
FINAL NOTICE

To: **The Carphone Warehouse Limited ("CPW" or the "Firm")**

Reference Number: **312912**

Address: **1 Portal Way, London W3 6RS**

Date: **13 March 2019**

1. ACTION

1.1 For the reasons given in this Final Notice, the Authority hereby imposes on CPW a financial penalty of £29,107,600 pursuant to section 206 of the Act.

1.2 The Firm agreed to settle all issues of fact and liability and therefore qualified for a 30% discount under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £41,582,300 on the Firm.

2. SUMMARY OF REASONS

2.1. On the basis of the facts and matters described below the Authority considers that between 1 December 2008 and 30 June 2015 ("the relevant period"), CPW breached Principle 3 (Management and control), Principle 6 (Customers' interests) and Principle 9 (Customers: relationships of trust) of the Authority's Principles for Businesses ("the Principles").

- 2.2 During the relevant period, CPW failed to equip its sales consultants to give suitable advice to customers in respect of “Geek Squad”, its mobile phone insurance and technical support product.
- 2.3 CPW offered versions of Geek Squad in respect of products other than mobile phones, but all of its activities in respect of such versions of Geek Squad fall outside the scope of this Notice. CPW did not undertake regulated activities in its sales of the version of Geek Squad for “pay as you go” customers between October 2010 and October 2013, and accordingly those sales also fall outside the scope of this Notice. Further, CPW did not conduct regulated activities in its sales of the “Geek Squad Repaired Mobile Lite” product sold from February 2014, and the “Geek Squad Mobile Lite” product sold from July 2014, and accordingly those sales fall outside the scope of this Notice. References to Geek Squad in this Notice are confined to the mobile phone insurance and technical support product sold by CPW during the relevant period by way of regulated sales.
- 2.4 CPW operated an advised sales process. It based compliance with the regulatory requirements in respect of advised sales of mobile phone insurance on four “Must Do’s”. CPW believed that a sales consultant who complied with the “Must Do’s” would make compliant sales. That belief was wrong. An essential element missing from the “Must Do’s” was the need for the sales consultant properly to establish the customer’s demands and needs and to undertake an assessment of whether Geek Squad was suitable for the customer.
- 2.5 The focus of the training given to sales consultants was on selling Geek Squad. They were not trained to properly assess a customer’s demands and needs and to make a suitable recommendation. Instead, they were trained to ask questions in order to help identify reasons why the customer “needed” Geek Squad, in order to persuade them to purchase it. Insufficient guidance was provided to sales consultants on circumstances where it may not be appropriate to recommend Geek Squad.
- 2.6 Sales consultants were trained in “objection handling”, which undermined the advised sales process. Customer objections should have been considered and taken into account as part of the overall assessment of the suitability of Geek Squad. In particular, where customers indicated that they might have alternative cover, or simply wanted time to think before making a decision, sales consultants were trained to encourage customers to purchase Geek Squad and to cancel it

within 14 days if they found that they did not need it. This created a risk that customers would purchase insurance that they did not need and would be exposed to the risk of paying for it if they did not cancel in time.

2.7 Sales consultants were not trained to tell customers that they were making a personal recommendation, or that there was only one kind of insurance policy that they could sell, despite an obligation to do so. As a result, there was a risk that customers would not understand that they should disclose relevant information to help the sales consultant provide proper advice, and they would not have been aware of the limitations on the scope of the advice that the sales consultant was able to give.

2.8 These failings created a risk that CPW's sales consultants would fail to give suitable advice to customers. It is evident from cancellation calls received by the Firm that this risk crystallised during the relevant period with customers confirming that they had been pressured into purchasing Geek Squad, told it was compulsory or sold on the basis that it could be cancelled at a later date. For example, one customer stated *"I just want to cancel the policy. I had to take it on because when I got a new phone...it was shop policy to get it and I've been told I can cancel it if I needed to"*.

2.9 A committee of the Board known as the FCACC was ultimately responsible for the compliance of CPW's advised sales of Geek Squad. It relied on management information and reports produced, among others, by CPW's compliance function. Those reports and information relied primarily on regular reviews of a number of performance indicators. These indicators were flawed, because they were based on incorrect assumptions or failed to capture relevant information. Consequently, the FCACC was not provided with sufficient information to be able to identify and/or address the risk of mis-selling. The relevant indicators principally comprised:

- (1) Measures of the results of CATI (computer assisted telephone interview) customer surveys;
- (2) Details of cancellations; and
- (3) Measures of complaints.

- 2.10 The CATI surveys measured answers to questions based on CPW's four "Must Do's". As CPW was wrong to believe that compliance with the Must Do's was alone sufficient to comply with regulatory requirements, this approach was inherently flawed. It was further flawed because information provided by customers in CATI surveys that did not relate to the Must Do's, but which was capable of indicating that the sale was not compliant, was not taken into account.
- 2.11 Although some measures of cancellation rates were included in management information, the range of different reasons for cancellation were not systematically provided to the FCACC until July 2014. Reasons for cancellation provide an important insight into potential failings in the sales process. In the absence of this information, the FCACC was unable to identify and take action about those failings. In any event, the rates of cancellation were reported to the FCACC. Those rates were high and should have been construed as indicating a significant risk of mis-selling, but the FCACC did not at any stage take effective action to address them.
- 2.12 Further, although CPW collected information on complaints, the range of different reasons for complaints about sales of Geek Squad were not regularly detailed in the management information provided to the FCACC. This meant that management was unable to understand the different sources of complaints about sales, which would have helped CPW to identify failings in the sales process.
- 2.13 During the relevant period, when customers complained about the sale of Geek Squad, the only material investigative step taken by CPW to assess the validity of the complaint was to locate the signed certificate of insurance. Customer testimony which could provide information regarding the circumstances of the sale was not taken into account. As a result, CPW's systems and controls for handling complaints were defective, because CPW did not properly investigate and fairly consider complaints. It follows that measures of the proportion of complaints about sales that were upheld were misleading, as the complaints had not been properly investigated and the true rate of complaints that should have been upheld was not known.
- 2.14 The Authority considers CPW's failings to be serious for the following reasons:
- (1) Geek Squad policies to a value of £444,771,786.41 were sold during the relevant period; and

(2) the breaches identified demonstrate significant weaknesses in CPW's procedures, management systems and internal controls relating to the sale of Geek Squad.

2.15 The Authority has taken into account that:

(1) CPW has undertaken redress schemes with the aim of paying redress to customers whose complaints were rejected unfairly and to certain customers who cancelled their policy due to reasons which were indicative of mis-selling having taken place; and

(2) the Firm has made significant improvements to its approach to regulatory matters.

2.16 In the light of the above failings, the Authority has imposed a financial penalty on CPW of £29,107,600 pursuant to section 206 of the Act.

2.17 This action supports the Authority's consumer protection objective.

2.18 In this Notice the Authority makes no criticism of any person other than CPW. Further, any facts or findings in this Notice relating to any function, committee or group of persons should not be read as relating to all the members of that function, committee or group, or even necessarily any particular individual.

2.19 The Authority identified 30 June 2015 as the end of the relevant period for the purpose of this Notice because this is the approximate date by which CPW implemented substantial changes to its processes and procedures intended to address the failings identified in this Notice. This choice of end date should not be taken to indicate that the Authority has determined that CPW's systems and controls and sales of Geek Squad were in fact compliant. The Authority also notes that from around July 2016 CPW altered its procedures. CPW now, along with other industry participants, sells mobile phone insurance in a manner that it considers to fall within the connected contracts exemption and therefore does not require it to be regulated by the Authority.

3. DEFINITIONS

3.1. The definitions below are used in this Notice:

“the Act” means the Financial Services and Markets Act 2000.

“the Authority” means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority.

“CATI survey” means a computer-assisted telephone interview survey.

“CPW” means The Carphone Warehouse Limited.

“DEPP” means the Authority’s Decision Procedure and Penalties Manual.

“DISP” means the Dispute Resolution: Complaints Sourcebook in the FCA Handbook.

“Firm” means The Carphone Warehouse Limited.

“FCACC” means the FCA Compliance Committee (formerly the FSA Compliance Committee), a committee of the board of CPW.

“FOS” means the Financial Ombudsman Service.

“Geek Squad” means the combination of technical support and insurance sold by the Firm under the “Geek Squad” brand during the relevant period.

“ICOBS” means the Insurance Conduct of Business Sourcebook in the FCA Handbook.

“INR” means Insurance Not Requested, a description the Firm gave to various kinds of complaint about the sale of Geek Squad.

“Insurer” means the underwriter from time to time of the Geek Squad insurance policies.

“Principles” means the Authority’s Principles for Businesses.

“the relevant period” means the period from 1 December 2008 to 30 June 2015 inclusive.

“Skilled Person” means the firm appointed in May 2015 pursuant to the Authority’s powers under section 166 of the Act to review and report on CPW’s insurance sales practices during the period 1 January 2014 to 31 March 2015.

“TCF Dashboard” means a spreadsheet produced on a monthly basis setting out management information to enable the Firm to monitor whether it was meeting the standards it hoped to reach with regards to the fair treatment of its customers.

“the Warning Notice” means the warning notice given to CPW dated 12 October 2018.

4. FACTS AND MATTERS

Background

- 4.1 CPW is a telecommunications retailer whose activities include the sale of insurance cover for repair or replacement of mobile telephones in the event of breakdown, accidental damage, loss or theft. The Firm has been part of the listed Dixons Carphone group since August 2014. During the relevant period, it sold mobile phone insurance in-store, over the telephone and on-line, with over 90% of sales being made in-store. All of the Firm’s in-store sales of insurance were made on an advised basis.
- 4.2 This Notice relates to the Firm’s regulated in-store sales of Geek Squad during the relevant period. As noted in paragraph 2.3, CPW did not undertake regulated activities in selling certain versions of Geek Squad branded insurance. Those versions were the Geek Squad products sold to “pay as you go” customers between October 2010 and October 2013, the “Geek Squad Repaired Mobile Lite” product sold from February 2014, and the “Geek Squad Mobile Lite” product sold from July 2014. All other Geek Squad policies relating to mobile phones were regulated and fall within the scope of this Notice.
- 4.3 On 5 September 2006, the Authority published a Final Notice against CPW pursuant to which it imposed a penalty of £245,000 for breaches of Principles 2, 3, 6 and 11 in respect of its telephone sales of insurance. In the period 14 January 2005 to 24 October 2005, CPW had failed to send 118,000 customers who had bought mobile phone insurance a statement of demands and needs in a durable format as required by ICOB rules 4.4.1 and 4.4.2(2), and the Firm also failed to

send 56,000 of those customers a policy summary setting out the main features of the policy as required by ICOB rules 5.3.8 and 5.3.6. The failings involved defects in CPW's systems and controls, as it was not aware until October 2005 that some of its telephone sales channels had no mechanism for sending policy summaries to customers. A mitigating factor recorded in the Final Notice was that the Firm had committed to a comprehensive programme of reviewing and strengthening its systems and controls in relation to all of its general insurance sales channels. This included undertaking a full compliance audit of all sales channels in order to ensure relevant disclosures were being made to customers in a timely manner, strengthening the insurance team, restructuring the compliance function, and committing considerable additional resource to the compliance function.

- 4.4 When a customer entered into a Geek Squad insurance plan, they were entering into an agreement with the Insurer to provide mobile phone insurance and an agreement with CPW for technical support.
- 4.5 In May 2015, in the light of concerns about CPW's sales practices, the Authority appointed a Skilled Person to undertake a review and to report on CPW's in-store insurance sales practices during the period 1 January 2014 to 31 March 2015.
- 4.6 As at November 2015, the Firm's in-store sales were made by approximately 8,000 sales consultants across circa 950 UK branches.

Governance and oversight

FCACC

- 4.7 During the relevant period, a Board Committee known as the FCACC had overall responsibility for monitoring and controlling the Firm's compliance with the Authority's rules regarding the selling of insurance policies to UK customers. It sought to discharge this duty by reviewing key operational management reports and reports on key issues identified from time to time by various functions, including the Compliance function. In addition, the FCACC had a number of specific duties, including assessing the effectiveness of the Firm's internal reporting and controls, reviewing compliance procedures and controls, agreeing actions and communicating them to management, and reporting to the Firm's Board.

- 4.8 During the relevant period, there were nine Compliance Sub-Committees, which reported to the FCACC.
- 4.9 The Retail Sub-Committee was comprised of operational-level employees. It focused on the compliance of in-store sales of Geek Squad. However, no detailed minutes were prepared of these meetings. As a result, it is not clear which issues were raised to it, which it considered, what it decided to do and why. It generally met monthly for an hour and considered detailed information about in-store sales, resulting in some positive progress. Some issues discussed in this forum were escalated to the FCACC.
- 4.10 The FCACC would consider, inter alia, compliance issues, FCA relationship matters and management information (primarily in the form of the TCF dashboard). Those attending included a member of the compliance function, persons holding FSA/FCA controlled functions and representatives from the Geek Squad business.
- 4.11 During the relevant period, the Board devolved accountability for regulatory oversight of the regulated business to the FCACC. As compliance matters were discussed in detail at the FCACC, and all Board members who held responsibility for the regulated business were also members of the FCACC, discussion of compliance matters by the Board would be limited.

Compliance function

- 4.12 The compliance function provided secretarial support for the FCACC, including by preparing agendas, finalising minutes, following up on actions and ensuring that other compliance-related groups were appropriately supported.
- 4.13 In addition, the compliance function was responsible for advising on matters relating to compliance with the requirements of the regulatory system, and for verification of compliance. This included verifying the compliance of new and existing sales practices, and the review and sign-off of customer documentation.
- 4.14 During the relevant period, no person in the compliance function was obliged to be, or was, approved to hold a controlled function.

Internal Audit

- 4.15 The Internal Audit function at CPW was responsible for providing an independent assessment of the Firm's system of internal control, through reviewing how effectively key risks were managed, and assisting management in the discharge of its responsibilities by carrying out independent appraisals and making recommendations for improvement.
- 4.16 During the relevant period, CPW undertook no audit of the compliance of its insurance sales process. As a result, the risks of mis-selling were not subject to scrutiny by CPW's Internal Audit function.
- 4.17 In 2013, CPW planned to undertake a quality assurance review of its "FSA Compliance activities". It had never previously undertaken such a review, although certain matters falling within the Compliance function's remit had been subject to audit, however, this review was not undertaken during the relevant period.
- 4.18 CPW's Internal Audit function did conduct a review in late 2014/early 2015 in order to "*provide an independent review of the supporting evidence in relation to the attestations made to the FCA in August 2013 We will also carry out testing to verify that the statements made reflect the current practice.*" Those attestations were given in the context of a thematic review conducted by the Authority. None of the attestations concerned the sales process, nor the process for considering complaints regarding sales. Internal Audit's review therefore did not consider whether the sales process was compliant, the adequacy of the governance and oversight arrangements in respect of the sales process, or the process for handling complaints regarding sales.

Sales process

- 4.19 The Firm operated an advised sales process. It sought to make a personal recommendation based on the individual circumstances of the customer and whether the insurance was suitable for the customer's needs. Accordingly, the Firm had to comply with the parts of the Authority's Handbook that are engaged when making an advised sale of insurance.

- 4.20 Aside from the insurance certificates that customers were required to sign, there were no records made relating to the nature of sales during the relevant period. In order to understand the sales process for Geek Squad and whether it complied with the relevant regulatory requirements during the relevant period, the Authority reviewed the Firm's training for staff involved in, or having oversight of, the sales process. This included induction training as well as bi-annual training, quality skills training, e-learning modules and ad hoc training. The Authority also conducted interviews with 29 sales consultants and store managers.
- 4.21 CPW's sales consultants did not search the market for products to recommend and did not have a choice of insurance products that they could recommend. During the relevant period, until 2 October 2013, there were differences in cover available depending on whether the mobile phone was sold on a "pay as you go" or "pay monthly" contract. After 2 October 2013, that distinction was removed. Although the sales booklet used in-store compared a number of product features with a number of other insurance policies, sales consultants were not expected to have a detailed knowledge of the full range of products in the market. They could not advise on products other than Geek Squad insurance.
- 4.22 Sales consultants were not trained to tell customers that they were only able to recommend one product, or a product provided by the Insurer, or that they were making a personal recommendation. It may have been possible to deduce this information from the insurance certificate, which sales consultants were trained to ask customers to sign to conclude a sale.
- 4.23 Initially during the relevant period, the training provided to sales consultants briefed them that *"Customers only buy something if they see a need for it. Our job is to show them the need"*. Consultants were trained in "spin selling", which was described as *"really all about matching needs to benefits in such a way that it makes it very difficult to refuse."* Consultants were given examples of questions which would be likely to elicit answers that could be related to benefits of Geek Squad as a way of seeking to persuade customers that they needed it. Although by March 2009 references to "spin selling" were removed from training materials, the sales process that sales consultants were trained to follow remained substantially unchanged.

- 4.24 Limited training was provided on how to respond when customers gave answers indicating that Geek Squad may not be appropriate, for example if they already had insurance cover or considered Geek Squad to be too expensive.
- 4.25 Throughout the relevant period, training was provided on how to respond to reasons given by customers for not purchasing Geek Squad, which were described as "objections".
- 4.26 Consultants were informed that objection handling was *"not about selling a product to a customer who does not want or need the cover; it is about tailoring your explanation of the product benefits to address the "objection" and to make sure that the customer takes out a product that they want, need and understand"*. Consultants were then trained on how to overcome objections by explaining features of Geek Squad. They were not trained to consider whether the customer's objections were relevant to the advice that the consultant should give. The effect of the training was therefore intended to help sales consultants persuade customers that they wanted or needed Geek Squad, rather than to help sales consultants to give a suitable recommendation.
- 4.27 The design of the sales process in place during the relevant period was based on staff completing four procedures known as the four "Must-Do's", which were summarised as:
- a) explore the customer's needs;
 - b) explain the excess and exclusions;
 - c) give the customer the policy booklet; and
 - d) ask the customer to tick the boxes, sign the insurance certificate and give them a copy.
- 4.28 The sales staff used a policy booklet as part of the sales process. They were trained to walk the customer through each page as part of the sale. In addition to an explanation of the product features, benefits and exclusions, the booklet also contained the insurance certificate, which had customer, plan and protection details and space for the confirmatory signature of the customer.
- 4.29 The sales consultants were expected to use information given by the customer in response to questions during the handset and contract sales process to inform

their questioning and approach to the insurance sale. Until June 2015, there was no detailed, documented and tailored assessment of demands and needs.

- 4.30 The first “Must Do” was to “explore the customer’s needs”. Training materials and guidance provided to sales consultants told them that this required them to match the product to the customer’s needs using the Geek Squad Product Guide, which appeared in the policy booklet. In addition, sales consultants were trained to ask open questions, lifestyle questions and work-related questions. They were told the purpose was *“to introduce the [Geek Squad] sale by identifying a customer need”*. Sales consultants were trained to persuade customers that they had a need for Geek Squad by relating one or more aspects of their personal or work life to benefits available under Geek Squad.
- 4.31 The intended purpose of the first “Must Do” was stated as being to make sure that the sales consultant recommended a policy that was suitable for the customer’s needs. The written guidance given to sales consultants about the “Must Do’s” stated that this meant the customer taking out a policy that had benefits which they needed and were not already covered by existing insurance. However, sales consultants were not trained in how to make an assessment of these matters.
- 4.32 For the period from 2009 to at least 2011 sales consultants were trained not to open the sale of Geek Squad by asking a direct question about whether the customer had alternative cover. Instead, the sales consultant was instructed to show the customer the “Geek Squad Product Guide” – a table comparing the cover provided by Geek Squad to the cover provided by other insurance policies. The cover provided by Geek Squad was shown as providing benefits such as technical support cover, mobile loan and in-store replacements which were not available from other insurance policies. As a result, it was likely that Geek Squad would always be recommended to a customer even when they already had pre-existing insurance during this period.
- 4.33 The Firm’s sales process in respect of the first “Must Do” changed by 2013. From this point, sales consultants were, as part of exploring a customer’s needs, instructed to establish whether a customer had cover elsewhere. If they did, then the sales consultant was to explore how Geek Squad could offer a more comprehensive level of cover with the key focus being on the technical support features offered by the product. As a result, there was still a risk that Geek Squad

would always be recommended to a customer even when they already had pre-existing insurance in place.

- 4.34 If the customer already had pre-existing insurance for their mobile phone, (usually through existing home insurance or packaged bank accounts), any recommendation would involve them paying again for elements of the same cover. The training provided to sales consultants did not include how they could assist the customer in establishing the level of existing cover in place and then how a decision would be made as to whether a customer should purchase duplicative cover just to obtain the additional benefits of Geek Squad.
- 4.35 In addition, the sales process involved no formal assessment of affordability of the product. Many customers would have to pass a credit check in order to purchase a phone. Sales consultants were given no training as to the relevance of affordability, or how to advise in relation to affordability. While affordability would not be an issue for many, or even most, customers, that may not have been the case for some. During the relevant period, one of the main reasons cited by customers when cancelling their policy was that the product was “too expensive”.
- 4.36 In addition to the training received, written objection handling documents were available to staff during the relevant period. The content of these documents was substantially identical to the training that staff received on handling objections.
- 4.37 Staff were trained to handle objections by describing the features, functions and benefits of Geek Squad or by emphasising the ability of the customer to cancel the product after buying it. For example, if the customer objected to purchasing Geek Squad on the basis that they wanted to think about it, the sales consultants were trained to say:

“If you take it today you have 14 days to cancel if you change your mind for any reason. That way, you’re definitely covered from the minute you sign the policy certificate. There is no long term commitment to keeping Geek Squad. You can always take it to start with, and cancel it later in the contract if you feel it no longer of benefit to you. I do recommend you take it to start with just to be sure you’re covered”.

- 4.38 When asked in interview, 4 out of 22 sales consultants (namely 18%) said that they try to sell insurance to customers on the basis of the customer being able to cancel it within 14 days.
- 4.39 CPW substantially changed its sales process in June 2015 by introducing a detailed, documented and tailored assessment of demands and needs. Sales consultants followed a process outlined in a document called "Insurance Needs Form" which contained a structured set of questions to help establish whether a customer had adequate insurance in place or if Geek Squad would be right for them. As part of the process, the sales consultant would ask the customer whether they had insurance cover in place. If the customer did, the sales consultant would ask three additional questions about the cover including whether the customer had accidental damage, cover for theft, loss and unauthorised use and technical support cover. If the customer answered yes to any of these questions, the default position was not to recommend or sell Geek Squad insurance. The Insurance Needs Form specifically recorded the decision not to recommend that the customer take out Geek Squad insurance.
- 4.40 During 2015, CPW also ceased objection handling training and removed any reference to objection handling material from its sales policy approach. Staff were instead trained on how to handle common customer queries so that the Geek Squad product benefits could be fully explained to them and matched to their demands and needs. There was a notable shift from the previous training on selling Geek Squad. In particular, the training highlighted that where a customer had existing insurance in place, Geek Squad probably was not right for them. It stated "*they would be duplicating their cover, because a lot of claims against mobile insurance are for accidental damage meaning the product would not be fit for purpose if they already had this cover in place*". The training further stated that if a customer already had cover for accidental damage and breakdown in place then the sales consultant must not recommend or sell Geek Squad insurance.

Systems and Controls

- 4.41 Preventing mis-selling should have been one of the primary purposes behind the systems and controls in place for in-store Geek Squad sales. CPW's systems and controls in respect of its in-store insurance sales business included, among other things:

- (1) complaints handling policies and procedures; and
- (2) the review of management information by relevant committees, primarily in the form of the TCF Dashboard.

4.42 The TCF Dashboard in use at CPW developed over time. It included

- (1) performance indicators derived from CATI surveys, and from July 2014 also email surveys, of customers;
- (2) details of cancellation rates; and
- (3) information about complaints.

4.43 In addition, from September 2014, the Firm recruited three "FCA Coaches". A further three FCA Coaches were recruited by March 2015. The role of an FCA Coach was to make unannounced visits to stores which had been identified as having potential failings in relation to compliance. The introduction of FCA Coaches enabled the Firm to identify and rectify specific compliance concerns in those stores that they visited. However, given the size of CPW's sales force, the number of FCA Coaches was insufficient to have a material impact during the relevant period.

Complaints Handling

4.44 CPW classified many of the complaints raised by customers about the sale of Geek Squad as "insurance not requested at point of sale", abbreviated to "INR". This category appears to have been intended to cover situations where customers asserted that they had been sold a policy they had not asked for, or that they had no knowledge of the policy and did not agree to it, or that it was sold without their permission. In practice, it was a broad category and included (for example) circumstances where the customer was not aware of having purchased insurance, where the customer had declined to purchase insurance, and where the customer had felt pressured to purchase insurance.

4.45 In these cases, where the sale had been made in-store, the complaints decision was based primarily on whether a properly completed certificate of insurance that had been signed by the customer could be located. Further evidence regarding the customer's experience at the point of sale was not considered as part of the

complaints investigation process. The complaints handling policies in place during this time focused on the logistical aspect of complaints handling, as opposed to how to properly investigate a complaint.

- 4.46 In around May 2015 the Firm amended its complaints process and the complaints handling policy was changed to reflect that additional evidence including customer testimony should be gathered and considered as part of the complaints investigation process.

Management information

TCF Dashboards

- 4.47 The Firm prepared "TCF Dashboards" throughout the relevant period. These dashboards contained a large number of performance indicators that were graded depending on their status. Those metrics with a sufficiently serious grading would be discussed at the monthly FCACC meetings. The performance indicators included in the TCF Dashboard developed before, during and after the relevant period.

CATI Surveys

- 4.48 Initially, the questions posed in the CATI survey focused on the four Must Do's (described above at paragraph 4.27), asking:
- a) Did the consultant take you through the Geek Squad Product Guide?
 - b) Did the consultant show you the summary setting out the policy excess and main exclusions?
 - c) Did the consultant give you the Policy Booklet to take home with you?
 - d) Did the consultant give you a copy of the Insurance Certificate to take home with you?
- 4.49 The questions were equally weighted with a score of 25% each. By 1 October 2013, amendments were made to the first "Must Do" question to make reference to matching the features of the product to the customer's needs. In addition, further questions were introduced, including whether the sales consultant advised the customer about the 14 day cooling off period and whether the consultant explained the price of the policy and the basis on which payment was made.

However, the scoring of the CATI surveys continued to be based solely on the four Must Do questions set out above. As a result, a sale could score 100% if the customer answered positively to the Must Do questions even if answers to the other questions indicated that the sale may not have been compliant.

- 4.50 Customers were not asked to provide qualitative feedback during the CATI survey as a matter of course. However, on occasion, customers volunteered information which indicated potential issues with the compliance of the sale. This information was not identified, explored, referred or acted upon to identify mis-selling risks.
- 4.51 The Firm introduced email surveys in July 2014 which, in addition to the questions in the CATI surveys, asked questions relating to whether the customer had been offered incentives to purchase Geek Squad; whether the customer had been pressured by the consultant; and whether the customer had been advised that the insurance was optional. These questions were not incorporated into the telephone survey until June 2015. The scoring system was not amended to take account of the customer's responses to these additional questions.
- 4.52 The only information from the CATI surveys that appeared in the TCF Dashboards was the percentage of surveyed customers who had answered "yes" to each of the four "Must Do" questions.
- 4.53 The average number of CATI calls was 1.3 surveys per month per branch. This was increased to a target of five calls per month per branch, with a minimum of four deemed acceptable for bonus assessment. Even when the number of CATI surveys was at the highest point, it was insufficient to effectively monitor the quality of sales at a branch or individual sales consultant level. CATI surveys were a major part of compliance monitoring but the number of calls meant that even if the questions asked had been appropriate, effective monitoring through CATI surveys could never have been achieved because the sample size was too small.

Cancellation rates

- 4.54 Throughout the relevant period, a high proportion of policies sold by the Firm were cancelled early. For example, in January 2014, 35% of policies were cancelled within the first three months from inception. High early cancellation rates are an indicator of a risk of mis-selling. Cancellations could be "active" - where the customer contacted the Firm to cancel the policy - or "passive" where, for

example, direct debits were cancelled by the customer without notifying the Firm. During the relevant period, early cancellation rates began to be included in the TCF Dashboard.

4.55 For most of the relevant period, CPW did not make use of the qualitative information provided by customers. Calls to cancel Geek Squad during the relevant period were recorded, and contained potentially significant evidence that mis-selling may have taken place. Examples of issues that would have been revealed by consideration of these cancellation calls include:

1. the customer had not been aware that they were purchasing insurance – for example, one customer stated *"When I actually looked at the stuff that he's given me, I think it looks like I've got insurance and Geek Squad. I don't even want and I did not ask for. I've already got mobile insurance through my bank account. So I don't know what I've paid for upfront"*;
2. the customer was pressured into buying the insurance – for example, one customer stated that that she *"did not really want it in the first place but they pressured you into getting it"*; and
3. the customer was told he should buy the insurance and cancel it later – for example, one customer stated that he *"was sold the insurance with [the phone] which I don't need and I was told to ring up after a couple of weeks and cancel it"*.

4.56 This kind of information was not captured by the Firm's management information until July 2014. From this date, the TCF Dashboards contained a metric which showed the top three reasons for cancellations. The TCF Dashboards were also updated to show *"perceived mis-selling"* as a percentage of sales that had been cancelled within 14 days. This included those cancellations that had been categorised as *"pressure from the sales person"* or *"insurance not requested"*.

4.57 In July 2014, the TCF Dashboard included the top three reasons for 14 day cancellations to be:

1. Customer refused to give a reason;
2. Alternative cover; and
3. Too expensive.

4.58 In assessing suitability for mobile phone insurance, it is essential to consider whether the customer has alternative cover and whether the policy would be too expensive for them. The results on the TCF Dashboard illustrate that there was a strong indication that potentially unsuitable advice was given by sales consultants where the top three reasons for customer cancellation included two of the most important criteria of a suitability assessment in an advised sale. During the relevant period, the FCACC did not take effective action to address the risk of mis-selling revealed by the cancellation information in the TCF Dashboard.

Complaints

4.59 The TCF Dashboard captured certain information in relation to complaints. This included the number of complaints as a percentage of sales across various different sales channels and percentages of complaints categorised as “insurance not requested” that were upheld across those channels.

4.60 Separately, at least at times during the relevant period, the Firm produced complaints analysis in a spreadsheet on a weekly basis. This analysis would include the number of complaints attributable to each category of complaint, for example the number of complaints where the customer was not happy that their claim had been declined, or where the customer had received incorrect information from the sales consultant. For complaints about sales of Geek Squad, there were two categories that could be used: “*No insurance requested at point of sale*” and “*Poor service or incorrect info given by sales consultant*”. A description of each complaint received was also available as part of the spreadsheet. However, it does not appear that this information was used to help the Firm to review and improve its sales process.

Internal whistleblowing

4.61 The whistleblowing logs maintained by the Firm were both inaccurate and inadequately detailed. For example:

- a) in the 2009/2010 whistleblowing log, several key fields (for example, those recording the action taken, findings and outcome) were blank for the majority of the entries;

- b) there was a significant discrepancy in the 2011/2012 whistleblowing log between the number of entries and the number of whistleblowing reports listed as having been received; and
- c) in the 2013/2014 whistleblowing log, entries noted that they had been closed with no further action but the log did not explain on what grounds that decision had been taken.

4.62 Incomplete information contained within the whistleblowing logs meant that the Firm was unable to evidence how it dealt with the issues raised, some of which were indicative of mis-selling. For example, one entry stated "*when selling geeks [sic] squad insurance he does not always go over the policy fully and always uses 14 days to cancel as a way to sell it, which probably mean [sic] 90% of the policies are being cancelled yet he is still getting bonus*". However, the findings and the action taken were not recorded.

4.63 The ownership and operation of the whistleblowing investigation process was unclear. CPW was unable to articulate to the Skilled Person how the process worked in operation, or to provide for interview any member of staff who could describe the complete operation of the individual case investigation process and the governance process relating to whistleblowing.

4.64 Whistle-blowing reports do not appear to have been considered by the FCACC. In February 2013, the FCACC requested a review of the Firm's whistle-blowing process. Despite requesting an outline of each whistle-blowing report from August 2013, further detail was not provided to the FCACC until July 2014 when the management information provided to the FCACC was amended to include the number of whistle-blowing reports received. Even at this point, the minutes of the FCACC do not indicate specific discussions relating to themes or findings of individual case investigations.

Redress

4.65 In 2016 CPW voluntarily commenced a redress exercise to compensate those customers whose complaints were categorised as "INR" and who may have been refused primarily because of the existence of a signed insurance certificate. To date, CPW have refunded £948,777.09 to those customers.

- 4.66 In 2018 CPW voluntarily commenced a second redress exercise with the aim of paying compensation to customers who may have been mis-sold a Geek Squad policy. This redress exercise sought to compensate those customers who had actively cancelled their policy for reasons which were identified by the Firm as being potentially indicative of mis-selling. This redress exercise is ongoing.

Current sales

- 4.67 From around July 2016, CPW has sold mobile phone insurance in a manner that it considers to fall within the connected contracts exemption and therefore does not require it to be regulated by the Authority. The Authority has not investigated, and therefore makes no findings about, whether that belief is correct or not.

5. FAILINGS

- 5.1. The regulatory provisions relevant to this Notice are referred to in Annex A.
- 5.2 Based on the facts and matters described above, the Authority considers that the Firm has breached Principles 3, 6 and 9.
- 5.3 Principle 3 requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems. The Firm breached this obligation in the following ways.
- (1) The process that sales consultants were trained to follow in selling mobile phone insurance in-store was inadequate to equip them properly to give personal recommendations to customers:
- a) The training focused on selling the Geek Squad product and did not adequately explain to sales consultants what was required in order to give compliant advice. Instead, sales consultants were told that complying with the “four Must Do’s” was all that was required.
 - b) Sales consultants were not trained to make a balanced assessment and a suitable recommendation. Instead, the training encouraged sales consultants to ask questions in order to help identify reasons why the customer could be persuaded that they “needed” Geek Squad insurance, to facilitate a sale.

- c) The training given to sales consultants was not sufficiently clear on the approach to be taken when a customer had existing cover. While the training material made reference to the need to ensure customers purchased an insurance policy that they needed and/or wanted and that was not covered by any existing policy, it also encouraged sales consultants to overcome objections posed by customers with existing cover and focus on exploring how Geek Squad could offer a more comprehensive level of cover rather than on the specific needs of the customer.
- d) The training material provided no examples or guidance as to circumstances where a customer might not “need” Geek Squad insurance, to help identify circumstances where a sales consultant should not recommend it.
- e) To the contrary, for most of the relevant period, the training material included “objection handling guides” to help sales consultants persuade customers that they did in fact need and should purchase Geek Squad insurance. Training sales consultants in “objection handling” undermined the advised sales process. Customer objections should have been considered and taken into account as part of the overall assessment of the suitability of the product that sales consultants were able to sell. Instead, sales consultants were encouraged to respond to objections by giving further explanations of the benefits of the product.
- f) Training sales consultants to sell on the basis that customers could cancel within 14 days as a way of overcoming customers’ objections that they wanted to have time to think, or that they were uncertain whether they had insurance already, was particularly inappropriate. These practices created a risk of inappropriate pressure being placed on customers and of customers being given an inappropriate recommendation. In some cases, the anticipated “objections” were such as ought to have raised concerns about the suitability of the product. For example, where customers explained they already had insurance, or felt that it was too expensive.
- g) The training material also made no reference to any assessment of affordability. This was a relevant consideration that sales consultants should have taken into account in deciding whether Geek Squad was

suitable for the customer. Although Geek Squad was likely to be affordable for many, or even most, customers, it may not have been affordable for some.

- h) Sales consultants were not trained to tell customers that they were making a personal recommendation, or that there was only one kind of insurance policy that they could sell. As a result, there was a risk that customers would not understand that they should disclose relevant information to help the sales consultant provide proper advice, and they would not have been aware of the limitations on the scope of the advice that the sales consultant was able to give.
- (2) The process that sales consultants were trained to follow also created a risk that the Firm would fail to comply with the requirements of ICOBS 4.1.6R and 4.1.7R. These rules required the Firm to tell the customer, prior to the sale of mobile phone insurance being concluded, that it was under an obligation to sell only an insurance product provided by the Insurer, and to state that it was giving a personal recommendation. Although it may have been possible to deduce this information from the small print in the insurance certificate that customers were required to sign, by the time customers came to sign the certificate they would normally have already decided to enter into the contract of insurance, and many customers would not have been in a position to read and understand the implications of the small print prior to signing. Accordingly, the sales process created a risk that the Firm would not discharge its obligations under these ICOBS rules.
- (3) For most of the relevant period, the Firm's complaints handling process for complaints about the sale of Geek Squad involved complaints being upheld or rejected solely on the basis of whether a signed insurance certificate could be found. This process was not capable of meeting the requirements of DISP 1.4.1R and treating customers who complained fairly in accordance with Principle 6.
- (4) The management information upon which the Firm relied to monitor the compliance of its mobile phone insurance sales was flawed:
 - a) The metrics derived from the CATI surveys were based solely on the "Must Do" questions. This was not sufficient to measure whether the sale was compliant. The first question was intended to establish whether the Firm had properly explored the customer's needs in order to ensure that

its advice was suitable, as required by ICOBS 5.3.1R. For much of the relevant period, the question asked about whether the sales consultant had taken the customer through the policy booklet. This was insufficient to test compliance with the relevant rule. Although the question was amended to refer to matching the product features to needs, this was not sufficient for positive answers to the question to indicate that the sales consultant had properly explored the customer's demands and needs, or considered whether, in the light of them, the policy was suitable.

- b) The CATI surveys were capable of obtaining information about potential mis-selling concerns, and on occasion, did so. However, sales could still be rated compliant when such information was provided to the Firm, because the only measures of compliance were the yes/no answers to the "Must Do" questions.
- c) Although the management information provided to the FCACC included some details of cancellation rates, for most of the relevant period, it did not capture any of the information about the reasons for cancellation that might have helped identify and address failings in the sales process. The information about cancellation rates did, however, show that a high proportion of policies were cancelled early throughout the relevant period. This was an indicator that there was a risk of mis-selling. The FCACC did not take effective action in response to this information.
- d) Although the Firm collected information on complaints, the management information used by the FCACC did not capture the range of different reasons for complaints, treating almost all complaints about the sale of Geek Squad as "insurance not requested" complaints. Information about the different sources of complaints about sales would have helped the FCACC to identify failings in the sales process.
- e) From July 2014 the FCACC was informed about the number of whistleblowing complaints, but received no other information about them. Management was therefore unaware throughout the relevant period of the kinds of issues concerning sales practices that whistleblowing complaints could reveal. Further, the whistleblowing logs maintained by the Firm were themselves defective as they failed to record all relevant information.

f) There was no review by the Internal Audit department of the compliance of the sales and advisory process during the relevant period. This was notwithstanding continuing high rates of early cancellation of Geek Squad, which indicated that there was potentially a problem with the sales process.

5.4 Principle 6 requires a firm to pay due regard to the interests of its customers and treat them fairly. In breach of Principle 6:

(1) The Firm put in place sales practices which were flawed in the manner described in paragraphs 5.2(1)(e), (f) and (h), 5.2(2) creating a risk that customers would not be treated fairly. In the advisory context, it is unfair to customers for advisers to respond to objections by seeking to make a sale rather than consider the implications for the advice that should be given. Failing to explain clearly the basis on which the Firm was advising was also unfair to customers, for the reasons given in paragraph 5.2(1)(h). This is illustrated by certain of the cancellation calls that the Authority has reviewed.

(2) The Firm failed to adequately investigate and consider customer complaints, with the result that customers who complained were not treated fairly.

5.5 Principle 9 requires a firm to take reasonable care to ensure the suitability of its advice for any customer who is entitled to rely upon its judgment. The Firm's sales practices described in paragraph 5.2(1) meant that sales consultants were not equipped to give suitable advice to customers. Accordingly, the Firm failed to take reasonable care to ensure the suitability of its advice.

5.6 The Authority therefore considers it is appropriate and proportionate in all the circumstances to take disciplinary action against the Firm for its breaches of Principles 3, 6 and 9 during the relevant period.

6. SANCTION

Financial penalty

6.1 The Authority's policy on the imposition of financial penalties is set out in Chapter 6 of DEPP. In determining the financial penalty, the Authority has had regard to this guidance.

6.2 The principal purpose of a financial penalty is to promote high standards of regulatory conduct by deterring persons who have breached regulatory requirements from committing further breaches, helping to deter other persons from committing similar breaches, and demonstrating generally the benefits of compliant behaviour. For the reasons set out above, the Authority considers that CPW breached Principle 3, Principle 6 and Principle 9. In determining that a financial penalty is appropriate and proportionate in this case, the Authority has considered all the relevant circumstances.

6.3 Changes to the penalty policy set out in DEPP were introduced on 6 March 2010. As the conduct at issue occurred both before and after 6 March 2010, the Authority has had regard to the provisions of DEPP in force prior to 6 March 2010 (the “old penalty regime”) in respect of the breaches that took place before 6 March 2010, and the provisions of DEPP in force from 6 March 2010 (the “current penalty regime”) for the later breaches.

6.4 The Authority has therefore:

- (1) calculated the financial penalty for CPW’s misconduct from 1 December 2008 to 5 March 2010 by applying the old penalty regime to that misconduct;
- (2) calculated the financial penalty for CPW’s misconduct from 6 March 2010 to 30 June 2015 by applying the current penalty regime to that misconduct; and
- (3) added the penalties calculated under (1) and (2) together to produce the total penalty.

Financial penalty under the old penalty regime

6.5 In determining the financial penalty to be attributed to the Firm’s misconduct prior to 6 March 2010, the Authority has had particular regard to the following:

- (1) The principal purpose of a financial penalty is, as set out at paragraph 6.2 above, to promote high standards of regulatory conduct through deterrence and by demonstrating generally the benefits of compliant behaviour (DEPP 6.5.2G(1)).
- (2) The nature, seriousness and impact of the breaches (DEPP 6.5.2G(2)), in particular:

- (a) the Firm's failings created a significant risk that many customers would enter into mobile phone insurance contracts that they did not want or need;
 - (b) Geek Squad policies to a value of £29.3 million were sold during the period from 1 December 2008 to 5 March 2010;
 - (c) the breaches occurred for over 15 months under the old penalty regime and continued afterwards; and
 - (d) the fact that the breaches identified demonstrate systemic weaknesses in the Firm's procedures, management systems and internal controls relating to the sale of Geek Squad. Defects in the procedures of large firms such as CPW are particularly serious because the failure to have adequate procedures and adequate monitoring to ensure that sales are compliant, has the potential to expose a large number of customers to an unacceptable level of risk.
- (3) The size and resources of CPW (DEPP 6.5.2G(5)).
- (4) The fact that CPW conducted two redress exercises, as described in paragraphs 4.65 and 4.66 above, and has made significant improvements to its approach to regulatory matters since the breaches were identified (DEPP 6.5.2G(8)).
- (5) CPW's disciplinary record and compliance history (DEPP 6.5.2G(9)). In particular, the Authority has had regard to the Final Notice issued against CPW on 5 September 2006, which identified failings in the systems and controls at CPW relating to its sales of mobile phone insurance.

6.6 The Authority considers that CPW's breaches of Principle 3, Principle 6 and Principle 9 in the period prior to 6 March 2010 merit a financial penalty of £1,900,000.

6.7 CPW agreed to settle all issues of fact and liability and therefore qualified for a 30% discount under the Authority's executive settlement procedures. The financial penalty for the Firm's breach of Principle 3, Principle 6 and Principle 9 in the period prior to 6 March 2010 is therefore £1,330,000.

Financial penalty under the current penalty regime

6.8 All references to DEPP in this section are references to the version of DEPP implemented on 6 March 2010 and currently in force. 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 6.5A sets out the details of the five-step framework that applies in respect of financial penalties imposed on firms.

Step 1: disgorgement

6.9 Pursuant to DEPP 6.5A.1G, at Step 1 the Authority seeks to deprive a firm of the financial benefit derived directly from the breach where it is practicable to quantify this.

6.10 The Authority does not consider that it is practicable to quantify the financial benefit derived from the breaches in this case.

6.11 The Step 1 figure is therefore £0.

Step 2: the seriousness of the breach

6.12 Pursuant to DEPP 6.5A.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. Where the amount of revenue generated by a firm from a particular product line or business area is indicative of the harm or potential harm that its breach may cause, that figure will be based on a percentage of the firm's revenue from the relevant products or business area.

6.13 The Authority considers that the revenue generated by the Firm in relation to the business undertaken by it in connection with its sale of Geek Squad during the period from 6 March 2010 to 30 June 2015 is indicative of the harm or potential harm caused by the Firm's breaches. The Authority considers CPW's relevant revenue for these breaches to be £377,927,282.

6.14 In determining the percentage of the relevant revenue that forms the basis of the Step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 20%. 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 firms there are the following five levels:

Level 1 – 0%

Level 2 – 5%

Level 3 – 10%

Level 4 – 15%

Level 5 – 20%

- 6.15 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. The factors that the Authority considers to be relevant to the Firm's breaches are set out below.

Impact of the breach

- 6.16 Geek Squad policies to a value of over £415.4 million were sold during the period from 6 March 2010 to 30 June 2015.
- 6.17 CPW's breaches presented a risk to the Authority's objective of securing protection for consumers.

Nature of the breach

- 6.18 The breaches occurred under the current penalty regime for over five years, having commenced beforehand.
- 6.19 The breaches identified demonstrate systemic weaknesses in the Firm's procedures, management systems and internal controls relating to the sale of Geek Squad.

Level of seriousness

- 6.20 DEPP 6.5A.2G(11) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the Authority finds the following factor to be relevant:
- (1) The breaches identified demonstrate systemic weaknesses in the Firm's procedures, management systems and internal controls relating to the sale of Geek Squad.

6.21 DEPP 6.5B.2G(12) lists factors likely to be considered 'level 1, 2 or 3 factors'. Of these, the Authority considers the following factor to be relevant:

(1) The breaches were committed negligently.

6.22 Taking all of the above factors into account, the Authority considers the overall seriousness of the breach to be level 3, and so the Step 2 figure is 10% of £377,927,282.

6.23 Step 2 is therefore £37,792,728.

Step 3: mitigating and aggravating factors

6.24 Pursuant to DEPP 6.5A.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.

6.25 The Authority considers that the Firm's disciplinary record is an aggravating factor. The financial penalty that the Authority imposed on CPW in September 2006 was in respect of systems and controls failings relating to CPW's sales of mobile phone insurance.

6.26 The Authority considers that the following factors mitigate the breach:

(1) CPW voluntarily undertook two redress schemes, as described in paragraphs 4.65 and 4.66.

(2) CPW has made significant improvements to its approach to regulatory matters since the breaches were identified.

6.27 Having considered these factors, the Authority considers that the Step 2 figure should be subject to a 5% uplift at Step 3.

6.28 The Step 3 figure is therefore £39,682,364.

Step 4: adjustment for deterrence

- 6.29 DEPP 6.5A.4G provides that if the Authority considers the figure arrived at after Step 3 is insufficient to deter the firm that committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.
- 6.30 The Authority considers that the Step 3 figure of £39,682,364 represents a sufficient deterrent to the Firm and others, and so has not increased the penalty at Step 4.
- 6.31 The figure at Step 4 therefore remains at £39,682,364.

Step 5: settlement discount

- 6.32 The Authority and CPW reached agreement to settle all issues of fact and liability. Therefore, pursuant to DEPP 6.5A.5G and DEPP 6.7.3AG(1), a 30% discount applies to the Step 4 figure.
- 6.33 The figure at Step 5, in respect of misconduct after 6 March 2010, is therefore £27,777,600. It is the Authority's usual practice to round down the final penalty figure to the nearest £100.

Penalty

- 6.34 The Authority has therefore imposed a total financial penalty of £29,107,600 on CPW for breaching Principle 3, Principle 6, and Principle 9 (comprising a financial penalty of £1,330,000 in respect of misconduct prior to 6 March 2010 and a financial penalty of £27,777,600 in respect of misconduct after 6 March 2010). Had CPW not agreed to settle all issues of fact and liability, and therefore not qualified for a 30% discount, the Authority would have imposed a total financial penalty of £41,582,300 (rounded down to the nearest £100).

7. REPRESENTATIONS

- 7.1 Annex B contains a brief summary of the key representations made by CPW in respect of the Warning Notice under section 393 of the Act, and how they have been dealt with. In making the decision which gave rise to the obligation to give this Notice, the Authority has taken into account all of the representations made by CPW whether or not set out in Annex B.

8. PROCEDURAL MATTERS

- 8.1. This Notice is given to CPW under and in accordance with section 390 of the Act. The following statutory rights are important.

Decision maker

- 8.2. The decision which gave rise to the obligation to give this Notice was made by the Regulatory Decisions Committee.

Manner and time for payment

- 8.3. The financial penalty must be paid in full by CPW to the Authority no later than 27 March 2019.

If the financial penalty is not paid

- 8.4. If all or any of the financial penalty is outstanding on 28 March 2019, the Authority may recover the outstanding amount as a debt owed by CPW and due to the Authority.

Publicity

- 8.5. 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 you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

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

Authority contacts

- 8.7. For more information concerning this matter generally, contact Lisa Ablett at the Authority (direct line: 020 7066 9886/email: lisa.ablett@fca.org.uk).

Anthony Monaghan

Head of Department

Financial Conduct Authority, Enforcement and Market Oversight Division

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

1 Relevant Statutory Provisions

1.1 The Authority's operational objectives are set out in section 1B (3) of the Act and include the objective of securing an appropriate degree of protection for consumers; protecting and enhancing the integrity of the UK financial system; and promoting effective competition in the interests of customers.

1.2 Section 206(1) of the Act provides:

"If the Authority considers that an authorised person has contravened a requirement imposed on him by or under this Act... it may impose on him a penalty, in respect of the contravention, of such amount as it considers appropriate."

2 Relevant Regulatory Provisions

2.1 The various relevant regulatory provisions as they were in force during the relevant period are set out below.

Principles for Businesses ("Principles")

2.2 The Principles are a general statement of the fundamental obligations of firms under the regulatory system and are set out in the Authority's Handbook. They derive their authority from the Authority's rule-making powers set out in the Act. The relevant Principles are as follows.

2.3 Principle 3 (Management and control) which states that:

'A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.'

2.4 Principle 6 (Customers' interests) which states that:

'A firm must pay due regard to the interests of its customers and treat them fairly.'

2.5 Principle 9 (Customers: relationships of trust) which states that:

'A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.'

The Dispute Resolution: Complaints rules (“DISP”)

2.6 The relevant rules are as follows:

2.7 DISP 1.3.1R, in force throughout the relevant period, which stated:

“Effective and transparent procedures for the reasonable and prompt handling of complaints must be established, implemented and maintained by:

(1) a respondent...”

2.8 DISP 1.4.1R, in force from 1 December 2008 to 31 August 2011, which stated:

“Once a complaint has been received by a respondent, it must:

(1) investigate the complaint competently, diligently and impartially;

(2) assess fairly, consistently and promptly:

(a) the subject matter of the complaint;

(b) whether the complaint should be upheld;

(c) what remedial action or redress (or both) may be appropriate;

(d) if appropriate, whether it has reasonable grounds to be satisfied that another respondent may be solely or jointly responsible for the matter alleged in the complaint;

taking into account all relevant factors;

(3) offer redress or remedial action when it decides this is appropriate;

(4) explain to the complainant promptly and, in a way that is fair, clear and not misleading, its assessment of the complaint, its decision on it, and any offer of remedial action or redress; and

(5) comply promptly with any offer of remedial action or redress accepted by the complainant”.

2.9 DISP 1.4.1R, in force from 1 September 2011 to 30 June 2015, which stated:

“Once a complaint has been received by a respondent it must:

(1) investigate the complaint competently, diligently and impartially, obtaining additional information as necessary;

(2) assess fairly, consistently and promptly:

(a) the subject matter of the complaint;

(b) whether the complaint should be upheld;

(c) what remedial action or redress (or both) may be appropriate;

(d) if appropriate, whether it has reasonable grounds to be satisfied that another respondent may be solely or jointly responsible for the matter alleged in the complaint;

taking into account all relevant factors;

(3) offer redress or remedial action when it decides this is appropriate;

(4) explain to the complainant promptly and, in a way that is fair, clear and not misleading, its assessment of the complaint, its decision on it, and any offer of remedial action or redress; and

(5) comply promptly with any offer of remedial action or redress accepted by the complainant."

2.10 DISP 1.4.2G, in force from 1 December 2008 to 31 August 2011, which stated:

"Factors that may be relevant in the assessment of a complaint under DISP 1.4.1R(2) include the following:

(1) all the evidence available and the particular circumstances of the complaint;

(2) similarities with other complaints received by the respondent;

(3) relevant guidance published by the FSA, other relevant regulators, the Financial Ombudsman Service or former schemes; and

(4) appropriate analysis of decisions by the Financial Ombudsman Service concerning similar complaints received by the respondent."

2.11 DISP 1.4.2G, in force from 1 September 2011 to 31 March 2013, which stated:

"Factors that may be relevant in the assessment of a complaint under DISP 1.4.1R(2) include the following:

- (1) all the evidence available and the particular circumstances of the complaint;*
- (2) similarities with other complaints received by the respondent;*
- (3) relevant guidance published by the FSA, other relevant regulators, the Financial Ombudsman Service or former schemes; and*
- (4) appropriate analysis of decisions by the Financial Ombudsman Service concerning similar complaints received by the respondent (procedures for which are described in DISP 1.3.2A G)."*

Insurance: Conduct of Business Sourcebook ("ICOBS")

2.12 The relevant rules are as follows:

2.13 ICOBS 4.1.6R, in force from 1 December 2008 to 31 December 2008, which stated:

- "(1) Prior to the conclusion of an initial contract of insurance and, if necessary, on its amendment or renewal, a firm must tell the customers whether:*
- (a) it gives advice on the basis of a fair analysis of the market; or*
 - (b) it is under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings; or*
 - (c) it is not under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings and does not give advice on the basis of a fair analysis of the market.*
- (2) A firm that does not advise on the basis of a fair analysis of the market must inform its customer that he has the right to request the name of each insurance undertaking with which the firm may and does conduct business. A firm must comply with such a request."*

2.14 ICOBS 4.1.6R, in force from 1 January 2009 to 30 June 2015, which stated:

- "(1) Prior to the conclusion of an initial contract of insurance (other than a connected travel contract) and, if necessary, on its amendment or renewal, a firm must tell the customer whether:*

- (a) *it gives advice on the basis of a fair analysis of the market; or*
 - (b) *it is under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings; or*
 - (c) *it is not under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings and does not give advice on the basis of a fair analysis of the market.*
- (2) *A firm that does not advise on the basis of a fair analysis of the market must inform its customer that he has the right to request the name of each insurance undertaking with which the firm may and does conduct business. A firm must comply with such a request."*

2.15 ICOBS 4.1.7R, in force throughout the relevant period, which stated:

"Prior to the conclusion of an initial contract of insurance with a consumer a firm must state whether it is giving a personal recommendation."

2.16 ICOBS 5.3.1R, in force throughout the relevant period, which stated:

"A firm must take reasonable care to ensure the suitability of its advice for any customer who is entitled to rely upon its judgment."

Decision Procedure and Penalties Manual ("DEPP")

2.17 Chapter 6 of DEPP, which forms part of the Authority's Handbook, sets out the Authority's statement of policy with respect to the imposition and amount of financial penalties under the Act.

The Enforcement Guide

2.18 The Enforcement Guide sets out the Authority's approach to exercising its main enforcement powers under the Act.

2.19 Chapter 7 of the Enforcement Guide sets out the Authority's approach to exercising its power to impose a financial penalty.

ANNEX B

REPRESENTATIONS

1. CPW's representations (in italics), and the Authority's conclusions in respect of them, are set out below:

Financial penalty under the current penalty regime

Step 2 of the penalty calculation – seriousness of the breach

Relevant revenue

2. *CPW agrees that the Step 2 figure should be based on its relevant revenue. However, for the reasons explained below, it disagrees with the Authority's proposed approach of basing the relevant revenue on the gross written premium ("GWP") collected by CPW on behalf of the Insurer.*
3. *In accordance with the relevant contractual arrangements in place between CPW and the Insurer ("the Agreements"), the Insurer was entitled to all of the GWP arising from the policies sold by CPW. From September 2009, the GWP was paid into a cash fund held and administered by a third party on behalf of the Insurer (between December 2008 and September 2009 the GWP was held by the third party on behalf of the Insurer). CPW had no entitlement to the cash fund; it was only entitled to payments out of the cash fund in accordance with the terms of the Agreements. The issue is which of these payments should be treated as CPW's relevant revenue for the purposes of the financial penalty.*
4. *CPW carried out a number of services for the Insurer as its agent, including sales services (i.e. selling insurance policies) and post-sales services (such as the collection/refund of premiums from/to customers and claims management and fulfilment). The Agreements provided for the Insurer to make a number of different payments to CPW from the cash fund in respect of these services.*
5. *In respect of the sales services, CPW was paid sales commission. For the period from 6 March 2010 to 30 June 2015, CPW received a total amount of £179,533,744 in sales commission. CPW submits that this should be the relevant revenue figure used at Step 2. It is the most accurate reflection of the revenue flowing from the relevant activity (the sale of Geek Squad insurance policies in CPW branches) affected by the breaches.*

6. *In respect of the post-sales services, the Insurer was required under the Agreements to make a number of different payments to CPW. CPW submits that these post-sales payments should not be included in determining the relevant revenue figure. The post-sales services were separate and (so far as CPW was concerned) not regulated, did not have to be undertaken by CPW and were more than one step removed from the breaches, which logically and naturally relate to the sales services. Including post-sales payments is inconsistent with the approach to determining relevant revenue set out at DEPP 6.5A.2G, which provides that the revenue figure should be that generated by (i.e. earned by) the firm from the product line or business area to which the breach relates.*
7. *As well as receiving payments in respect of the services that CPW carried out, CPW received a profit commission. This was paid by the Insurer, out of the cash fund, to incentivise CPW to carry out the claims administration and fulfilment effectively, and to avoid or minimise its own liability. This does not constitute remuneration for sales activities and so CPW submits that it should not be included in the determination of the relevant revenue figure.*
8. *Only including remuneration from sales services in the relevant revenue figure calculation would be consistent with the approach taken by the Authority in previous cases, in particular the Final Notice given to Policy Administration Services Limited ("PAS") dated 1 July 2013 and the Final Notice given to HomeServe Membership Limited ("HML") dated 12 February 2014.*
9. *In respect of PAS, its relevant revenue was stated in the Final Notice to be the revenue derived from the sale of mobile phone insurance by PAS during the period of the breach, and the stated relevant revenue figure was about £12 million lower than the total turnover figure, according to its audited accounts, for the same period. CPW submits that this £12 million difference must be income from PAS's post-sales services, which was not taken into account in determining relevant revenue. In respect of HML, it carried out both sales services and post-sale services, but CPW contends that the penalty imposed by the Authority only captured revenue relating to the former. It would therefore be inconsistent with the approach taken in calculating the financial penalties imposed on PAS and HML to take into account CPW's post-sales payments.*
10. *CPW also submits that it is inappropriate for the relevant revenue figure to be based on the GWP, because the GWP figure includes substantial monies which were not*

earned by, and never belonged to, the Firm. The Insurer was required to pay insurance premium tax ("IPT") and to pay other third parties for providing other services to it related to the insurance. In addition, a fee was paid to the Insurer itself. These payments were made from the cash fund and never crossed CPW's balance sheet. Including these payments is inconsistent with the approach to determining relevant revenue set out at DEPP 6.5A.2G and described in paragraph 6 above.

11. The Authority has concluded that CPW's relevant revenue should consist of its sales commission, its post-sales payments and its profit commission. Therefore, for the period between 6 March 2010 and 30 June 2015, CPW's relevant revenue was £377,927,282.
12. The Authority has reached this conclusion because it considers that all of these types of payment fall within the definition of "relevant revenue" in DEPP 6.5A.2G(2), which provides that it "*will be the revenue derived by the firm during the period of the breach from the products or business areas to which the breach relates*". This definition does not restrict the revenue to that derived solely from the relevant activity affected by the breach, as it encompasses all revenue derived "*from the products or business areas*" to which the breach relates. Accordingly, as long as the revenue received by the firm derives from the relevant product or business area it should be included.
13. In respect of CPW, the relevant "product or business area" is the business undertaken by CPW in connection with its sale of Geek Squad. The Authority therefore considers that all revenue earned and received by CPW in connection with its sale of Geek Squad should be included in calculating its relevant revenue.
14. The Authority considers that the post-sales payments were earned and received by CPW in connection with its sale of Geek Squad and so should form part of CPW's relevant revenue. The Authority considers that this connection is clear from the fact that, had CPW not sold Geek Squad, it would not have provided any post-sales services, and so would not have received any post-sales payments. Even if it was theoretically possible for the business to be arranged in such a way that a third party provided the post-sales services, in practice, and in accordance with the terms of the Agreements, it was CPW that provided both those services and the sales services, and received payments in respect of them. In addition, the policy in DEPP does not provide that the relevant revenue must derive from regulated activity, and so the Authority considers that whether or not the post-sales payments related to unregulated activity does not affect whether they should be included.

15. The Authority also considers it is appropriate to include the profit commission because it was earned and received by CPW in connection with its sale of Geek Squad, and so falls under the definition of relevant revenue in DEPP 6.5A.2G(2). Again, this connection is clear because, if it had not sold Geek Squad, CPW would not have been paid any profit commission.
16. The Authority considers that the evidence does not demonstrate that in the calculation of the financial penalties imposed on PAS and HML, any revenue from post-sales services was deliberately excluded. In both cases, the Authority's intention was to capture all revenue received by the firm in connection with the relevant product or business area. The Authority therefore does not consider it would be inconsistent with the approach taken in those cases to include CPW's post-sales payments and profit commission. Further, the Authority considers that, for the reasons given above, the inclusion of these monies is appropriate in this case, irrespective of how the penalty was calculated in previous cases.
17. The Authority agrees that it is not appropriate to include IPT, the third party payments and the fee paid to the Insurer in the relevant revenue calculation, as CPW was not entitled to these payments under the Agreements, and did not earn or receive them, and so they do not fall within the definition of relevant revenue in DEPP 6.5A.2G(2). The Authority has therefore decided not to base the relevant revenue figure on the GWP.

Seriousness level

18. *CPW contends that, having regard to all relevant factors, the breaches should be considered to be seriousness level 2, rather than level 3. In assessing seriousness, the Authority has not taken into account the fact that the loss or risk of loss caused to customers as a whole and to individual customers was low:*
 - a. *There was a low incidence of actual mis-selling, as evidenced by the review carried out by CPW on actively cancelled insurance policies in its second redress exercise.*
 - b. *Even where loss was caused, the average amount of loss suffered by customers was relatively low: between £49 and £78.*

- c. *The product sold was a relatively straightforward type of insurance cover, and so the risk and consequences of mis-selling was lower than in respect of more complex products.*

- 19. *If the Authority decides that the breaches are of seriousness level 3, CPW submits that the Authority should decrease the level of the penalty arrived at after applying Step 2, on the basis that it is disproportionately high (given the low incidence of actual mis-selling and the relatively low average loss suffered) for the breaches concerned.*

- 20. The Authority has had regard to all relevant factors and has concluded that the seriousness of the breaches should be assessed as level 3. The factors that the Authority considers to be relevant are set out in paragraphs 6.16 to 6.21 of this Notice. In particular, the Authority considers that it is not appropriate for the breaches to be assessed as seriousness level 2 given that they demonstrate systemic weaknesses in CPW's procedures, management systems and internal controls relating to the sale of Geek Squad. As stated at paragraph 6.20 of this Notice, this is a factor that is likely to be considered a 'level 4 or 5 factor'.

- 21. The Authority does not agree with CPW's submission that the loss or risk of loss caused to customers, either as a whole or individually, was low and so has not included this in its list of relevant factors. In respect of the three points made by CPW:
 - a. The Authority does not agree that the second redress exercise demonstrates that there was a low incidence of mis-selling. In that exercise, whether a customer is given redress depends on the reason they gave for cancelling their insurance policy. However, it does not follow that customers who gave a different reason for cancelling, or no reason at all, were not mis-sold the policy in the first place. Further, that redress exercise excluded customers who actively cancelled their policy but did not incur any financial detriment. Whilst these customers may not have required any redress, as is mentioned at paragraph 4.54 of this Notice, high early cancellation rates are an indicator of a risk of mis-selling. In addition, the second redress exercise excluded customers who had received redress through the first redress exercise.

 - b. The Authority acknowledges that the average amount of loss suffered by an individual customer of CPW is relatively low in comparison to the potential loss suffered by individual customers who are mis-sold other types of financial products (for example, a pension). However, as Geek Squad was sold to a

very large number of customers, generating hundreds of millions of pounds in premium payments, the Authority considers that the risk of loss to CPW's customers as a whole is significant.

- c. The Authority considers that the fact that mobile phone insurance is a relatively straightforward product does not mitigate the seriousness of CPW's breaches, given that they were systemic, affected many customers and occurred over a long period of time.
22. The Authority considers that the Step 2 figure of £37,792,728 is not disproportionately high for the breaches concerned, and so has not reduced it on the grounds of proportionality. As mentioned in paragraph 21 above, the Authority does not consider that it has been demonstrated that there was a low incidence of actual mis-selling, and considers that the risk of loss to CPW's customers as a whole is significant.

Step 3 of the penalty calculation – mitigating and aggravating factors

23. *CPW accepts that its previous disciplinary record could in principle be taken into account as an aggravating factor. However, it submits that the 2006 Final Notice is of no or very limited relevance as an aggravating factor because it related to very different conduct. The subject of the 2006 Final Notice was CPW's failure to send certain customers a statement of demands and needs ("SDN") and a policy summary setting out the main features of the policy, and its failure to establish effective controls for reviewing the operation of its SDN procedures. The 2006 Final Notice did not relate to CPW's conduct in relation to the sale of insurance or the handling of complaints. It is therefore not the case that the earlier disciplinary action should have put CPW on notice of the possibility of breaches of the type described in this Notice, or led it to take other steps to forestall the possibility of those breaches.*
24. *The Authority should have given more weight to CPW's two voluntary redress schemes. In respect of the first redress scheme, relating to customers' complaints: it was deliberately limited in scope; the Authority's Supervisory team was satisfied with CPW's review exercise; and CPW has so far paid nearly £1 million of redress to customers.*
25. *In respect of the much larger second redress scheme, relating to cancellations: it was initiated by CPW on its own initiative; where CPW identified an active cancellation category with 10% or more customers incurring potential detriment, CPW took the*

decision to redress all customers within that category, notwithstanding that that approach was likely to result in significant over-redress; the risk thresholds used were based upon the review and advice of an independent third party; and it was reasonable for CPW to take the view that it would be disproportionate to carry out a proactive redress scheme in respect of passive cancellations.

26. *The Authority should also consider as a mitigating factor the remedial steps taken by CPW since the breaches were identified, and/or the steps taken by CPW's senior management to stop the breaches. In May 2015, in the early stages of the Skilled Person review, CPW on its own initiative instructed an independent third party to assist it with implementing changes to the business. These changes included: a systematic process change to provide a more comprehensive assessment of customer needs and a recommendation; enhanced training to CPW's sales staff; and enhanced analytics and monitoring with defined Key Performance Indicators to monitor stores' activity. CPW has also, since that time, significantly increased its compliance resources and its commitment to compliance.*
27. *Relevant precedent cases do not support an increase to the financial penalty at Step 3. In the Final Notice given to Swinton Group Limited ("Swinton") dated 16 July 2013, the Authority reduced the financial penalty by 10% at Step 3 after balancing Swinton's previous disciplinary record and financial penalty for similar failings against mitigating factors, which included its voluntary customer redress scheme. In the Final Notice given to Stonebridge International Insurance Limited ("Stonebridge") dated 7 August 2014, the Authority reduced the financial penalty by 15% at Step 3, giving credit for mitigating factors which included the implementation of a redress programme and revision made to its governance structure and policies and procedures.*
28. *CPW therefore submits that no amendment should be made to the financial penalty at Step 3 of the penalty calculation.*
29. *The Authority has decided that it is appropriate to increase the amount of the financial penalty by 5% at Step 3 of the penalty calculation. In reaching this decision it has had regard to the aggravating factor mentioned at paragraph 6.25 of this Notice and the mitigating factors mentioned at paragraph 6.26 of this Notice.*
30. *The factor that aggravates CPW's breaches is its disciplinary record. The Authority considers the 2006 Final Notice to be particularly relevant because, like this Notice, it*

concerned significant failings in CPW's systems and controls relating to its sales of mobile phone insurance. Further, the breaches described in this Notice occurred despite the fact that, as recorded as a mitigating factor in the 2006 Final Notice, CPW had committed to a comprehensive programme of reviewing and strengthening its systems and controls in relation to all of its general insurance sales channels, including committing considerable additional resource to the compliance function. Given the breaches described in this Notice, CPW clearly failed properly to carry out that which it had undertaken to do.

31. The Authority acknowledges that CPW has carried out two redress exercises in connection with the breaches, and agrees that these are relevant mitigating factors. The Authority does not criticise CPW for limiting the scope of the redress exercises (for example, its decision not to carry out a proactive redress scheme in respect of passive cancellations). However, had CPW not limited their scope, it is likely that the Authority would have given more weight to the redress exercises as mitigating factors.
32. The Authority also agrees that it is appropriate to regard the significant improvements made by CPW to its approach to regulatory matters since the breaches were identified as a relevant mitigating factor. However, as these improvements should have been made by CPW following the 2006 Final Notice, the Authority considers that only limited weight should be given to them.
33. The Authority has concluded that, overall, the aggravating factor is more significant than the combined relevant mitigating factors, and that an uplift of 5% at Step 3 is appropriate.
34. The Authority does not consider that its decision to increase the financial penalty at Step 3 is inconsistent with the reductions made to the financial penalty at Step 3 in the Final Notices given to Swinton and Stonebridge. The Authority has made its decision having regard to all the relevant circumstances in this case, which are different to those in the Swinton and Stonebridge cases. In particular, the Authority notes that four relevant mitigating factors were mentioned in the Swinton Final Notice, including Swinton's participation in a research study conducted by the Authority to increase the effectiveness of its customer contact exercise and its replacement of its executive management, and that no relevant aggravating factors were identified in the Stonebridge Final Notice.

Financial penalty under the old penalty regime

35. *CPW submits that any reduction made to the proposed current penalty regime figure should be matched by a similar proportionate reduction to the proposed old penalty regime figure. This is appropriate as there is no substantive difference in relation to the factors in play under both regimes.*
36. The Authority has reduced the level of the proposed financial penalty under the old penalty regime to reflect the fact that it has reduced the level of uplift at Step 3 of the new penalty regime calculation and the same mitigating and aggravating factors apply to both penalty calculations. However, as CPW's relevant revenue is not a relevant factor in the old penalty regime calculation, the Authority has not made any further adjustments to the penalty imposed under the old penalty regime in the light of its decision to reduce the relevant revenue figure, and therefore the level of the financial penalty, at Step 2 of the current penalty regime calculation.
37. The Authority has therefore decided that CPW's breaches under the old penalty regime merit a financial penalty of £1,900,000.