

Pursuant to the [Decision](#) of the Upper Tribunal, which was published on 16 August 2019, this Decision Notice has been superseded by a [Final Notice](#) dated 16 August 2019.



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## DECISION NOTICE

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To: **Andrew James Tinney**  
IRN: **AJT01247**  
Date: **8 July 2016**

### 1. ACTION

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

- (1) publish a statement of Andrew Tinney's misconduct (a 'public censure') pursuant to section 66 of the Act; and
- (2) make an order, pursuant to section 56 of the Act, prohibiting Mr Tinney from performing any senior management function and any significant influence function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm.

## 2. SUMMARY OF REASONS

- 2.1. Between 20 May 2010 and 17 December 2012, Mr Tinney was the Global Chief Operating Officer of Barclays Wealth and Investment Management ('Wealth'), a division of Barclays Bank PLC (the 'Firm'). In that role, Mr Tinney was responsible for overseeing Wealth's global technology, operations and infrastructure activities and for Wealth's Compliance function, and had joint responsibility for Wealth's Legal function.
- 2.2. In his role as Chief Operating Officer, Mr Tinney was approved by the Authority to carry out the CF29 (Significant Management) controlled function and was required to comply with the Statements of Principle. Of these, Statement of Principle 1 required that he act with integrity in carrying out his controlled function. For the reasons set out in paragraph 2.5 below, the Authority considers that, during the period 26 September 2012 to 17 December 2012 (the 'Relevant Period'), Mr Tinney failed to do so.
- 2.3. In early 2012 Mr Tinney was appointed Chairman of a steering committee ('SteerCo') that had been appointed to oversee a remediation program that the Firm was undertaking to correct certain regulatory deficiencies identified by the SEC during an examination of Wealth's US branch, Barclays Wealth Americas ('BWA'). The remediation program included a "Culture Audit" workstream which Mr Tinney initiated and personally communicated to the SEC as part of a programme designed to reassure the SEC that the Firm took the deficiencies seriously and would seek to identify their root cause(s). As a part of that workstream, a third party consultancy ('the Consultancy') was engaged to examine how the '*tone at the top*' flowed through BWA. The Consultancy set out its findings in a 29 page document entitled '*Barclays Wealth America – Cultural Assessment*' (the 'Report') which Mr Tinney received, in hard copy, on 30 March 2012. The words '*Barclays Wealth America – Culture Audit*' appear at the top of each page of the Report.
- 2.4. The Report contains a contents page, a description of the methodology and data sources used by the Consultancy, a summary and recommendations. It does not address how the '*tone at the top*' flowed through BWA. Instead, it includes a number of statements and quotes derived from interviews of certain BWA employees which are highly critical of some members of BWA's senior

management. It expresses an opinion that BWA had pursued a course of revenue at all costs and had a culture that was high risk and actively hostile to compliance. Its main recommendation is that the Firm should replace or consider replacing some members of BWA's senior management.

2.5. Prior to the Relevant Period, although the Consultancy's findings were orally shared with a small number of senior individuals within Wealth and two senior individuals within BWA, and although some individuals in Wealth either knew, suspected or assumed the Report existed, Mr Tinney was the only individual at the Firm who saw the Report. After discussing its contents with his manager, the Chief Executive of Wealth, Mr Tinney took steps which aimed to ensure that the Report would not be seen by or available to those senior individuals referred to above or anyone else at the Firm, whilst also putting in place a plan (which included briefings and the Workshop) to address the criticisms contained in the Report. He ensured that the Report would not be seen by or available to others by not sharing it with anyone, not entering it into the Firm's records or IT systems, and instructing the Consultancy that they did not need to circulate a copy. Having done so, during the Relevant Period, in breach of Statement of Principle 1, he recklessly made misleading statements and omissions to certain of his colleagues at the Firm as to the Report's nature and/or existence, which he should have been aware would make it less likely that he or the Consultancy would be asked for a copy of it. Mr Tinney made those statements and omissions:

- (1) after an anonymous email to the Firm's Chairman (the 'Anonymous Email') alleged that a '*Wealth cultural audit report*' had been suppressed. In drafts of a note regarding the allegation (the 'September Note'), to which he contributed and which, as he was aware, was likely to be provided to the Firm's Chairman and new Chief Executive, as well as to those conducting the Salz Review (see paragraph 2.8 below), Mr Tinney did not mention the Report, described the Consultancy's work so as to imply that there was no written output and, at one stage of the drafting, added the words '*There has never been a "Wealth Cultural Audit Report" produced at any time*'. In making these misleading statements and omissions, Mr Tinney closed his mind to the obvious possibility that the Anonymous Email was referring to the Report, and also to the legitimate interest that the ultimate recipients of the September Note had in being made aware of the existence of the

Report, of which they could then have requested a copy, had they so wished; and

- (2) after the Firm received a request from the Federal Reserve Bank of New York ('New York Fed') for a copy of the BWA '*cultural audit*'. In emails to colleagues regarding this request, Mr Tinney initially did not mention the Report and then made statements which suggested the Report did not exist. Later, when discussing with colleagues what document(s) should be given to the New York Fed, Mr Tinney described the Report as '*interview notes*', '*rough notes*', '*interview material*' or similar, which did not fairly and accurately reflect its nature and contents. In making these misleading statements and omissions, Mr Tinney closed his mind to the obvious possibility that the Report was relevant to and likely, at least in part, to have satisfied the New York Fed's request.

2.6. In December 2012 the Firm received a copy of the Report from the Consultancy and, shortly afterwards, suspended Mr Tinney's employment. Mr Tinney subsequently resigned from the Firm.

2.7. Mr Tinney's misconduct as described in this Notice is serious, particularly in the light of his seniority at the Firm, his substantial industry experience and the obvious significance of the concerns giving rise to, and set out in, the Report. His actions may have hindered attempts by the Firm's Board to understand the reasons for BWA's regulatory deficiencies. He also exposed the Firm to the risk that its efforts to address failings in its compliance with its legal and regulatory obligations could be delayed or frustrated as his actions could have delayed or frustrated:

- (1) the Firm's Board's ability to ascertain whether the concerns raised in the Anonymous Email were well-founded;
- (2) the Firm's Board's ability to establish whether the Firm was complying with its obligations in respect of dealing with allegations from whistleblowers; and
- (3) the Firm's ability to comply with the New York Fed's request in circumstances where, as Mr Tinney was aware, the New York Fed was

specifically interested in, and made several requests during 2012 for, information about the Culture Audit workstream.

- 2.8. The Authority also considers Mr Tinney's misconduct to be serious because it occurred during the Salz Review, an independent review of business practices launched by the board of the Firm in the immediate aftermath of the LIBOR Settlements and which was intended to examine the Firm's values, principles and standards of operation - the historical culture - and make recommendations for change. In that context, Mr Tinney should have understood the connection between the Firm's culture and regulatory compliance, and senior management's ability and willingness to positively influence appropriate behaviour throughout the organisation. Indeed, the fact that he devised the Culture Audit workstream because he wanted to assess whether the culture in BWA contributed to BWA's regulatory deficiencies demonstrates that Mr Tinney did understand that connection. Mr Tinney should therefore have understood that his conduct was not consistent with setting an appropriate tone from the top.
- 2.9. Mr Tinney's misconduct is aggravated by the subsequent account of certain events which he gave, through his solicitors, in correspondence with the Institute of Chartered Accountants of England and Wales ('ICAEW'), of which Mr Tinney is a member, and which he gave in compelled interviews with the Authority on 29 July 2014 and 23 January 2015. In the Authority's view, Mr Tinney's account of these events was misleading.
- 2.10. The Authority therefore proposes to publish a statement of Mr Tinney's misconduct pursuant to section 66 of the Act for breaching Statement of Principle 1 and to make a prohibition order pursuant to section 56 of the Act in the terms set out at paragraph 1.1(2) above. This action supports the Authority's regulatory objectives of protecting and enhancing the integrity of the UK financial system and securing an appropriate degree of protection for consumers, and is consistent with the importance placed by the Authority on the accountability of senior management.

### **3. DEFINITIONS**

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

'the Act' means the Financial Services and Markets Act 2000.

'Anonymous Email' means the anonymous email described at paragraph 4.10 of this Notice.

'APER' means the Statements of Principle and Code of Practice for Approved Persons section of the Handbook.

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

'BWA' means Barclays Wealth Americas, a US branch of Wealth.

'the Consultancy' means the third party consultancy engaged by Mr Tinney to examine how the '*tone at the top*' flowed through BWA.

'Culture Audit' means the workstream described in paragraph 4.2 of this Notice.

'DEPP' means the Decision Procedure and Penalties Manual section of the Handbook.

'EG' means the Enforcement Guide part of the Handbook.

'EURIBOR' means the Euro Interbank Offered Rate.

'Firm' means Barclays Bank Plc.

'FIT' means the Fit and Proper test for Approved Persons section of the Handbook.

'the Handbook' means the Authority's Handbook of rules and guidance.

'ICAEW' means the Institute of Chartered Accountants of England and Wales.

'IT' means information technology.

'LIBOR' means the London Interbank Offered Rate.

'LIBOR Settlements' means the Firm's agreement to pay financial penalties totalling £290 million for misconduct relating to LIBOR and EURIBOR, described in paragraph 4.7 of this Notice.

'New York Fed' means the Federal Reserve Bank of New York.

'Relevant Period' means 26 September 2012 to 17 December 2012.

'Report' means the hard copy document entitled '*Barclays Wealth America – Cultural Assessment*' issued by the Consultancy pursuant to the Culture Audit workstream and received by Mr Tinney on 30 March 2012.

'Salz Review' means the independent review of the Firm's business practices described at paragraphs 4.8 and 4.9 of this Notice.

'SEC' means the United States Securities and Exchange Commission.

'September Note' means the written response, described at paragraph 4.11 of this Notice, to the allegations in the Anonymous Email.

'SteerCo' means the steering committee appointed by the Firm to oversee the remediation activity, described at paragraph 4.1 of this Notice.

'Statements of Principle' means the Statements of Principle in force during the Relevant Period, which were issued by the Authority under section 64 of the Act and set out in APER.

'the Tribunal' means the Upper Tribunal (Tax and Chancery Chamber).

'Wealth' means the Wealth and Investment Management division of the Firm.

'the Workshop' means the workshop held on 29 May 2012 described at paragraph 4.6 of this Notice.

## 4. FACTS AND MATTERS

### Background - Events preceding the Relevant Period

- 4.1. In early 2012 the Firm was notified by the SEC that it had identified a number of deficiencies in the course of a regulatory examination of the US branch of Wealth, BWA. In response, the Firm embarked on a remediation program and appointed the SteerCo, of which Mr Tinney was Chairman, to oversee the rectification of those deficiencies. Mr Tinney assured the SEC that the Firm would spend *'whatever it took'* and he *'would personally make sure that their deficiency letter was addressed fully and comprehensively'*.
- 4.2. One of the remediation activities was a "Culture Audit" workstream. Mr Tinney informed the Authority that the purpose of this workstream was to assess whether the culture in BWA contributed to the deficiencies identified by the SEC by examining, among other things, how the *'tone at the top'* flowed through the organisation and how issues were escalated from the *'bottom up'*. The Culture Audit workstream was Mr Tinney's initiative and he personally communicated it to the SEC as a way of reassuring them that the Firm took the deficiencies seriously and would seek to identify their root cause(s). A similar reassurance (of which Mr Tinney was aware) was given by the Firm to the New York Fed.
- 4.3. Mr Tinney engaged the Consultancy to carry out part of the Culture Audit work: the examination of how the *'tone at the top'* flowed through BWA. The Consultancy set out its findings in the Report, which was delivered to Mr Tinney's home address on 30 March 2012. The Report was only delivered in hard copy. Another third party consultancy was engaged to ascertain how issues were escalated from the *'bottom up'*. This consultancy set out its findings in a report sent to the Firm by email on 19 April 2012.
- 4.4. The Report is a 29 page spiral-bound document entitled *'Barclays Wealth America - Cultural Assessment'* and the words *'Barclays Wealth America - Culture Audit'* appear at the top of each subsequent page. Although not a conventional audit, it begins with the words *'[The Consultancy] have been asked to conduct a culture audit into BWA...'* and is clearly a report. The Report contains a contents page, a description of the methodology and data sources used by the Consultancy, a summary, recommendations, descriptions of the core cultural issues identified by



the Consultancy, a review of the attitudes, skills and behaviours of BWA's senior management, next steps and an appendix. It was written on the basis of three days of interviews with certain BWA employees and includes many emotive and pejorative quotes from these interviews as the main evidence in support of observations which are highly critical of BWA's culture and some members of its senior management. The Report points to a comprehensive failure by BWA to comply with its regulatory obligations, but contains little analysis or evidence other than the interview quotes. It does not address how the '*tone at the top*' flowed through BWA and instead focuses on identifying and blaming those responsible for the regulatory deficiencies identified by the SEC. It expresses an opinion that BWA had pursued a course of revenue at all costs and had a culture that was high risk and actively hostile to compliance. In order to change this culture, the Report's main recommendation is that the Firm should replace or consider replacing some members of BWA's senior management and it sets out possible scenarios. The Report does not mention or criticise Mr Tinney.

- 4.5. On receiving the Report, Mr Tinney discussed its contents with his manager, the Chief Executive of Wealth, and they agreed that the Report's contents should be acted upon to address the cultural failings in BWA. They also agreed that the Report should not be seen by or made available to any other person within the Firm (including the Chief Executive of Wealth), and Mr Tinney subsequently took steps which aimed to ensure that this happened, including not entering the Report into the Firm's records or IT systems.
- 4.6. During April and May 2012, on Mr Tinney's initiative, the Consultancy orally shared its findings with a small number of senior individuals within Wealth during several briefings and one workshop ('the Workshop'). The Workshop was held on 29 May 2012 and was also attended by two senior individuals within BWA and the other third party consultancy, which shared its findings on how issues were escalated from the '*bottom up*'. Mr Tinney did not provide a copy of the Report to anyone during or in advance of those briefings (including the Workshop) and, before the first briefing, gave instructions to the Consultancy that a copy of the Report would not be needed. At the briefings, the format of the Report was followed, so that the main issues identified by the Consultancy in the Report were discussed. As a consequence of the briefings and the Workshop some individuals in Wealth either knew, suspected or assumed the Report existed, however it was not until 6 December 2012, after the Firm had commenced an internal

investigation into the matter, that anyone in the Firm other than Mr Tinney either saw or received a copy of the Report.

### **The September Note**

- 4.7. On 27 June 2012 the Firm announced that it had agreed to pay financial penalties totalling £290 million issued by the Authority, the United States Commodity Futures and Trading Commission and the United States Department of Justice for misconduct relating to LIBOR and EURIBOR. In a press release, the Firm's Chief Executive at that time, Bob Diamond, said:

*'The events which gave rise to today's resolutions relate to past actions which fell well short of the standards to which Barclays aspires in the conduct of its business... Nothing is more important to me than having a strong culture at Barclays; I am sorry that some people acted in a manner not consistent with our culture and values...'*

- 4.8. As a result of those events, on 2 July 2012 the Firm launched an independent review of its business practices (which later became known as the 'Salz Review'). The Salz Review had three objectives:

- (1) to undertake a root and branch review of all of the past practices that had been revealed as flawed since the credit crisis started and identify implications for the Firm's business practices and culture going forward;
- (2) to publish a report of its findings; and
- (3) to produce a new, mandatory code of conduct that would be applied across the Firm.

- 4.9. In a press release announcing the Salz Review, the Firm said that the review would be *'part of a broader programme of activity intended to restore Barclays' reputation and [...] establish a zero tolerance policy for any actions that harm the reputation of the bank'*. To facilitate broad input into the review, the terms of reference provided that any current or former staff involved in the process would receive full indemnity and would be able to provide input on a non-attributable basis so that they could participate without any fear of potential consequences.

The terms of reference also stated that in order to change the Firm's culture, the Firm would be required to do three things:

- (1) affirm the key values and operative beliefs that guided the behaviour of staff at the Firm;
- (2) ensure that the actual behaviours of those who represented the Firm were consistent with those values (and were so regarded by those who came in contact with the Firm); and
- (3) ensure that vital reinforcing mechanisms, such as visible leadership examples, formal and informal systems and processes, policies and rewards were aligned with those values, operative beliefs and behaviours.

4.10. On 25 September 2012 the Firm's Chairman received the Anonymous Email, which had the subject line '*Salz Review - Confidential*'. The email asserted, among other things, that a '*Wealth cultural audit report ... prepared by an independent third party consultancy*' had been suppressed, and concluded by asking that the issues it raised be shared with the Salz Review to '*address the deep-rooted cultural failings at Barclays Wealth in the Americas in order to protect clients and prevent any further damage to the wider firm's reputation.*'

4.11. The Anonymous Email was circulated on 26 September 2012 to relevant members of the Firm's senior management, including Mr Tinney. In the Authority's view, it should have been obvious to Mr Tinney that the Anonymous Email either was, or could have been, referring to the Report. Mr Tinney has told the Authority that he did not consider the Anonymous Email was referring to the Report because it included some statements which were not true of the Report. In particular, the Anonymous Email stated that the '*Wealth cultural audit report*' had been mandated by the Chief Executive of Wealth (Mr Tinney had engaged the Consultancy to work on the Culture Audit), had been recently issued (the Report had been issued several months previously) and had been suppressed by a senior individual in BWA (as far as Mr Tinney was aware, nobody in BWA even knew the Report existed). However, the Authority does not consider it reasonable for Mr Tinney to have expected a whistleblower to get every detail of an allegation correct and considers that the Report was clearly a document which could fit the description in the Anonymous Email of a '*Wealth cultural audit report*', particularly

given that every page of the Report was headed '*Barclays Wealth America – Culture Audit*' and no other document better fitted the description. In the Authority's view, Mr Tinney closed his mind to the obvious possibility that the Anonymous Email was referring to the Report, and also to the legitimate interest that the Firm's Chairman and new Chief Executive, as well as those conducting the Salz Review, had in being made aware of the existence of the Report, and, having closed his mind, made statements and omissions which he should have been aware would make it less likely that he or the Consultancy would be asked for a copy of the Report. In doing so, the Authority considers that Mr Tinney acted recklessly.

4.12. The Chief Executive of Wealth decided that a note would be drafted by Wealth responding to each of the allegations that were raised in the Anonymous Email (the 'September Note') and sent by him to the Firm's Chairman and new Chief Executive for their consideration. Mr Tinney was aware of this and also that it was likely that the September Note would be provided to those conducting the Salz Review. The September Note underwent several iterations and Mr Tinney was heavily involved in the drafting, as was a senior Wealth lawyer who had attended the first briefing by the Consultancy and either knew, suspected or assumed the Report existed. In the drafts of the September Note to which he contributed, Mr Tinney made several misleading statements and omissions:

- (1) In one version, Mr Tinney outlined the Culture Audit workstream but made no reference to the allegation that a '*Wealth cultural audit report*' had been suppressed or to the existence of any document (including the Report). After the senior Wealth lawyer asked him to comment on the allegation of suppression, in his next draft Mr Tinney described the work undertaken by the Consultancy as '*verbal input*' and stated '*There has never been a "Wealth Cultural Audit Report" produced at any time*'.
- (2) After receiving this draft, the senior Wealth lawyer sought clarification from Mr Tinney as to the written output produced by the Consultancy. Although Mr Tinney informed him that the Consultancy had not produced any work that could be construed as an audit report, in his next draft Mr Tinney removed the sentence stating '*There has never been a "Wealth Cultural Audit Report" produced at any time*'. He also removed or replaced several

phrases implying that the Consultancy had produced a written document. In particular, Mr Tinney:

- (a) deleted a reference to the Consultancy being '*retained to conduct a "Compliance Culture Audit" of BWA*' and instead characterised that work as '*data gathering interviews*'; and
- (b) deleted a reference to there being '*input collated*' and a '*review [of] the findings*' and instead characterised that process as '*determin[ing] next steps*'.

4.13. The final version of the September Note made no reference to the Report and therefore omitted important information needed to assess properly whether the allegation of suppression had any foundation. Mr Tinney was not shown the final version before it was sent by the Chief Executive of Wealth to the Firm's new Chief Executive on 2 October 2012. On the same day the Chief Executive of Wealth updated the Firm's Chairman and informed him that the September Note would be forwarded to those conducting the Salz Review.

4.14. Later that month the senior Wealth lawyer attempted to obtain a copy of the Report directly from the Consultancy. The Consultancy declined to provide a copy after discussing the matter with Mr Tinney. On 20 October 2012 and 2 November 2012 Mr Tinney spoke to the senior Wealth lawyer about the work produced by the Consultancy, including whether the Consultancy had produced a report. Mr Tinney therefore would have continued to have the Report in his mind during the months following the September Note.

#### **The New York Fed's request**

4.15. On 29 November 2012 the Firm's Global Head of Regulatory Relations sent Mr Tinney an email headed '*BWA*' in which she asked for a copy of the '*cultural audit*'. Mr Tinney was not told at that time that the reason for her request was that the New York Fed had requested the document.

4.16. In response, Mr Tinney asked a colleague to arrange for the Global Head of Regulatory Relations to be supplied with a PowerPoint deck which had been created following the Workshop. When the colleague identified the work

undertaken by the Consultancy as being potentially relevant to the request and noted to Mr Tinney that he had not seen any output from that work, Mr Tinney replied that *'the only substantive input/output [of the Culture Audit] was from the [Workshop].'* However, Mr Tinney knew that the Report was both a substantive output of the Culture Audit and a substantive input to the Workshop.

4.17. On 6 December 2012 Mr Tinney received further emails from the Global Head of Regulatory Relations in connection with the request. In those emails, Mr Tinney was informed that:

- (1) a report was needed, the original request was from the New York Fed, and the New York Fed was *'chasing'* for a response;
- (2) the PowerPoint deck was not the document that the New York Fed was looking for; and
- (3) the New York Fed was looking for a document which was drafted in the course of the *'BWA Culture workstream'* and was composed of a *""look back"" type of review after the SEC exam assessing: 1) why did the tone at the top ... not filter down to the bottom; and 2) what issues were there around escalation going from the ground up?'*

4.18. In response to these emails, Mr Tinney made statements which suggested the Report did not exist, namely:

- (1) that he did not know *'to what extent there was a look back in the work'* that had been done. However, Mr Tinney knew that the work carried out by the Consultancy was looking back and was in the nature of an audit, and would have known that the phrase *'tone at the top'* was used in the commissioning of the Consultancy's work and in the briefings and Workshop that followed the Report; and
- (2) that they could *'create something if that would be helpful'*. However, Mr Tinney knew that the Report already existed and it should have been obvious to him that the Report was likely, at least in part, to have satisfied the New York Fed's request.

- 4.19. On 10 December 2012 Mr Tinney attended a meeting with the Global Head of Regulatory Relations and others to discuss what should be provided to the New York Fed to satisfy its request. During that meeting, Mr Tinney said he had received from the Consultancy a document he described as '*interview notes*', '*interview material*', '*a summary of interview notes*', '*rough notes*' or similar. This led the Global Head of Regulatory Relations to conclude that the document Mr Tinney described was not what the New York Fed was looking for. The Authority considers that Mr Tinney's descriptions of the Report, and the statements and omissions made by Mr Tinney regarding the existence of the Report, were misleading. In the Authority's view, Mr Tinney closed his mind to the possibility that the Report could help to satisfy the New York Fed's request and, having closed his mind, made statements and omissions which he should have been aware would make it less likely that the Global Head of Regulatory Relations or the New York Fed would ask for a copy of the Report. In doing so, the Authority considers that Mr Tinney acted recklessly.
- 4.20. During the course of the events described in paragraphs 4.10 to 4.19 above, the Firm commenced an investigation into the existence of the Report and received a copy of it directly from the Consultancy on 6 December 2012, which it subsequently provided to the New York Fed. The Firm suspended Mr Tinney's employment on or about 17 December 2012 and Mr Tinney resigned shortly thereafter.

#### **Provision of misleading information to the ICAEW and to the Authority**

- 4.21. In September 2013 the ICAEW (of which Mr Tinney is a member) asked Mr Tinney to provide it with information about the events that led to his resignation from the Firm. In a written response, Mr Tinney's solicitors stated that the manner in which he handled the hard copy Report was '*consistent with the advice of*' the Firm's in-house lawyers, who had '*advised what should be said and done with it in April 2012*'. They also stated that it was his '*understanding of the legal advice that he had received... that the [Report] should not be entered into Barclays' computer system because of the litigation risk it posed.*' However, Mr Tinney had not in fact sought or obtained any such legal advice in April 2012, and he subsequently admitted this in compelled interviews with the Authority on 29 July 2014 and 23 January 2015. The Authority considers that Mr Tinney permitted these statements to be made in order to avoid criticism of his conduct and that he

should have realised that these statements were inaccurate and that his response to the ICAEW was therefore misleading.

- 4.22. As described in paragraphs 4.23 to 4.26 below, Mr Tinney made a number of statements to the Authority during the compelled interviews of 29 July 2014 and 23 January 2015 about certain matters prior to and during the Relevant Period, which the Authority considers were misleading. The Authority considers that Mr Tinney made these statements in order to avoid criticism of his conduct and that he should have realised that the statements were misleading.
- 4.23. Mr Tinney told the Authority that he expressly instructed the Consultancy not to produce anything in writing and had been surprised when he learnt that the Report was going to be delivered to him. He told the Authority that he expressed his surprise to his Chief of Staff, and that she told him she had instructed the Consultancy to prepare a written report. The Authority considers that other witness and documentary evidence indicates that Mr Tinney gave no such instruction, was not surprised by the delivery of the Report, and was not told by his Chief of Staff that she had given that instruction.
- 4.24. The Authority showed Mr Tinney an email in which he appeared to instruct the Consultancy not to bring a copy of the Report to the first briefing. Mr Tinney told the Authority in his first interview that the email related to a different document. This was inconsistent with the account given by the Consultancy and Mr Tinney's Chief of Staff. Mr Tinney subsequently accepted in his second interview that he had given this instruction to the Consultancy.
- 4.25. Mr Tinney told the Authority that he instructed the Consultancy in April and October 2012 to retain a copy of the Report and to provide it to anyone from the Firm who asked for a copy without reference to him. The Consultancy told the Authority that no such instruction was given until December 2012.
- 4.26. Mr Tinney told the Authority that during the 10 December 2012 meeting, described at paragraph 4.19 above, he recommended giving a copy of the Report to the New York Fed. The Authority considers that other witness and documentary evidence indicates that Mr Tinney only referred to the existence of '*interview notes*' or similar and offered in passing to obtain them.



4.27. The Authority has reviewed Mr Tinney's statements in the light of the witness and documentary evidence gathered during the course of its investigation and has given Mr Tinney the opportunity to explain any discrepancies. It has also taken account of the varying strength of that evidence and other relevant factors, such as the possibility of genuine differences in recollection amongst witnesses. Having done so, the Authority has determined that Mr Tinney made the statements described in paragraphs 4.23 to 4.26 above out of a desire to avoid criticism of his conduct, and that in doing so he was reckless as to the accuracy of the answers he gave to the Authority's questions.

### **Inconsistency in Mr Tinney's actions**

4.28. The Authority has considered the evidence and submissions that are relevant to the issues of why Mr Tinney took the course of action that he did in relation to the Report and why he made misleading statements and omissions in connection with the September Note and the New York Fed's request. The Authority notes that Mr Tinney was not criticised by the Report, did not seek to suppress its conclusions, and initiated actions that made others aware of some of the Report's findings and which were intended to address some of the BWA cultural issues identified by the SEC and in the Report. The Authority considers that Mr Tinney did have legitimate concerns at the outset around the litigation risk and employment law consequences about the Report being circulated. However, the Authority concludes that he did not take the course of action in September and December 2012 that was both obvious and correct, which would have been to make clear the existence of the Report, explain its potential litigation risk and offer to provide a copy to those preparing the September Note, its ultimate recipients, the Global Head of Regulatory Relations and the New York Fed, subject to appropriate confidentiality restrictions. The Authority does not consider it is necessary to determine what Mr Tinney's motive or motives were for making the misleading statements and omissions, nor to reconcile his apparently contradictory actions, in order to reach the conclusion that he recklessly made such statements and omissions.

## **5. FAILINGS**

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

- 5.2. During the Relevant Period, Statement of Principle 1 provided that an approved person must act with integrity in carrying out his controlled function. Mr Tinney, in the course of carrying out the CF29 (Significant Management) controlled function, breached Statement of Principle 1 during the Relevant Period as set out in paragraphs 5.5 to 5.12 below.

**Background: Mr Tinney's conduct before the Relevant Period**

- 5.3. Prior to 26 September 2012 Mr Tinney took steps which aimed to ensure that the Report would not be seen by or available to anyone else at the Firm. He did this by not sharing the Report with anyone, not entering it into the Firm's records or IT systems and instructing the Consultancy that they did not need to circulate a copy. However, Mr Tinney also ensured that the Consultancy's findings were orally shared with certain Wealth and BWA senior individuals, and that the cultural failings in BWA identified in the Report were addressed, by arranging several briefings and the Workshop. The Authority makes no criticism of Mr Tinney's conduct prior to the Relevant Period.

**Mr Tinney's conduct during the Relevant Period**

- 5.4. Having taken steps which aimed to ensure that the Report would not be seen by or available to anyone else at the Firm, Mr Tinney recklessly made a number of misleading statements and omissions during the Relevant Period about the Report's nature and/or existence which he should have been aware would make it less likely that he or the Consultancy would be asked for a copy, thereby delaying or hindering (or potentially delaying or hindering): (i) the Firm's Board from assessing the truth of the allegations relating to the suppression of a '*Wealth cultural audit report*'; and (ii) the Firm's response to the New York Fed's request.

***Misleading statements and omissions in connection with the September Note***

- 5.5. In the course of drafting the September Note, Mr Tinney closed his mind to the possibility that the Anonymous Email was referring to the Report, and also to the legitimate interest that the ultimate recipients of the September Note had in being made aware of the existence of the Report, and made a number of misleading statements and omissions as to the nature and/or existence of the

Report which he should have been aware would make it less likely that the ultimate recipients of the September Note would ask for a copy of the Report.

- 5.6. Mr Tinney's conduct in this regard lacked integrity. The Report was plainly a document which could fit the description in the Anonymous Email of a '*Wealth cultural audit report*' (particularly given that every page of the Report was headed '*Barclays Wealth America - Culture Audit*'). Accordingly, it should have been evident to Mr Tinney that the September Note would be incomplete unless it disclosed the Report's existence.
- 5.7. In those circumstances, the amendments that Mr Tinney made to the September Note (paragraph 4.11 above) were misleading and made recklessly. In particular, in inserting the words '*There has never been a "Wealth Cultural Audit Report" produced at any time*' (see paragraph 4.11(1)), Mr Tinney closed his mind to the obvious possibility that the Report could fit that description. Although Mr Tinney subsequently deleted those words when challenged, his later amendments (paragraph 4.11(2)) did not refer to the existence of any written document containing the Consultancy's findings. As a result, his conduct risked delaying or frustrating the Firm's Board's ability to establish whether there was any foundation for the allegations of misconduct in the Anonymous Email.
- 5.8. Further, the Firm's response to allegations in the Anonymous Email about suppression and the Report itself were both potentially relevant to the Salz Review. Mr Tinney should have been transparent about the Report, which was clearly of relevance to the allegations made in the Anonymous Email, in order to co-operate with those conducting the Salz Review and set the right example to others, given that:
  - (1) he was aware that the September Note was likely to be provided to those conducting the Salz Review;
  - (2) the Salz Review arose from the Firm's desire to remedy potential cultural failings that led to the LIBOR Settlements and the associated financial and reputational damage that the Firm suffered as a result;
  - (3) Mr Tinney was aware that the Report was not held within the Firm's records or IT systems; and

(4) as Chief Operating Officer of Wealth, Mr Tinney held an influential role, which included responsibility for Wealth's Compliance function.

5.9. Instead, by recklessly making misleading statements and omissions in relation to the nature and/or existence of the Report, Mr Tinney demonstrated the failure of cultural leadership that the Salz Review was intended to address and the Culture Audit purportedly intended to identify and improve.

***Misleading statements and omissions in connection with the New York Fed's request***

5.10. Mr Tinney recklessly made misleading statements and omissions in response to the request from the Firm's Global Head of Regulatory Relations for a copy of the BWA '*cultural audit*'. The Report was plainly a document which could fit that description (especially given that every page of the Report was headed '*Barclays Wealth America - Culture Audit*' and it began with the words '*[We] have been asked to conduct a culture audit into BWA...*'). This was even clearer when:

(1) one of Mr Tinney's colleagues identified the work done by the Consultancy as being potentially relevant to the request (paragraph 4.18 above); and

(2) Mr Tinney was told that the New York Fed was seeking a "*look back*" type of review after the SEC exam, assessing: 1) why did the tone at the top... not filter down to the bottom; and 2) what issues were there around escalation going from the ground up' (paragraph 4.17(3) above).

5.11. Additionally, in the meeting of 10 December 2012 (see paragraph 4.19 above), Mr Tinney recklessly described the Report in misleading language, using the terms '*rough notes*', '*interview material*', '*interview notes*' or similar. That language did not fairly and accurately reflect the nature and content of the Report and, like the misleading statements and omissions referred to in paragraph 5.10, made it less likely that the Global Head of Regulatory Relations or the New York Fed would ask for a copy of the Report. The Authority concludes that Mr Tinney made these misleading statements and omissions because he had closed his mind to the obvious possibility that the Report could, at least in part, have satisfied the New York Fed's request.

5.12. In those circumstances, Mr Tinney's statements and omissions were made recklessly and risked frustrating the endeavours of the Global Head of Regulatory Relations to comply with the New York Fed's request on behalf of the Firm. Mr Tinney's conduct in this regard lacked integrity.

### **Lack of fitness and propriety**

5.13. The relevant sections of FIT are set out in Annex A.

5.14. The Authority considers that Mr Tinney is not a fit and proper person as he lacks integrity. This is based on the Authority's finding that Mr Tinney acted in breach of Statement of Principle 1 during the Relevant Period by recklessly making misleading statements and omissions in relation to matters relevant to regulatory compliance, and that he subsequently gave misleading accounts of certain matters in correspondence, through his solicitors, with the ICAEW and directly in compelled interviews with the Authority (as to which see paragraphs 4.21 to 4.27 above). As a result of Mr Tinney's actions, the Authority concludes that Mr Tinney cannot be relied upon to be truthful and open.

## **6. SANCTION**

### **Public Censure**

6.1. The principal purpose of issuing a public censure is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant behaviour.

6.2. DEPP 6.4.2 sets out factors that may be of particular relevance when the Authority determines whether it is appropriate to issue a public censure rather than impose a financial penalty. The criteria are not exhaustive and DEPP 6.4.1G(1) provides that the Authority will consider all the relevant circumstances when deciding whether to impose a penalty or issue a public censure. The Authority considers that the factors below are particularly relevant in this case.

### ***Deterrence (DEPP 6.4.2G(1))***

6.3. In determining whether to publish a statement of Mr Tinney's misconduct, the Authority has had regard to the need to send a clear message that the Authority considers that the reckless making of misleading statements and omissions by an individual performing a significant influence controlled function constitutes serious misconduct, and to the need to ensure that Mr Tinney and other persons are deterred from committing similar breaches in the future. The Authority considers that, in the circumstances of this case, deterrence is effectively achieved by issuing a public censure.

***The seriousness of the breaches (DEPP 6.4.2G(3))***

6.4. As mentioned in paragraph 6.3 above, the Authority considers that the reckless making of misleading statements and omissions by an individual performing a significant influence controlled function constitutes serious misconduct. While the Authority considers that a person of integrity in Mr Tinney's position would not have failed to mention the Report's existence in drafting the September Note and in response to the New York Fed's request, and would not have made misleading statements, the Authority considers that the following factors, which are relevant to the Authority's assessment of the seriousness of Mr Tinney's misconduct, support its view that the appropriate sanction is a public censure rather than a financial penalty:

- (1) Mr Tinney did not personally profit as a result of his misconduct, and his misconduct did not result in loss to consumers, investors or other market users or increase the existing risk of loss to the Firm's clients that had been identified by the SEC.
- (2) The Authority does not conclude that Mr Tinney made the statements and omissions with a deliberate intention to mislead.
- (3) The Relevant Period was relatively brief.

***Mitigating factors***

6.5. The Authority has taken account of the mitigating factors mentioned below. While these factors do not excuse Mr Tinney's actions, especially as Mr Tinney was a senior individual at the Firm approved to carry out the CF29 (Significant

Management) controlled function and therefore required to meet certain minimum standards whatever the environment he worked in, the Authority considers that they support its conclusion that, whilst Mr Tinney's failings were serious, the appropriate sanction to be imposed on him is a public censure.

- (1) Mr Tinney initiated both the Culture Audit workstream and the steps designed to address some of the BWA cultural issues identified in the Report. The Authority considers that Mr Tinney genuinely did hope that the Culture Audit workstream would in due course help to improve the Firm's culture and compliance with regulatory requirements, and reduce the risk of loss to consumers, investors or other market users, albeit his conduct during the Relevant Period was inconsistent with these goals.
- (2) As the Report is highly critical of BWA and some members of its senior management, and recommends that the Firm should replace or consider replacing some members of BWA's senior management, the Authority considers it potentially carried some litigation risk and that it is therefore understandable why Mr Tinney, after discussion with his manager, took steps prior to the Relevant Period which aimed to ensure it was not seen by or available to others.

### **Prohibition order**

- 6.6. The Authority has the power to prohibit individuals under section 56 of the Act. The Authority has had regard to the guidance in Chapter 9 of EG in considering whether to impose a prohibition order on Mr Tinney.
- 6.7. The Authority considers that Mr Tinney is not a fit and proper person to perform any senior management function or any significant influence function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm and has decided that a prohibition order should be imposed on him under section 56 of the Act in those terms. The prohibition order is based on the Authority's conclusions that Mr Tinney:
  - (1) failed to comply with Statement of Principle 1 during the Relevant Period by recklessly making misleading statements and omissions in relation to matters relevant to regulatory compliance;

(2) subsequently recklessly gave a misleading account of certain matters in correspondence with the ICAEW (through his solicitors) and in interview with the Authority; and

(3) as a consequence, lacks integrity.

6.8. In deciding to impose the prohibition order, the Authority has taken account of the factors mentioned in paragraphs 6.3 to 6.5 of this Notice, and has concluded that, on the basis of Mr Tinney's reckless conduct in the course of carrying out the CF29 (Significant Management) controlled function, the prohibition order is appropriate in order to support the Authority's regulatory objectives of protecting and enhancing the integrity of the UK financial system and securing an appropriate degree of protection for consumers.

## **7. REPRESENTATIONS**

7.1. Annex B contains a brief summary of the key representations made by Mr Tinney 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 Mr Tinney, whether or not set out in Annex B.

## **8. PROCEDURAL MATTERS**

8.1. This Notice is given to Mr Tinney under sections 57 and 67 and in accordance with section 388 of the Act.

### **Decision maker**

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

### **The Tribunal**

8.3. Mr Tinney has the right to refer the matter to which this Notice relates to the Tribunal. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, Mr Tinney has 28 days from the date on which this Notice is given to him to refer the matter to the Tribunal. A reference to the Tribunal is



made by way of a signed reference form (Form FTC3) filed with a copy of this Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, Fifth Floor, Rolls Building, Fetter Lane, London EC4A 1NL (tel: 020 7612 9730; email: fs@hmcts.gsi.gov.uk).

- 8.4. Further information on the Tribunal, including guidance and a link to 'Forms and leaflets' which include Form FTC3 and notes on that form, can be found on the HM Courts and Tribunal Service website:

<http://www.justice.gov.uk/tribunals/tax-and-chancery-upper-tribunal>.

- 8.5. A copy of Form FTC3 must also be sent to Martha Stokes at the Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS at the same time as filing a reference with the Tribunal.

#### **Access to evidence**

- 8.6. Section 394 of the Act applies to this Notice. In accordance with section 394, Mr Tinney has the right to access:
- (1) the material upon which the Authority has relied in deciding to give this Notice; and
  - (2) the secondary material which, in the opinion of the Authority, might undermine that decision.
- 8.7. This material was enclosed with the Warning Notice given to Mr Tinney on 14 December 2015.

#### **Confidentiality and publicity**

- 8.8. This Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). In accordance with section 391 of the Act, a person to whom this Notice is given or copied may not publish the Notice or any details concerning it unless the Authority has published the Notice or those details.

8.9. However, the Authority must publish such information about the matter to which a decision notice or final notice relates as it considers appropriate. Mr Tinney should be aware, therefore, that the facts and matters contained in this Notice may be made public.

**Contact**

8.10. For more information concerning this matter generally, please contact Martha Stokes at the Authority (direct line: 020 7066 0894 / email: martha.stokes@fca.org.uk).

Beverley Walker, DMC Secretariat Manager, on behalf of

**Peter Hinchliffe**

**Deputy Chair, Regulatory Decisions Committee**

## ANNEX A

### RELEVANT STATUTORY AND REGULATORY PROVISIONS

#### 1. RELEVANT STATUTORY PROVISIONS

- 1.1. The Authority's general duties established in section 1B of the Act include the strategic objective of ensuring that the relevant markets function well and the operational objectives of protecting and enhancing the integrity of the UK financial system and securing an appropriate degree of protection for consumers.
- 1.2. Section 66 of the Act provides that the Authority may take action against a person if it appears to the Authority that he is guilty of misconduct and the Authority is satisfied that it is appropriate in all the circumstances to take action against him. A person is guilty of misconduct if, while an approved person, he has failed to comply with a Statement of Principle issued under section 64 or section 64A of the Act, or has been knowingly concerned in a contravention by a relevant authorised person of a relevant requirement imposed on that authorised person.
- 1.3. Section 56 of the Act provides that the Authority may make a prohibition order prohibiting an individual from performing a specified function, any function falling within a specified description, or any function, if it appears to the Authority that the individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, exempt person or a person to whom, as a result of Part 20 of the Act, the general prohibition does not apply in relation to that activity. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities.

#### 2. RELEVANT REGULATORY PROVISIONS

##### Statements of Principle and Code of Practice for Approved Persons

- 2.1. During the Relevant Period, Statement of Principle 1 stated:

*'An approved person must act with integrity in carrying out his controlled function.'*

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

### **The Fit and Proper Test for Approved Persons**

- 2.3. FIT sets out the criteria that the Authority will consider when assessing the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an approved person.
- 2.4. FIT 1.3.1G states that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person. The most important considerations will be the person's honesty, integrity and reputation, competence and capability and financial soundness.
- 2.5. In determining a person's honesty, integrity and reputation, FIT 2.1.1G provides that the Authority will have regard to all relevant matters including but not limited to, those set out in FIT 2.1.3G. FIT 2.1.3G includes whether the person has been dismissed, or asked to resign and resigned, from employment or from a position of trust, fiduciary appointment or similar (FIT 2.1.3G(11)).

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

- 2.6. The Authority's policy in relation to prohibition orders is set out in Chapter 9 of EG.
- 2.7. EG 9.1.1 provides that the Authority's power under section 56 of the Act to prohibit individuals who are not fit and proper from carrying out controlled functions in relation to regulated activities helps the Authority to work towards achieving its statutory objectives. The Authority may exercise this power to make a prohibition order where it considers that, to achieve any of those objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities, or to restrict the functions which he may perform.

- 2.8. EG 9.2.2 sets out the general scope of the Authority's powers in respect of prohibition orders, which include the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant.
- 2.9. EG 9.5 provides guidance on the Authority's exercise of its power to make a prohibition order against an individual who is not an approved person. The Authority will consider the severity of the risk posed by the individual and may prohibit the individual where it considers this is appropriate to achieve one or more of its statutory objectives.
- 2.10. When considering whether to exercise its power to make a prohibition order against such an individual, the Authority will consider all the relevant circumstances of the case. These may include, but are not limited to, the factors set out in EG 9.3.2.
- 2.11. EG 9.3.2 states that, when deciding whether to make a prohibition order against an approved person and/or withdraw his approval, the Authority will consider all the relevant circumstances of the case which may include, but are not limited to, the following factors:
- (1) whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety of approved persons are set out in FIT 2.1 (Honesty, integrity and reputation); FIT 2.2 (Competence and capability) and FIT 2.3 (Financial soundness) (EG 9.3.2(2));
  - (2) whether, and to what extent, the approved person has:
    - (a) failed to comply with the Statements of Principle issued by the FCA with respect to the conduct of approved persons; or
    - (b) been knowingly concerned in a contravention by the relevant firm of a requirement imposed on the firm by or under the Act (including the Principles and other rules) or failed to comply with any directly applicable Community regulation made under MiFID or any directly applicable provision of the auction regulation (EG 9.3.2(3));

- (3) the relevance and materiality of any matters indicating unfitness (EG 9.3.2(5));
- (4) the length of time since the occurrence of any matters indicating unfitness (EG 9.3.2(6));
- (5) the particular controlled function the approved person is (or was) performing, the nature and activities of the firm concerned and the markets in which he operates (EG 9.3.2(7)); and
- (6) the previous disciplinary record and general compliance history of the individual including whether the Authority, any previous regulator, designated professional body or other domestic or international regulator has previously imposed a disciplinary sanction on the individual (EG 9.3.2(9)).

2.12. EG 9.3.5 sets out examples of types of behaviour which have previously resulted in the Authority deciding to issue a prohibition order or withdraw the approval of an approved person. These include but are not limited to:

- (1) providing false or misleading information to the Authority; including information relating to identity, ability to work in the United Kingdom and business arrangements (EG 9.3.5(1)); and
- (2) serious breaches of the Statements of Principle for approved persons (EG 9.3.5(5)).

## **DEPP**

2.13. Chapter 6 of DEPP sets out the Authority's approach to deciding whether to issue a public censure. In particular, DEPP 6.4.2G sets out factors that may be of particular relevance when the Authority determines whether it is appropriate to issue a public censure rather than impose a financial penalty.

## ANNEX B

### REPRESENTATIONS

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

#### **Background Matters**

##### Events preceding the Relevant Period

2. *There were proper reasons for Mr Tinney not to distribute a physical copy of the Report and not to enter the Report into the Firm's records or IT systems. For example, the Report outlined conclusions but provided little express analysis or evidence, contained identifiable quotes and comments from some interviewees and specific recommendations in relation to a number of members of BWA's senior management, despite the participants having been assured that everything they shared with the Consultancy would be confidential unless otherwise agreed with them, and carried a litigation risk.*
3. The Authority considers that Mr Tinney had legitimate concerns at the outset about the Report being circulated and makes no criticism of the decision not to circulate the Report.

##### Knowledge of Mr Tinney's colleagues

4. *Several of Mr Tinney's colleagues knew that the Report existed, and the findings of the Report were disseminated and acted upon. This renders unsustainable the allegations that Mr Tinney attempted, in full view of some of these colleagues, to mislead as to the existence or nature of the Report.*
5. The Authority considers that its conclusion that Mr Tinney made the misleading statements and omissions recklessly, having closed his mind to the obvious possibility that the Anonymous Email and the New York Fed's request were referring to the Report, is compatible with several of Mr Tinney's colleagues having knowledge of the Report's existence and with the fact that the findings of the Report were disseminated and acted upon.

## Motive

6. *Mr Tinney had no motive to conceal the Report and therefore had no motive to make misleading statements or omissions. The Report does not mention or criticise Mr Tinney; the Culture Audit was Mr Tinney's initiative, so it would have been bizarre for him to seek to suppress the Report in circumstances where he was seeking to improve the corporate culture within BWA; and Mr Tinney had nothing to gain by the concealment of the Report and everything to lose by such actions.*
  
7. As explained in paragraph 4.28 of this Notice, the Authority has considered the evidence and submissions that are relevant to the issues of why Mr Tinney took the course of action that he did in relation to the Report and why he made the misleading statements and omissions. The Authority notes that Mr Tinney was not criticised by the Report, did not seek to suppress its conclusions, and initiated actions that made others aware of some of the Report's findings and which were intended to address some of the BWA cultural issues identified by the SEC and in the Report. The Authority considers that Mr Tinney had legitimate concerns at the outset about the Report being circulated. However, he did not take the course of action in September and December 2012 that was both obvious and correct, which would have been to make clear the existence of the Report, explain its potential litigation risk and offer to provide a copy to those preparing the September Note, its ultimate recipients, the Global Head of Regulatory Relations and the New York Fed, subject to appropriate confidentiality restrictions. The Authority does not consider it is necessary to determine what Mr Tinney's motive or motives were for making the misleading statements and omissions, nor to reconcile his apparently contradictory actions, in order to reach the conclusion that he recklessly made such statements and omissions.

## **The September Note**

Mr Tinney reasonably believed the Anonymous Email was not referring to the Report

8. *Mr Tinney was aware of the possibility that a whistleblower may not get every detail of an allegation correct, but believed in good faith that the reference in the Anonymous Email to a 'Wealth cultural audit report' was not a reference to the Report. This was for several reasons including that the Report had not been*



*mandated by the Chief Executive of Wealth, had not been 'recently issued' and could not have been suppressed by a senior individual in BWA.*

9. *The fact that each page of the Report was headed 'Barclays Wealth America – Culture Audit' is not determinative. All it indicates is that the Report was produced as an input into the Culture Audit workstream.*
10. *The work product emanating from the Workshop better fitted the description of a 'Wealth cultural audit report' in the Anonymous Email, and this was Mr Tinney's view at the time.*
11. *The reasonableness of Mr Tinney's belief that the reference in the Anonymous Email to a 'Wealth cultural audit report' was not a reference to the Report is supported by the fact that the Chief Executive of Wealth's contemporaneous view was that the Anonymous Email was wrong to claim that a 'Wealth cultural audit report' had been suppressed.*
12. *The contention that the Anonymous Email was referring to the Report must be rejected because the Report does not fit the description in the Anonymous Email. If the Anonymous Email was not referring to the Report, there can be no criticism of Mr Tinney. If the Anonymous Email might have been referring to the Report, Mr Tinney should not be criticised for believing in good faith that the Anonymous Email was not referring to the Report.*
13. *As the Authority has not found that the Report was suppressed, it follows that the allegation of suppression in the Anonymous Email cannot have been a reference to the Report, and that it was reasonable for Mr Tinney to believe that.*
14. *The Authority considers that, although there are some discrepancies between the Report and the description in the Anonymous Email, the Report was clearly a document which could fit the description in the Anonymous Email of a 'Wealth cultural audit report', particularly given that every page of the Report was headed 'Barclays Wealth America – Culture Audit'. The Authority considers that the work product from the Workshop, which consisted of a PowerPoint deck of slides setting out action points agreed at the Workshop and next steps for the Culture Audit workstream, could not reasonably be considered a cultural audit report and so did not better fit the description in the Anonymous Email. In the Authority's view, Mr Tinney*

closed his mind to the obvious possibility that the Anonymous Email was referring to the Report and it was not reasonable for him to proceed on the basis that the Anonymous Email could not have been referring to the Report. In any event, even having closed his mind to the obvious possibility that the Report was the subject of the Anonymous Email, the description in the Anonymous Email was sufficiently close to that of the Report such that a reference to the existence of the Report would naturally have formed part of an open and diligent response.

#### Previous whistleblowing emails

15. *The Anonymous Email was the third in a sequence of anonymous whistleblowing emails which made allegations about BWA. The allegations in the previous two emails did not appear to be well-founded, so it was natural for Mr Tinney (and the Chief Executive of Wealth) to start from the position that the Anonymous Email contained allegations which were also wide of the mark.*

16. The Authority does not consider that the existence of two previous whistleblowing emails, which made allegations which Mr Tinney considered were not well-founded, justified him approaching the allegations in the Anonymous Email with the view that they were also not well-founded. In any event, Mr Tinney should have been aware that the Anonymous Email could have been referring to the Report. He was aware of the gravity of the concerns that had led to the Report being produced and of the serious issues raised in the Report. He therefore should have been truthful and open about the nature and existence of the Report.

#### Mr Tinney was not responsible for the September Note

17. *Mr Tinney was one of at least three employees of the Firm assisting the Chief Executive of Wealth with the drafting of a note which the Chief Executive was ultimately responsible for approving and deciding to whom it should be sent. He was therefore not in a position to ensure that the final version of the September Note took any particular position in relation to the Report. This is demonstrated by the fact that Mr Tinney was not involved in the final two drafts of the September Note and some of his drafting was deleted before the final draft without his knowledge. Instead, it was the Chief Executive who, knowing about the Report and having responsibility for the September Note, was ultimately responsible for the September Note not mentioning the Report.*

18. *Mr Tinney cannot properly or fairly be singled out for a lack of integrity in the context of a collaborative drafting exercise involving a number of people who knew about the existence of the Report and with reference to drafting that was never included in the final draft of the September Note.*
19. The Authority acknowledges that other employees contributed to the drafting of the September Note which was to be sent by the Chief Executive of Wealth, that Mr Tinney was not involved in the drafting of the final two drafts and that some of Mr Tinney's drafting was deleted without his knowledge. However, the Authority considers that Mr Tinney should bear responsibility for his own drafting, in particular in relation to matters of which he had particular knowledge, such as the nature of the Report, and that the involvement of others with differing levels of knowledge about the Report is not inconsistent with a finding that Mr Tinney recklessly made misleading statements and omissions in the drafts of the September Note to which he contributed.

Knowledge of the Chief Executive of Wealth and a senior Wealth lawyer

20. *It is unsustainable to allege that Mr Tinney sought to insert misleading drafting into the September Note, in circumstances where: (i) Mr Tinney's manager, the Chief Executive of Wealth, commissioned and oversaw the drafting of the September Note and was aware of the existence and contents of the Report; and (ii) a senior Wealth lawyer knew of the existence of the Report, broadly knew of its contents, and authored or was copied on each of the drafts of the September Note.*
21. *As the Chief Executive of Wealth was aware of the existence and contents of the Report, the only reasonable assessment of Mr Tinney's contributions to the drafting process is that Mr Tinney was suggesting drafting that he believed, in good faith, to have been compatible with the existence of the Report. It is not reasonable to allege that Mr Tinney would have suggested drafting that he would have known would result in the Chief Executive misleading the Firm's executive management in circumstances where the Chief Executive would immediately know that the drafting was misleading and it is not alleged that there was any collusion between Mr Tinney and the Chief Executive.*
22. The Authority considers that Mr Tinney made the misleading statements and omissions recklessly, having closed his mind to the obvious possibility that the

Anonymous Email was referring to the Report. The Authority considers that this conclusion is valid even if the Chief Executive of Wealth and a senior Wealth lawyer had some knowledge of the Report's existence and were recipients of the drafting that Mr Tinney contributed to the September Note.

Mr Tinney's drafting was reasonable and not misleading

23. *Mr Tinney did not at first address the suppression allegation in drafting the September Note because he did not think there was any such cultural audit report. He did however reference the Culture Audit workstream into which the Report had been an input.*
24. *The statement 'There has never been a "Wealth Cultural Audit Report" produced at any time' was consistent with Mr Tinney's honestly held belief that the Anonymous Email had made an unfounded allegation of suppression of an audit report and was not referring to the Report. In addition, it was reasonable for Mr Tinney to take the view that the Report was not an 'audit report', as others, including the Consultancy, shared this view.*
25. *The description of the work undertaken by the Consultancy as 'verbal input' was accurate as it was a description of the Consultancy's input to the Workshop.*
26. *The allegation in paragraph 4.12(2) that Mr Tinney removed or replaced several phrases implying that the Consultancy had produced a written document is an unsafe basis for a finding of a lack of integrity, given that:*
  - a. *None of the three deleted terms actually expressly refer to a written document;*
  - b. *That draft still referred to the fact that the Consultancy had produced 'interview notes and working papers' which is a clear reference to the fact that the Consultancy produced written materials in the course of its work; and*
  - c. *Mr Tinney's decision to redraft to refer to a workshop to 'determine next steps' can be explained by a desire to reassure management that the Workshop was able to generate a positive action plan for improving BWA culture.*

27. The Authority considers that the amendments that Mr Tinney made to the September Note, as described in paragraph 4.12 of this Notice, were misleading. The Report was plainly a document which could fit the description in the Anonymous Email of a '*Wealth cultural audit report*', so it should have been evident to Mr Tinney that the September Note would be incomplete unless it disclosed the Report's existence. However, the Authority notes the reasoning that Mr Tinney has given for the comments that he made and, as is explained in paragraph 5.7 of the Notice, in all of the circumstances has concluded that the amendments that Mr Tinney made to the September Note were misleading and made recklessly.

No-one was misled by Mr Tinney's drafting

28. *The Authority has not identified who was misled by Mr Tinney's drafting, and has not adduced any evidence showing such person(s) actually being misled. The case based on 'misleading statements' therefore cannot succeed.*

29. It is not necessary for the Authority to conclude that Mr Tinney's drafting actually misled anyone in order to conclude that Mr Tinney made statements and omissions that were misleading and that he did so recklessly, in circumstances where he should have known that this was likely to have misled others about issues of serious regulatory concern.

Mr Tinney referred the Anonymous Email for an independent internal investigation

30. *Mr Tinney, along with the Chief Executive of Wealth, was instrumental in referring the Anonymous Email for an independent internal investigation. It is implausible to suggest that Mr Tinney sought to draft a misleading response to a whistleblowing email that he knew to be under independent investigation, especially as Mr Tinney later confirmed to the Consultancy that the Report should be provided to the person leading that investigation.*

31. The Authority considers the evidence to be unclear as to Mr Tinney's role in referring the Anonymous Email to an independent internal investigator and what that investigator's role was. In any event, the Authority considers that the evidence supports its conclusion that Mr Tinney recklessly made misleading statements and omissions regarding the nature and existence of the Report, and considers that the

referral of the Anonymous Email for an independent internal investigation does not affect the validity of this finding.

### **The New York Fed's request**

#### The New York Fed was not requesting the Report

32. *The request from the New York Fed stemmed from meetings between the Chief Executive of Wealth and the New York Fed at which the Chief Executive appears to have informed the New York Fed that he had commissioned a 'culture audit' and that he would provide this to the New York Fed. The notes of these meetings make it clear that he was not referring to the Report. The Authority's case therefore appears to be that Mr Tinney (wrongly) believed the New York Fed was or might have been requesting the Report, and he sought to conceal the Report from the New York Fed. This is unsustainable.*

33. Whether or not the New York Fed was specifically requesting the Report does not affect the Authority's conclusion that, in responding to the New York Fed's request, Mr Tinney recklessly made misleading statements and omissions as to the nature and/or existence of the Report.

#### Mr Tinney reasonably did not believe the Report was being requested

34. *Mr Tinney suggested that they could 'create something if that would be helpful' because it appeared that the New York Fed was looking for a composite of the work of the Consultancy and the third party consultancy and he knew there was no such composite.*

35. The Authority considers that the Report was clearly a document which could be considered a 'culture audit' (especially given that every page of the Report was headed 'Barclays Wealth America - Culture Audit' and it began with the words '[We] have been asked to conduct a culture audit into BWA...'). Mr Tinney also had good reason to consider that the Report was likely, at least in part, to have satisfied the New York Fed's request, as his colleague identified the Report as being potentially relevant to the request and Mr Tinney was told that the New York Fed was seeking a "look back" type of review after the SEC exam, assessing: 1) why did the tone at the top... not filter down to the bottom; and 2) what issues were there around escalation

*going from the ground up*'. The Authority therefore concludes that Mr Tinney closed his mind to the possibility that the Report could help to satisfy the New York Fed's request and made misleading statements and omissions which he should have been aware would make it less likely that the Global Head of Regulatory Relations or the New York Fed would ask for a copy of the Report.

#### Mr Tinney volunteered the existence of the Report

36. *The fact that Mr Tinney expressly referred to the Report in the 10 December 2012 meeting and said that a copy could be obtained is inconsistent with an attempt to stop the Report surfacing. Further, Mr Tinney also volunteered the existence of the Report in a conversation with the Global Head of Regulatory Relations on 6 December 2012.*

37. The Authority considers that Mr Tinney's description of the Report in the 10 December 2012 meeting was misleading, and that Mr Tinney described the Report in this way because he had closed his mind to the possibility that the Report could help to satisfy the New York Fed's request. The Authority considers that Mr Tinney should have been aware that the way that he described the Report would make it less likely that the Report would be disclosed.

38. The Authority considers it likely that Mr Tinney did have a conversation with the Global Head of Regulatory Relations on 6 December 2012. However, the Authority has not seen any evidence to support Mr Tinney's assertion that he volunteered the existence of the Report in that conversation. The Authority considers it more likely that, if he did reference the work of the Consultancy, he would have described the Report in a way which was consistent with his other descriptions of it. The Authority therefore has not concluded from the evidence that the conversation would have led the Global Head of Regulatory Relations to believe that the Report was what the New York Fed was looking for.

#### Knowledge of the Chief Executive of Wealth

39. *The Chief Executive of Wealth received Mr Tinney's emails to the Global Head of Regulatory Relations dated 6 December 2012 (see paragraph 4.18 of the Notice) and was present at Mr Tinney's meeting on 10 December 2012 with the Firm's Global Head of Regulatory Relations. The Chief Executive knew of the existence and*

*contents of the Report and was best placed to make an assessment as to what was meant by a 'cultural audit', but did not object to any of the statements made by Mr Tinney or suggest that Mr Tinney was proceeding on the basis of a misapprehension as to what the New York Fed appeared to be interested in receiving.*

40. *The most straightforward explanation is that both the Chief Executive of Wealth and Mr Tinney believed in good faith that the Report was not the appropriate response to the New York Fed's request, with the former being in the best position to judge this issue.*

41. *The Chief Executive of Wealth's knowledge of the Report, and the fact that he did not object to the statements made by Mr Tinney, does not affect the Authority's conclusion that Mr Tinney's statements and omissions were misleading and made recklessly.*

Mr Tinney's statements were not misleading and no-one was misled by them

42. *Mr Tinney's statement, described in paragraph 4.16 of the Notice, that 'the only substantive input/output [of the Culture Audit] was from the [Workshop]', cannot have been intended to convey the impression that the Report did not exist. Mr Tinney's colleague had identified three potential documents: (i) the other third party consultancy's conclusions; (ii) the Consultancy's conclusions; and (iii) the Workshop materials, and Mr Tinney's statement was in response to the question 'What would you like me to share?' Mr Tinney's response therefore did not imply that none of the other documents mentioned by his colleague existed.*

43. *The statements made by Mr Tinney, described in paragraph 4.18 of the Notice, in response to the Global Head of Regulatory Relations' emails of 6 December 2012, cannot plausibly have been intended to give the recipients the impression that the Report did not exist because they were sent after Mr Tinney's conversation with the Global Head of Regulatory Relations on 6 December 2012, in which he had volunteered the existence of the Report and the Global Head of Regulatory Relations had opined that it did not seem to be what the New York Fed was looking for.*

44. *Mr Tinney's descriptions of the Report at the 10 December 2012 meeting were not misleading as they are consistent with how others, including the Consultancy, have characterised the Report.*



45. *No-one was misled by Mr Tinney's allegedly misleading statements, so a case based on 'misleading statements' cannot succeed.*

46. The Authority considers that the statements made by Mr Tinney were misleading for the reasons given in paragraphs 5.10 and 5.11 of the Notice. The Authority considers it is not necessary to find that anyone was actually misled in order to find that Mr Tinney made misleading statements, and, in any case, Mr Tinney's descriptions of the Report at the 10 December 2012 meeting did mislead the Global Head of Regulatory Relations, as it led her to the conclusion that the Report was not what the New York Fed was looking for.

An independent investigator had a copy of the Report

47. *It is implausible to suggest that Mr Tinney made misleading statements regarding the nature of the Report at the 10 December 2012 meeting because, from at least 4 December 2012, Mr Tinney was aware that the individual leading the independent investigation into the Anonymous Email had sought and obtained a copy of the Report.*

48. *Mr Tinney met with the individual leading the independent investigation into the Anonymous Email on 11 December 2012. At this meeting Mr Tinney described the Report in terms which broadly tally with those he used at the 10 December 2012 meeting, yet at this point Mr Tinney knew that the lead investigator had obtained a copy of the Report. This undermines the suggestion that Mr Tinney sought to make misleading statements to the Global Head of Regulatory Relations at the 10 December 2012 meeting.*

49. The Authority considers that Mr Tinney recklessly made misleading statements to the Global Head of Regulatory Relations at the 10 December 2012 meeting, despite knowing by that date that another person in the Firm had obtained a copy of the Report, because he had closed his mind to the obvious possibility that the Report could, at least in part, have satisfied the New York Fed's request.

## **Provision of misleading information to the ICAEW and the Authority**

### Provision of misleading information to the ICAEW

50. *There is, and was, legitimate confusion about the extent of the 'legal advice' involved in the decisions that were made about the dissemination of the Report. On at least one view of events, Mr Tinney did, in effect, take legal advice regarding what should be done with the Report because the Firm's Global General Counsel was aware of the Report and did not object to the decision that the Report should not be distributed. Mr Tinney's response to the ICAEW was therefore not misleading.*

51. *The allegation relates to a peripheral sentence in a letter drafted by Mr Tinney's solicitors. The worst that could be said of Mr Tinney is that he failed to spot an inaccurate statement in lengthy correspondence drafted by someone else, and it is unfair to find that he misled the ICAEW on that basis.*

52. *It is not appropriate for the Authority to make a public finding as to Mr Tinney's interactions with another regulator.*

53. The Authority considers that Mr Tinney's response to the ICAEW, through his solicitors, did contain inaccurate and misleading statements, and has not seen any evidence supporting the contention that they were simply overlooked by Mr Tinney. The Authority does not accept that it should not have regard to evidence concerning Mr Tinney's interactions with another regulator in considering whether Mr Tinney is a fit and proper person, particularly when that evidence relates to the same factual circumstances as this Notice and is relevant to its decision as to whether Mr Tinney is a fit and proper person.

### Provision of misleading information to the Authority

54. *In making the allegations that Mr Tinney provided misleading information to it, the Authority does not make allowances for the potentially imperfect recall of an extraordinarily busy executive several years after the events in question (which formed but a small part of his workload during his employment at the Firm).*

55. *Mr Tinney denies the allegation at paragraph 4.23 of the Notice. The Authority's assessment of the other witness and documentary evidence is not balanced as to*

*whether Mr Tinney gave such an instruction. Mr Tinney clearly believed that he would not be getting a document from the Consultancy, either because he had told them this or because the previous working practice had been for such reports from the Consultancy to be delivered orally to Mr Tinney. To the extent that anyone provided instructions to produce a document, it is very likely to have been his Chief of Staff. In addition, there is no evidence that Mr Tinney did instruct the Consultancy to produce a written document.*

56. *Mr Tinney denies the allegation at paragraph 4.24 of the Notice. Whilst the Consultancy may have understood such an instruction, the Authority's assessment is not balanced as to whether Mr Tinney and the Consultancy had become confused in their dealings with each other through the intermediary role played by Mr Tinney's Chief of Staff.*

57. *Mr Tinney denies the allegation at paragraph 4.25 of the Notice. The Consultancy's evidence is actually that Mr Tinney never said 'don't mention the report' and that, in October 2012, Mr Tinney told the Consultancy that the Report should be given to anyone who asked for it "on the record".*

58. *Mr Tinney denies the allegation at paragraph 4.26 of the Notice. A fair assessment of the evidence does demonstrate that Mr Tinney expressly raised the Report at the 10 December 2012 meeting, but was told by the Global Head of Regulatory Relations that she did not think it was what the New York Fed was looking for. In addition, it does not take into account the Chief Executive of Wealth's central participation in the meeting, including his own knowledge of the Report and its substantive content.*

59. The Authority has had regard to Mr Tinney's explanations but considers that the evidence supports its conclusion that the statements described in paragraphs 4.23 to 4.26 of this Notice were misleading. The Authority considers that Mr Tinney made these statements in order to avoid criticism of his conduct, and that in doing so he was reckless as to the accuracy of the answers he gave to the Authority's questions.

### **Disproportionality of action**

60. *Mr Tinney had not seen the Report for many months by the time of the relevant events, and during those months Mr Tinney had a very busy work schedule and his*

*attention was focused on thousands of other documents and issues. He therefore should not be blamed if there were shortcomings in his description of the Report.*

61. *Even if the Authority considers that there were shortcomings in Mr Tinney's descriptions of the Report and/or that he ought to have proactively taken steps to bring the Report to the attention of the Firm's executive management and the New York Fed, this would not be a proper basis for a finding of a lack of integrity or a prohibition order in circumstances where:*

- a. Mr Tinney had conscientiously driven attempts to improve and reform the culture at Wealth and BWA;*
- b. there is no suggestion of any personal benefit to Mr Tinney arising out of the alleged wrongdoing;*
- c. other senior employees of the Firm must also have been culpable for any shortcomings, and*
- d. this is the first time that regulatory charges have been made against Mr Tinney in a previously unblemished career.*

62. *A fair evaluation of the evidence and relevant context leads to the conclusion that Mr Tinney's actions were well within the range of actions of a person acting in good faith.*

63. The Authority does not consider it needs to reach a view on whether other employees of the Firm were also culpable in order to conclude that it is appropriate to take the action set out in this Notice. The Authority has taken the other circumstances mentioned above into account in determining that the appropriate sanction is a public censure rather than a financial penalty. However, the Authority remains of the view that it is appropriate, in order to support the Authority's regulatory objectives of protecting and enhancing the integrity of the UK financial system and securing an appropriate degree of protection for consumers, to prohibit Mr Tinney from performing any significant management function and any significant influence function on account of his reckless conduct in his contributions to the drafting of the September Note and the Firm's response to the New York Fed's request.