

This Decision Notice has been referred to the Upper Tribunal to determine what (if any) the appropriate action is for the Authority to take, and remit the matter to the Authority with such directions as the Tribunal considers appropriate.



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DECISION NOTICE

To: **David Arden**

Reference number: **DTA01011**

Date: **10 November 2022**

1. ACTION

- 1.1. For the reasons given in this Notice, the Authority has decided to impose on Mr Arden a financial penalty of £134,600 pursuant to section 91 of the Financial Services and Markets Act 2000, for being knowingly concerned in Metro Bank's contravention of Listing Rule 1.3.3R (misleading information not to be published).

2. SUMMARY OF REASONS

- 2.1. The UK listing regime relies on disclosure and transparency to allow investors to make fully informed decisions. It is of fundamental importance that directors of listed companies discharge their responsibilities for ensuring that market disclosures are not false, misleading or deceptive and do not omit anything likely to affect the import of the information that is disclosed. This ensures that they can be relied on by investors in making investment decisions to hold, buy or sell an investment. Disclosure and transparency serve to advance the Authority's

strategic objective of ensuring the relevant markets function well and its operational objective of protecting and enhancing the integrity of the UK financial system.

- 2.2. Metro Bank was established in 2010. It is often described as a “challenger bank” on the basis that it is a more recently created retail bank which seeks to compete directly with older, more established banks. Its shares are admitted to the Official List of the London Stock Exchange.
- 2.3. Mr Arden was Metro Bank’s Chief Financial Officer (CFO) from 29 March 2018 until 15 February 2022. This Notice relates to Mr Arden’s conduct in relation to Metro Bank’s Q3 trading update on 24 October 2018 (the “October Announcement”).
- 2.4. Mr Arden was knowingly concerned in Metro Bank’s publication of inaccurate information concerning the figure for Risk Weighted Assets (“RWA”) in the October Announcement. In particular, Metro Bank breached LR 1.3.3R by failing to take reasonable care to ensure that the October Announcement was not false or misleading and did not omit anything likely to affect the import of the information:
 - (1) The October Announcement stated that Metro Bank’s RWA totalled £7,398 million as at 30 September 2018. This was inaccurate. As Mr Arden was aware, this figure included Metro Bank’s incorrect application of risk weights to certain of its commercial loan portfolios, including its commercial loans secured on immovable property (CLIP Loans) where an incorrect risk weighting of 50% had been applied.
 - (2) By no later than 11 September 2018, two external consultants had independently confirmed to Metro Bank (as Mr Arden knew) that the correct risk weighting for CLIP Loans was 100% and not 50%.
 - (3) To Mr Arden’s knowledge, Metro Bank had itself acknowledged this error internally and recognised that it should be remediated.
- 2.5. Metro Bank and Mr Arden in particular were aware by the time of the October Announcement that the size of the necessary adjustment to correct this error would be substantial:
 - (1) Mr Arden (as CFO) was provided with an initial estimate and supporting calculation on 24 August 2018 which estimated an RWA increase of £640 million as a result of correcting this error.
 - (2) Subsequent review and investigation carried out by Metro Bank provided further detail in advance of the October Announcement. Metro Bank’s Credit Risk Policy and Appetite Committee and its Risk Operating Committee both received a paper for their meetings on 22 October 2018 and 23 October 2018 respectively (both of which were attended by Mr Arden) which stated that:

(a) correcting the Bank's error in respect of CLIP Loans would lead to an estimated increase in RWA of £574 million; and (b) while the Bank continued to review its data and processes, any change to this estimated increase was not expected to be material.

2.6. Metro Bank and Mr Arden were aware of the market significance of Metro Bank's RWA figures, which had been the subject of both analyst commentary and specific questioning at an analyst meeting prior to the October Announcement. However, when publishing the inaccurate RWA figure of £7,398 million in the October Announcement, Metro Bank failed to explain that:

- (1) The total RWA figure of £7,398 million included Metro Bank's application of a risk weighting of 50% for CLIP Loans.
- (2) This risk weighting was incorrect.
- (3) Metro Bank had recognised that it needed to correct this error.
- (4) Metro Bank was carrying out an ongoing review to determine the quantum of the correction.
- (5) The quantum of the necessary correction would be substantial.

2.7. Metro Bank and Mr Arden as CFO failed to consider whether any of the matters specified in paragraph 2.6 above ought to have been included in the October Announcement by way of qualification, or to seek legal advice or input from Metro Bank's professional advisers on this question. Instead, Metro Bank and Mr Arden assumed that Metro Bank did not need to say anything publicly about these matters whilst its review was ongoing and that it was appropriate to publish the inaccurate RWA figure in the October Announcement. Metro Bank and Mr Arden made this incorrect and unreasonable assumption in the light of two strands of discussion neither of which addressed the October Announcement: first, the Bank's discussions with the PRA in the context of a separate stream of regulatory reporting; and second, legal advice that the Bank was not required to make a proactive market announcement about its miscalculation of the risk weighting but which did not address the October Announcement (still less whether Metro Bank could publish an RWA figure in the October Announcement that it knew was inaccurate).

2.8. Further, Mr Arden failed to ensure that the Audit Committee and the Board considered whether the inclusion of the inaccurate RWA figure in the October Announcement without any qualification was appropriate.

2.9. Shortly after the October Announcement, at an investor call on 2 November 2018, Mr Arden was specifically asked the following question: "*the risk weight on the commercial real estate portfolio, if my math is right, it is 60.4%, which just seems*

low, given where those standardised risk weights should be. Do you mind just helping me understand the disparity there?”. Mr Arden replied as follows: “I have not got the details to hand, so I will probably get back to you. But just rest assured, we continuously look at all the risk weightings we have, and we are constantly reviewing that. I am afraid I have not got the math to hand”.

2.10. Notwithstanding that Mr Arden was specifically asked the above question regarding standardised risk weighting, neither he nor Metro Bank considered the need to qualify or correct the inaccurate RWA figure contained in the October Announcement. It was not until 23 January 2019, after its review had concluded, that Metro Bank corrected the RWA figure:

- (1) On this date Metro Bank issued its full year 2018 Results Preview and Trading Update announcing an expected increase in RWA to “*approximately £8.9bn*” and a softening in its underlying profit before tax in the last quarter. Later the same day, Mr Arden explained on an analyst presentation call that this estimated increase in RWA included adjustments of “*around £900 million*” due to errors in Metro Bank’s risk weighting of certain commercial loan portfolios.
- (2) £563 million of this RWA increase was attributable to Metro Bank’s error in respect of CLIP Loans. This corresponds closely with the estimated impact which Metro Bank had already calculated prior to the October Announcement (which was £574 million: see paragraph 2.5(2) above).
- (3) Following the January 2019 announcement, Metro Bank’s share price dropped by 39% on the day of the announcement, which was the largest single price drop experienced by a UK bank since 2009.

2.11. For the reasons above, Mr Arden was knowingly concerned in Metro Bank’s breach of LR 1.3.3R. As CFO he had a central role in reviewing and finalising the October Announcement and approving it as a Board member. He also held an influential role as a member of Metro Bank’s Disclosure Committee in addition to being the Company Secretary. Despite this, he failed to take adequate steps to ensure that the October Announcement was not false or misleading and did not omit anything likely to affect the import of the information contained in the announcement concerning the RWA figure.

2.12. The Authority has therefore decided to impose on Mr Arden a financial penalty of £134,600 pursuant to section 91 of the Act.

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 Financial Conduct Authority.

"CFO" means Chief Financial Officer.

"CLIP Loans" means loans which are fully and completely secured by mortgages on commercial immovable property within the meaning of Article 126 of the CRR.

"COREP" means the Common Reporting framework, described in paragraph 4.10(4) of this Notice.

"CRD" means Directive 2013/36/EU (the Capital Requirements Directive).

"CRPAC" means Metro Bank's Credit Risk Policy and Appetite Committee, which is the management committee responsible for oversight of credit risk policies; reviewing proposals on risk appetite; and monitoring portfolio performance against risk appetite.

"CRR" means Regulation (EU) No 575/2013 (the Capital Requirements Regulation) which governed Metro Bank's approach to risk weighting credit risk exposures during the Relevant Period.

"DEPP" means the Decision Procedure and Penalties manual, part of the Handbook.

"First Consultant" means the external consultant engaged by Metro Bank in April 2018.

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

"the Listing Rules" means those rules contained in the part of the Handbook entitled 'Listing Rules'.

"Market Abuse Regulation" or "MAR" means Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse.

"Metro Bank" or "the Bank" means Metro Bank Plc.

"October Announcement" means Metro Bank's Q3 trading update on 24 October 2018.

"PRA" means the Prudential Regulation Authority.

"PBTL Loans" means professional buy-to-let loans.

"RDC" means the Regulatory Decisions Committee of the Authority (see further under Procedural Matters) below.

"ROC" means the Risk Oversight Committee, a sub-committee of the Board responsible for ICAAP, ILAAP and Pillar 3 disclosures and recommending risk appetite statements to the Board.

"RWA" means risk weighted assets.

"the Relevant Period" means the period between 23 and 24 October 2018.

"Second Consultant" means the external consultant formally engaged by Metro Bank in October 2018.

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

"the Warning Notice" means the warning notice given to Mr Arden dated 17 January 2022.

4. FACTS AND MATTERS

SECTION A: METRO BANK AND MR ARDEN

- 4.1. Metro Bank was established in 2010 and is an authorised firm that is regulated by the Authority and the PRA. It is a listed company and is admitted to trading on the premium segment of the main market of the London Stock Exchange.
- 4.2. Mr Arden joined Metro Bank on 19 March 2018 and was its CFO from 29 March 2018 until 15 February 2022. He was also a member of Metro Bank's Disclosure Committee during the entirety of his tenure as CFO. Upon joining Metro Bank, Mr Arden was also given the role of Company Secretary, which was a position he held until 1 December 2020. Metro Bank was Mr Arden's first CFO position at a listed entity, having previously held the role of CFO at Sainsbury's Bank.
- 4.3. Metro Bank is a challenger bank in the sense that it is a more recently created retail bank which seeks to compete directly with older, more established banks. It offers retail, business, commercial and private banking services. Around 2018, it had a business model that focused heavily on branches and was expecting to grow its branch network with significant investment.
- 4.4. Metro Bank achieved its first annual profit in 2017. Metro Bank's strategy in 2017-18 was to rapidly expand its footprint and scale of operations. This involved substantial year-on-year increases in Metro Bank's deposits from customers: in particular, an increase of 47% (2016 to 2017) and 34% (2017 to 2018).

- 4.5. The failings addressed in this Notice relate to Metro Bank's commercial lending portfolio (as distinct from Metro Bank's retail lending portfolio). In 2018 this amounted to a total of £4.4 billion and represented 31% of Metro Bank's overall lending. As set out in Section B immediately below, Metro Bank's RWA figures were important for its business and strategy because (among other things) an increase in RWA could increase its regulatory capital requirements and require further capital raising in order to support its intended growth.
- 4.6. As CFO, Mr Arden was responsible (among other things) for the management of the allocation and maintenance of capital, funding and liquidity, and the production and integrity of Metro Bank's financial information and its regulatory reporting in respect of its regulated activities.

SECTION B: CAPITAL REQUIREMENTS AND RISK WEIGHTED ASSETS

- 4.7. A bank's capital requirement is the amount of capital that it must hold and is set by both objective calculations and discretionary components determined by its financial regulator. Capital requirements are important to ensure that firms are managed prudently and are able to withstand adverse trading or economic conditions. They aim to protect firms, customers, the Financial Services Compensation Scheme (which compensates certain customers in the event of a bank failure) and the markets. The financial regulator establishes rules to make sure that institutions hold enough capital to ensure continuation of a safe and efficient market and are able to withstand any foreseeable problems.
- 4.8. As CFO, any information concerning Metro Bank's capital requirements or RWA figure was particularly relevant to Mr Arden and he was expected to ensure the accuracy of any figures disclosed to the market or to regulators.
- 4.9. The applicable rules governing capital requirements during the Relevant Period were set out in the CRD and the CRR as supplemented / varied by the PRA Rulebook. Under this regulatory regime, the level of capital requirements depended on an institution's total risk exposure as assessed by reference to certain factual tests.
- 4.10. The concept of RWA is a regulatory tool that is used to determine the riskiness of a bank's assets and consequently how much capital a bank must hold against them. More fully:
- (1) RWA is a concept used to calculate the total risk exposure of the institution. The higher the amount of RWA that an institution has, all else equal, the more capital it is required to hold.

- (2) There are both standardised and advanced models for calculating risk components. At the relevant time, Metro Bank used (as it was required to do) the standardised model, under which there is much less discretion than with the more advanced models.
 - (3) The standardised model for calculating RWA involves taking the value of the bank's assets, classifying them into a number of categories, and then applying a prescribed percentage to each of those categories to reflect the risks associated with assets of that type.
 - (4) Firms are required to submit regular reports to their relevant financial regulator regarding their compliance with regulatory capital requirements. This reporting forms part of the Common Reporting framework (COREP) which is a standardised reporting framework originally defined and implemented by the European Banking Authority.
- 4.11. Metro Bank had at all times held sufficient capital to comply with regulatory requirements. However, the Bank's strategy of growing its balance sheet by means of increased deposits and lending was dependent on generating further capital to support its growth. To achieve this, Metro Bank completed a £278 million capital raise in July 2017 and a further £303 million capital raise and £250 million debt issuance in 2018.
- 4.12. Metro Bank's RWA figure had important consequences for its growth strategy and whether it would be required to raise additional capital:
- (1) RWA is significant because it is a key factor in determining how much capital a bank is required to hold, it impacts on the bank's potential for future growth and affects when it will need to raise additional capital.
 - (2) The RWA figure is therefore a key indicator of the amount of capital that a bank needs to raise in order to hold sufficient capital and sustain future growth.
 - (3) The need to raise additional capital has potentially significant implications for a bank and its investors. This includes its existing shareholders if done by means of the bank issuing additional shares to raise the required capital which can lead to a dilution in existing shareholders' interest in the company.
 - (4) The RWA is therefore an important key performance indicator for banks and commonly features in announcements and analyst comments.
- 4.13. The RWA figure had particular significance for Metro Bank given its business model and intended growth strategy: an increase in RWA could lead to an increased regulatory capital requirement and the need to raise further capital, with the

potential consequent risks of dilution of existing shareholders' holdings and a restriction of the rate of Metro Bank's future growth. Mr Arden knew the significance of RWA to Metro Bank's capital ratio and the subsequent effects on its growth strategy.

4.14. The inaccuracy in the RWA figure that Metro Bank published in the October Announcement resulted from its incorrect treatment of two categories of loans:

- (1) CLIP Loans: these are loans which are fully and completely secured by mortgages on commercial immovable property within the meaning of Article 126 of the CRR. As Mr Arden was made aware, Metro Bank ought to have applied a risk weighting of 100% to CLIP Loans but, as set out below, wrongly applied a percentage of 50%.
- (2) PBTL Loans: these are professional buy-to-let mortgages, which depending on the circumstances of the particular loan may amount to: (a) residential mortgages under Article 125 CRR with a risk weighting of 35%; or (b) CLIP Loans under Article 126 CRR with a risk weighting of 100%. If a PBTL Loan does not fall within either of these specific categories, then by default it is subject to a risk weighting of 100% under Article 124 CRR.

4.15. The failings addressed in this Notice concern the first of these errors (i.e. the error in respect of CLIP Loans). As set out below, this was a fundamental error of regulatory interpretation of which Metro Bank and Mr Arden were aware in advance of the October Announcement. Metro Bank nonetheless published an inaccurate RWA figure in the October Announcement based on the application of a 50% risk weighting to CLIP Loans, which Metro Bank knew to be materially incorrect. This error in regulatory interpretation accounted for £563 million of the approximately £900 million increase in RWA that was later announced by Metro Bank in January 2019.

SECTION C: EVENTS LEADING TO THE OCTOBER ANNOUNCEMENT

Metro Bank's discovery of its error

4.16. Metro Bank's discovery of its error regarding the risk weighting of CLIP Loans arose out of an internal audit of its COREP reporting which concluded in June 2017. The internal audit was part of a thematic review of firms' COREP reporting and Metro Bank had been selected by the PRA to participate. The audit identified a "lack of documented policies and procedures", a "lack of skilled and experienced resources to interpret the rules", "data inaccuracies" and a number of errors and omissions in the Bank's interpretation of the rules on capital requirements. It did not, however, identify the specific error regarding the risk weighting applied to CLIP Loans. Following this internal audit, Metro Bank carried out a programme of

ongoing work relating to its risk weights. In early 2018, in the course of this programme of work, some individuals within Metro Bank's Risk and Finance functions explored concerns that the risk weights used by Metro Bank in relation to CLIP Loans may be incorrect.

- 4.17. In April 2018, Metro Bank engaged the First Consultant to conduct a review of the commercial loan classifications used by the Bank in its RWA calculations. The First Consultant was asked to prepare flow diagrams setting out a structured series of questions (referred to by Metro Bank and the First Consultant as "decision trees") to assist the Bank in classifying loans correctly for the purposes of (among other things) calculating RWA under the standardised model applied by Metro Bank.
- 4.18. By 31 May 2018, based on its work with the First Consultant, Metro Bank had identified that its risk weighting classifications were incorrect and that all loans secured on commercial property should have a risk weighting of 100%.
- 4.19. On 18 June 2018, Metro Bank's Credit Risk Policy and Appetite Committee (CRPAC) was provided with copies of the draft "decision trees" prepared by the First Consultant, which displayed a risk weighting of 100% for CLIP Loans.
- 4.20. By 16 July 2018, the First Consultant had confirmed that Metro Bank's use of the 50% risk weighting for CLIP Loans was incorrect, and Metro Bank was of the view that such use of the 50% risk weighting was incorrect and needed to be changed.
- 4.21. On or around 16 August 2018, the First Consultant signed off internally on the "decision trees" that it had prepared.
- 4.22. Although Mr Arden was aware of the work being conducted in the background by the First Consultant, he was not aware of the details surrounding the RWA error until 17 August 2018.

August 2018: Mr Arden informed of estimated quantum of RWA errors

- 4.23. In August 2018, personnel within Metro Bank's Credit Risk and Commercial Banking departments discussed and sought to quantify the impact of the Bank's error regarding the risk weighting of CLIP Loans.
- 4.24. On 17 August 2018, Mr Arden was updated by email as to the ongoing work on RWA: in particular, he was informed that Metro Bank had arrived at a "*joined up understanding*" of the proper interpretation of the applicable rules and that the outcome was "*at the higher end of the impact ranges*" that had been discussed, in that almost every commercial loan (other than PBTL Loans) should have carried a risk weighting of 100%.

- 4.25. On 24 August 2018, an email was sent to Mr Arden and Mr Craig Donaldson (the Chief Executive Officer of Metro Bank) attaching a note which “*details the RWA impacts*” of “*two key changes*” which were “*required to bring our RWA calculation into compliance*”. The email described the estimated impact of the RWA adjustments as follows (emphasis added):

*“The impact is a **circa £900m increase in RWA** across Commercial and PBTL books. This represents a circa £70m increase in T1 capital.”*

- 4.26. The attached note explained the following:

- (1) £640 million of this estimated increase in RWA was attributable to the incorrect risk weighting applied to CLIP Loans:

“There are two key drivers of the increase (All RW are quoted before potential SME factors):

1. Assets backed by commercial real-estate are currently in Metro allocated a standardised risk weight of 50%. This is based on a simplistic interpretation of the European CRR rules. Following detailed PRA statements and reviewing BIPRU confirms that the PRA have used their permitted powers of derogation to ensure that relevant assets in the UK backed by commercial Real Estate should receive a 100% RW.

This interpretation has been confirmed by a full [First Consultant] review.

As a result of this reclassification we estimate that RWAs increase by £640 million (June month end).”

- (2) The remainder of the estimated RWA increase (being approximately £269 million) was attributable to errors in the classification of PBTL Loans, as a result of Metro Bank having incorrectly applied a risk weighting of 35% instead of 100% to those loans.

- (3) As to the methodology used by Metro Bank to reach these estimates:

(a) The estimated £640 million increase in respect of CLIP Loans was calculated using the existing asset classifications as recorded in Metro Bank’s systems, by applying the correct risk weighting of 100% to those categories of assets which constituted CLIP Loans.

(b) The estimated £269 million increase in respect of PBTL Loans was calculated by using random sampling to estimate how many PBTL Loans had been incorrectly classified, and then applying the correct risk

weighting of 100% to the estimated total value of the incorrectly classified loans.

- 4.27. Mr Arden and Mr Donaldson discussed the issues raised in the 24 August 2018 note with Metro Bank's Credit Risk department in advance of the next monthly meeting of the CRPAC (which took place on 17 September 2018, as addressed in paragraph 4.31 below).

September 2018: Meeting with the PRA and engagement of the Second Consultant

- 4.28. On 6 September 2018, Metro Bank attended a meeting with the PRA at which the PRA raised concerns regarding the Bank's miscalculation of risk weightings for certain types of commercial loans. In response, Metro Bank told the PRA that the miscalculation was "*clearly an error on our part and was being fixed*".
- 4.29. Whilst Mr Arden was not present at the meeting on 6 September 2018, the concerns raised at the meeting were reflected in a letter sent by the PRA to Metro Bank on 10 September 2018 which required (among other things) that the Bank submit the results of its commercial risk weighting exercise to the PRA together with an attestation from the CFO confirming the accuracy of the Bank's financial reporting. Mr Arden saw this letter and was aware of the matters raised therein.
- 4.30. In the light of this letter from the PRA, Metro Bank, on Mr Arden's initiative, decided to engage the Second Consultant to provide external assurance regarding the Bank's approach to risk weighting for its commercial loan portfolios. By 11 September 2018, the Second Consultant had confirmed that 100% was the correct percentage risk weighting to be applied to CLIP Loans. This was confirmed by email to Mr Arden on 11 September 2018. By this date at the latest, Metro Bank and Mr Arden in particular knew that the application of the 50% risk weighting to CLIP Loans was wrong.
- 4.31. On 17 September 2018, at a meeting of the CRPAC attended by Mr Arden, the committee members were presented with a paper informing them of "*inconsistencies in current RWA calculations that will result in a significant increase in RWs*" and explaining the "*driver of the increase*" as follows:

"Commercial mortgages (ie owner occupier loans) are currently in Metro allocated a standardised risk weight of 50%. This is based on a simplistic interpretation of the European CRR rules. Reviewing detailed PRA statements confirms that the PRA have used their permitted powers of derogation to ensure that all assets in the UK backed by commercial property should receive a 100% RW. This interpretation has been confirmed by a full [First Consultant] review.

As a result of this reclassification we estimate that RWs (pre potential SME factor) increase by £640 million (June month end)."

- 4.32. At the same meeting on 17 September 2018, the CRPAC was presented with final versions of the decision trees prepared by the First Consultant (as to which see paragraph 4.17 above). The final versions were consistent with the earlier draft of the decision trees presented in June 2018 (as to which see paragraph 4.19 above), in that they displayed the risk weighting for CLIP Loans as 100%. The CRPAC approved the implementation of these decision trees.
- 4.33. At a meeting on 18 September 2018 attended by Mr Arden, Metro Bank's Audit Committee was told that the Bank now accepted that its application of the 50% risk weighting to commercial loans was an error which should be remediated. The Audit Committee was informed that Metro Bank had *"taken what it believed to be the correct approach at the time"*. The Audit Committee meeting minutes noted that *"the impact of incorrect reporting on the balance sheet was not insignificant"*.
- 4.34. At a further meeting on 18 September 2018 also attended by Mr Arden, Metro Bank's Board was provided with a credit risk update which referred to the fact that standardised RWA *"exceeded appetite"* and that this was primarily due to the *"reclassification of CRE assets, the review of which is still ongoing"* and that *"[t]his metric could increase by circa 10% (c.£40m of capital) upon completion of the asset classification project"*. Metro Bank's error as to the risk weighting of CLIP Loans was not mentioned at this meeting.
- 4.35. On 5 October 2018, Metro Bank sought and obtained external legal advice. At a meeting attended by Mr Arden, Metro Bank informed its external lawyers that it *"had identified a problem with the risk weight classification of some commercial assets; that current estimates based on sampling was c.£600m and the impact on core equity capital of c.£50m but further work was being undertaken (with the help of [the Second Consultant]) to finalise the amount; that the PRA had agreed that there were no immediate changes necessary for our [COREP] reporting; and the intention was to notify the market once finalised and resolved in line with our usual full year and Pillar 3 disclosures"*, and sought advice as to whether a proactive market announcement was required at that point in time. Metro Bank's external lawyers advised that a proactive market announcement was not required, agreeing with Metro Bank's view that it was *"neither specific or material information"* at that point. As set out below, and as Mr Arden knew, Metro Bank did not return to its external lawyers thereafter to seek any legal advice specifically in relation to the October Announcement, and whether that announcement could properly give an RWA figure that was based on an incorrect risk weighting.

- 4.36. On 9 October 2018, having informed the PRA about its miscalculation of risk weightings in early September 2018, Mr Arden agreed with the PRA that Metro Bank's COREP reporting to the PRA for Q3 2018 would be materially unchanged pending completion of the review by the Second Consultant.
- 4.37. At a meeting attended by Mr Arden on 16 October 2018, having been informed of the legal advice received, Metro Bank's Disclosure Committee decided that no proactive market announcement was required at this stage to reflect the problem regarding risk weight classification of commercial assets. The Disclosure Committee consisted of three members, including Mr Arden. The minutes of the meeting record that the potential impact of the error based on sampling was approximately £600 million of RWA with an impact on core equity capital of approximately £50 million, and that further work would be carried out to finalise the amount. The minutes also record that the Disclosure Committee "*understood that, once fixed, further consideration would need [to] be given to whether a market announcement was required*".
- 4.38. Also on 16 October 2018, the Second Consultant was formally engaged to review and remediate Metro Bank's current policies, procedures and controls in relation to the calculation of RWA and COREP reporting. This review was to be conducted in three phases that spanned a period of nine to ten weeks in total.
- 4.39. On 17 October 2018, Mr Arden met with an analyst to discuss questions regarding Metro Bank's approach to risk weighting (among other issues) in the light of analyst reports observing that the risk density of Metro Bank's non-residential mortgage lending seemed low relative to expectations.
- 4.40. At a meeting attended by Mr Arden on 22 October 2018, the CRPAC was presented with a paper on RWA reclassification which stated that "*the correction to Standardised RWAs, primarily for commercial mortgages, leads to a significant increase in RWA of £642 million*" of which £574 million was attributable to the increase from 50% to 100% for commercial mortgages. The paper further stated that "*Finance and Credit Risk and Analytics will continue to review RWA calculations as data and processes improve, but any further adjustments to calculations are not expected to be material*". The further review ultimately led to the overall RWA adjustment of approximately £900 million (see paragraph 4.53 below), of which £563 million was attributable to Metro Bank's error in respect of CLIP Loans (a difference of only £11 million compared to this estimate).

SECTION D: THE OCTOBER ANNOUNCEMENT

- 4.41. On 23 October 2018, at a meeting attended by Mr Arden, the Audit Committee was presented with a draft of the October Announcement and approved the draft subject only to minor amendments. The Audit Committee was provided with a

supporting paper which served to identify “*significant matters that we would like to bring to the Committee’s attention*” in relation to the draft trading update. This paper noted that Metro Bank had commenced a review of “*our calculation of Risk Weighted Asset reporting to the regulator*”, supported by the Second Consultant. The paper further stated that “*(w)e expect to complete this work by year end, and we will update the Committee on any corrections which will be reported to the regulator and any revisions required to our reporting methodologies*”. The Audit Committee was not asked to consider whether the inclusion of the inaccurate RWA figure in the October Announcement without any qualification was appropriate.

4.42. On 23 October 2018, following the Audit Committee meeting, the ROC (at a meeting attended by Mr Arden) received versions of the paper previously presented to the CRPAC on 17 September 2018 (see paragraph 4.31 above) and the paper on RWA reclassification presented to the CRPAC on 22 October 2018 (see paragraph 4.40 above). There was some overlap between the membership of the ROC and that of the Board and the Audit Committee, but the ROC was not involved in reviewing or approving the October Announcement.

4.43. At a further meeting on 23 October 2018 attended by Mr Arden, the Board was presented with a draft of the October Announcement and approved the announcement for release at 7.00am the following morning. The Board was informed of the estimated quantum of the Bank’s error regarding RWA with respect to CLIP Loans at this meeting, but was not asked to consider whether the inclusion of the inaccurate RWA figure in the October Announcement without any qualification was appropriate.

4.44. The October Announcement was duly released on 24 October 2018. It included the following statement:

“Capital ratios remain robust. Common Equity Tier 1 Capital (“CET1”) of £1,164m as at 30 September 2018 is 15.7% as a percentage of risk weighted assets, currently exceeding our Tier 1 regulatory minimum of 9.7%. This was supported by the completion of a £303m equity raise in July. Risk weighted assets at 30 September 2018 were £7,398m. The Regulatory Leverage ratio is 5.7%. Our total capital as a percentage of risk weighted assets is 19.1%.”

4.45. The figure for RWA in the October Announcement (£7,398 million) was incorrect because, amongst other things, it was based on the erroneous application of 50% risk weighting to CLIP Loans. Mr Arden was aware of this error. The figures for CET1 capital as a percentage of RWA (15.7%) and total capital as a percentage of RWA (19.1%) were correspondingly inaccurate, because they were based on an understated figure for RWA.

4.46. On 24 October 2018, after the release of the October Announcement, Mr Arden and Mr Donaldson attended a Q3 2018 Earnings Call with brokers and made the following statements:

- (1) Mr Arden said: *"we are very comfortable with our capital plans for 2019"*.
- (2) Mr Donaldson said: *"I think our capital planning we're comfortable with for next year. And we're very comfortable that the £2.5 billion you've raised are not numbers that we would recognize over the course of our growth. So, our view is very simple. That's, one, we are anticipating fulfilling, of course, all of our regulatory requirements next year. Our capital planning and scenario planning certainly can do that and we will. And I do foresee that by the end of 2021, we will start to see a closing because we won't be needing to raise £2.5 billion of CET1, AT1 and MREL. That's not the numbers we have in our long-term planning horizon"*.

SECTION E: EVENTS FOLLOWING THE OCTOBER ANNOUNCEMENT

- 4.47. On 1 November 2018 the Second Consultant, having performed an initial two-week review of the RWA calculation and COREP reporting process, concluded that *"(t)he most significant mis-statement in the RWA calculation is due to the incorrect risk weighting of commercial property at 50% rather than 100%. Impact c. £600m RWA"* and *"currently it is virtually impossible to evidence the integrity of the RWA calculation or the COREP reports. This is because there are multiple gaps in the controls framework at every stage of the process, from data sourcing through to report generation"*. These findings were reported to Mr Arden on 1 November 2018.
- 4.48. On an investor call on 2 November 2018, Mr Arden was specifically asked about the risk weights Metro Bank had applied to its commercial real estate portfolio. Mr Arden was asked the following question: *"the risk weight on the commercial real estate portfolio, if my math is right, it is 60.4%, which just seems low, given where those standardised risk weights should be. Do you mind just helping me understand the disparity there?"*. He replied as follows: *"I have not got the details to hand, so I will probably get back to you. But just rest assured, we continuously look at all the risk weightings we have, and we are constantly reviewing that. I am afraid I have not got the math to hand"*.
- 4.49. Notwithstanding that Mr Arden was specifically asked the above question, neither he nor Metro Bank considered at that point whether the inaccurate RWA figure contained in the October Announcement needed to be qualified or corrected.
- 4.50. A significant portion of the Second Consultant's work was completed within the expected 10-week timeframe, culminating in an email from the Second Consultant

to Mr Arden on 20 December 2018 stating that *"it is estimated that, in aggregate, the issues identified in the RWA calculation will increase RWA by £0.9-1.0bn, and an increase in capital requirements of c.£100m, at a target capital ratio of 12.5%"*.

- 4.51. In early January 2019, further work was undertaken by Metro Bank to finalise the figures initially provided by the Second Consultant on 20 December 2018 and consult with its advisers as to whether an announcement was required in respect of this information.
- 4.52. On 23 January 2019, Metro Bank issued its FY18 Results Preview and Trading Update. The announcement itself did not give specific details regarding the re-categorisation and RWA adjustment. Instead, it provided a revised approximation of £8.9 billion for its RWA:

"Risk weighted assets at full year are expected to be approximately £8.9bn with the increase driven by both net loan growth and an adjustment in the risk weighting of certain commercial loans secured on property and certain specialist BTL loans to large portfolio landlords. Total capital ratio is expected to be approximately 15.8% as at December 31 2018."

In addition, the announcement mentioned a softening in Metro Bank's underlying profit before tax in the last quarter.

- 4.53. The error regarding the risk weights applied to CLIP Loans was first mentioned by Mr Arden during the analyst presentation call which took place hours after the announcement. In the same call, Mr Arden stated that the estimated increase in RWA included adjustments of *"around £900 million"*.
- 4.54. Following the January 2019 announcement there was a drop in Metro Bank's share price of 39% on the day of the announcement, which was the largest single price drop experienced by a UK bank since 2009.
- 4.55. Commentary from analysts in the days and weeks following the January 2019 announcement emphasised the significance of Metro Bank's RWA error to its future growth and strategy. The issue of the RWA error has continued to be reflected in more recent market commentary concerning Metro Bank.

5. FAILINGS

- 5.1. The facts and matters above resulted in Metro Bank breaching LR 1.3.3R (misleading information not to be published) during the period from 23 October 2018 (being the date on which the October Announcement was approved by the Audit Committee and the Board) to 24 October 2018 (being the date on which the October Announcement was published). Mr Arden was knowingly concerned in Metro Bank's breach of LR 1.3.3R for the reasons set out below.

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

Metro Bank's obligations and knowing concern

5.3. Listing Rule 1.3.3R requires an issuer to take reasonable care to ensure that any information it notifies to a RIS or makes available through the Authority is not misleading, false or deceptive and does not omit anything likely to affect the import of the information.

5.4. Section 91(2) of the Act provides that *"If, in the case of a contravention [by an issuer] ... the [Authority] considers that [another person] who was at the material time a director of [the issuer] was knowingly concerned in the contravention, it may impose upon him a penalty of such amount as it considers appropriate."*

Metro Bank's failings

5.5. The October Announcement contained inaccurate information:

- (1) The figure for RWA (£7,398 million) was incorrect because it included Metro Bank's incorrect application of a 50% risk weighting to CLIP Loans.
- (2) The figures for CET1 capital as a percentage of RWA (15.7%) and total capital as a percentage of RWA (19.1%) were correspondingly inaccurate, because they were based on that understated figure for RWA.

5.6. When publishing this inaccurate information, Metro Bank failed to explain that:

- (1) The total RWA figure of £7,398 million included Metro Bank's application of a risk weighting of 50% for CLIP Loans.
- (2) This risk weighting was incorrect.
- (3) Metro Bank had recognised that it needed to correct this error.
- (4) Metro Bank was carrying out an ongoing review to determine the quantum of the correction.
- (5) The quantum of the necessary correction would be substantial.

5.7. Metro Bank was aware that the October Announcement contained inaccurate information. However, despite being aware of the market significance of its RWA figures, which had been the subject of analyst commentary and specific

questioning at an analyst meeting, Metro Bank failed to consider whether any of the matters specified in paragraph 5.6(1) to (5) above ought to have been included in the October Announcement by way of qualification, or to seek legal advice or input from its professional advisers on this question. Instead, Metro Bank incorrectly and unreasonably assumed that it did not need to say anything publicly about these matters whilst its review was ongoing and that it was appropriate to publish the inaccurate RWA figure in the October Announcement.

- 5.8. Further, Mr Arden failed to ensure that the Audit Committee and the Board considered whether the inclusion of the inaccurate RWA figure in the October Announcement without any qualification was appropriate.
- 5.9. Following the October Announcement, neither Metro Bank nor Mr Arden considered the need to qualify or correct the inaccurate RWA figure contained in the October Announcement notwithstanding that Mr Arden was asked a specific question regarding standardised risk weighting at the investor call on 2 November 2018.
- 5.10. Metro Bank did not qualify or correct the inaccurate figure for RWA contained in the October Announcement at any time prior to 23 January 2019, when the Bank issued its FY18 Results Preview and Trading Update.
- 5.11. For the reasons set out in paragraphs 5.5 to 5.8 above, Metro Bank breached LR 1.3.3R by failing to take reasonable care to ensure that the information it notified to a RIS was not misleading, false or deceptive and did not omit anything likely to affect the import of the information.

Knowing concern

- 5.12. Mr Arden was knowingly concerned in Metro Bank's breach by virtue of the matters set out in paragraphs 5.13 and 5.14 below.
- 5.13. Mr Arden knew the following facts and matters:
 - (1) He knew what the October Announcement said and that it contained inaccurate information;
 - (2) He knew of the matters specified in paragraph 5.6(1) to (5) above and that the October Announcement omitted to explain any of these matters;
 - (3) He knew of the market significance of Metro Bank's RWA figures, and that they had been the subject of commentary and specific questioning at an analyst meeting;
 - (4) He knew that Metro Bank had not considered whether any of the matters specified in paragraph 5.6(1) to (5) above ought to have been included in

the October Announcement, and that Metro Bank had not sought legal advice or input from its professional advisers on this question; and

(5) He knew that the Audit Committee and the Board had not considered whether the inclusion of the inaccurate RWA figure in the October Announcement without any qualification was appropriate.

5.14. Mr Arden was involved in Metro Bank's breach of LR 1.3.3R. As CFO and an executive director of Metro Bank, Mr Arden had a central role in reviewing and finalising the October Announcement and approving it as a Board member. He attended the Audit Committee Meeting on 23 October 2018 at which the announcement was approved in draft and himself approved the announcement as a member of Metro Bank's Board at the Board meeting later the same day, despite his knowledge of the facts and matters set out in paragraph 5.13 above.

6. SANCTION

Financial penalty

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

6.2. The total financial penalty which the Authority has decided to impose on Mr Arden is £134,600. In summary, this penalty is calculated as follows.

Step 1: disgorgement

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

6.4. The Authority has not identified any financial benefit that Mr Arden derived directly from his knowing concern in Metro Bank's breach of LR 1.3.3R. The Step 1 figure is therefore £0.

Step 2: Seriousness of the breach

Relevant Income

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

- 6.6. Where the breach lasted less than 12 months, or was a one-off event, the relevant income will be that earned by the individual in the 12 months preceding the end of the breach. Where the individual was in the relevant employment for less than 12 months, his relevant income will be calculated on a pro rata basis to the equivalent of 12 months' relevant income (DEPP 6.5B.2G(2)).
- 6.7. The period of the breach for which Mr Arden was knowingly concerned is from 23 to 24 October 2018. Mr Arden joined the Bank on 19 March 2018. Accordingly, the Authority has calculated his relevant income on a pro rata basis, based on the income he earned between 19 March 2018 and 24 October 2018. The Authority therefore considers Mr Arden's relevant income for the 12-month equivalent period preceding 24 October 2018 to be £673,191.
- 6.8. In deciding on the percentage of the relevant income that forms the basis of the Step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 40%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach; the more serious the breach, the higher the level. For penalties imposed on individuals in non-market abuse cases there are the following five levels:
- Level 1 – 0%
- Level 2 – 10%
- Level 3 – 20%
- Level 4 – 30%
- Level 5 – 40%
- 6.9. In assessing the seriousness level for the purpose of penalty, the Authority takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly.

Impact of the breach

- 6.10. Metro Bank is a premium listed issuer that was listed on the FTSE 250 at the time of the breach. The Bank's inclusion of a total RWA figure calculated using the incorrect CLIP Loans risk weight, without any qualification, had the potential to mislead its investors and affect the import of the information contained in the October Announcement. The fact that, following the January 2019 announcement, there was a drop in Metro Bank's share price of 39% on the day of the announcement and adverse market commentary indicates that Metro Bank's breach of LR 1.3.3R, in respect of which Mr Arden was knowingly concerned, had a serious adverse effect on financial markets and risked damaging confidence in the financial markets (6.5B.2G(8)(f)).

- 6.11. The existence of the CLIP Loans error only became known to investors three months after the breach, when the January 2019 announcement was released. This delay caused a risk of loss to new and existing individual shareholders who traded between the October Announcement and the January 2019 announcement (DEPP 6.5B.2G(8)(c)).

Nature of the breach

- 6.12. Although Mr Arden does not have significant industry experience, with this being his first senior role at a listed firm, as CFO of Metro Bank he held a senior position within the firm (DEPP 6.5B.2G(9)(j) and (k)).
- 6.13. Mr Arden was aware that Metro Bank calculated the total RWA figure in its October Announcement by, amongst other things, incorrectly applying a risk weighting of 50% to its CLIP Loans and failed to take adequate steps to ensure that Metro Bank complied with LR 1.3.3R. Mr Arden failed to ensure that Metro Bank considered whether the October Announcement ought to have included a qualification or sought legal advice or input from its professional advisers on this question. He also failed to ensure that the Audit Committee and the Board considered whether the inclusion of the inaccurate RWA figure in the October Announcement without any qualification was appropriate (DEPP 6.5B.2G(9)(n)).

Level of seriousness

- 6.14. DEPP 6.5B.2G(12) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the Authority considers the following factor to be relevant:
- (1) Metro Bank's breach of LR 1.3.3R, in which Mr Arden was knowingly concerned, risked causing significant loss to investors who traded between the release of the October Announcement and the January 2019 announcement, at which point the existence of the CLIP Loans error was made known to the market (DEPP 6.5B.2G(12)(a)).
- 6.15. DEPP 6.5B.2G(13) lists factors likely to be considered 'level 1, 2 or 3 factors'. Of these, the Authority considers the following factors to be relevant:
- (1) No profits were made or losses avoided by Metro Bank or Mr Arden as a result of the breach (DEPP 6.5B.2G(13)(a)).
- (2) The Authority considers that Mr Arden's knowing concern in Metro Bank's breach of LR 1.3.3R was negligent, as a result of a lack of competence, and did not occur as a result of deliberate or reckless behaviour (DEPP 6.5B.2G(13)(d)).
- 6.16. Taking all of these factors into account, the Authority considers the seriousness of Mr Arden's breach to be level 3. The Step 2 figure is therefore 20% of £673,191, which is £134,638.

Step 3: Mitigating and aggravating factors

- 6.17. Pursuant to DEPP 6.5B.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount disgorged at Step 1, to take into account factors which aggravate or mitigate the breach.
- 6.18. Having regard to the factors set out in DEPP 6.5B.3G, the Authority considers that there are no factors that aggravate or mitigate Mr Arden's breach, so the Authority has not increased or decreased the penalty at Step 3.
- 6.19. The Step 3 figure is therefore £134,638.

Step 4: Adjustment for deterrence

- 6.20. Under DEPP 6.5B.4G, if the Authority considers that the figure arrived at after Step 3 is insufficient to deter the individual who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.
- 6.21. The Authority considers that the figure at Step 3 is sufficient to act as a deterrent to Mr Arden and others, so the Authority has not increased the penalty.
- 6.22. The Step 4 figure is therefore £134,638.

Step 5: Settlement discount

- 6.23. Pursuant to DEPP 6.5B.5G, if the Authority and the individual on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the individual reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.
- 6.24. No settlement has been reached with Mr Arden. The Step 5 figure is therefore £134,600 (rounded down to the nearest £100 in accordance with the Authority's usual practice).

Penalty

- 6.25. The Authority has therefore decided to impose a financial penalty of £134,600 on Mr Arden for being knowingly concerned in Metro Bank's breach of LR 1.3.3R.

7. REPRESENTATIONS

- 7.1. Annex B contains a brief summary of the key representations made by Mr Arden in response to the Warning Notice 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, whether or not set out in Annex B.

8. PROCEDURAL MATTERS

8.1. This Notice is given to Mr Arden under section 92 and in accordance with section 388 of the Act.

8.2. The following statutory rights are important.

Decision maker

8.3. The decision which gave rise to the obligation to give this Notice was made by the RDC. The RDC is a committee of the Authority which takes certain decisions on behalf of the Authority. The members of the RDC are separate to the Authority staff involved in conducting investigations and recommending action against firms and individuals. Further information about the RDC can be found on the Authority's website:

<https://www.fca.org.uk/about/who-we-are/committees/regulatory-decisions-committee>

The Tribunal

8.4. Mr Arden 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 Arden 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 notice (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). Further information on the Tribunal, including guidance and the relevant forms to complete, can be found on the HM Courts and Tribunal Service website:

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

8.5. A copy of the reference notice (Form FTC3) must also be sent to the Authority at the same time as filing a reference with the Tribunal. It should be sent to Ross Murdoch at the Financial Conduct Authority, 12 Endeavour Square, London E20 1JN.

- 8.6. Once any such referral is determined by the Tribunal and subject to that determination, or if the matter has not been referred to the Tribunal, the Authority will issue a final notice about the implementation of that decision.

Access to evidence

- 8.7. Section 394 of the Act applies to this Notice.
- 8.8. The person to whom this Notice is given 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.

Confidentiality and publicity

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

Authority contact

- 8.11. For more information concerning this matter generally, contact Ross Murdoch at the Authority (direct line: 020 7066 3999/email: Ross.Murdoch@fca.org.uk).

Elizabeth France
Deputy Chair, Regulatory Decisions Committee

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

The statutory and regulatory provisions set out below are the versions that were in force during the Relevant Period.

1. RELEVANT LEGISLATIVE 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 91 of the Act:

"(1) If the [Authority] considers that—

- (a) an issuer of listed securities, or*
- (b) an applicant for listing,*

has contravened any provision of listing rules, it may impose on him a penalty of such amount as it considers appropriate."

"(2) If, in the case of a contravention [by an issuer] ... the [Authority] considers that [another person] who was at the material time a director of [the issuer] was knowingly concerned in the contravention, it may impose upon him a penalty of such amount as it considers appropriate."

2. RELEVANT REGULATORY PROVISIONS

The Listing Rules

2.1. Listing Rule 1.3.3R – Misleading information not to be published

"An issuer must take reasonable care to ensure that any information it notifies to a RIS or makes available through the FCA is not misleading, false or deceptive and does not omit anything likely to affect the import of the information."

Decision Procedures and Penalties Manual ("DEPP")

2.2. 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

- 2.3. The Enforcement Guide sets out the Authority's approach to exercising its main enforcement powers under the Act.
- 2.4. 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. A summary of the key representations made by Mr Arden, and the Authority's conclusions in respect of them (in **bold**), is set out below.

The October Announcement did not contain a false or misleading RWA figure

2. The October Announcement was not false or misleading. The RWA figure in the October Announcement was the most accurate figure available to Metro Bank at the time of publication. Publishing that figure was the appropriate response to a situation in which Metro Bank was faced with a lack of reliable figures on the scale of the RWA correction and was engaged in a confidential dialogue with the PRA. The alternative response suggested by the Authority would have been misleading and reckless.
3. The scale and impact of the RWA adjustment that Metro Bank would have to make was highly uncertain and provisional. Only initial estimates existed as the Second Consultant had just begun its review which would eventually allow the Bank to make the adjustment accurately in conjunction with the PRA.
4. **The October Announcement contained an RWA figure that was materially inaccurate. As Mr Arden was aware, the published RWA figure was incorrect because, among other things, it had been calculated using a risk weighting of 50%, rather than 100%, for CLIP Loans.**
5. **Pursuant to LR 1.3.3R, Metro Bank was required to take reasonable care to ensure that any disclosures that it made to investors and other market participants were accurate, complete and not misleading. Metro Bank and Mr Arden were aware that the October Announcement contained a materially inaccurate RWA figure, but did not consider publishing an explanation, caveat or qualifier in the October Announcement. Had Metro Bank communicated the true position about the RWA figure in the October Announcement, the market would not have been misled, and so such an approach could not reasonably be considered misleading or reckless.**
6. **Although the review by the Second Consultant was still ongoing when the October Announcement was published, Mr Arden was aware by this time that the size of the necessary RWA adjustment would be substantial, even if its exact amount could not be reliably quantified at that stage. On 24 August 2018 he had been provided with an initial estimate and supporting calculation which estimated an RWA increase of £640 million as a result of correcting the error. Further, Metro Bank's CRPAC and its ROC both received a paper for their meetings on 22 October 2018 and 23 October 2018 respectively (both of which were attended by Mr Arden) which stated that: (a) correcting the Bank's error in respect of CLIP Loans would lead to an estimated increase in RWA of £574 million; and (b) while the Bank continued to review its data and**

processes, any change to this estimated increase was not expected to be material.

A speculative RWA figure could not be published due to ongoing discussions with the PRA

7. Throughout the period preceding the Announcement, Metro Bank had a close and constructive relationship with the PRA. Mr Arden had regular meetings with the PRA's supervisory team. The PRA's engagement and discretion is integral to the calculation of a bank's final RWA figure. An accurate figure cannot be calculated without it.
8. The PRA was aware in July 2018 that, following Metro Bank's asset classification review of the CLIP Loans error, the RWA figure was not accurate. The PRA was open to considering exercising its discretion to grant Metro Bank a Pillar 2A offset (Pillar 2A being a requirement designed to meet any current or ongoing risks in a bank) once the RWA issue was addressed, which would have more than compensated for any potential RWA increase. The PRA had made it clear to Metro Bank that it expected these ongoing discussions to be kept confidential and had criticised the Bank in September 2018 for releasing information which the PRA considered should have remained confidential.
9. Metro Bank was not in possession of a precise RWA figure while the Second Consultant's review and discussions with the PRA were ongoing. Metro Bank's final RWA figure could have changed very significantly depending on the decisions taken by the PRA following the conclusion of the Second Consultant's review. Publishing a speculative RWA figure that had not been agreed with the PRA would have risked breaching the Listing Rules, been contrary to market expectations, and would have undermined the confidential dialogue with the PRA to determine the final RWA and capital figures. It would also have meant that Metro Bank was effectively making inconsistent statements for the purposes of two different regulatory regimes.
10. The RWA figure agreed with the PRA for COREP reporting was the most reliable figure available to Metro Bank for publication in the October Announcement. The report of an expert instructed by Mr Arden in relation to this matter concluded that Metro Bank had no realistic alternative but to align the October Announcement with its regulatory reporting by publishing this figure, as is standard market practice, and that to do otherwise would have risked misleading the market and could have had very serious legal consequences for the Bank. The report identified that in most situations, the RWA figure in a bank's COREP reporting will be accurate and appropriate to be disclosed to the market on that basis. Mr Arden had agreed with the PRA that Metro Bank's COREP reporting would not be amended until the conclusion of the Second Consultant's review. With that agreement in place, it would have been wholly inappropriate to undermine it by publishing an alternative and uncertain figure or some form of qualification. The report therefore concluded that the October Announcement was not false, misleading or omissive.

- 11. The Authority acknowledges that Metro Bank and Mr Arden had discussions with the PRA about the RWA figure in the period leading up to the October Announcement and that the PRA was aware that the RWA figure was not accurate. However, the fact that such discussions were taking place did not preclude Metro Bank from adding a qualification to its RWA figure in its announcement to the market. The PRA's role is not to determine, verify or authorise a firm's calculation of its RWA figures in its announcements to the market. A qualification could have been included in the October Announcement which did not reveal information that was the subject of confidential discussions with the PRA. If Mr Arden or Metro Bank were concerned that these discussions might be undermined, they could have raised the matter with the PRA. However, they did not do so and there is also no contemporaneous evidence that the confidentiality of discussions with the PRA was considered by either Metro Bank or Mr Arden as a reason for disclosing a materially inaccurate RWA figure in the October Announcement.**
- 12. The Authority accepts that Metro Bank did not know the accurate RWA figure at the time of the October Announcement, but that did not make it acceptable to publish, without explanation or qualification, an RWA figure which it knew was materially inaccurate. The paper provided to Metro Bank's CRPAC and its ROC for their meetings on 22 October 2018 and 23 October 2018 respectively, which stated that while the Bank continued to review its data and processes, any change to the estimated increase in RWA of £574 million to correct the Bank's error was not expected to be material, shows that Metro Bank considered it unlikely that its final RWA figure would be significantly different.**
- 13. It is not the Authority's position that Metro Bank should have published a speculative RWA figure. Rather, the Authority considers that it was not reasonably open to Metro Bank to publish an RWA figure that it knew was materially inaccurate without qualification or explanation, especially in circumstances where it did not consider whether to explain or qualify that figure or seek legal advice on what it should publish. The Authority considers this is the case, notwithstanding that the published RWA figure had been agreed with the PRA for COREP reporting purposes. COREP reporting is a fundamentally different form of reporting with a different audience, namely the prudential regulator instead of an announcement to the market. While the RWA figure in a bank's COREP reporting will normally be accurate and appropriate for disclosing to the market, Metro Bank's RWA figure in its COREP reporting was materially inaccurate, as Mr Arden knew, and so risked misleading the market.**
- 14. In addition, when Metro Bank provided the RWA figure in its COREP reporting, it explained to the PRA that there was a miscalculation in the risk weightings applied which was being reviewed. In contrast, the CLIP Loans error was not communicated to the market, and as there was no qualifier or explanation in**

the October Announcement, there was nothing to suggest to the market that the RWA figure contained therein was based on an incorrect risk weighting being applied to the CLIP Loans. Had the October Announcement included such a qualifier, there would have been no inconsistency between Metro Bank's disclosures to the market and to the PRA.

- 15. The Authority considers that it cannot reasonably be held that communicating the true position regarding the RWA figure risked misleading the market, and therefore disagrees with the conclusions of the expert report relied upon by Mr Arden.**

Alternative estimates of the RWA figure were not reliable enough to be published

16. Mr Arden did not have access to accurate and complete estimates of the impact of any CLIP Loans misclassification on the RWA figure at the time of the announcement.

17. The corrected weightings had not been applied to the CLIP Loans so a corrected figure could not be provided at the time of the October Announcement. Mr Arden did not know with any certainty that Metro Bank had applied the wrong risk weighting to the CLIP Loans, and only knew that this may have occurred. The quantum of re-weighting was uncertain, and any announcement to the market would have been premature against the background of the ongoing dialogue with the PRA, and the very real risk that investors could misinterpret what could have amounted to a very unusual announcement, which could have created a false market in and of itself.

18. Mr Arden could also not rely on estimates of the impact that any CLIP Loans misclassification may have on the RWA figure, because Metro Bank's categorisation of loans in its portfolio was not entirely accurate. Applying a 100% risk weighting to all of the loans in Metro Bank's CLIP portfolio would not produce an accurate figure, for example, because some of the loans in that portfolio were not CLIP Loans and there were loans in other portfolios that were CLIP Loans. Metro Bank did not know, and had no reliable way of knowing at the time, how many of the loans were to be reclassified. It is for these reasons that Mr Arden (among others) decided to instruct the Second Consultant to review all of Metro Bank's loan categorisations and correct the whole portfolio, a task that would take 10 weeks to complete, and which had only just begun at the time of the October Announcement. Although the final RWA adjustment required was relatively close to the provisional estimates, that does not mean that anybody knew at the time that it would be.

19. The statement in the document presented to the CRPAC on 22 October 2018 that "*any further adjustments to calculations are not expected to be material*" is not intended to be read without the background context that the figures as available were provisional and depended on the detailed outcome of the Second Consultant's work. Mr Arden does not recall reviewing the paper presented to the CRPAC and he considers the suggestion that adjustments to calculations were not expected to be material to be inaccurate on the basis of the information available to Metro Bank at the time.

20. Publishing an announcement with an estimated figure, a qualified statement informing investors that the RWA figure was inaccurate, or not releasing an estimated figure at all, would have been unprecedented and irresponsible, and would have risked misleading the market, especially as Metro Bank was not in a position at the time to inform the market what the correct figure was. Any figures that Metro Bank issued at that time would have been inaccurate in that they would have been speculative and would not have represented the correct RWA figure that was yet to be finalised. Such an announcement would have created a disorderly market and would have done untold damage to Metro Bank's shareholders.
21. **Mr Arden knew at the time of the October Announcement that the correct risk weighting for CLIP Loans was 100% and not 50%. As Mr Arden knew, this had been confirmed by the First and Second Consultants to Metro Bank by no later than 11 September 2018.**
22. **The Authority acknowledges that the correct RWA figure, and therefore the exact size of the adjustment required to correct the error, was unknown at the time of the October Announcement, and that the Second Consultant was carrying out work to ascertain the true extent of the adjustment required. However, and notwithstanding that there may have been uncertainty as to whether or not every single CLIP Loan had been correctly categorised, Metro Bank and Mr Arden had access to sufficiently reliable estimates by the time of the October Announcement to reasonably conclude that the impact of the CLIP Loans error on the RWA figure would be substantial. The Authority considers it is reasonable to rely on the statement in the paper presented to the CRPAC on 22 October 2018 that "*any further adjustments to calculations are not expected to be material*". The Authority considers it likely, in particular because of his role as the CFO of Metro Bank, that Mr Arden did review the paper, including this statement. There is no evidence that Mr Arden, or anyone else at Metro Bank, had a different view at the time or challenged the statement, and it is consistent with other statements made prior to the October Announcement regarding the expected quantum of the RWA adjustment required.**
23. **The Listing Rules, and LR 1.3.3R in particular, are not primarily concerned with ensuring that there is no uncertainty or volatility in a share price, but instead are aimed at ensuring the provision of timely and accurate information to investors and other market participants, including requiring that issuers take reasonable care to ensure that disclosures are complete and not misleading. The Authority therefore disagrees with the suggestion that the fact a disclosure may generate uncertainty in the market makes it permissible for an issuer to publish false or misleading information. In any event, Mr Arden has not provided any properly particularised evidence to support his submission that explaining the existence of the CLIP Loans error and ongoing review risked creating a false or disorderly market. Further, Mr**

Arden did not at the time decide against including a qualifier on the basis that it might mislead investors or generate market uncertainty; instead, he failed to consider a qualification at all.

Mr Arden took reasonable care to ensure that the October Announcement was not in breach of Listing Rule 1.3.3R

24. Mr Arden took reasonable care to ensure that the October Announcement was not false or misleading. He was faced with a difficult and nuanced choice, but ensured that Metro Bank took and relied on appropriate legal advice, and reacted in a measured and reasonable way, in consultation with others at the Bank.
25. Mr Arden sought legal advice from Metro Bank's external lawyers on 5 October 2018, when he was aware and had in mind that the Q3 trading update was due in less than 3 weeks' time. There was no other public announcement pending. The external lawyers had historically advised Metro Bank on day-to-day legal issues and engaged with the business as a whole, so they would have been aware that the Q3 trading update was due, and that the advice sought was to cover the period of the Q3 announcement.
26. Metro Bank sought broad advice on whether it was obliged to disclose, under any legal provision, the potential change to the RWA figure at any time before it was finalised; it did not specifically or only seek advice as to whether an immediate, proactive market announcement was necessary. The external lawyers were told all of the information that was relevant to their advice, including the nature of the problem, the initial estimate of its scale, the stage that the work to calculate the correction had reached and the approach of the PRA. Further, it was reasonable for Metro Bank and Mr Arden to expect that if there was any impending obligation to qualify or change the RWA figure, that would have been proactively drawn to its attention when the external lawyers gave their advice on 5 October 2018, particularly given the proximity of that advice to the October Announcement.
27. The external lawyers provided unequivocal advice that there was no obligation for Metro Bank to disclose the existence or scale of the potential RWA adjustment until after the RWA was finalised and agreed with the PRA. The advice did not indicate that a qualified or caveated statement in the October Announcement was necessary.
28. It is wrong to characterise the legal advice received as being limited to whether a proactive market announcement was required. As everybody concerned understood at the time, the advice extended to the October Announcement and was given in circumstances where that announcement was imminent. There was no need to ask the external lawyers about a qualified announcement specifically because the external lawyers had already given advice that precluded it.
29. Mr Arden relayed the legal advice at a Disclosure Committee meeting on 16 October 2018 that was attended by a senior Metro Bank internal lawyer, who also understood that the legal advice sought from the external lawyers was in the context of the Q3

October Announcement, and did not object to the proposed course of action, seek clarification as to the scope of the legal advice received or suggest that the Bank obtain further advice from the external lawyers. That reinforces the reasonableness of the approach taken by Mr Arden and also the conclusion that the external lawyers' advice was intended to be and was understood to be applicable to the October Announcement. Mr Arden was also reasonably entitled to assume that the internal lawyer would have advised if there were any shortcomings in the instructions given to the external lawyers or the advice received, and to rely on the internal lawyer's expertise and role in that regard.

30. The Authority has not interviewed the senior Metro Bank internal lawyer, any of the external lawyers involved or several other persons involved, which means there is an incomplete evidential picture on the key issues of the scope and content of the legal advice, the disclosure discussions and how these were understood within the Bank. This displays a fundamental unfairness in the Authority's approach to its investigation.
31. The external lawyers did not raise concerns about the contents of the October Announcement when it was published, nor did they suggest that a corrective statement ought to be issued to remedy any risk that it would be misleading to the market. The external lawyers maintained their advice that Metro Bank had no obligation to disclose the potential RWA adjustment until January 2019, when the RWA figure was finalised and agreed with the PRA. It was entirely reasonable for Mr Arden to rely on the legal advice given.
32. As soon as the Second Consultant's review was completed, and Metro Bank had concluded its confidential discussions with the PRA, Metro Bank announced the RWA correction. The decision to do so was consistent with the external lawyers' updated advice. Mr Arden therefore took immediate action to allow Metro Bank to comply with its disclosure obligations by making the announcement on 23 January 2019.
33. **The Authority does not agree that Mr Arden took reasonable care to ensure that the October Announcement was not false or misleading. Mr Arden was aware that the October Announcement contained a materially inaccurate RWA figure, but did not consider whether the inaccurate RWA figure needed to be qualified or explained and did not seek legal advice on that question. In addition, he failed to ensure that the Audit Committee and the Board considered whether the inclusion of the inaccurate RWA figure in the October Announcement without any qualification was appropriate.**
34. **The advice that Metro Bank sought and obtained from the external lawyers in a meeting, attended by Mr Arden, on 5 October 2018 was summarised in an internal Metro Bank email sent later that day to Mr Arden and others. The email did not refer to the October Announcement, or to Metro Bank's obligations under the Listing Rules.**

35. **The Authority considers, based on the 5 October 2018 email, that the advice being sought was whether the RWA errors and the Second Consultant’s ongoing review amounted to “specific or material information” (i.e. inside information as defined in MAR) such that it was “necessary at this point” to issue a proactive market announcement in order to comply with Metro Bank’s obligations under Article 17 of MAR. There is no contemporaneous evidence to support Mr Arden’s submission that the legal advice sought was also intended to, and did, cover the October Announcement that took place 3 weeks later. If it was Mr Arden’s intention for the external lawyers’ advice to cover the October Announcement, he should have made that clear to the external lawyers; there was no reasonable basis for him simply to assume that their advice covered the October Announcement.**
36. **The external lawyers were not provided with a draft of the October Announcement or asked to review its wording. In the circumstances, it was unreasonable for Mr Arden to conclude that, because the external lawyers had advised that no proactive market announcement was needed, it was appropriate simply to publish the inaccurate RWA figure in the October Announcement.**
37. **The fact that a senior Metro Bank internal lawyer did not question the scope of the legal advice received does not mean that Mr Arden acted reasonably. As CFO, an executive director and a member of Metro Bank’s Board and Disclosure Committee, Mr Arden had a central role in reviewing and approving the October Announcement and had a responsibility to ensure that it was accurate and not misleading. Mr Arden approved the October Announcement in the knowledge that the RWA figure was not accurate and that Metro Bank had not sought legal advice on whether it would be complying with its obligations under the Listing Rules if it published an inaccurate RWA figure without any qualification or explanation. The Authority therefore concludes that Metro Bank breached LR 1.3.3R and that Mr Arden was knowingly concerned in that breach.**
38. **The accuracy of the 5 October 2018 email as a record of the meeting between Metro Bank and the external lawyers is not in dispute. Mr Arden confirmed in interview that there was no discussion at the meeting with the external lawyers about the potential need to qualify the October Announcement. The Authority therefore considers there is no reasonable basis for concluding that the evidential picture in respect of the legal advice sought and received is materially incomplete and does not agree that the Authority’s approach to gathering evidence was unfair.**
39. **There is no evidence that the external lawyers were aware of the publication of the incorrect RWA figure in the October Announcement. In any case, the fact that they did not raise any concerns after it was published does not**

indicate that the wording in the October Announcement was reasonable or that the advice they provided was intended also to cover the October Announcement.

- 40. Similarly, the fact that Mr Arden acted in accordance with advice provided by the external lawyers in respect of the announcement in January 2019 does not show that he took reasonable care in respect of the October Announcement to ensure that Metro Bank complied with its disclosure obligations under the Listing Rules.**

The Board's knowledge of the RWA issue

41. When it approved the October Announcement at the 23 October 2018 Board meeting, the Board was well aware of the nature of the problem, the inherent unreliability of the estimates that Metro Bank had available at the time and the ongoing work being undertaken by the Second Consultant to provide reliable data. At this meeting, the Board was informed of the estimated quantum of the RWA error and the steps that needed to be taken to clarify the RWA issue before any public announcements about it could be made. The Board raised no concerns about announcing the existing RWA figure and did not suggest making any form of qualified announcement. Mr Arden therefore escalated the issue appropriately and transparently and the Board approved the October Announcement with proper knowledge of the quantum of the estimated correction. To that extent at least, the Authority must therefore accept that he acted reasonably and with due care and skill.
42. Whilst it is accurate to say that the possibility of issuing a qualified announcement was not discussed by the Board or Metro Bank's committees, that is because the possibility was not remotely realistic or reasonable.
- 43. The Authority accepts that the estimated quantum of Metro Bank's error regarding RWA with respect to CLIP Loans was mentioned in the 23 October 2018 Board meeting, at which the October Announcement was approved. However, the Board was not asked to consider whether the inclusion of the inaccurate RWA figure in the October Announcement without any qualification was appropriate. As nobody at Metro Bank considered the issue of a qualifier or took specific advice on it, the Authority considers that the fact that the Board was aware of the estimated quantum of the RWA error does not establish that Mr Arden took reasonable care to ensure that Metro Bank complied with its disclosure obligations in respect of the October Announcement.**

Mr Arden's interaction with investors

44. The answer given by Mr Arden to a question asked by an investor on 2 November 2018 does not support the Authority's case. As it was an answer given in a private call with an investor, it did not engage the obligation under LR 1.3.3R. Further, his answer was

consistent with Metro Bank's reasonable position that there was no obligation to disclose the existence of the RWA issue, and that to do so might in itself be misleading.

- 45. The answer given by Mr Arden to a specific question regarding standardised risk weighting at the investor call on 2 November 2018 does not form part of the basis for the Authority's conclusion that Metro Bank breached LR 1.3.3R and that Mr Arden was knowingly concerned in that breach. However, the Authority considers it is reasonable when assessing Mr Arden's conduct to have regard to his actions after the October Announcement and that, in that respect, it is relevant that Mr Arden did not consider the need to qualify or correct the inaccurate RWA figure contained in the October Announcement in light of the question asked by the investor about the risk weights Metro Bank had applied to its commercial real estate portfolio.**

Mr Arden's personal liability is disputed

46. It is not clear why the Authority has proposed to take action against Mr Arden, given that the October Announcement was not a product of individual negligence or of rogue operators within the Bank's management, and given that the Board was aware of the quantum of the estimated correction prior to approving the Announcement.
47. Mr Arden was relatively new in post. He took on his role at Metro Bank in March 2018 and had a handover that did not reveal the full extent of the issues that he would inherit.
- 48. The Authority considers that it is appropriate to take action against Mr Arden for being knowingly concerned in Metro Bank's breach of LR 1.3.3R. As CFO at Metro Bank, a member of the CRPAC, and on account of the various communications he received in relation to this issue, Mr Arden (along with Mr Donaldson, the only other executive director on the Board) was closer to the RWA issue than any of Metro Bank's other directors. He sought and received the legal advice from Metro Bank's external lawyers and was aware that it did not specifically address the October Announcement. He was a member of the Disclosure Committee, which was responsible for ensuring that the October Announcement was accurate and not misleading and did not omit anything material. He was also responsible, in that role and as CFO, for ensuring that the Board properly considered the disclosure implications of disclosing a materially inaccurate RWA figure without qualification or explanation.**
- 49. It was Mr Arden's responsibility to instruct the external lawyers and consider their advice; as he did not specifically seek advice covering the October Announcement, and as no such advice was provided, he could not rely on the advice that the external lawyers did give to ensure that the October Announcement did not breach the Listing Rules.**

50. **The Authority recognises that Mr Arden was relatively new to his role as CFO of Metro Bank, but notes that the October Announcement was not the first market announcement he was involved in at Metro Bank and that he would therefore have seen the process involved in previous announcements. Further, by virtue of him being relatively new in post, and having regard to his role and responsibilities within Metro Bank, the Authority would have expected Mr Arden to be particularly careful to ensure that Metro Bank complied with its regulatory obligations in issuing the October Announcement.**

Financial penalty

Appropriate sanction

51. The October Announcement was not misleading and Mr Arden did not fail to take reasonable care in relation to it. It would be unfair to impose a financial penalty on Mr Arden for failing to take a course of action which Metro Bank's lawyers say would have been without precedent. The underlying facts point to an error of judgement after consideration of appropriate advice, and so the appropriate sanction, if any, is a public censure or a much-reduced financial penalty.

52. **For the reasons set out in paragraphs 5.5 to 5.8 and 5.13 to 5.14 of this Notice, the Authority considers that Metro Bank breached LR 1.3.3R by failing to take reasonable care to ensure that the information in the October Announcement was not misleading, false or deceptive and did not omit anything likely to affect the import of the information, and that Mr Arden was knowingly concerned in Metro Bank's breach. The Authority considers that Mr Arden acted negligently and that his misconduct was serious, and that it is therefore appropriate to impose a financial penalty on him.**

Step 2: Seriousness - relevant income

53. Mr Arden does not accept the Authority's calculation of his relevant income. Neither his share options nor his sign-on bonus ought to be included as part of the relevant income. The share options were not exercised and are now worthless because they lapsed following his departure from Metro Bank, and so if they are included in the relevant income figure Mr Arden will unjustly be fined on the basis of income that he did not receive. The sign-on bonus was intended to award Mr Arden's past performance with his former employer, and to recognise the loss value of the sign-on bonus payments that his former employer would have made to Mr Arden had he not joined Metro Bank. It would not be just or reasonable to include the bonus in the relevant income calculation, as it does not relate to the conduct complained of or form part of any compensation to Mr Arden in respect of his conduct at Metro Bank at the material time. Mr Arden's actual total relevant income was therefore £419,591.

54. **The Authority accepts that the share options awarded to Mr Arden that have since lapsed should not form part of Mr Arden's relevant income for the purposes of DEPP 6.5B.2G(1), and so has not included them in its calculation of his relevant income. However, the Authority considers it is appropriate to include Mr Arden's sign-on bonus in the calculation of his relevant income. Pursuant to DEPP 6.5B.2G(1) and (2), an individual's relevant income is the gross amount of all benefits received by the individual from the employment in connection with which the breach occurred during the period of the breach, or for breaches lasting less than 12 months (as in this case), the 12 months preceding the end of the breach (24 October 2018 in this case), with the relevant income being calculated on a pro rata basis where the individual had been in the relevant employment for less than 12 months (which was the case for Mr Arden). All benefits received are included in the calculation of an individual's relevant income, irrespective of whether they relate to the conduct complained of. Mr Arden received the sign-on bonus as part of his remuneration at Metro Bank after he joined the Bank in March 2018. Therefore, consistent with the Authority's penalty policy as set out in DEPP 6.5B, the Authority has included it in its calculation of his relevant income. The relevant income figure is therefore £673,191.**

Step 2: Seriousness – impact of the breach

55. The only difference that the alleged breach made was to the timing of the price impact on Metro Bank's shares. Issuing a qualification in the October Announcement would have led to Metro Bank's share price being even more severely affected than it was following the January 2019 announcement, or at least in the same way but at an earlier point in time, as being unable to confirm either the scale of the RWA correction or its impact on capital would have created uncontrolled and uninformed speculation among investors.

56. The share price drop in January 2019 cannot be solely attributed to the RWA correction, as the same announcement also confirmed that profits had "*softened as the last quarter progressed*".

57. Issuing a qualified statement in the October Announcement in the absence of proper information would have risked volatile uncertainty in the market far worse than maintaining the status quo by releasing the October Announcement without qualification. Investors would therefore have been exposed to a greater risk of loss.

58. **Investors are entitled to buy or sell shares on the basis that information published by issuers to the market is accurate and materially complete. This was not the case for investors buying or selling Metro Bank's shares between the date of the October Announcement and the January 2019 announcement, as they were unaware during that period that the RWA figure announced in the October Announcement was materially wrong.**

59. **The Authority has quantified the potential maximum impact on investors at over £110 million, calculated by reference to those investors who established a net buy position in Metro Bank's shares between the October Announcement and the January 2019 announcement. The Authority therefore considers the risk of investors being misled as a result of Mr Arden's actions had a potentially significant impact.**
60. **Although the Authority agrees that the 39% share price fall following the January 2019 announcement cannot solely be attributed to the corrected RWA figure, it nonetheless played a substantial part in that fall. The evidence indicates that the RWA adjustment was the most price sensitive aspect in the January 2019 announcement and supports the conclusion that a substantial proportion of the share price fall was attributable to the adjusted RWA figure (and by extension, the CLIP Loans error). The Authority therefore considers that the 39% share price fall is relevant in considering the impact on investors of not being appraised of the true position regarding the RWA figure in the October Announcement.**
61. **Had a qualified RWA figure been published in the October Announcement, investors would have faced a known risk (albeit with an uncertain final outcome) with the ability to adapt their investment decisions accordingly. Mr Arden's decision to publish an unqualified RWA figure in the October Announcement meant that investors proceeded under the positive misapprehension that the published RWA figure was reliable, and made investment decisions without the benefit of knowing the true position.**

Step 2: Seriousness - nature of the breach

62. Mr Arden sought legal advice on what should be included in the October Announcement and received advice indicating unequivocally that no qualification should be made. He also brought the estimated quantum of the RWA correction to the attention of the Board and the Audit Committee. The nature of the alleged breach is therefore significantly less serious than suggested in the Notice. If there was a breach of the Listing Rules, it was made collectively, in difficult circumstances and after careful consultation.
63. **The Authority considers that the nature of Mr Arden's misconduct supports the view that it was serious. Misconduct by an individual holding a senior position within a firm is more serious than misconduct by junior employees, as reflected in DEPP 6.5B.2(9)(i)-(k).**
64. **As explained in paragraph 35 above, the Authority considers that Mr Arden did not seek legal advice on what should be included in the October Announcement, and that the advice received could not reasonably be interpreted as confirming that an inaccurate RWA figure should be issued to the market without qualification.**

65. As explained in paragraph 43 above, although the Board was made aware of the estimated quantum of the RWA error, Mr Arden failed to ensure that the Audit Committee and the Board considered whether the inclusion of the inaccurate RWA figure in the October Announcement without qualification was appropriate. The failure to consider the inclusion of such a qualification is central to the Bank's failure to take reasonable care.

Step 2: Level of seriousness

66. The seriousness of the breach ought to be limited to level 1, or level 2 at most, to reflect the fact that there are far more "level 1, 2 or 3" factors than "level 4 or 5" factors, and the fact that the only identified "level 4 or 5" factor, namely the apparent risk to investors trading between October 2018 and January 2019, is misconceived as there would have been greater risk to the volatility in the market, had a qualified statement been included in the October Announcement.

67. The following "level 1, 2 or 3" factors should be taken into account in assessing the seriousness level of the alleged breach. First, no profits were made or losses avoided by the breach. Secondly, Mr Arden sought to mitigate the risk to investors in releasing the October Announcement without a qualification. Thirdly, if there was a breach it was inadvertent, and if the Authority concludes there was negligence, it must be regarded as low level.

68. As explained in paragraph 23 above, Mr Arden has not provided any properly particularised evidence in support of his submission that, had the RWA figure been qualified or explained in the October Announcement, this would have risked greater volatility in the market. In the Authority's view, the inclusion of the RWA figure in the October Announcement without qualification risked causing significant loss to investors who traded between the release of the October Announcement and the January 2019 announcement, and is a factor which is appropriately considered "level 4 or 5".

69. In respect of Mr Arden's submissions regarding potential "level 1, 2 or 3 factors", as mentioned above, the Authority considers that releasing the October Announcement without qualification risked causing significant loss to investors. The Authority also considers that the misconduct was negligent rather than inadvertent, given Mr Arden's position and his knowledge of, and involvement in, the facts and matters regarding the RWA figure miscalculation.

70. In conclusion, although the Authority accepts that no profits were made or losses avoided by Metro Bank or Mr Arden as a result of the breach, it considers that overall level 3 is an appropriate assessment of the seriousness of Mr Arden's misconduct.

Step 3: Mitigating and aggravating factors

71. Mr Arden co-operated fully with the Authority's investigation at all times, by providing documents and engaging in a full and frank interview, and by leading a teach-in presentation (that was delivered to the PRA in July 2019) in which the underlying background to the alleged breaches was explained.
72. The matters underlying the breach were quickly and completely brought to the attention of the PRA throughout the relevant period, due to Metro Bank's close and constructive relationship with the PRA. In contrast, Metro Bank had no effective or dedicated supervisory relationship with the Authority at the relevant times.
73. Mr Arden took swift remedial steps to bring the breach to an end as soon as he was able to do so, by ensuring that Metro Bank disclosed the corrected RWA figure to the market as soon as reliable estimates were available and the confidential discussions with the PRA had concluded. Mr Arden also actively sought to remediate the ongoing RWA issue by instructing and overseeing the Second Consultant's review into the CLIP Loans error calculations, so that he was suitably informed when discussing with the PRA.
74. The fact that Mr Arden has no previous disciplinary record should also be treated as a mitigating factor.
75. **Mr Arden had a legal obligation to attend his interview with the Authority and to give answers. The teach-in presentation was given to the PRA only, and the admissions contained in it concerned historical governance, controls and the process for preparing COREP reports. The presentation and its contents were therefore not directly relevant to the Authority's investigation and so the Authority does not consider that Mr Arden's co-operation should be considered a mitigating factor.**
76. **The breach in this case concerns the publication of a materially incorrect and unqualified RWA figure. Mr Arden did not bring this to the attention of the Authority, and so the Authority does not consider the fact that the PRA was notified of the RWA error to be a mitigating factor. The Authority considers Metro Bank's lack of a dedicated supervisory relationship with the Authority to be irrelevant to the issues in this case and does not amount to a mitigating factor.**
77. **The Authority does not agree that the steps taken by Mr Arden in January 2019 can be characterised as remedial, as Metro Bank disclosed the corrected RWA figure to the market in the January 2019 announcement to comply with its obligations under Listing Principle 1 and Article 17 of MAR rather than in order to remedy directly any harm arising from its breach of LR 1.3.3R. In addition, the Authority does not consider that the steps taken by Mr Arden to address the RWA error constitute a mitigating factor as regards Metro Bank's**

publication of a materially incorrect and unqualified RWA figure in the October Announcement.

- 78. The Authority acknowledges Mr Arden's lack of any disciplinary record but does not consider this amounts to a mitigating factor meriting a reduction in the financial penalty.**
- 79. In conclusion, the Authority does not consider there to be any aggravating or mitigating factors affecting the calculation of the penalty at Step 3 of the penalty calculation.**