

This decision notice has been referred to the Upper Tribunal to determine, in the case of the decision to impose a disciplinary sanction: 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; and in relation to the prohibition order: whether to dismiss the reference or remit it to the Authority with a direction to reconsider and reach a decision in accordance with the findings of the Tribunal.



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DECISION NOTICE

To: **Stuart Malcolm Forsyth**
Individual
Reference
Number: **SMF01029**
Date: **30 September 2019**

1. ACTION

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

- (1) make an order, pursuant to section 56 of the Act, prohibiting Stuart Malcolm Forsyth from performing any function in relation to any regulated activity carried on by an FCA-authorized person, or by an exempt person or exempt professional firm in respect of any FCA-regulated activity; and
- (2) impose, pursuant to section 66 of the Act, a financial penalty of £78,318 on Mr Forsyth.

2. SUMMARY OF REASONS

- 2.1. The Authority has decided to take the action set out in paragraph 1.1 because, for the reasons set out below, it considers that between 19 February 2010 and 8 July 2016 (the “Relevant Period”) Mr Forsyth’s conduct demonstrates a serious lack of integrity in breach of Statement of Principle 1 (Integrity) of the Authority’s Statements of Principle for Approved Persons and Rule 1 (Integrity) of the Authority’s Individual Conduct Rules. The Authority has concluded that Mr Forsyth is therefore not fit and proper to perform any function in relation to any regulated activity carried on by an FCA-authorized person, or by an exempt person or exempt professional firm in respect of any FCA-regulated activity.
- 2.2. Mr Forsyth became the CEO of a mutual insurance firm, SBMIA, in September 2000. In 2003, he arranged for his wife, Penelope Forsyth, to become an employee of SBMIA. Mrs Forsyth’s working arrangements were different to other SBMIA employees. For example, she did not work from SBMIA’s offices and had no set working hours. Instead, she provided assistance to Mr Forsyth in his role as CEO, by carrying out some administrative tasks for him and providing occasional hospitality services and, from 2013 to 2015, by providing a limited amount of out-of-hours clerical support in respect of the work Mr Forsyth was carrying out in connection with Solvency II.
- 2.3. Unlike all other SBMIA employees, Mrs Forsyth’s salary was not determined by SBMIA’s Remuneration Committee. Instead, every year the Remuneration Committee decided the salary that should be paid to Mr Forsyth, and Mr Forsyth then arranged for a proportion of that salary to be paid to Mrs Forsyth. In 2003, Mrs Forsyth received £5,000, which was 11.5% of Mr Forsyth’s salary, and she continued to receive approximately this proportion of Mr Forsyth’s salary until September 2013.
- 2.4. In February 2010, when the amount of Mr Forsyth’s salary paid to Mrs Forsyth was approximately £10,000 per annum, Mr Forsyth instructed SBMIA’s cashiers also to pay Mrs Forsyth all of his contractual bonus of £7,310. This bonus was stated to be paid to Mrs Forsyth “*in compensation for additional duties carried out during 2009/10*”. Mr Forsyth also arranged for Mrs Forsyth to receive all, or part of, his bonus in four of the following five years, with the amount paid to Mrs Forsyth on each occasion being between £9,000 and £12,500. The Remuneration Committee did not approve the payment of any of these bonus payments to Mrs Forsyth.

- 2.5. Mr Forsyth also arranged for Mrs Forsyth to receive an additional bonus payment of £10,000 in March 2011 and a bonus payment of £12,500 in February 2014 which, unlike the other bonus payments received by Mrs Forsyth, were not all or part of the bonus that SBMIA's Remuneration Committee had approved to be paid to Mr Forsyth.
- 2.6. In September 2013, Mr Forsyth significantly increased the proportion of his salary which was paid to Mrs Forsyth, and then increased this proportion further over the next two years. In May 2015, Mr Forsyth arranged for £40,000 of his salary to be paid to Mrs Forsyth. This meant that, in the tax year 2015/2016, Mr Forsyth transferred £52,037 of his own remuneration (including part of his bonus) to Mrs Forsyth. This sum was higher than the remuneration of any SBMIA employee (apart from Mr Forsyth himself). The Remuneration Committee did not approve these payments.
- 2.7. Until July 2016, neither the Board nor the Remuneration Committee knew of the amount of remuneration being paid to Mrs Forsyth, although some individual members were aware or informed of elements of it at various times: the Chairman of the Board (who was also a member of the Remuneration Committee) was aware throughout the Relevant Period; the Chairman of the Remuneration Committee was aware of the March 2011 additional bonus payment; and another member of both the Board and Remuneration Committee was informed in an email by Mr Forsyth in May 2015 of the current split of his salary between him and Mrs Forsyth.
- 2.8. The Authority considers that, during the Relevant Period, the payment to Mrs Forsyth of a proportion of Mr Forsyth's salary and, on four occasions, all or part of his bonus, resulted in Mrs Forsyth receiving remuneration in excess of what was reasonable for the work she was undertaking, and was deliberately arranged by Mr Forsyth in order to reduce his tax liability. Mr Forsyth was aware that SBMIA's Remuneration Committee had not approved the amount of Mrs Forsyth's salary or these bonus payments being paid to her, and that Mrs Forsyth had not carried out any additional duties, or other work, which justified the level of remuneration she received.
- 2.9. By deliberately arranging these payments to Mrs Forsyth, Mr Forsyth acted without integrity to his financial benefit. The Authority considers that, as a result of these arrangements, between 2010 and 2016 Mr Forsyth paid approximately £18,000 less in income tax than he should have done.

- 2.10. The Authority considers that Mr Forsyth also acted without integrity by deliberately arranging for Mrs Forsyth to be paid an additional bonus in March 2011 and a bonus in February 2014, when he was aware on each occasion that Mrs Forsyth had not carried out work in the preceding year which justified the bonus being paid to her.
- 2.11. Mr Forsyth also acted without integrity during the Relevant Period in the ways described in paragraphs 2.12 to 2.14 below.
- 2.12. First, Mr Forsyth created false minutes for the Remuneration Committee for 2013, 2014 and 2015 which purported to show that the Remuneration Committee had agreed the salaries of both Mr and Mrs Forsyth. In fact, the original Remuneration Committee minutes showed that it was only Mr Forsyth's salary which had been agreed at those meetings, at an amount which was the combined total of Mr and Mrs Forsyth's salaries in the false minutes. No reference was made in the original minutes to the amount of the split of Mr Forsyth's salary between him and Mrs Forsyth.
- 2.13. Mr Forsyth then responded recklessly to an information request from the PRA, and provided the PRA with the false minutes of the Remuneration Committee's meetings for 2013, 2014 and 2015 and did not provide the original minutes. Mr Forsyth did this despite being aware that there was a risk that the PRA would be misled as to what had been agreed in the Remuneration Committee meetings.
- 2.14. When internal concerns were raised at SBMIA in late 2015 about certain matters, including the payment of part of Mr Forsyth's salary to Mrs Forsyth, Mr Forsyth inappropriately involved himself in the investigation by an external auditor. He participated in the agreement of the scope of the investigation, which in accordance with his proposals did not include any examination of the splitting of his salary with Mrs Forsyth, and in January 2016 asked the auditor not to include in its report to the Board any details of what he and Mrs Forsyth were being paid and had been paid in the tax year to April 2015. This had the effect that the Board was not made aware of the high level of remuneration being paid to Mrs Forsyth, so there was no legitimate scrutiny by the Board of the substance of the allegation regarding the payment of part of Mr Forsyth's salary to her. Mr Forsyth, in particular as the CEO of SBMIA and an approved person, must have realised that, as the concerns raised related to him, it was inappropriate for him to involve himself in the auditor's investigation.
- 2.15. As the CEO of a small mutual insurer, Mr Forsyth occupied a position where SBMIA's Board and members placed considerable trust in his integrity, and expected him to

act properly and in SBMIA's best interests. Mr Forsyth abused that trust by acting without integrity in the ways described above, for his financial benefit and over a protracted period of time.

- 2.16. As a result of Mr Forsyth's failure to act with integrity in breach of Statement of Principle 1 and Rule 1, the Authority has decided to impose a financial penalty on Mr Forsyth in the amount of £78,318 pursuant to section 66 of the Act.
- 2.17. Further, as a result of Mr Forsyth's failure to act with integrity, the Authority considers that Mr Forsyth lacks fitness and propriety and poses a risk to consumers and to confidence in the financial system. The Authority therefore has decided to make the Prohibition Order.
- 2.18. The Authority's actions support its operational objectives of securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the financial system.

3. DEFINITIONS

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

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

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

'Board' means the board of directors of SBMIA

'CEO' means Chief Executive Officer

'Chairman of the Board' means the Chairman of SBMIA's board of directors during the Relevant Period

'DEPP' means the Authority's Decision Procedure and Penalties manual

'EG' means the Authority's Enforcement Guide

'FIT' means the Fit and Proper Test for Employees and Senior Personnel section of the Handbook

'HMRC' means Her Majesty's Revenue and Customs

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

'Mr Forsyth' means Stuart Malcolm Forsyth

'Mrs Forsyth' means Penelope Muriel Milburn Forsyth, wife of Mr Forsyth

'PAYE' means Pay As You Earn, a system of paying income tax in which an employer pays an employee's tax directly to the government, and then deducts this amount from the employee's salary or wages

'PRA' means the Bank of England exercising its functions as the Prudential Regulation Authority

'Prohibition Order' means an order prohibiting Mr Forsyth, pursuant to section 56 of the Act, from performing any function in relation to any regulated activity carried on by an FCA-authorized person, or by an exempt person or exempt professional firm in respect of any FCA-regulated activity

'Remuneration Committee' means an SBMIA sub-committee which was established in 2001 to determine the appropriate level of remuneration to be paid to SBMIA's employees

'Relevant Period' means the period from 19 February 2010 to 8 July 2016

'SBMIA' means The Scottish Boatowners Mutual Insurance Association

'Solvency II' means Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009, which came into force on 1 January 2016 and sets out regulatory requirements for insurance firms and groups, covering financial resources, governance and accountability, risk assessment and management, supervision, reporting and public disclosure

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

'Warning Notice' means the warning notice given to Mr Forsyth by the Authority dated 24 April 2019

4. FACTS AND MATTERS

Background

- 4.1. SBMIA is a mutual insurer that was founded in 1918 by fishermen in the area of Buckie, Scotland. It predominantly provides insurance for fishing vessels and associated insurance products. By 2016, SBMIA had one office in Buckie and had

fewer than ten full-time employees. In 2017 it was acquired by another mutual insurer.

- 4.2. Mr Forsyth was the CEO of SBMIA from September 2000 until July 2016. He managed SBMIA's day-to-day operations and reported to the Board.
- 4.3. In April 2001, SBMIA established a Remuneration Committee. Its role was to decide the remuneration of all employees, including that of the CEO. Over time, both the Remuneration Committee and the Board comprised a varying number of non-executive directors, in addition to Mr Forsyth and a chairman.

Mr Forsyth's arrangement to pay Mrs Forsyth

- 4.4. On 7 February 2003, in response to an enquiry from Mr Forsyth, an SBMIA employee sent Mr Forsyth a memo assessing the impact on SBMIA's National Insurance Employer contributions of reducing Mr Forsyth's salary by £5,000 and paying Mrs Forsyth a salary of £5,000. The net effect was stated to be a reduction of SBMIA's National Insurance Employer contributions.
- 4.5. Mr Forsyth subsequently arranged for Mrs Forsyth to become an employee of SBMIA and she signed an SBMIA employment contract on 12 February 2003. The contract, which was countersigned by Mr Forsyth, described Mrs Forsyth's role as an "assistant" with a contractual salary of £5,000 per annum. The contract did not contain any specific duties or working hours.

Work by Mrs Forsyth

- 4.6. The Authority has not been provided with any contemporaneous, documentary evidence of work carried out by Mrs Forsyth. However, the Authority accepts that Mrs Forsyth did do a limited amount of work for SBMIA each year in accordance with her employment contract until she ceased being an employee of SBMIA in July 2016. Before and during the Relevant Period, this work mostly appears to have involved Mrs Forsyth carrying out some administrative tasks for Mr Forsyth and providing occasional hospitality services, such as hosting dinner parties for visiting SBMIA business persons who would sometimes also stay overnight at the Forsyths' house. Mrs Forsyth also provided some out-of-hours clerical support to Mr Forsyth between 2013 and 2015 in respect of work he was carrying out in connection with Solvency II. When interviewed by the Authority, Mr Forsyth said that, at its peak, in the summer of 2015, Mrs Forsyth provided such assistance for about 10 hours a week. No record of the hours worked by Mrs Forsyth was ever provided by her or Mr Forsyth to SBMIA.

4.7. Mrs Forsyth's working arrangements were different to those of other employees at SBMIA. For example:

- (1) She did not work from SBMIA's offices and had no set working hours;
- (2) There was no formal oversight or monitoring of her performance;
- (3) Unlike all other SBMIA employees, the quantum of her remuneration was never discussed by the Remuneration Committee; and
- (4) She was not party to any discussions about her pay or bonus.

4.8. The Board was informed by Mr Forsyth in February 2004 that employing Mrs Forsyth *"had been a way of reducing the national insurance burden on the Association by taking an amount of his salary and paying it to his wife for entertaining at home and answering the phone."* Although the Chairman of the Board (who was also a member of the Remuneration Committee) was aware of Mrs Forsyth's level of remuneration during the Relevant Period, and another member of both the Board and Remuneration Committee was informed in an email by Mr Forsyth in May 2015 of the current level of Mrs Forsyth's salary (although the member told the Authority that they did not read that part of the email and did not know what she was being paid), other members of the Board interviewed by the Authority stated that they did not know the level of remuneration that Mrs Forsyth was receiving between 2003 and 2016.

The payment of a proportion of Mr Forsyth's salary to Mrs Forsyth

4.9. The Remuneration Committee convened twice a year. The main purpose of one of those meetings was to agree Mr Forsyth's remuneration and the main purpose of the other meeting was to agree the salary of other SBMIA employees. At the Remuneration Committee meetings in which Mr Forsyth's remuneration was discussed, Mr Forsyth set out his salary and bonus expectations to the committee. He then left the room to allow the committee to agree his salary and bonus. In reaching its decision, it was understood by the Remuneration Committee that the salary it agreed for Mr Forsyth was a 'global figure' that included the salary that would be paid to Mrs Forsyth. Upon re-entering the room, Mr Forsyth was informed of any pay increase and bonus. He then typed minutes to record the decisions made by the Remuneration Committee which would be signed by the Chairman of the Remuneration Committee. The amount of Mrs Forsyth's remuneration was not discussed at any Remuneration Committee meeting and was not recorded in the minutes signed by the Chairman of the Remuneration Committee.

- 4.10. Once the Remuneration Committee had decided the amount of his salary, Mr Forsyth arranged for a proportion of it to be paid to Mrs Forsyth. From 2003 until June 2012, Mr Forsyth arranged for the equivalent of approximately 11.5% of his salary to be paid to Mrs Forsyth. This meant that the annual salary paid to Mrs Forsyth prior to the Relevant Period was between £5,000 and approximately £10,000. The Authority considers that this amount was not obviously unreasonable for the work she was undertaking.
- 4.11. In September 2013, May 2014 and May 2015, Mr Forsyth arranged for an increased proportion of his salary to be paid to Mrs Forsyth. These changes were made without the approval of the Remuneration Committee which, although it was aware that it was agreeing a 'global figure', did not discuss or agree any increased proportion of Mr Forsyth's salary to be paid to Mrs Forsyth. They were also made at a time when:
- (1) the Remuneration Committee had agreed significant increases to the amount of Mr Forsyth's salary, and therefore resulted in large increases to the amount that Mrs Forsyth was paid; and
 - (2) with respect to the May 2015 change, the Board had agreed SBMIA's Remuneration Policy, which Mr Forsyth reviewed before it was approved by the Board on 6 May 2015. This stated that SBMIA's remuneration framework was underpinned by a set of guiding principles, including that it should be applied consistently to all employees, with no 'special arrangements' inconsistent with the policy, that it should incorporate measures aimed at avoiding conflicts of interest, and that there should be a clear, transparent and effective governance structure around remuneration, incorporating independent oversight and review.
- 4.12. The amount of the salary that the Remuneration Committee decided should be paid to Mr Forsyth for the years 2013/14 to 2015/16, and the split of that salary between Mr and Mrs Forsyth that was arranged by Mr Forsyth, is set out in the table below. The Authority considers that the salary that Mr Forsyth arranged to be paid to Mrs Forsyth in those years was in excess of what was reasonable for the work she was undertaking, and that Mr Forsyth was aware of this and arranged these levels of payments in order to reduce his tax liability.

Date of Remuneration Committee meeting	Mr Forsyth's salary as decided by Remuneration Committee	Mr Forsyth's salary after split	Mrs Forsyth's salary after split
05/06/2013	£125,000	£105,000	£20,000 (split arranged in September 2013)
28/05/2014	£140,000	£110,000	£30,000
06/05/2015	£180,000	£140,000	£40,000

Bonuses

- 4.13. Mr Forsyth's employment contract set out his entitlement to a performance related bonus. Annual operational and financial targets would be submitted by Mr Forsyth to the Board along with the financial budget for the coming year. The Board determined the key targets for SBMIA for the coming year. If those targets were met, Mr Forsyth was entitled to receive a payment consisting of a percentage of his fixed salary (the percentage was to be agreed by Mr Forsyth and the Board).
- 4.14. In August 2009, an addendum to Mr Forsyth's employment contract was signed by the Chairman of the Remuneration Committee stating that, with effect from 1 January 2009, if SBMIA had a surplus on ordinary activities before tax (as per the audited Financial Statements), Mr Forsyth's bonus was payable at 5% of that figure. The addendum stipulated that bonus payments were, at all times, subject to the underlying profitability of SBMIA. Sometimes, however, Mr Forsyth's bonus was not linked to SBMIA's performance, but was at the discretion of the Remuneration Committee up to a maximum of £25,000.
- 4.15. Between 2010 and 2015, Mr Forsyth arranged for a total of approximately £62,800 of his bonus payments to be paid to Mrs Forsyth. There was no reference in Mrs Forsyth's employment contract to the payment of any bonus. The Remuneration Committee had decided that these bonus payments should be paid to Mr Forsyth and this was recorded in documents signed by the Chairman of the Remuneration

Committee. The Remuneration Committee did not approve the payment of any of these bonus payments to Mrs Forsyth.

- 4.16. To do this, Mr Forsyth created documents setting out the amount of his bonus to be paid to Mrs Forsyth. Between 2010 and 2013, these documents were entitled "File Note" and stated that Mr Forsyth's bonus was to be paid to Mrs Forsyth "*in compensation for additional duties carried out*" in the previous year. In 2015 he took a different approach. After the Remuneration Committee had decided that Mr Forsyth should receive a bonus of £25,000, Mr Forsyth created two new documents, one stating that his bonus was agreed at £12,500 and the other stating that Mrs Forsyth's bonus was agreed at £12,500.
- 4.17. He then arranged for the documents he had created to be signed in a separate meeting by the Chairman of the Board. However, this was done without the approval of the Remuneration Committee.
- 4.18. In addition, on two occasions Mr Forsyth arranged for Mrs Forsyth to receive a bonus which, unlike the other bonus payments received by Mrs Forsyth, was not all or part of the bonus that the Remuneration Committee had approved to be paid to Mr Forsyth. First, in March 2011, the Chairman of the Remuneration Committee signed a document stating that Mrs Forsyth was to receive "*an additional, discretionary bonus payment of £10,000*". Secondly, in February 2014, on the same day that the Chairman of the Remuneration Committee approved a bonus payment of £12,500 to Mr Forsyth, the Chairman of the Board signed a document stating that Mrs Forsyth was to receive a bonus payment of the same amount.
- 4.19. According to Mr Forsyth, one other employee at SBMIA received a company car in 2009, and then a newer model on two occasions during the Relevant Period, in recognition of their work ethic. Otherwise, no other employee of SBMIA received a bonus at any point during the Relevant Period, other than a bonus at Christmas which was equivalent to one week's salary.
- 4.20. There is no evidence that Mrs Forsyth carried out any "additional duties" or any other work for SBMIA which could justify the bonus payments that she received. The bonus payments referred to in paragraphs 4.15 and 4.18 which Mr Forsyth arranged to be paid to Mrs Forsyth during the Relevant Period are set out in the table below:

Date bonus paid to Mrs Forsyth	Amount of bonus paid to Mrs Forsyth (£)
28/02/2010	7,310
20/03/2011	9,296
20/03/2011	10,000
20/04/2012	12,500
20/03/2013	10,000
20/04/2013	11,260
20/03/2014	1,750
20/04/2014	10,750
20/05/2015	12,500

Total payments of Mr Forsyth's remuneration to Mrs Forsyth during the Relevant Period

- 4.21. During the Relevant Period, Mr Forsyth arranged for SBMIA cashiers to pay a total of £200,785 of his remuneration to Mrs Forsyth, as well as the March 2011 additional bonus payment and the February 2014 bonus. The Authority considers that, for the work she carried out, it was not reasonable for Mrs Forsyth to receive more than a total of approximately £80,000 in this period.
- 4.22. This arrangement meant that during the 2015/2016 tax year, Mrs Forsyth received total remuneration of £52,037, which was more than any employee at SBMIA (apart from Mr Forsyth himself).
- 4.23. The Authority considers that Mr Forsyth was aware that the amount of his remuneration which he arranged to be paid to Mrs Forsyth could not be justified by the work she was carrying out, and that he arranged these payments in order to reduce his tax liability.

Falsification of Remuneration Committee Minutes

- 4.24. On 5 June 2013, 28 May 2014 and 6 May 2015 the Remuneration Committee met to discuss Mr Forsyth's salary and agreed increases to £125,000, £140,000 and £180,000 respectively with immediate effect. On each occasion, a minute which had been typed by Mr Forsyth was signed by the Chairman of the Remuneration Committee at the end of the meeting to record the decision. Following each meeting, Mr Forsyth decided to split his salary with Mrs Forsyth in the amounts set out in the table at paragraph 4.12 above (in 2013, Mr Forsyth decided on the split set out in the table several months later, in September of that year). He then created another minute of the same date purporting to record that the

Remuneration Committee had agreed that his and Mrs Forsyth's salaries be increased to those amounts. Mr Forsyth then arranged for this false minute to be signed later, in a separate meeting, by the Chairman of the Board. This was done without the approval or knowledge of the Remuneration Committee.

- 4.25. These false minutes were used by Mr Forsyth to instruct SBMIA's cashiers to make payments to Mrs Forsyth. Mr Forsyth was aware that the false minutes gave the impression that such payments had been authorised by the Remuneration Committee, when in fact they had not.

Misleading SBMIA's Board of Directors

- 4.26. In October 2015, a number of concerns were raised internally at SBMIA in respect of Mr Forsyth's conduct as CEO. These concerns included an allegation regarding the payment of part of Mr Forsyth's salary to Mrs Forsyth. In response, SBMIA commissioned an external auditor to examine, amongst other things, reporting to HMRC in respect of Mr and Mrs Forsyth's salaries. Mr Forsyth participated in the agreement of the scope of the auditor's investigation, which in accordance with his proposals did not include any examination of the splitting of his salary with Mrs Forsyth.
- 4.27. Mr Forsyth then oversaw the production of the report and, when a draft version was sent to him, asked the auditor to remove from the final report details of his and Mrs Forsyth's pay with respect to the tax years 2014/15 and 2015/16. These details were removed and Mr Forsyth then sent the report to Board members as evidence that the allegations against him were unfounded. As a result, the Board was unaware of the level of remuneration which he had arranged to be paid to Mrs Forsyth in 2014/15 and 2015/16.
- 4.28. Although the Chairman of the Board was aware throughout the Relevant Period, and another Board member was informed in an email of the current split of Mr Forsyth's salary between him and Mrs Forsyth in May 2015 (although the Board member told the Authority that they did not read that part of the email), the Board was not made aware of the amount of remuneration which was being paid to Mrs Forsyth until July 2016. On 13 July 2016, following the departure of Mr Forsyth from SBMIA, the Board met and discussed the position in respect of his remuneration being split with Mrs Forsyth. For the first time, the Board was provided with the quantum of what had been paid to Mrs Forsyth and as a result authorised an internal tax investigation.

Misleading the PRA

- 4.29. On 22 April 2016, in advance of a supervisory visit to SBMIA, the PRA required Mr Forsyth to provide it with *“Minutes from all Board, Risk & Audit and Remuneration Committee: 2013, 2014, 2015 and 2016 to date”*. Mr Forsyth asked a senior colleague to collate the minutes and replied on 25 April 2016, attaching what he described as *“Minutes 2013-2016”*. Mr Forsyth did not provide the PRA with the original minutes of the Remuneration Committee meetings of June 2013, May 2014 and May 2015. Instead, Mr Forsyth provided the minutes which he had created after the meetings recording the Remuneration Committee agreeing to pay Mrs Forsyth a salary of £20,000, £30,000 and £40,000 respectively. These minutes were false and misleading as this was not what had been agreed by the Remuneration Committee. Mr Forsyth was aware that the sets of minutes collated by his colleague included these false minutes and did not include the original minutes, and that there was therefore a risk that, by responding to the PRA without ensuring that the original minutes were provided, the PRA would be misled as to what had been agreed in the 2013, 2014 and 2015 Remuneration Committee meetings.

5. FAILINGS

- 5.1. The regulatory and statutory provisions relevant to this Notice are referred to in Annex A.
- 5.2. For the reasons set out below, during the Relevant Period Mr Forsyth breached Statement of Principle 1 (Integrity) of the Authority’s Statements of Principle for Approved Persons and Rule 1 (Integrity) of the Authority’s Individual Conduct Rules as he failed to act with integrity.
- (1) Mr Forsyth deliberately arranged for a proportion of his salary and, on four occasions, all or part of his bonus, to be paid to Mrs Forsyth, so that she received remuneration in excess of what was reasonable for the work she was undertaking. Mr Forsyth was aware that SBMIA’s Remuneration Committee had not agreed the amount of Mrs Forsyth’s salary or to these bonus payments being paid to her, and that Mrs Forsyth had not carried out any additional duties, or other work, which justified the level of the remuneration she received. As a result of these payments, during the 2015/2016 tax year, Mrs Forsyth was paid more than any employee of SBMIA apart from Mr Forsyth. The Authority concludes that these payments were arranged by Mr Forsyth in order to reduce his income tax liability.

- (2) Mr Forsyth deliberately arranged for Mrs Forsyth to receive an additional bonus payment in March 2011 and a bonus in February 2014, when he was aware on each occasion that Mrs Forsyth had not carried out work in the preceding year which justified the payment of the bonus to her.
- (3) Mr Forsyth was aware that the Remuneration Committee agreed the amount of salary to be paid to him, and that he then arranged for a proportion of his salary to be paid to Mrs Forsyth without the Remuneration Committee's agreement. However, in 2013, 2014 and 2015 Mr Forsyth created false minutes of the Remuneration Committee which purported to show that the Remuneration Committee had agreed the salaries of both Mr and Mrs Forsyth. Mr Forsyth prepared these minutes deliberately to give the misleading impression that the Remuneration Committee had agreed these payments.
- (4) In October 2015, when internal concerns were raised at SBMIA about certain matters, including an allegation concerning the payment of part of Mr Forsyth's salary to Mrs Forsyth, Mr Forsyth inappropriately involved himself in the investigation by an external auditor. He participated in the agreement of the scope of the investigation, which in accordance with his proposals did not include any examination of the splitting of his salary with Mrs Forsyth, and later asked the external auditor not to include in its report to the Board any details of what he was being paid nor the amounts that he was directing the cashiers to pay to Mrs Forsyth. This had the effect that the Board was not made aware of the high level of remuneration being paid to Mrs Forsyth, so there was no legitimate scrutiny by the Board of the substance of the allegation regarding Mr Forsyth's payment to her. Mr Forsyth, especially as the CEO of SBMIA and an approved person, must have realised that, as the concerns raised related to him, it was inappropriate for him to involve himself in the auditor's investigation.
- (5) In April 2016, Mr Forsyth responded recklessly to a request from the PRA for all of SBMIA's minutes from 2013 to 2016, and sent the false minutes which he had created and not the original Remuneration Committee Minutes for 2013, 2014 and 2015.

6. SANCTION

6.1. The Authority has decided to:

- (1) impose a financial penalty of £78,318 on Mr Forsyth for his failure to comply with Statement of Principle 1 and Rule 1; and
- (2) make the Prohibition Order, by reason of Mr Forsyth's failure to comply with Statement of Principle 1 and Rule 1, his lack of fitness and propriety and the risk he poses to consumers and to confidence in the financial system.

Financial penalty

- 6.2. The principal purpose of a financial penalty is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour.
- 6.3. In determining whether a financial penalty is appropriate, the Authority is required to consider all the relevant circumstances of a case. A financial penalty is an appropriate sanction in this case, given the nature of the breach and the need to send out a deterrent message.
- 6.4. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. In determining the financial penalty, the Authority has had regard to this guidance. Changes to DEPP were introduced on 6 March 2010. Given that nearly all of Mr Forsyth's misconduct took place after that date, the Authority has had regard to the provisions of DEPP in force after that date with respect to all of Mr Forsyth's misconduct during the Relevant Period.
- 6.5. The Authority's penalty calculation is at Annex B of this Notice.

Prohibition

- 6.6. In light of the serious nature of Mr Forsyth's misconduct, involving a lack of integrity, the Authority considers that Mr Forsyth is not fit and proper and poses a serious risk to consumers and to confidence in the financial system. Consequently, the Authority considers it appropriate to impose the Prohibition Order.
- 6.7. In deciding to make the Prohibition Order, the Authority has had regard to the guidance in Chapter 9 of EG (the relevant provisions of which are set out in Annex A to this Notice).

7. REPRESENTATIONS

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

8. PROCEDURAL MATTERS

Decision maker

- 8.1. The decision which gave rise to the obligation to give this Notice was made by the Regulatory Decisions Committee.
- 8.2. This Notice is given under sections 57 and 67 and in accordance with section 388 of the Act. The following statutory rights are important.

The Tribunal

- 8.3. Mr Forsyth 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 Forsyth 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).
- 8.4. 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 Form FTC3 must also be sent to the Authority at the same time as filing a reference with the Tribunal. A copy should be sent to Paul Smith 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.

Third party rights

- 8.9. A copy of this Notice is being given to Mrs Forsyth and to the Chairman of the Board as third parties identified in the reasons above and to whom in the opinion of the Authority the matter is prejudicial. Those parties have similar rights to those mentioned in paragraphs 8.3 and 8.8 above, in relation to the matters which identify them.

Confidentiality and publicity

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

Authority contact

8.12. For more information concerning this matter generally, contact Paul Smith (direct line: 020 7066 0410 / paul.smith@fca.org.uk) of the Enforcement and Market Oversight Division of the Authority.

Mark Roberts, DMCS Manager, on behalf of

Tim Parkes
Chair, Regulatory Decisions Committee

ANNEX A

RELEVANT STATUTORY PROVISIONS

1. The Authority's statutory objectives, set out in section 1B(3) of the Act, include securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.
2. Section 56 of the Act provides that the Authority may make an order prohibiting an individual from performing a specified function, any function falling within a specified description or any function, if it appears to the Authority that that individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, exempt person or a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities.
3. Section 66 of the Act provides that the Authority may take action against a person if it appears to the Authority that he is guilty of misconduct and the Authority is satisfied that it is appropriate in all the circumstances to take action against him. A person is guilty of misconduct if, while an approved person, he has failed to comply with a statement of principle issued under section 64 of the Act, or has been knowingly concerned in a contravention by a relevant authorised person of a relevant requirement imposed on that authorised person.

RELEVANT REGULATORY PROVISIONS

Statements of Principle and Code of Practice for Approved Persons

4. The Authority's Statements of Principle and Code of Practice for Approved Persons "APER" have been issued under section 64 of the Act.
5. Statement of Principle 1 states that an approved person must act with integrity in carrying out his accountable functions.
6. The Code of Practice for Approved Persons sets out descriptions of conduct which, in the opinion of the Authority, does not comply with a Statement of Principle. It also sets out factors which, in the Authority's opinion, are to be taken into account

in determining whether an approved person's conduct complies with a Statement of Principle.

Individual Conduct Rules (Code of Conduct "COCON") – From 7 March 2016

7. From 7 March 2016, COCON applied to the persons set out in COCON 1.1.2. These persons include *"an FCA-approved person or PRA-approved person approved to perform a controlled function in a Solvency II firm (including a large non-directive insurer) or a small non-directive insurer"* (1.1.2(1)(g)).
8. Under section 64A of the Act, the Authority may make rules about the conduct of certain individuals working at specified authorised firms.
9. Those rules apply to persons who have approval under section 59 of the Act to perform a designated senior management function.
10. Rule 1 states that an approved person must act with integrity in carrying out his senior management functions (COCON 2.1.1).

The Fit and Proper Test for Approved Persons

11. The part of the Authority's Handbook entitled "The Fit and Proper Test for Employees and Senior Personnel" ("FIT") sets out the criteria that the Authority will consider when assessing the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an approved person.
12. FIT 1.3.1G states that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person. The most important considerations will be the person's honesty, integrity and reputation, competence and capability and financial soundness.
13. FIT 2.1.1G provides that in determining a person's honesty and integrity the Authority will have regard to all relevant matters.

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

14. The Authority's policy in relation to prohibition orders is set out in Chapter 9 of the Enforcement Guide ("EG").
15. EG 9.1 states that the Authority may exercise this power where it considers that, to achieve any of its regulatory objectives, it is appropriate either to prevent an

individual from performing any functions in relation to regulated activities or to restrict the functions which he may perform.

16. EG 9.2.2G sets out the general scope of the Authority's powers in respect of prohibition orders, which include the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant.
17. EG 9.2.3G provides that the scope of a prohibition order will depend on the range of functions that the individual performs in relation to regulated activities, the reasons why he is not fit and proper, and the severity of risk which he poses to consumers or the market generally.
18. EG 9.3.2G provides that, when deciding whether to make a prohibition order against an approved person, the Authority will consider all the relevant circumstances of the case which may include, but are not limited to, the following factors (among others):
 - (1) whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety of an approved person are contained in FIT 2.1 (Honesty, integrity and reputation), FIT 2.2 (Competence and capability) and FIT 2.3 (Financial soundness);
 - (2) whether, and to what extent the approved person has failed to comply with the Statements of Principle;
 - (3) the relevance and materiality of any matters indicating unfitness;
 - (4) the length of time since the occurrence of any matters indicating unfitness;
 - (5) the particular controlled function the approved person is (or was) performing, the nature and activities of the firm concerned and the markets in which he operates;
 - (6) the severity of the risk which the individual poses to consumers and to confidence in the financial system; and
 - (7) the previous disciplinary record and general compliance history of the individual.

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

The Authority's policy on the imposition of financial penalties

20. The Authority's policy in relation to the imposition of financial penalties is set out in Chapter 6 of DEPP which forms part of the Handbook.
21. DEPP 6.1.2G provides that the principal purpose of imposing a financial penalty is to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches, and demonstrating generally the benefits of compliant behaviour.
22. The Authority will consider the full circumstances of each case when determining whether or not to impose a financial penalty. DEPP 6.2.1G sets out a non-exhaustive list of factors that may be of relevance in determining whether to impose a financial penalty, which include the following:
- (1) DEPP 6.2.1G(1): The nature, seriousness and impact of the suspected breach, including whether the breach was deliberate or reckless, the duration and frequency of the breach, the amount of any benefit gained or loss avoided as a result of the breach, the loss or risk of loss caused to consumers or other market users, and the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the breach;
 - (2) DEPP 6.2.1G(2): The conduct of the person after the breach, including how quickly, effectively and completely the person brought the breach to the attention of the Authority or another relevant regulatory authority, the degree of co-operation the person showed during the investigation of the breach, any remedial steps the person has taken in respect of the breach, the likelihood that the same type of breach (whether on the part of the person under investigation or others) will recur if no action is taken, and the nature and extent of any false or inaccurate information given by the person and whether the information appears to have been given in an attempt to knowingly mislead the Authority; and
 - (3) DEPP 6.2.1G(5): Action taken by the Authority in previous similar cases.

23. DEPP 6.5.1G(1) provides that the Authority will consider all the relevant circumstances of a case when it determines the level of financial penalty (if any) that is appropriate and in proportion to the breach concerned.
24. DEPP 6.5.2G sets out guidance on a list of factors that may be relevant to determining the appropriate level of financial penalty
25. DEPP 6.5B sets out the five steps for calculation of financial penalties to be imposed on individuals.

ANNEX B

Penalty Calculation

1.1. 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. As mentioned in paragraph 6.4 of this Notice, given that nearly all of Mr Forsyth's misconduct took place after 6 March 2010, the Authority has had regard to these DEPP provisions with respect to all of Mr Forsyth's misconduct during the Relevant Period.

Step 1: disgorgement

- 1.2. 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.
- 1.3. Mr Forsyth derived direct financial benefit from the breach. He deliberately arranged for a proportion of his salary and all or part of his bonus payments to be paid to Mrs Forsyth, which resulted in Mrs Forsyth receiving remuneration in excess of what was reasonable for the work she was undertaking. Without these arrangements, Mr Forsyth's income tax liability would have been greater.
- 1.4. Based on SBMIA's figures of the amount of remuneration that it would have been proper for Mrs Forsyth to receive, the Authority considers that the amount of income tax that Mr Forsyth saved during the Relevant Period from the arrangements he put in place was £18,034. The Authority seeks to deprive Mr Forsyth of half this amount, which totals £9,017. The remaining half forms part of the penalty that the PRA has decided to impose on Mr Forsyth [see the PRA's Decision Notice dated 30 September 2019].
- 1.5. 3% interest, totalling £1,501, has been applied to the sum above.
- 1.6. Step 1 is therefore £10,518.

Step 2: the seriousness of the breach

- 1.7. 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.
- 1.8. The Authority considers Mr Forsyth's relevant income during the Relevant Period to have been £905,102. This is the total amount of remuneration which Mr Forsyth would have been paid had Mrs Forsyth only received a reasonable level of income, and is based on SBMIA's figures of the amount of remuneration that it would have been proper for Mrs Forsyth to receive.
- 1.9. In deciding on the percentage of the relevant income which 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%
- 1.10. In assessing the level of seriousness, the Authority takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly. DEPP 6.5B.2G(12) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the Authority considers the following factors to be relevant:
- (1) Mr Forsyth failed to act with integrity;
 - (2) Mr Forsyth abused his position of trust as the CEO of SBMIA by arranging for Mrs Forsyth to receive remuneration in excess of what was reasonable for the work she was undertaking, without the knowledge or approval of the Board or

Remuneration Committee, and in 2015 contrary to SBMIA's Remuneration Policy, for his own financial benefit; and

(3) The breach was committed partly deliberately and partly recklessly.

1.11. 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) The breach did not result in loss or risk of loss to consumers, investors or other market users individually or in general; and

(2) There was no actual or potential effect on the orderliness of, or confidence in, markets as a result of the breach.

1.12. Taking all of these factors into account, the Authority considers the seriousness of the breach to be Level 4 and so the Step 2 figure is 30% of £905,102.

1.13. Step 2 is therefore £271,530.

1.14. DEPP 6.5.3G(3) states that the Authority recognises that a penalty must be proportionate to the breach. The Authority may decrease the level of the penalty arrived at after applying Step 2 of the framework if it considers that the penalty is disproportionately high for the breach concerned. In this case the Authority does consider that the Step 2 figure is disproportionately high and should be adjusted. In order to achieve a penalty that (at Step 2) is proportionate to the breach, the Step 2 figure is reduced by 50% to £135,765.

Step 3: mitigating and aggravating factors

1.15. Pursuant to DEPP 6.5B.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the breach.

1.16. The Authority considers that the following factor mitigates the breach:

(1) The PRA has decided to impose a financial penalty of £76,180 (including disgorgement) on Mr Forsyth in respect of misconduct by Mr Forsyth relating to broadly the same facts and matters.

1.17. Having taken into account this mitigating factor, the Authority considers that the Step 2 figure should be reduced by 50%.

1.18. Step 3 is therefore £67,882.

Step 4: adjustment for deterrence

1.19. Pursuant to DEPP 6.5B.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the individual who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.

1.20. The Authority considers that the Step 3 figure of £67,882 represents a sufficient deterrent to Mr Forsyth and others, and so has not increased the penalty at Step 4.

1.21. Step 4 is therefore £67,882.

Step 5: settlement discount

1.22. The Authority and Mr Forsyth have not reached agreement to settle and so no discount applies to the Step 4 figure.

1.23. Step 5 is therefore £67,800 (rounded down to the nearest £100).

Penalty

1.24. The Authority therefore has decided to impose a total financial penalty of £78,318 (including the Step 1 disgorgement figure) on Mr Forsyth for breaching Statement of Principle 1 and Rule 1.

ANNEX C

REPRESENTATIONS

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

The circumstances of Mrs Forsyth's employment

2. *In order to understand the specific circumstances which led to Mrs Forsyth's employment, and the circumstances in which it was carried out, it is essential to appreciate the highly unusual nature, by London insurance market standards, of SBMIA's situation. First, Buckie is a small, geographically remote town, which had no suitable local hotels for visiting brokers and insurance professionals. Secondly, the small number of SBMIA staff, the lack of middle management and the nature of SBMIA's clients' work as fishermen, meant that Mr Forsyth was required to work "out-of-hours" and at anti-social times. There was therefore a genuine need for some form of hospitality to be provided and extra "out-of-hours" administrative support.*
3. *Mrs Forsyth became employed at SBMIA through necessity, as it was she who provided these hospitality services and who was able to provide the necessary out-of-hours administrative support to enable Mr Forsyth to fulfil his professional duties.*
4. The Authority does not dispute that SBMIA's situation meant that there were times when Mr Forsyth was required to work out-of-hours, and that Mrs Forsyth sometimes assisted him when he carried out such work. However, the Authority considers that the evidence, including Mr and Mrs Forsyth's interviews with the Authority, supports its view that Mrs Forsyth only did a limited amount of work to support Mr Forsyth in his role as CEO in accordance with what was contemplated in her contract of employment dated 12 February 2003.

The Remuneration Committee's understanding that it was setting a global figure

5. *SBMIA agreed to Mrs Forsyth's employment on the basis that her employment should impose no extra cost on SBMIA than it would have incurred through Mr Forsyth's employment alone. In subsequent years, this developed into a practice whereby the Remuneration Committee set a global figure for Mr and Mrs Forsyth's remuneration which avoided the Remuneration Committee having to analyse the precise tasks which Mrs Forsyth had undertaken, an exercise which would have been impracticable given the nature of the work which Mrs Forsyth undertook and the circumstances in which she did so. The principles behind this arrangement remained in place throughout the Relevant Period, with the Remuneration Committee effectively determining a global figure for the "CEO's office".*
6. *The Remuneration Committee, despite being fully aware that it was awarding a global figure, never sought separately to audit or evaluate Mrs Forsyth's contribution, or to request that Mrs Forsyth's remuneration be separately determined and/or approved by the Remuneration Committee.*

7. *As the Remuneration Committee understood that the salary it agreed for Mr Forsyth was a global figure which included the salary that would be paid to Mrs Forsyth, it necessarily follows that the Remuneration Committee was aware of, and approved, the procedure whereby the actual split of the salary between Mr and Mrs Forsyth was determined in a forum other than the Remuneration Committee.*
8. *The bonus was always looked at in the round for Mr and Mrs Forsyth, and was always going to be split. The approach was therefore consistent with the Remuneration Committee's approach to determining a global salary figure. It was perfectly permissible for the bonus to be split between the two individuals who collectively constituted the CEO's office.*
9. *The procedure actually adopted, which was for Mr Forsyth's proposal to be approved and signed by the Chairman of the Board, was pragmatic and sensible. Had the Remuneration Committee wished to determine and approve the split as a full committee it could have done so, but it perfectly properly elected not to do so.*
10. The Authority accepts that the Remuneration Committee understood that, in determining Mr Forsyth's salary, it was deciding upon a global figure that included the salary that would be paid to Mrs Forsyth. It also acknowledges that the Remuneration Committee does not appear to have sought to evaluate Mrs Forsyth's work or to approve her salary separately.
11. However, the Authority does not agree that, because the Remuneration Committee understood it was agreeing a global salary figure, it follows that the Remuneration Committee was aware of, and approved, a procedure which gave Mr Forsyth discretion to arrange for his salary to be split, so that Mrs Forsyth received a salary which was not justified by the work she was undertaking. The evidence seen by the Authority suggests that only the Chairman of the Board knew how Mrs Forsyth's salary was determined and that no other member of the Remuneration Committee was aware of how much of Mr Forsyth's salary was apportioned to Mrs Forsyth until at the earliest May 2015, when Mr Forsyth mentioned the current split in an email to another member (who told the Authority that they did not read that part of the email).
12. The Authority has not seen any evidence that any member of the Remuneration Committee, other than the Chairman of the Board, knew that all or part of Mr Forsyth's bonus was paid to Mrs Forsyth. The payment of all of Mr Forsyth's bonus to Mrs Forsyth, which is what Mr Forsyth arranged between 2010 and 2013, is not consistent with the setting of a global bonus figure. In addition, unlike Mr Forsyth's employment contract, Mrs Forsyth's employment contract did not refer to the payment of a bonus. The Authority therefore does not agree that the Remuneration Committee was also aware that it was determining a global bonus figure for Mr and Mrs Forsyth.
13. The Authority does not agree that the approach adopted by Mr Forsyth to determining Mrs Forsyth's remuneration was appropriate. Mr Forsyth was the CEO of SBMIA and was aware of the need for good governance and appropriately documented procedures for determining employees' remuneration, and must have been aware that this is particularly important where the employee in question is the CEO's wife. It would not have been difficult for him to ensure that Mrs Forsyth's remuneration was approved by the Remuneration Committee, after assessing the level and value of her work, and properly documented and supported by a contemporary record of the hours worked by her. The Authority concludes that he did not do so because his ultimate objective was to reduce his income tax liability, and he was aware that the remuneration that he

proposed for Mrs Forsyth could not be justified by the work she was actually undertaking.

The actual work carried out by Mrs Forsyth

Bonus payments from 19 February 2010

14. *The payment of a bonus to Mrs Forsyth in February 2010 was justified because she was doing more work. There were reductions in staff at SBMIA at the time, and Mrs Forsyth was more involved helping Mr Forsyth in the evenings and at weekends. Mr Forsyth also had an increasing workload due to SBMIA having substantial new business in Australia and New Zealand, which he sought to expand in 2008 to 2010, and which generated a particularly high volume of work on the claims side following the Christchurch earthquake in New Zealand in 2011. In addition, Mr Forsyth began assuming responsibility in 2009 for the forthcoming implementation of Solvency II, which imposed enormous burdens upon SBMIA. The increase in Mr Forsyth's duties led to an increase in Mrs Forsyth's workload.*
15. *The nature of Mrs Forsyth's work in 2009/2010 was administrative and secretarial, which she was qualified to do due to her previous experience working as the personal assistant to a chairman and directors of companies in London in the 1990s. She was essentially an out-of-hours secretary, working whenever required outside the normal working hours, such as answering telephone calls and dictating documents. She carried out these activities nearly every day. Accordingly, the relatively modest remuneration received by Mrs Forsyth between 2010 and 2013 was justified by the work she carried out.*
16. The Authority has two concerns with the bonus payments received by Mrs Forsyth between 2010 and 2013 which were stated to be "in compensation for additional duties carried out" in the previous year. First, each of these bonus payments involved the transfer of all of Mr Forsyth's contractual bonus, rather than being a payment which Mrs Forsyth was contractually entitled to.
17. Secondly, the Authority has not seen any evidence that Mrs Forsyth carried out additional duties which could justify the bonus payments. Instead, the evidence suggests that, between 2009 and 2013, Mrs Forsyth continued to carry out a small number of administrative tasks for Mr Forsyth and provide the occasional hospitality service (which had in any event reduced from 2008 onwards). Whilst the Authority acknowledges that SBMIA might have had additional work resulting from the earthquake in Christchurch in 2011, it has not been provided with any contemporaneous evidence that this led to more work for Mrs Forsyth, and in fact the contemporaneous evidence shows that SBMIA conducted a diminishing amount of Australia and New Zealand related business from 2008 onwards. As Mrs Forsyth received the entirety of Mr Forsyth's bonus between 2010 and 2013, the Authority concludes that Mr Forsyth arranged these payments in order to reduce his income tax liability.

Salary increases and total remuneration from 2013 to 2015

18. *The increases to Mrs Forsyth's salary, and to her overall remuneration, between 2013 and 2015 were justified by the increased workload imposed upon SBMIA generally, and Mrs Forsyth particularly, by the impending implementation of Solvency II. The SBMIA Board minutes between 2010 and 2015 consistently referred to the substantial burden*

on Mr Forsyth of this work. As Mrs Forsyth was providing out-of-hours support to Mr Forsyth, she endured a similar consequential increase to her own workload from 2013, working nearly every evening and weekend. Her work relating to Solvency II involved proof-reading, reading out loud to Mr Forsyth and typing up the various policies, and she also continued to do her previous work. Mr and Mrs Forsyth had to do this work out-of-hours as there was a lack of alternative management capability in SBMIA, the other SBMIA employee who provided administrative support to Mr Forsyth only worked normal office hours, it was difficult for SBMIA to recruit competent professional support, and external advisers were expensive and provided advice which was generic rather than relevant to SBMIA's circumstances.

19. Mrs Forsyth worked about 20 hours a week during this period. However, she was also on call at lunchtimes, in the evenings and at weekends, so in assessing the permissibility of her remuneration, her job should not simply be considered to be the aggregation of the hours she worked. Other jobs also involve a person being paid for a full day's work when they only actually work part of a day, for example, a childcare professional and a chauffeur, yet it is not suggested that this is improper.
20. Although there is no contemporaneous, documentary evidence of the work Mrs Forsyth was carrying out, a Board member stated in interview with the Authority that Mr Forsyth told him in the summer of 2015 that Mrs Forsyth was helping him type up the various Solvency II policies.
21. The Authority accepts that preparing for the implementation of Solvency II was a burden on Mr Forsyth, and that Mrs Forsyth provided some out-of-hours clerical support to him in connection with this work, particularly in 2015. However, the Authority has concluded that Mrs Forsyth did a good deal less than Mr Forsyth submits. In particular, the Authority notes that the only contemporaneous written record by Mr Forsyth of the work that Mrs Forsyth was carrying out in this period did not even mention that she was assisting him with his Solvency II work. This was an email in May 2015 from Mr Forsyth to a member of the Remuneration Committee, which stated that his current salary was split with Mrs Forsyth, so that he received £110,000 and she received £30,000, and that this was "to compensate for the business dinners/guest that we have to stay as well as doing some airport pick ups etc."
22. On Mr Forsyth's own account at interview, at its peak, which was in the summer of 2015 and therefore short in duration, Mrs Forsyth provided assistance to him in connection with his Solvency II work for only about 10 hours a week. The Authority notes that, by this point, all of the bonus payments and salary increases during the Relevant Period had already been decided, so Mrs Forsyth benefited from these before this apparent increase in her workload.
23. The Authority does not agree that it is appropriate to compare Mrs Forsyth's work to a childcare professional or a chauffeur. In accordance with her contract of employment, Mrs Forsyth carried out some occasional work from her family home, but the Authority does not accept that she was effectively performing a full-time job and that it was appropriate for her to be remunerated accordingly.

Mr Forsyth's belief as to what Mrs Forsyth could permissibly receive

24. Mr Forsyth genuinely and reasonably believed that the remuneration paid to Mrs Forsyth by SBMIA during the Relevant Period was permissible in the light of the work which Mrs Forsyth carried out for SBMIA, in particular the increasingly onerous nature

of that work in the light of the impending Solvency II implementation and the impracticability of the "out of hours" work carried out by Mrs Forsyth being undertaken by anyone other than a domestic partner.

- 25. Mr Forsyth did not consider there to be anything wrong with the amount of remuneration which Mrs Forsyth received not being scrutinised by the Remuneration Committee because it agreed the global total. This was consistent with SBMIA's Remuneration Policy, which was approved by the Board on 6 May 2015. That policy did not provide that the Remuneration Committee would determine the salary of every SBMIA employee, but instead that the committee would consider the remuneration framework of SBMIA and make recommendations in respect of individual remuneration in the case of executives, senior staff and key function holders.*
- 26. Given the procedure that the Remuneration Committee elected to adopt, Mr Forsyth considered it was appropriate for him to propose a figure for Mrs Forsyth's remuneration to the Chairman of the Board for approval. Mr Forsyth was the only person who could vouch for the work Mrs Forsyth actually did, and how it benefited him and SBMIA, given that she carried out her work at their family home, and it seemed to him that it was within his remit as CEO to do this. The lack of contemporaneous records of the work done by Mrs Forsyth, and the lack of detailed explanations for the amount of her remuneration, do not impinge upon Mr Forsyth's integrity in considering that it was appropriate for him to propose, within the global figure established by the Remuneration Committee, how much remuneration it was appropriate for Mrs Forsyth to receive.*
- 27. In determining what it was permissible for Mrs Forsyth to receive by way of remuneration, Mr Forsyth believed and proceeded on the basis that he was entitled to value her work on the basis that her personal, out-of-hours services, necessarily carried out within their family home during evenings and at the weekend, could not be performed by anyone else and could not therefore be benchmarked against any other role.*
- 28. Moreover, given that the global figure had been agreed, and SBMIA would suffer no prejudice however the split was allocated, Mr Forsyth considered he had a reasonably broad discretion to determine Mrs Forsyth's permissible remuneration by reference to the benefit which he perceived Mrs Forsyth's services had provided to him as the CEO. This necessarily involved a relatively subjective judgement.*
- 29. Mr Forsyth did not consider he had an entirely unfettered discretion in this regard. In respect of Mrs Forsyth's remuneration in 2015, it was only just in excess of one fifth of the total amount paid to Mr and Mrs Forsyth, it remained comparable to other employees of SBMIA, including the Company Secretary who provided similar assistance to Mr Forsyth during office hours, and it represented the average salary of an Executive Assistant to a CEO based in London. It had been agreed at the outset of his employment that Mr Forsyth's remuneration was to be set by reference to comparable London-based salaries, and it is reasonable to infer that the global figure (and therefore Mrs Forsyth's remuneration) was also to be set on this basis.*
- 30. The Authority does not agree with Mr Forsyth's submission regarding the amount of work carried out by Mrs Forsyth. As set out in paragraph 4.6 of this Notice, the Authority considers that Mrs Forsyth only did a limited amount of work, which appears to have involved carrying out some administrative tasks for Mr Forsyth and providing occasional hospitality services, and also involved some out-of-hours clerical support*

between 2013 and 2015 in respect of Mr Forsyth's work in connection with Solvency II. In the light of its findings regarding the amount of work carried out by Mrs Forsyth, the Authority considers that Mr Forsyth could not genuinely or reasonably have believed that the level of remuneration paid to Mrs Forsyth during the Relevant Period was permissible. Further, the Authority considers that the procedures put in place by Mr Forsyth for approving Mrs Forsyth's remuneration, his creation of the false minutes and the actions he took to prevent the Board from becoming aware of her level of remuneration, all demonstrate that Mr Forsyth did not consider that Mrs Forsyth's remuneration was justified.

31. SBMIA's Remuneration Policy, which Mr Forsyth reviewed before it was approved by the Board on 6 May 2015, stated that SBMIA's remuneration framework was underpinned by a set of guiding principles. These included that it should be applied consistently to all employees, with no 'special arrangements' inconsistent with the policy, that it should incorporate measures aimed at avoiding conflicts of interest, and that there should be a clear, transparent and effective governance structure around remuneration, incorporating independent oversight and review. The Authority considers that, by ensuring that his wife's remuneration was not considered and determined by the Remuneration Committee, and by arranging for her to receive a bonus in circumstances where, apart from one other employee who received a newer model of a company car on two occasions and himself, no other employee received one in the Relevant Period (other than the small contractual Christmas bonus), Mr Forsyth's actions were inconsistent with SBMIA's guiding principles for its remuneration framework.
32. As the CEO of SBMIA, Mr Forsyth was aware of the need for good governance and appropriately documented procedures for determining employees' remuneration. Accordingly, Mr Forsyth must have realised that the procedure that was followed for deciding Mrs Forsyth's remuneration was inappropriate. In particular, he must have realised that his role in proposing his wife's salary and bonus, and in being the only person who was aware of the type and amount of work that she carried out, created a clear conflict of interest. He should also have realised that the lack of contemporaneous records of Mrs Forsyth's work made it even more important that he was not involved in setting the level of her remuneration, and that it should instead have been decided by the Remuneration Committee in accordance with its usual approach to deciding the remuneration of other SBMIA employees.
33. The Authority does not accept Mr Forsyth's submission that Mrs Forsyth's remuneration was acceptable because it was comparable with other employees of SBMIA, including the Company Secretary, and because it represented the average salary of an Executive Assistant to a London CEO. During the 2015/2016 tax year, Mrs Forsyth's total remuneration was greater than any employee of SBMIA (apart from Mr Forsyth). In any case, even if Mrs Forsyth had been paid a similar total level of remuneration to the Company Secretary, such a level of remuneration would not have been justified given that the Company Secretary also had considerable, additional responsibilities and worked full-time. Further, the Authority does not consider it reasonable to compare Mrs Forsyth's salary to that of an Executive Assistant to a London CEO as Mrs Forsyth was not performing an Executive Assistant role, which is generally far more demanding than the limited amount of administrative assistance that Mrs Forsyth provided to Mr Forsyth. Also, as Mrs Forsyth was being paid a salary of £40,000 in 2015, whilst working less than half as many hours as a full-time employee, Mr Forsyth's submission is effectively that it would have been reasonable to pay Mrs Forsyth the equivalent to

an annual full-time salary of about £100,000. The Authority considers this to be clearly unreasonable and excessive for the nature of the work she was doing.

Knowledge of members of the Remuneration Committee of Mrs Forsyth's remuneration

34. *Mr Forsyth did not seek to conceal the level of Mrs Forsyth's remuneration from members of the Remuneration Committee. Of the members of the Remuneration Committee during the Relevant Period, the Chairman of the Board approved Mrs Forsyth's remuneration repeatedly, the Chairman of the Remuneration Committee did so on occasion, another member was informed of the precise salary split by Mr Forsyth in May 2015, and the evidence of the other member was either that he was content for the precise amount to be paid to Mrs Forsyth to be left to Mr Forsyth or that the Remuneration Committee probably did agree the £40,000 salary figure in May 2015, but did not see the document which recorded this and was subsequently signed by the Chairman of the Board. At no point during the Relevant Period did any individual member of the Remuneration Committee object to the amount of Mrs Forsyth's remuneration.*
35. The Authority acknowledges that the Chairman of the Board signed the documents that Mr Forsyth created regarding the payment of all or part of his bonus to Mrs Forsyth, and the false minutes setting out Mrs Forsyth's level of salary between 2013 and 2015. The Authority also acknowledges that the Chairman of the Remuneration Committee approved the payment of the March 2011 additional bonus to Mrs Forsyth, and that another member of the Remuneration Committee, who had joined the committee in 2014, was informed by Mr Forsyth in May 2015 in an email covering a number of points, that at that point Mr Forsyth's salary was split so that he received £110,000 and Mrs Forsyth received £30,000 (although the member told the Authority that they did not read that part of the email). The Authority also acknowledges that there is no evidence that any member of the Remuneration Committee objected to the amount of Mrs Forsyth's remuneration during the Relevant Period.
36. However, the Remuneration Committee as a whole was not aware of, and did not agree, in each of the years of the Relevant Period the level of remuneration that Mrs Forsyth was receiving, nor the method by which her remuneration was being determined. Mr Forsyth could, and should, have ensured that Mrs Forsyth's remuneration was determined by the Remuneration Committee in the same way as for other SBMIA employees, yet he decided not to take this approach. In particular, in May 2015 Mr Forsyth arranged for £40,000 of his salary to be paid to Mrs Forsyth, in circumstances where he was aware that SBMIA's Remuneration Policy provided that SBMIA's remuneration framework should be applied consistently to all employees, with no 'special arrangements'. The fact that the Chairman of the Board approved the payments, and that another member was sent an email which mentioned Mrs Forsyth's current salary in May 2015, does not negate the fact that Mr Forsyth was aware that he was arranging for Mrs Forsyth to receive remuneration in excess of what was justified for the work she was undertaking without the Remuneration Committee's knowledge or approval. In the Authority's view, by doing so Mr Forsyth failed to act with integrity.

Advice from SBMIA's external auditors

37. *Mr Forsyth's actions were consistent with advice received by SBMIA from its external auditors. According to a minute of a meeting dated 6 February 2014, the external auditors advised that "if [SBMIA] was to have a PAYE inspection then they may try to*

recover additional tax from [Mr Forsyth] on the basis that he does not take all his salary and gives some to [Mrs Forsyth]. [The external auditors] told Mr Forsyth that the remuneration committee should have something in writing to state the amount paid to [Mr Forsyth] and then an amount paid to [Mrs Forsyth] and that the bonus should state to [Mrs Forsyth] only." The external auditors did not suggest that revenue law required anything other than the proper documentation of the fact that the amounts were to be paid to Mrs Forsyth. It should not be held that Mr Forsyth lacked integrity, given that the relatively informal manner in which he proceeded, and the lack of retained tangible evidence as to the activities carried out by Mrs Forsyth, was consistent with the advice provided by SBMIA's external auditors.

38. The external auditors' advice was not intended as a review of the arrangements for Mrs Forsyth's employment, nor advice as to the legitimacy of those arrangements. Rather, it gave an outline of the correct procedure to adopt, pointing out some concerns that it had noted. This is apparent from a letter that the external auditors sent to another regulatory body in 2017, which provided further information about the advice they had provided to SBMIA and Mr Forsyth in 2014. They stated that they were concerned that the bonus paid to Mrs Forsyth was linked to the bonus due to Mr Forsyth and that Mrs Forsyth's salary had not been agreed by the Remuneration Committee, and that they advised Mr Forsyth that in future the Remuneration Committee should agree her salary and bonus, that any bonus paid to Mrs Forsyth should not be linked to his earnings and that Mrs Forsyth's salary should be commensurate with the services carried out by her for SBMIA. They also stated that they were informed that Mrs Forsyth did some administrative work from home and provided some hospitality services, but did not obtain any evidence as to her employment duties.
39. As the Remuneration Committee did not agree Mrs Forsyth's salary or bonus at any point during the Relevant Period, half of Mr Forsyth's bonus in 2015 was paid to Mrs Forsyth and as, in the Authority's view, Mrs Forsyth's salary was not commensurate with the work she carried out, the Authority does not consider that Mr Forsyth acted consistently with advice given by SBMIA's external auditors.

The March 2011 and February 2014 bonus payments

40. *There is no basis not to treat at face value the contents of the document, signed by the Chairman of the Remuneration Committee in March 2011, which stated that the Remuneration Committee agreed to make an additional, discretionary bonus payment of £10,000 to Mrs Forsyth. As it was signed by the Chairman of the Remuneration Committee, it cannot be alleged that it by-passed him.*
41. *There is ample evidence to support the contention that the work done by Mrs Forsyth was sufficient to make both the March 2011 additional bonus payment and the February 2014 bonus entirely permissible.*
42. The Authority considers that Mrs Forsyth only did a limited amount of work in the years preceding the March 2011 additional bonus payment and the February 2014 bonus, and that this work did not justify the bonuses of £10,000 and £12,500 respectively that she received on those two occasions. The Authority considers that, although these bonus payments were not all or part of the bonus that the Remuneration Committee had approved to be paid to Mr Forsyth, Mr Forsyth deliberately arranged them when he was aware that they were not justified, and in doing so failed to act with integrity.

Remuneration Committee Minutes

43. *The allegation that the documents created in 2013, 2014 and 2015 evidencing the finally determined split of the salary between Mr and Mrs Forsyth were drafted by Mr Forsyth deliberately to give the misleading impression that the Remuneration Committee had agreed these payments is unfair. Whilst it is accepted that the heading "Minutes of the Remuneration Committee" was inapposite in that, in each case, the document is not a record of a discussion which took place at a Remuneration Committee meeting, the document does accurately record the conclusions of the decision-making procedure adopted by the Remuneration Committee.*
44. *Moreover, the documents were not designed to mislead. The Chairmen of the Board and of the Remuneration Committee approved and signed documents on this basis, another member of the Remuneration Committee was aware of the split, and the other member was content to approve a global figure and leave the precise split to be determined by one of the Chairmen.*
45. The Authority considers that the additional minutes created in 2013, 2014 and 2015 were clearly false and misleading, as they purported to record a decision of the Remuneration Committee regarding the split of Mr Forsyth's salary with Mrs Forsyth, when the Remuneration Committee had not agreed or even discussed the split. As Mr Forsyth prepared these minutes when he was aware that they were misleading, the Authority considers that he acted without integrity. The Authority considers that the fact that the Chairman of the Board signed the false minutes does not mitigate Mr Forsyth's misconduct.

Misleading the PRA

46. *Mr Forsyth did not act without integrity in sending the Remuneration Committee "minutes" in their final form to the PRA. They represented the final conclusions of the Remuneration Committee, as signed by the Chairman of the Board, setting out the ultimate result of the procedure approved by that committee. It was perfectly reasonable for Mr Forsyth, in response to the PRA's request for the minutes of the Remuneration Committee to send, in respect of each relevant year, (i) the document which contained the narrative and chronological record of the matters discussed at the meeting, and (ii) the separate document which set out the final results of the process adopted by the Remuneration Committee for determining Mr and Mrs Forsyth's salary.*
47. The Authority has concluded that Mr Forsyth acted recklessly in sending the false minutes to the PRA and failing to provide all copies of minutes that had been prepared, with the result that the PRA had an incomplete picture of what had (and had not) been agreed by the Remuneration Committee in respect of Mr and Mrs Forsyth's remuneration. In responding to the PRA, Mr Forsyth was aware of the PRA's request and of the documents that were being sent, and therefore that there was a risk that the PRA would be misled as to what had been agreed in the Remuneration Committee meetings.

Misleading SBMIA's Board of Directors

48. *The text which Mr Forsyth suggested should be omitted from the external auditor's report did not relate to, or affect any substantive opinion or determination of, the auditor. The auditor's terms of reference were to consider whether SBMIA had been accounting for PAYE correctly on Mr and Mrs Forsyth's salaries for the year ended 5*

April 2015 and the period 6 April to November 2015. The auditor clearly concluded that SBMIA had accounted correctly in respect of these matters.

49. *Mr Forsyth asked for details of his and Mrs Forsyth's remuneration to be removed out of concern with the extent to which the report would be circulated. It was perfectly proper for Mr Forsyth to request the omission of confidential details that it was not necessary to include, to ensure that sensitive information did not enter the public domain. The external auditor was not asked to consider whether the amount paid to either Mr or Mrs Forsyth was permissible under the relevant tax regime or reasonable, and nothing in Mr Forsyth's suggested amendments related to these issues.*
50. *Other Board members were aware of the allegation regarding the payment of Mr Forsyth's salary to Mrs Forsyth and could have commissioned a factual investigation into whether Mrs Forsyth carried out genuine work in the business, but chose not to do so. Mr Forsyth could not have commissioned such an investigation, as it would have been an investigation into his own veracity. Other Board members were also involved in deciding on the scope of the external auditor's report and did not raise any concerns with it.*
51. *As the CEO of SBMIA and an approved person, Mr Forsyth must have realised that it was not appropriate and was a clear conflict of interest for him to be involved in deciding on the scope of a formal investigation of allegations concerning his conduct. However, not only did he participate in deciding on the scope of the investigation, but the instructions to the external auditor that he proposed to another Board member did not reflect the focus of the allegations raised, which concerned the splitting of his salary with Mrs Forsyth. Instead his proposal was that the external auditor examine SBMIA's reporting to HMRC in respect of his and Mrs Forsyth's salaries and did not refer to the splitting of his salary. Even though the other Board member could have objected to the proposed instructions or insisted that the salary splitting allegation be examined, that does not mitigate the fact that it was inappropriate for Mr Forsyth to participate in agreeing the scope of the investigation.*
52. *Further, the Authority considers it was not appropriate for Mr Forsyth to ask the auditor to remove details of his and Mrs Forsyth's remuneration from its report, even though it might not have been necessary for the auditor to include that information in order to fulfil the requirements of the investigation, and notwithstanding any confidentiality concerns, in circumstances where he was aware that this would mean that the Board would not be aware of the high level of remuneration being paid to Mrs Forsyth and therefore would not be able to scrutinise properly the allegations regarding these payments.*

Integrity

53. *Mr Forsyth acted at all times with integrity. Integrity is principally a subjective concept, defined for the purposes of disciplinary proceedings in the case of Wingate v SRA [2018] 1 WLF 3969. In that judgment it was stated that integrity represents "a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members ... Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty."*
54. *This test reflects the approach by the Tribunal and its predecessors, as expressed in Hoodless & Blackwell v Financial Services Authority [2003]: "In our view 'integrity'*

connotes moral soundness, rectitude and steady adherence to an ethical code. A person lacks integrity if unable to appreciate the distinction between what is honest and dishonest by ordinary standards. (This presupposes, of course, circumstances where ordinary standards are clear. Where there are genuinely grey areas, a finding of lack of integrity would not be appropriate.)"

55. *In considering the application of the test for integrity to the facts of this case, it should be borne in mind that whilst Mr Forsyth was an approved person who was obliged to act with integrity in carrying out his functions as CEO of SBMIA, he was not a professional lawyer, accountant or tax adviser who had, or held himself out as having, particular specialist expertise in revenue matters. In forming his understanding as to what SBMIA could properly pay to himself and Mrs Forsyth by way of remuneration, Mr Forsyth acted in good faith and in a manner that he genuinely believed to be lawful and permissible. Such conduct does not demonstrate any lack of integrity.*
56. The Authority has concluded that Mr Forsyth did not act with integrity, for the reasons set out in paragraph 5.2 of this Notice. The Authority agrees that the Court of Appeal's judgment in *Wingate* sets out the relevant test for a lack of integrity for the purposes of disciplinary proceedings, and that it was noted in that judgment that the observations of the Tribunal's predecessor in *Hoodless & Blackwell* had met with general approval. The Authority considers that it was not concluded in *Wingate* that integrity is principally a subjective concept; rather, the judgment shows that it involves the application of objective ethical standards, with the objective assessment informed by the facts which the individual knew and their state of mind.
57. The Authority does not accept that Mr Forsyth genuinely believed that his actions were permissible. In particular, the Authority considers that Mr Forsyth was aware that Mrs Forsyth only carried out a limited amount of administrative work and that the level of remuneration she received during the Relevant Period for that work was clearly not justified. In any case, whatever Mr Forsyth's subjective belief as to the permissibility of his actions, the Authority does not consider that his actions were proper, judged by the standards of his profession.
58. Mr Forsyth was a CEO of a regulated insurance company, and accordingly was expected to behave to a high moral standard and to adhere to an ethical code. The Authority considers that by committing the acts set out in paragraph 5.2 of this Notice, which included deliberately arranging for his wife to be paid remuneration in excess of what was reasonable for the work she was undertaking in order to reduce his income tax liability, deliberately drafting false minutes and recklessly responding to the PRA, Mr Forsyth clearly acted without integrity during the Relevant Period.

The rules of the relevant tax regime

59. *No attempt has been made by the Authority to identify the relevant tax rules that apply to the payments made to Mrs Forsyth, in particular any rules which would suggest that there is any wrongdoing from a tax law perspective in a company paying an employee remuneration "in excess of what was reasonable for the work she was undertaking". This is a relevant issue as, if Mrs Forsyth's remuneration was permissible in accordance with the relevant tax laws, and it was determined according to a procedure approved by SBMIA involving its authorisation by a senior member of the Remuneration Committee, there is no basis for a finding of lack of integrity.*

60. *There are two High Court cases which are routinely referred to in this area. The case of Copeman v William Flood & Sons [1941] 1 KB 202, considered whether payments of remuneration to family members were “wholly and exclusively” laid out or expended for the purposes of the company’s trade, which is a different test to seeking to evaluate what is reasonable. The case of Moschi v Kelly 91950 – 1952) TC 433 disallowed excessive payments to a spouse, but solely on the basis that they had not been paid, rather than by any reference to their alleged reasonableness. Neither of these cases provides an answer as to whether, and if so how, a company might be permitted to value services which are provided to a CEO where, due to the fact they are provided out-of-hours and in the context of the CEO’s own home, they could not practically be provided by anyone other than a family member.*
61. *The decision of the First-Tier Tribunal (Tax) in the case of Evans v Commissioners for HMRC [2010] UKFTT 140 (TC) also supports the view that SBMIA’s and Mr Forsyth’s approach to Mrs Forsyth’s remuneration was permissible. In that case, the First-Tier Tribunal, applying the test in the Copeman case, held that it was required to consider proportionality, and did so on the basis of what the paying party would have been willing to pay to an unconnected third party in the relevant circumstances. Applying the First-Tier Tribunal’s approach to the circumstances of this case, the remuneration paid to Mrs Forsyth was proportionate in the light of (i) the anti-social evening/weekend nature of the work that Mr Forsyth required to be performed; (ii) the impracticality of actually hiring someone to do that work; and (iii) the ad hoc and urgent nature and volume of the work. Also, there is no reason to suppose that SBMIA would not have been entirely content to pay Mrs Forsyth what it in fact did as it was part of a “global figure” for Mr and Mrs Forsyth which it had approved. Moreover, the decision in Evans demonstrates that the issues in Mr Forsyth’s case involve a “genuine grey area”, such that a finding of a lack of integrity by Mr Forsyth would not be appropriate.*
62. *In addition, there is no requirement under HMRC tax rules that, in order for a salary increase or bonus to be permissible, there needs to be an additional element of personal performance or work as compared to previous years.*
63. The issue which the Authority has had to decide is not whether it was permissible from a tax law perspective for Mrs Forsyth to have received the amounts awarded, but rather whether Mr Forsyth acted with a lack of integrity in breach of Statement of Principle 1 (Integrity) of the Authority’s Statements of Principle for Approved Persons and Rule 1 (Integrity) of the Authority’s Individual Conduct Rules. In considering whether Mr Forsyth did act with a lack of integrity, the Authority has had regard to the relevant facts and evidence, and to the test for integrity as set out in the case of *Wingate* (see paragraph 56 above). The Authority has concluded that the deliberate and reckless acts and omissions of Mr Forsyth, as set out in paragraph 5.2 of this Notice, clearly demonstrate that he failed to act with integrity.
64. The Authority does, however, note that the First-Tier Tribunal’s judgment in *Evans*, and also its judgment in the case of *McAdam v Revenue & Customs [2016] UKFTT 838 (TC)* (which post-dated the Relevant Period), sets out a number of principles which, when applied to the facts in this case, support the Authority’s conclusions. One of these principles concerns a consideration of whether the payments were excessive or disproportionate and, as Mr Forsyth mentions (see paragraph 61 above), the First-Tier Tribunal held that the relevant test is what the paying party would have been willing to pay to an unconnected third party for the relevant services, and that this involves an assessment of proportionality. However, the Authority does not agree that SBMIA

would have considered it proportionate to pay an unconnected third party the remuneration that Mrs Forsyth was receiving for doing similar work. Instead, the Authority considers it more likely that SBMIA would have been willing to pay a far lower sum, of around £10,000 per year. The Authority notes that, when this matter was discussed by the Board in July 2016, a Board member, who was an experienced chartered accountant, noted that organisations often pay spouses a modest salary of around £5,000 to £10,000 for doing work similar to that carried out by Mrs Forsyth, and that Mrs Forsyth had initially received a modest salary but the figure had increased so that it was no longer a reasonable sum. Further, a part-time assistant at SBMIA, whose role was the most comparable to Mrs Forsyth's, was proposed a salary of £8,450 in 2015.

65. Other principles that can be derived from these judgments include that: the burden of proof is on an individual to satisfy the Tribunal as to the actual work carried out and volume of work; the Tribunal gives more weight to contemporaneous documentation and/or early accounts in evidencing the volume or duration of work carried out; and the Tribunal is prepared to look at the proportionality of even relatively small sums. Given the lack of contemporaneous, documentary evidence of work carried out by Mrs Forsyth, and that in interview Mr Forsyth was not able to state what additional duties Mrs Forsyth had carried out to justify the bonus payments she received, the Authority considers that applying these principles in this case also supports a finding that Mr Forsyth acted without integrity.
66. The Authority also does not agree that the issues in Mr Forsyth's case involve a "genuine grey area". The Authority considers it is clear, when judged against the objective ethical standards of the financial services industry, that Mr Forsyth's actions, which involved paying increasing and unjustified remuneration to a spouse without proper scrutiny, financially benefitting from that arrangement, and taking steps to conceal the arrangement, lacked integrity.

Limitation

67. *Pursuant to section 66 of the Act, action may not be taken after the expiry of the relevant period of years, beginning with the first day on which the Authority knew of the misconduct, unless a warning notice has been issued in that period, and the Authority is to be treated as knowing of misconduct for these purposes if it has information from which the misconduct can be reasonably inferred. For misconduct which took place before 25 July 2014, the relevant period is three years.*
68. *The Tribunal's decision in the case of Jeffrey v Financial Conduct Authority FS/2010/0039 sets out the relevant test for the purposes of considering limitation. This makes it clear that the limitation period starts to run when the Authority knows enough for it to be reasonable to investigate further.*
69. *By 6 November 2015, the Authority had been made aware of allegations that "[Mr Forsyth] has arranged ... to pay part of his salary and bonus to his wife who does not work in the business to reduce his tax liability thereby committing tax fraud. This has been ongoing since 2003." These allegations, although false and denied by Mr and Mrs Forsyth, were clear, specific and unequivocal and a sufficient basis for the Authority to investigate further. Accordingly, from this date the Authority had information from which Mr Forsyth's alleged misconduct could be reasonably inferred.*

70. *As the Warning Notice was issued on 24 April 2019, after the relevant three-year period had expired, the Authority is prohibited by statute from imposing any financial penalty in respect of misconduct that is found to have occurred prior to 25 July 2014.*
71. The Authority acknowledges that it received a letter (with attachments) containing such allegations more than three years prior to the date of the Warning Notice, and that if it was held that, as a result of these documents, the Authority knew of Mr Forsyth's misconduct, then the Authority would be prohibited from imposing any financial penalty in respect of that part of Mr Forsyth's misconduct that occurred prior to 25 July 2014.
72. The Authority also agrees that the relevant test for the purposes of considering limitation is set out in the case of *Jeffrey*. However, the Authority notes that the Tribunal in paragraph 338 of its decision made the following comments: "... A mere allegation or assertion unsupported by evidence would be unlikely to be regarded as sufficient to amount to knowledge of misconduct or as information from which it would be reasonable for the Authority to have inferred misconduct, although it might be expected to give rise to further enquiry. Knowledge of an allegation of misconduct is not the same as knowledge of the misconduct. As an investigation progresses more information may come to light as a result of which there comes a time when the Authority either knows, or it can reasonably be inferred from information which the Authority has, that there is substance to an allegation of misconduct in relation to a particular person. It is only at the latter stage that the time limitation begins to run in respect of that misconduct..."
73. The Authority has reviewed the letter and attachments and considers that, insofar as Mr Forsyth's misconduct prior to 25 July 2014 is concerned, they contain mere unsubstantiated allegations of misconduct. Some of these allegations are consistent with the Authority's view of Mr Forsyth's misconduct, but many are not. The only evidence provided in support of the allegation that the payment arrangements had been ongoing since 2003 are copies of the memo dated 7 February 2003 referred to in paragraph 4.4 of this Notice and of Mrs Forsyth's employment contract. However, the Authority considers these documents to be evidence that Mrs Forsyth was genuinely employed, accepts that Mrs Forsyth was a genuine employee and considers there was no misconduct by Mr Forsyth until February 2010. Accordingly, the Authority considers that it cannot reasonably be inferred from the letter and attachments that Mr Forsyth committed misconduct between 19 February 2010 and 24 July 2014. Instead, the Authority considers that this information might be expected to give rise to further enquiry, which is what in fact happened.

Sanctions

74. *Mr Forsyth is a man of unblemished character, who has spent over 30 years working in the marine insurance industry, and is highly respected within the financial services sector. The prohibition order that the Authority is proposing to impose, together with that which the PRA is proposing to impose, is the most draconian possible and will have the effect that Mr Forsyth will no longer be able to continue working in his current position at another insurance company.*
75. *For the reasons given, Mr Forsyth denies that he lacks integrity and submits that he is fit and proper and that no prohibition order is needed. Should the Authority disagree with Mr Forsyth's submissions as to the facts, it will still need to consider carefully*

whether a prohibition order, particularly a full prohibition order, is necessary for the protection of the public.

76. *Mr Forsyth submits that he has not committed any misconduct and so no financial penalty should be imposed. However, if the Authority disagrees with Mr Forsyth's submissions as to the facts, it will need to consider carefully whether a further reduction to the financial penalty is justified on the grounds of proportionality or a reduction in the alleged seriousness level of the misconduct.*
77. For the reasons set out in paragraph 5.2 of this Notice, the Authority has concluded that Mr Forsyth failed to act with integrity. As set out in paragraph 6.6 of this Notice, in light of the serious nature of Mr Forsyth's misconduct, the Authority considers that Mr Forsyth is not fit and proper and poses a serious risk to consumers and to confidence in the financial system, and that it is therefore appropriate to impose the Prohibition Order. In reaching this conclusion, the Authority has carefully considered the effect that the Prohibition Order will have on Mr Forsyth, and has taken account of his many years working in the insurance industry, but considers that the Prohibition Order is necessary given the nature of Mr Forsyth's misconduct.
78. The Authority proposed to reduce the financial penalty for proportionality reasons at Step 2 of the penalty calculation when it gave Mr Forsyth the Warning Notice. The Authority does not consider that any further reduction for proportionality reasons is necessary and maintains its view that Mr Forsyth's misconduct should be assessed as seriousness level 4, in particular because it was committed partly deliberately and partly recklessly.