FINAL NOTICE

To: **Kevin Peter Wells**

IRN: **KPW01016**

Address: **4 Deanery Crescent**
Leicester
LE4 2WD

Date: **18 April 2013**

1. ACTION

1.1. For the reasons given in this Notice, the Authority hereby:

i) censures Mr Wells publicly for breaches of Statements of Principle 6 and 7 in his capacity as an approved person at MPAS during the Relevant Period; and

ii) makes the Prohibition Order prohibiting Mr Wells from performing any significant influence function in relation to any regulated activity carried on by any authorised person,

exempt person or exempt professional firm because he is not a fit and proper person for such a role in terms of his competence and capability. This order takes effect from 18 April 2013.

1.2. Mr Wells' misconduct merits a financial penalty. Were it not for Mr Wells' current financial difficulties and verifiable evidence that the imposition of a penalty would result in serious financial hardship, the Authority would have imposed a financial penalty of £58,500. In that event, Mr Wells would have qualified for a 20% discount (Stage 2) in accordance with the Authority's executive settlement procedure, reducing the penalty to £46,800.

1.3. The public censure will be issued on 18 April 2013 and will take the form of this Final Notice, which will be published on the Authority's website.

2. SUMMARY OF REASONS

2.1. On the basis of the facts and matters described below, the Authority sanctions Mr Wells for breaches of Statements of Principle 6 and 7 in performing the significant influence controlled function of CF1 (Director) at MPAS during the Relevant Period.

2.2. In summary, the Authority considers that Mr Wells failed to exercise due skill, care and diligence in managing the business of the firm for which he was responsible in his controlled function, in breach of Statement of Principle 6, in that he:

a) failed to take reasonable steps to inform himself about the regulatory requirements to which MPAS was subject

as a SIPP scheme operator and to which he was subject as an approved person;

b) expanded the business of MPAS without adequately identifying, monitoring or mitigating the risks associated with that expansion; and

c) acted without due regard to compliance issues and permitted MPAS staff to do similarly.

2.3. The Authority also considers that Mr Wells failed to take reasonable steps to ensure that the business of MPAS, for which he was responsible in his controlled function, complied with the relevant requirements and standards of the regulatory system, in breach of Statement of Principle 7, by failing to:

a) take steps to ensure that MPAS complied with its regulatory requirements under the CASS rules; and

b) take steps to ensure that MPAS had adequate systems and controls in place to enable it to comply with its regulatory requirements, in particular, the due diligence it conducted on third parties and SIPP assets, its record keeping of SIPP assets and its use of management information.

2.4. The Authority considers that the nature and seriousness of the breaches outlined above would have warranted the imposition of a financial penalty, but for evidence that imposing such a penalty would have caused Mr Wells serious financial hardship. By failing to ensure that MPAS properly assessed the risks associated with accepting esoteric investments into its schemes, Mr Wells potentially exposed

scheme members to an increased risk of loss. Mr Wells also potentially exposed scheme members to the risk of loss of cash funds held on their behalf by his failure to ensure that MPAS complied with the CASS rules. The Authority therefore censures Mr Wells publicly instead.

2.5. By virtue of the breaches outlined above, the Authority also considers that Mr Wells has failed to meet minimum regulatory standards in terms of competence and capability and that he is not fit and proper to perform significant influence functions at any authorised person, exempt person or exempt professional firm. Accordingly, the Authority imposes the Prohibition Order on him.

2.6. This action supports the Authority's consumer protection operational objective.

3. DEFINITIONS

3.1. The definitions below are used in this Final Notice:

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

"APER" or "the Statements of Principle" means the Statements of Principle and Code of Conduct for Approved Persons set out in the Authority's Handbook;

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

"Board" means the board of directors of MPAS;

"MPAS" means Montpelier Pension Administration Services Limited;

the "MPAS SIPPs" means the two SIPP schemes operated by MPAS, being the Montpelier SIPP and the MPAS SIPP;

"CF1" means the Authority's controlled function of Director;

"CF10" means the Authority's controlled function of Compliance Oversight;

"CASS" means the Client Assets Handbook;

"Compliance" means the compliance staff at MPAS;

"DEPP" means the Decision Procedures and Penalties Manual in the Authority's Handbook;

"EG" means the Enforcement Guide;

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

"HMRC" means Her Majesty's Revenue and Customs;

"IFA" means independent financial adviser;

"Introducers" means the IFAs with whom MPAS had entered into agreement for the referral of new SIPP business;

"Mr Wells" means Kevin Peter Wells;

"Principles" means the Authority's Principles for Businesses;

the "Prohibition Order" means the order to be made pursuant to section 56 of the Act prohibiting Mr Wells from performing any significant influence function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm;

the "Relevant Period" means the period between 22 July 2009 and 21 January 2011;

"SIPP" means a self-invested personal pension; and

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

4. FACTS AND MATTERS

Background

4.1. Mr Wells was approved by the Authority to perform the controlled function of CF1 at MPAS, a SIPP scheme operator based in Leicester, from 22 July 2009 until 13 May 2011. MPAS operated two schemes, the Montpelier SIPP and the MPAS SIPP, which together comprised approximately 1,400 members during the Relevant Period.

4.2. As part of the SIPP Thematic Review, the Authority conducted a supervisory visit to MPAS in October 2010 and identified numerous regulatory failings, which it formally communicated to MPAS on 21 January 2011. Between January and May 2011, MPAS made provision for an extensive audit programme and review of compliance procedures. However, on 12 May 2011, before the results of that review were fully implemented, MPAS sold its two schemes to another SIPP operator. Mr Wells' approval in relation to MPAS was withdrawn voluntarily on 13 May 2011, and MPAS voluntarily applied to cancel its Part IV permission on 16 June 2011. MPAS' cancellation was effected on 14 October 2011.

4.3. MPAS had permission to carry on the following regulated activities:

i) agreeing to carry on a regulated activity;

ii) arranging (bringing about) deals in investments;

iii) dealing in investments as principal;

iv) establishing/operating/winding up a personal pension scheme; and

v) making arrangements with a view to transactions in investments.

4.4. During the Relevant Period, MPAS had three other individuals approved as CF1, one of whom was also approved as CF10. Mr Wells, the managing director, was the only CF1 employed on a full-time basis and remunerated directly by MPAS. Mr Wells was responsible for the day-to-day running of MPAS and was the only CF1 with oversight of all aspects of the business. Mr Wells also had specific responsibility for MPAS' client asset arrangements and compliance with the Authority's CASS rules.

Mr Wells' understanding of the business of MPAS and its regulatory requirements

SIPP operation

4.5. Mr Wells was recruited as the managing director of MPAS in July 2009 with the intention that he would drive an initiative to promote MPAS' SIPP schemes to a wider range of IFAs, and thereby expand the business of MPAS. Mr Wells was considered suitable for this role based on his previous experience at a large SIPP operator where he was a CF1 (Director). However, that role and his experience was almost exclusively sales based and Mr Wells therefore had no

experience in management at a regulated company. Mr Wells relied on a non-approved administrator at MPAS for her experience of running SIPPs, including regulatory reporting and compliance knowledge.

MPAS' authorisation

4.6. As managing director, Mr Wells did not understand the meaning and effect of the specific regulated activities which MPAS was permitted by the Authority to conduct and, as such, could not ensure that MPAS conducted only such business as fell within the range of those activities. Mr Wells did not take steps to inform himself of the specific types of regulated business which MPAS was authorised to conduct and thereby failed to equip himself to ensure that MPAS operated within the scope of its permission. Instead, he considered it sufficient to rely on MPAS' Introducers to refer only such business as MPAS was permitted to conduct, without itself having any internal controls in place.

4.7. Further, as managing director, Mr Wells did not understand his own specific regulatory responsibilities as an approved person, understanding only that he was broadly responsible for the activities of MPAS on a day-to-day basis, but without regard to his specific regulatory obligations as CF1. Specifically, Mr Wells was not familiar with his regulatory responsibilities as a significant influence function holder pursuant to the Authority's Code of Practice for Approved Persons as set out in the Authority's Handbook.

Expansion of the business

4.8. During 2009, the year after Mr Wells became managing director of MPAS, the number of individual SIPPs under MPAS' administration almost doubled. Prior to Mr Wells' employment, MPAS' schemes comprised 365 members (acquiring 97 new members in 2008). In 2009, that number increased to 674 (with 309 members newly acquired in 2009). This rate of growth increased in 2010, and by January 2011, MPAS' two schemes comprised approximately 1,400 members.

4.9. During this period of rapid expansion, MPAS moved away from accepting exclusively standard, 'vanilla' investments, such as trustee investment plans and cash funds, and began accepting a large proportion of more complex, esoteric and unregulated investments into its schemes, such as life settlement funds, overseas property, hotel rooms and unlisted shares.

4.10. Non-standard investment types typically hold additional risk for members because:

i) they are more likely to be deemed liable to tax by HMRC and thereby incur significant additional tax charges;

ii) they may be inappropriate investments for members to hold in their SIPPs on the basis that they are not readily realisable in the event of a member's death, or if a member requires that they be sold at short notice; and

iii) they may be of a specialist nature such that they pose practical difficulties in terms of maintenance and

administration by the SIPP operator, thereby requiring enhanced and/or specialised systems and controls.

4.11. By March 2011, approximately 40% of the investments in the Montpelier SIPP were non-standard, 33% of which were hotel room investments. However, Mr Wells did not understand the risks and regulatory implications associated with such rapid growth and MPAS' unusually wide offering of high-risk investments, and he consequently failed to make adequate provision to mitigate those risks.

Effect of expansion on MPAS' capital adequacy

4.12. The high proportion of non-standard investments held in the schemes presented a number of risks to the adequacy of MPAS' regulatory capital position. Mr Wells was not aware of these risks, namely that:

i) if HMRC deemed these non-standard investments to be liable to tax, both the member and MPAS (as the HMRC registered scheme administrator) would have incurred significant tax charges. MPAS' liability for these scheme sanction charges would have increased in the event that the member could not to pay their own liability. MPAS therefore required sufficient additional capital to be available to meet any such liability;

ii) if tax was levied and MPAS failed to pay the tax due, HMRC could have sought to deregister the relevant MPAS scheme. This would have immediately given rise to penalty tax charges should HMRC have seen fit to do so, thereby exposing members to further significant additional loss; and

iii) in the event that MPAS wound up the schemes (one of the activities within its part IV permission) either as a result of insolvency or otherwise, the high proportion of esoteric and/or illiquid investments would significantly prolong the time and resources required to complete an orderly wind down. Additional capital provision would therefore have been needed to cover the additional costs associated with a protracted wind down.

Effect of expansion on compliance resources

4.13. The increase in the number of SIPPs under MPAS' administration during the Relevant Period, and the increasingly non-standard nature of the investments accepted, was not matched by increased compliance resource.

4.14. Mr Wells focused on hiring additional administration staff to support the new business coming in. Administration staff did not deal with compliance issues. The number of administration staff grew from approximately three employees in 2008 to approximately 11 in 2010. Mr Wells did not understand or anticipate that specific additional resource would also be required in terms of compliance budget and dedicated compliance staff, in order to deal with the increased regulatory requirements which accompanied MPAS' growth and the high proportion of esoteric investments in its SIPPs. As such, Compliance was significantly under-resourced during the Relevant Period and was unable to discharge its regulatory function adequately (as described at paragraphs 4.17 to 4.18 below).

4.15. In response to this, the CF10 repeatedly raised the lack of compliance resource with Mr Wells. Compliance at MPAS was

funded by another group company, rather than by MPAS itself, and Mr Wells obtained approval from that company for significant funds to hire additional administration staff and purchase enhanced IT systems. However, he did not also seek approval for additional funds to be allocated to compliance costs. This was despite being aware from the CF10 that compliance was under-resourced. Mr Wells did not then make reasonable further efforts to obtain funding specifically for compliance.

MPAS' compliance arrangements

Compliance staffing

4.16. The compliance function at MPAS was executed by the CF10, who was assisted by a non-approved administrator. Both the CF10 and assisting administrator were employed by the Montpelier Group rather than by MPAS itself, and provided compliance oversight for multiple companies within the Montpelier Group at once, devoting approximately two thirds of their time to the other entities in the Montpelier Group and were based permanently in another office.

4.17. In light of the fact that Compliance worked on a part-time basis only and was based outside of its offices, Mr Wells ought to have ensured that Compliance was sufficiently involved in the day-to-day business of MPAS to monitor the business thoroughly and identify compliance risks before they crystallised. Instead, he was content to communicate with Compliance only as and when specific compliance issues presented themselves.

Compliance access to client and management information

4.18. Compliance should have had regular sight of the flow of information at MPAS and full and up-to-date knowledge of the business transacted. Mr Wells failed to ensure that client and management information was supplied to Compliance with the result that Compliance was not adequately immersed into the business such as to be able to obtain this information regularly and promptly itself.

4.19. Prior to the Relevant Period and MPAS' growth into non-standard investments, Compliance was able to function adequately by requesting documentation from internal MPAS staff as and when required, given the small size of the firm and its narrow "vanilla" investment offering. However, by January 2010, the business had grown, the scope of its offering had widened, and new IT systems were in place for storage of all client and management information. While staff based in MPAS' offices had access to the main server, it was not remotely available to Compliance, which could only access the system if visiting MPAS' offices. Mr Wells ought to have ensured that Compliance had full access to all the information it required.

4.20. At some point between January 2010 and April 2010, Compliance raised concerns with Mr Wells about its lack of remote access to the IT systems. Compliance escalated these concerns to two directors of MPAS' parent company, one of whom was also on the Board at MPAS. Remote access was finally provided to Compliance in September 2010. Mr Wells was therefore aware, or should reasonably have been aware, that for a period of at least nine months, from January 2010

(when the new systems were in place and the volume and nature of MPAS' business had changed considerably) until September 2010 (when Compliance was given full access to IT systems), that compliance issues at MPAS were not being adequately attended to and he failed to take reasonable steps to rectify this position.

Due regard to compliance matters

4.21. This failure to ensure Compliance was embedded into the business led to MPAS staff failing to check regulatory documentation with Compliance for review and sign-off, such as sophisticated investor letters. Mr Wells was not aware, as managing director, that his staff frequently conducted themselves in this way and did not identify that Compliance was itself unable to monitor staff practice in this regard.

4.22. Mr Wells also demonstrated a personal disregard for established compliance procedures at MPAS by failing to adhere to those procedures himself. Compliance had sent an email to Mr Wells stating that all promotional material, specifically including any internet material, required Compliance review and sign-off. Mr Wells arranged publication of an advertisement feature article for MPAS, without ensuring that it was sent to Compliance for approval when he was aware from an email sent to him that Compliance needed to approve all promotional materials.

4.23. Compliance only identified serious instances of MPAS staff bypassing Compliance on an *ad hoc* and reactive basis:

i) for example, Compliance was made aware by an Authority consumer alert of the fact that a scheme into which MPAS

members had invested approximately £1 million was an unregulated and illegal collective investment scheme run by an unauthorised investment company. Subsequent enquiries by Compliance revealed that Mr Wells had received a letter from the investment company in question four months earlier, notifying MPAS that the company had been injuncted by the Authority and was the subject of an investigation. Mr Wells did not pass the letter on to Compliance and instead chose to speak to the investment adviser concerned who told Mr Wells that his clients were aware of the Authority's intervention. Therefore no action was subsequently taken to protect potentially affected scheme members;

ii) Compliance discovered that the promotional article arranged by Mr Wells had been published only after reading the industry magazine in which it appeared.

Client asset arrangements

4.24. In addition to his general oversight responsibility as managing director of MPAS, Mr Wells took on specific responsibility for MPAS' client asset arrangements and compliance with the CASS rules. However, he did not understand, nor did he seek to make himself aware of, the specific CASS requirements to which MPAS was subject. MPAS was, in fact, in breach of the CASS rules throughout the Relevant Period.

4.25. During the Relevant Period, MPAS failed to hold client assets in accordance with the Authority's CASS rules, exposing customers to a risk of loss of assets in the event that MPAS failed. It was identified as a result of the Authority's supervisory visit in October 2010 that MPAS had failed to:

i) designate accounts in which client money was pooled as being client accounts rather than MPAS accounts, creating a risk of client money being co-mingled with that of MPAS, in breach of CASS 7.8.1R(1)(b);

ii) have trust status notification letters in place in relation to each of its client accounts, in breach of CASS 7.8.1R(2);

iii) carry out reconciliations between its own records of physical shares and those of the custodian bank, in breach of CASS 6.2.2 and CASS 6.5.6; and

iv) ensure that its client asset records accurately reflected the assets held by individual clients at all times. MPAS did not have systems in place to enable it readily to ascertain client positions and, as such, its records did not give an accurate and up-to-date reflection of client assets held.

4.26. In August 2010, Mr Wells gave assurance to Compliance that the firm was operating in accordance with its CASS requirements, and this assurance was provided to the Authority. However, Mr Wells gave that assurance without ensuring that this was in fact correct.

Due diligence and monitoring of Introducers

4.27. Mr Wells acted as business liaison between MPAS and its Introducers, making personal visits to their offices every two months on average. His visits were designed to encourage referrals. However, Mr Wells did not consider that MPAS had an obligation to satisfy itself that the advice given to SIPP members by Introducers did not present any clear consumer detriment, nor did he consider that MPAS should take steps to monitor trends in the types of business being referred, in

order to identify any risks such as financial crime. No procedures were in place to such effect.

4.28. The Authority had explicitly set out in its SIPP thematic report published in September 2009 that a SIPP operator has a duty to members to satisfy itself that the advice given by IFAs to those members does not cause consumer detriment (by way of unsuitable SIPP investments, for example), and to contact members where it has concerns. The Authority's thematic report, which Mr Wells read at the time of publication, included guidance which stated that a SIPP operator has an express duty to members to conduct an adequate assessment of the Introducers from which it accepts business, and a duty to analyse management information in order to identify trends in the sources of its business which might indicate risk to members or MPAS itself (including financial crime).

4.29. MPAS' due diligence on the Introducers from whom it accepted new business consisted only of a search on the Financial Services Register each time an application for new business was received to ensure that the introducing firm was still authorised. MPAS did not carry out any other monitoring, such as identifying and analysing referral trends, which would have enabled it to be satisfied that Introducers were recommending SIPP investments only where it was suitable to members and only where the investment type was suitable to MPAS. Indeed, Mr Wells considered that MPAS' Register check on Introducers was over and above what should reasonably be expected of a SIPP operator, because, he asserted, other SIPP operators tended not to conduct any due diligence on Introducers at all.

4.30. Moreover, MPAS' lack of adequate monitoring of Introducers was identified by Compliance when the Authority's report was published, and Compliance made a specific recommendation to Mr Wells and to the Board that appropriate procedures be implemented. While one procedure was put in place in early 2010 as a result (an 'appropriateness test' which was intended to assist MPAS in verifying that a new SIPP applicant was best suited to a SIPP rather than an ordinary personal pension), Mr Wells failed to ensure that this was procedure was properly adhered to by staff processing new business.

4.31. After the Authority had communicated its concerns to MPAS in January 2011 regarding the firm's lack of due diligence and monitoring of Introducers, Compliance conducted an audit which identified a trend of exclusively high-risk business being referred by certain Introducers, indicating that those Introducers were not referring investors to MPAS according to suitability alone, and importing significant risk to members and MPAS alike. Compliance identified two Introducers as having habitually referred an unacceptably high volume of high-risk investments, or as having advised clients who were not sophisticated investors to place the entirety of their SIPP funds into high-risk investments. As a result, Compliance recommended to the Board that MPAS terminate its relationship with those Introducers, and termination took effect in December 2010.

Due diligence of new assets to be accepted into MPAS' schemes

4.32. MPAS' procedures for assessing the suitability of new investments were not adequately strengthened during the Relevant Period for the higher-risk products which it had

begun to accept. As described at paragraphs 4.10 to 4.11 above, Mr Wells did not understand the nature of the attached risks and consequently did not take adequate steps to ensure that MPAS' assessment procedure was sufficiently robust.

4.33. MPAS' procedure for assessing new applications for SIPP investment began with the New Business team, which consisted of two administrators. New applications were first vetted by the New Business team, which would assess those applications by reference to a list of approved investment types. Those not appearing on the list would be classed as either low-risk/standard, or higher-risk/non-standard and therefore in need of specific due diligence in order to ascertain suitability. No procedure was in place at this early vetting stage to ensure that the New Business team's assessment of an investment as low or high risk was correct, because Mr Wells assumed that the individuals assessing those investment applications "would just know".

4.34. Those investments identified as non-standard were then referred for assessment by a management committee convened by Mr Wells (later referred to within MPAS as the investment committee). This committee was made up of Mr Wells, a sales manager and two administrators, but had no Board or Compliance involvement. Mr Wells considered that Compliance in particular did not have adequate knowledge to contribute, and therefore did not include it in the process of assessing the suitability of new investments.

4.35. The committee's assessment of new investments was generally limited to whether those investments accorded with

HMRC requirements. There were no agreed considerations for the committee, such as the suitability of terms and conditions (including exit terms), proposed valuation methodologies, or illiquidity. Further, there was no specific due diligence carried out on the providers of new investment types, nor on the background information provided to MPAS by the Introducers. Nor was specific consideration given to whether a new asset type might, in addition to being potentially unsuitable for members, have regulatory implications for MPAS itself. Further, committee meetings were not thoroughly documented so that investment acceptance decisions could be readily accessed and understood by others, and they were not formally reported to the Board or Compliance.

4.36. In or around February 2011, during the course of remedial work undertaken following the Authority's supervisory visit, MPAS identified the extent of the risk to which it had exposed members by accepting large numbers of non-standard investments and ultimately took the decision to cease accepting hotel rooms investments and unregulated investments altogether (albeit three months before MPAS sold its schemes).

Identification and monitoring of SIPP assets

4.37. MPAS did not have adequate systems and controls in place to monitor and administer SIPP assets on an ongoing basis. Mr Wells did not ensure that there was an appropriate system in place by which MPAS could identify the exact assets held for individual members, nor was there a system in place by which MPAS could instantaneously ascertain the current value of those assets (for example through real-time price feeds).

Instead, MPAS relied on obtaining delayed valuations upon request to the relevant investment platforms. Mr Wells did not make reasonable effort during the Relevant Period to identify and implement a method by which MPAS could regularly and closely monitor the value of assets held for individual members. It was only after the Authority identified this weakness in MPAS' systems and controls that Mr Wells ensured, in February 2011, that MPAS acquired an IT system which provided a regular and accurate feed of information on the nature and current value of assets.

Due diligence and monitoring of discretionary fund managers

4.38. A proportion of the assets administered by MPAS were managed by discretionary fund managers during the Relevant Period, and MPAS typically entered into agreements with those discretionary fund managers upon recommendation by MPAS' Introducers. However, no due diligence was undertaken in relation to the recommended fund managers, nor was any ongoing monitoring undertaken to ensure that those with responsibility for management of members' assets were doing so properly. One of MPAS' administrators was responsible for overseeing those relationships, including ensuring that agreements were in place for all fund managers. However, without adequate oversight from Mr Wells, MPAS had in fact failed to put agreements in place in every case, conferring responsibility for the management of its members' assets to all but one of its fund managers (of which there were approximately 20) without ensuring that terms of business had been agreed to govern that arrangement. Mr Wells was not aware that these agreements

had not been put in place until notified by the Authority in January 2012, after its supervisory visit.

Use of management information

4.39. MPAS did not routinely gather management information and was thereby unable to identify areas of risk to both itself and to members. Regular collation and analysis of management information should have enabled the Board to have a clear understanding of vital aspects of the business, such as the effectiveness of its compliance procedures, its adherence to service standards and trends indicating risk in the types of business being referred and accepted. However, Mr Wells did not ensure that management information was put to the Board or that Compliance had such information to enable it to conduct regular audits. While Mr Wells was aware that neither the Board nor Compliance made use of management information, he did not understand the importance of such information to MPAS' ability to comply with regulatory requirements, and therefore took no steps to ensure that the Board had access to and made adequate use of it.

5. FAILINGS

5.1. The relevant statutory provisions and regulatory requirements are set out in the Annex to this Notice.

Breach of Statement of Principle 6

5.2. The Authority considers that Mr Wells has breached Statement of Principle 6 by failing to exercise due skill, care and diligence in managing the business of MPAS, for which he was responsible in his controlled function of CF1, on the basis of the specific failings detailed below.

Failure to understand the business of MPAS and its regulatory requirements

5.3. Mr Wells lacked an adequate understanding of the nature of MPAS' business, and, in particular, the regulatory implications and risks associated with operating a SIPP scheme comprising a large number of esoteric investments. Where Mr Wells' previous experience was sales-based, his focus at MPAS was similarly narrow to the exclusion of important regulatory considerations that came within his remit as CF1.

5.4. Mr Wells failed to exercise due skill, care and diligence by giving insufficient consideration to compliance and to the safety of members' investments, including failing to understand the consequences and risks of accepting a high volume of illiquid non-standard investments into the MPAS schemes. By failing to ensure MPAS could identify such issues, Mr Wells caused scheme members to be exposed to additional risks such as formulaic selling by introducers, unsuitable recommendations for illiquid or volatile investments, or the potential imposition of a range of tax charges.

5.5. Mr Wells was unaware of MPAS', and his own, regulatory responsibilities to the extent that he was unaware of the regulated activities which MPAS was permitted to conduct. Also, Mr Wells had no knowledge of his own specific responsibilities as an approved person performing a significant influence function. Without this basic regulatory knowledge, Mr Wells was not equipped to manage and oversee the business of MPAS competently.

5.6. Additionally, Mr Wells did not understand the significance of certain systems and controls, including the use of management information to identify and mitigate areas of risk in the business, and due diligence and continued monitoring of Introducers and discretionary fund managers and the SIPP assets, which would have reduced the risk of members being unsuitably advised or their assets unsafely managed.

5.7. Mr Wells' lack of understanding of the CASS rules and his lack of attention to client asset arrangements at MPAS meant he was unaware that MPAS was in breach of CASS rules in numerous significant respects during the Relevant Period. Mr Wells neglected CASS issues despite the Authority having sent two communications during the Relevant Period which stressed the importance of safe custody of client assets and he thereby created an unacceptable risk of loss to consumers.

Failure to make adequate compliance provision and failure to monitor or assess the risks arising from the lack of adequate compliance provision

5.8. Mr Wells' failed to exercise due skill, care and diligence in managing the business of MPAS by failing to understand the relevance and importance of adequate compliance. Given that MPAS had undergone a period of significant growth during the Relevant Period, involving a significant increase in the number of non-standard investments accepted into its schemes, Mr Wells should have recognised the need to ensure that MPAS' systems and controls were robust in order to mitigate the increased risk to both scheme members and the business of MPAS itself. However, he did not have sufficient understanding of the regulatory capital or compliance needs

of an authorised SIPP operator, particularly with regard to non-standard investments.

5.9. Mr Wells did not understand that an increased proportion of non-standard investments brought with it an increased risk of tax charges being incurred, both by members and MPAS. Had Mr Wells understood this, he would have identified the need to make additional capital provision to ensure that MPAS could pay any tax liability as it fell due. Mr Wells also failed to understand that a scheme comprising a high proportion of non-standard assets will take considerably more time and resource to wind down than one comprising standard assets, and he failed to ensure that additional capital was available should MPAS have needed to wind down one or both of its schemes.

5.10. Mr Wells failed to identify the need for a full-time, integrated compliance team. He also failed to ensure that, what compliance resource there was, had full and unfettered access to the necessary information and IT systems it needed given that the resource was not embedded into the business.

5.11. Although the ultimate decision as to MPAS' compliance budget lay with another group company, Mr Wells should have made greater effort either to allocate existing MPAS funds to compliance, or to highlight to the funding company the importance of making adequate compliance provision in order to safeguard members' interests and ensure that MPAS could conduct regulated business in a compliant manner. Mr Wells should have escalated the issue of compliance funding more quickly and decisively than he did after Compliance raised the lack of resource with him. He should also have recognised the

serious effect that a lack of adequate compliance provision would have on MPAS' ability to operate its schemes in the best interests of members and in satisfaction of its own regulatory obligations.

5.12. Further, it was Mr Wells' responsibility as managing director to provide adequate support to Compliance in all other respects, including by ensuring unrestricted access to the necessary client and management information (which was an issue brought specifically to his attention by Compliance early in the Relevant Period) and by overseeing staff to ensure that they operated with due consideration to compliance matters. Indeed, Mr Wells' failure to understand the relevance and importance of regulatory compliance was so fundamental that he personally circumvented established procedure in relation to promotional material.

5.13. The Authority therefore considers that Mr Wells exercised a lack of due skill, care and diligence in his fundamental lack of understanding of the nature of MPAS' business and its compliance needs, in breach of Statement of Principle 6, and has thereby demonstrated a serious lack of competence and capability as a significant influence function holder.

Breach of Statement of Principle 7

5.14. The Authority considers that Mr Wells has breached Statement of Principle 7 by failing to take reasonable steps to ensure that the business of MPAS, for which he was responsible in his controlled function of CF1, complied with the relevant requirements and standards of the regulatory system on the basis of the specific failings detailed below.

Failure to take reasonable steps to ensure that MPAS complied with its regulatory requirements under the CASS rules

5.15. In addition to his general oversight responsibility as the managing director of MPAS, Mr Wells was responsible for ensuring that MPAS complied with its regulatory obligations in relation to client assets, as per the CASS rules. However, Mr Wells failed to take reasonable steps to ensure that MPAS had adequate systems and controls in place such as, for example, trust letters for each account in which client money was pooled and client accounts being properly designated as such. Mr Wells could reasonably have delegated the task of implementing and maintaining CASS systems and controls to another individual at MPAS (with adequate oversight) but did not do so, and he failed to give adequate attention to CASS issues himself.

5.16. By failing to take reasonable steps to ensure CASS compliance, Mr Wells allowed MPAS to operate in breach of CASS rules, and he thereby exposed members to the risk that their funds may not be recognised as client monies and be co-mingled with those of MPAS in the event of MPAS' liquidation.

Failure to take steps to ensure that MPAS had adequate systems and controls in place to enable it to comply with its regulatory requirements

5.17. In his role as managing director, and especially in light of MPAS' expansion into non-standard investments during the Relevant Period, Mr Wells should have taken reasonable steps to ensure that MPAS' systems and controls were strengthened sufficiently to counter the increased risks to both scheme members and the business of MPAS itself. However, Mr Wells

failed to take reasonable steps to ensure that adequate systems and controls were in place in the following respects.

Use of management information

5.18. Mr Wells did not take steps to ensure that MPAS made adequate use of management information so as to enable it to identify areas of risk to both members and to MPAS' itself. Mr Wells should have ensured that Compliance and the Board in particular had ready access to management information reports at its quarterly meetings in order to allow it to govern the firm effectively. MPAS did not utilise management information to identify and mitigate areas of risk, with the effect that it only acted upon key areas of risk (such as certain Introducers recommending unacceptably high volumes of risky investments to some members) after they were highlighted by the Authority following its supervisory visit in October 2010.

Due diligence and monitoring of Introducers

5.19. As both managing director and MPAS' liaison with Introducers, Mr Wells failed to take reasonable steps to ensure that MPAS conducted adequate due diligence and continued monitoring on those firms. Mr Wells concentrated his efforts on fostering business opportunities for Introducers without taking reasonable steps to ensure that those Introducers were advising scheme members in relation to suitable SIPP investments only, in satisfaction of MPAS' regulatory obligation as a SIPP operator to ensure that its members were being properly advised. Mr Wells' lack of understanding of the obligations of a SIPP operator to its members in this respect is demonstrated by his assessment, after reading the

Authority's thematic report, that MPAS was actually meeting its regulatory obligations to a satisfactory level.

Due diligence of assets

5.20. Mr Wells failed to take reasonable steps to ensure that sufficiently robust procedures were implemented to ensure that an adequately high proportion of non-taxable assets were accepted into MPAS' SIPPs to balance the non-standard investments and to reduce that risk of loss to members. There was insufficient expertise available and inadequate procedural controls in place to conduct thorough due diligence on new investment types. Mr Wells could have recommended to the Board at the outset that MPAS seek legal advice on the suitability of higher-risk assets, or that it outsource the assessment of new investment types to an external consultant with relevant expertise. However, he kept such assessment in-house for most of the Relevant Period and failed to involve both the Board and Compliance in that process.

Identification and monitoring of SIPP assets

5.21. Accurate identification and monitoring of SIPP assets should have been of particular concern to Mr Wells during the Relevant Period given the large proportion of non-standard, investments under MPAS' administration. However, Mr Wells failed to take reasonable steps to ensure that MPAS was able to identify and monitor assets accurately on behalf of members. He did not ensure that MPAS had access to regular and accurate asset information, which would have been easily obtainable via software providing regular and live price feeds. Mr Wells thereby failed to ensure that MPAS was able to

satisfy its basic obligation to SIPP members to maintain proper control over the assets it held for their benefit.

Due diligence and monitoring of discretionary fund managers

5.22. Mr Wells failed to ensure that any controls were in place in relation to discretionary fund managers, in the form of agreements setting out the terms on which SIPP assets were to be managed. By failing in this regard, Mr Wells exposed members to the risk that their assets would be mismanaged without detection by MPAS, and especially given that no other procedures were in place for continuous monitoring of discretionary fund managers.

5.23. The Authority therefore considers that in having failed to take reasonable steps to ensure that systems and controls were in place in key areas of MPAS' business, in breach of Statement of Principle 7, Mr Wells has demonstrated a serious lack of competence and capability as a significant influence function holder.

6. SANCTIONS

Public censure

6.1. The Authority publicly censures Mr Wells for breaching Statements of Principle 6 and 7.

6.2. The Authority's policy on the imposition of financial penalties is set out in Chapter 6 of DEPP. The relevant sections of DEPP are set out in more detail in the Annex of this Notice. Since the gravamen of Mr Wells' failings occurred after the change in the regulatory provisions governing the determination of financial penalties and public censures on 6 March 2010, the

Authority has applied the provisions that were in place after that date. All references to DEPP in this Notice are references to the version in force from 6 March 2010.

6.3. In addition, the Authority has had regard to the corresponding provisions of Chapter 7 of EG in force during the Relevant Period.

6.4. The principal purpose of issuing a public censure or imposing a financial penalty is to promote high standards of conduct by deterring persons who have committed regulatory breaches from committing further breaches, helping to deter others from committing similar breaches and demonstrating generally the benefits of compliant behaviour. A public censure is a tool that the Authority may employ to help it achieve its regulatory objectives.

6.5. In determining whether a financial penalty or public censure is appropriate, the Authority is required to consider all the relevant circumstances of the case. Applying the criteria set out in DEPP 6.2.1G (regarding whether or not to take action for a financial penalty or public censure) and 6.4.2G (regarding whether to impose a financial penalty or a public censure), the Authority considers that a public censure is an appropriate sanction.

6.6. In deciding to issue a public censure, the Authority considered that the factors below were particularly relevant in this case.

Deterrence (DEPP 6.4.2G(1)

6.7. In proposing to publish a statement of Mr Wells' misconduct the Authority has had regard to the need to ensure that those who are approved persons are fit and proper and fully engage

with their regulatory responsibilities. The Authority considers that a public censure should be imposed to demonstrate to Mr Wells and others the seriousness with which the Authority regards his behaviour.

The seriousness of the breach in question (DEPP 6.4.2G(3))

6.8. Mr Wells failed to ensure that he understood his own basic regulatory obligations and those of the firm of which he was in charge. This failure occurred while Mr Wells presided over the rapid expansion of the business and a significant change in the nature of its investment book, which became increasingly non-standard. These factors required particular managerial care and expertise, which Mr Wells failed to demonstrate, with the result that MPAS operated in breach of its regulatory requirements in numerous key respects and members were consequently exposed to additional risk.

Conduct following the breach (DEPP 6.4.2G(5))

6.9. Mr Wells has given full and immediate co-operation to the Authority. Mr Wells is not aware of any investor having suffered a loss or being prejudiced.

Previous action taken by the Authority (DEPP 6.4.2G(7))

6.10. In determining the appropriate sanction, the Authority took into account sanctions imposed by the Authority on other approved persons for similar behaviour. This was considered alongside the deterrent purpose for which the Authority imposes sanctions.

The financial impact on the person concerned (DEPP 6.4.2G(8))

6.11. The Authority views Mr Wells' misconduct as very serious and would have imposed a financial penalty of £58,500. However, the Authority has taken into account in determining that it is appropriate to issue a public censure, rather than impose a financial penalty, that Mr Wells has provided verifiable evidence that he would suffer serious financial hardship if the Authority imposed a financial penalty.

6.12. For these reasons, it is appropriate to publicly censure Mr Wells, but not to impose a financial penalty on him.

Prohibition

6.13. The Authority considers it appropriate and proportionate in all the circumstances to prohibit Mr Wells from performing any significant influence function in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm because he is not a fit and proper person in terms of competence and capability.

6.14. The Authority has had regard to the guidance in Chapter 9 of EG in proposing that Mr Wells be prohibited from performing controlled functions involving the exercise of significant influence. The relevant provisions of EG are set out in the Annex of this Notice.

6.15. Given the nature and seriousness of the failures outlined above, the Authority considers that Mr Wells' conduct demonstrated a lack of competence and capability such that he is not fit and proper to perform any significant influence function in relation to regulated activities carried on at any

authorised person, exempt person or exempt professional firm. In particular, Mr Wells demonstrated a lack of regard for the standards and requirements of the regulatory system. In the interests of consumer protection, the Authority deems it appropriate and proportionate in all the circumstances to impose the Prohibition Order on Mr Wells in the terms set out above.

7. CONCLUSION

7.1. On the basis of the facts and matters described above, the Authority considers that Mr Wells' conduct as CF1 of MPAS fell short of the minimum regulatory standards required of an approved person and that he has breached Statements of Principle 6 and 7, and that he is not fit and proper to be an approved person.

7.2. The Authority, having regard to all the circumstances, therefore considers that it is appropriate and proportionate to censure Mr Wells publicly and to make the Prohibition Order against him.

8. PROCEDURAL MATTERS

Decision Maker

8.1 The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.

8.2 This Final Notice is given under and in accordance with section 390 of the Act.

Publicity

8.3 Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Notice relates. Under those provisions, the Authority must publish such information about the matter to which this Notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to Mr Wells or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

8.4 The Authority will publish such information about the matter to which this Final Notice relates as it considers appropriate.

Authority contact

8.5 For more information concerning this matter generally, Mr Wells should contact Rachel West of the Enforcement and Financial Crime Division of the Authority (direct line: 020 7066 0142/ fax: 020 7066 0143).

Bill Sillett

Head of Department

Financial Conduct Authority, Enforcement and Financial Crime Division

STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY

1. STATUTORY PROVISIONS

1.1. Section 56 of the Act provides that the Authority may make a prohibition order if it appears to the Authority that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person. Such an order may relate to a specific regulated activity, an activity falling within a specified description or all regulated activities.

1.2. Section 66 of the Act provides that the Authority may publish a statement of a person's misconduct where it appears to the Authority that the individual is guilty of misconduct and it is satisfied that it is appropriate in all the circumstances to take action. Misconduct includes failure, while an approved person, to comply with a statement of principle issued under section 64 of the Act or to have been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person by or under the Act.

2. REGULATORY PROVISIONS

2.1. In exercising its power to issue a public censure, the Authority must have regard to relevant provisions in the Authority Handbook.

2.2. The Authority's Enforcement Guide ("EG") and Decision Procedure and Penalties Manual ("DEPP") came into effect on 28 August 2007.

2.3. The guidance and policy that the Authority considers relevant to this case is set out below.

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

2.4. APER sets out the Statements of Principle as they relate to approved persons and descriptions of conduct which, in the opinion of the Authority, do not comply with a Statement of Principle. It further describes factors which, in the opinion of the Authority, are to be taken into account in determining whether or not an approved person's conduct complies with a Statement of Principle.

2.5. APER 3.1.3G states that when establishing compliance with or a breach of a Statement of Principle, account will be taken of the context in which a course of conduct was undertaken, including the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour to be expected in that function.

2.6. APER 3.1.4G provides that an approved person will only be in breach of a Statement of Principle where he is personally culpable; that is, in a situation where his conduct was deliberate or where his standard of conduct was below that which would be reasonable in all the circumstances.

2.7. APER 3.1.6G provides that APER (and in particular the specific examples of behaviour which may be in breach of a generic description of conduct in the code) is not exhaustive of the kind of conduct that may contravene the Statements of Principle.

2.8. The Statements of Principle relevant to this matter are:

(i) Statement of Principle 6, which provides that an approved person performing a significant influence function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his controlled function; and

(ii) Statement of Principle 7, which provides that an approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function complies with the relevant requirements and standards of the regulatory system.

2.9. APER 3.1.8G states that in applying Statements of Principle 5 to 7, the nature, scale and complexity of the business under management and the role and responsibility of the individual performing a significant influence function within the firm will be relevant in assessing whether an approved person's conduct was reasonable.

2.10. APER 3.3.1E states that in determining whether or not the conduct of an approved person performing a significant influence function complies with Statement of Principles 5 to 7, the following are factors are to be taken into account:

i) whether he exercised reasonable care when considering the information available to him;

ii) whether he reached a reasonable conclusion which he acted on;

iii) the nature, scale and complexity of the firm’s business;

iv) his role and responsibility as an approved person performing a significant influence function; and

v) the knowledge he had, or should have had, of regulatory concerns, if any, arising in the business under his control.

2.11. APER 4.6 lists types of conduct which, in the opinion of the Authority, do not comply with Statement of Principle 6.

2.12. APER 4.6.3E states that failing to take reasonable steps to adequately inform himself about the affairs of the business for which he is responsible is conduct that does not comply with Statement of Principle 6.

2.13. APER 4.6.4E states that permitting transactions without a sufficient understanding of the risks involved or inadequately monitoring highly profitable transactions or business practices or unusual transactions is conduct that does not comply with Statement of Principle 6.

2.14. APER 4.6.6E states that failing to take reasonable steps to maintain an appropriate level of understanding about an issue or part of the business that he has delegated to an individual or individuals (whether in-house or outside contractors) is conduct that does not comply with Statement of Principle 6.

2.15. APER 4.7 lists types of conduct which, in the opinion of the Authority, do not comply with Statement of Principle 7.

2.16. APER 4.7.3E states that failing to take reasonable steps to implement (either personally or through a compliance department or other departments) adequate and appropriate systems of control to comply with the relevant requirements and standards of the regulatory system in respect of its

regulated activities is conduct that does not comply with Statement of Principle 7.

2.17. APER 4.7.4E states that failing to take reasonable steps to monitor (either personally or through a compliance department or other departments) compliance with the relevant requirements and standards of the regulated system in respect of its regulated activities is conduct that does not comply with Statement of Principle 7.

2.18. APER 4.7.7E provides that failing to take steps to ensure that procedures and systems of control are reviewed and, if appropriate, improved, following the identification of significant breaches (whether suspected or actual) of the relevant requirements and standards of the regulatory system relating to its regulated activities is conduct that does not comply with Statement of Principle 7.

2.19. APER 4.7.8E states that behaviour of the type referred to at APER 4.7.7E includes unreasonably failing to implement recommendations for improvements in systems and procedures.

Fit and Proper Test for Approved Persons ("FIT")

2.20. The part of the Authority Handbook entitled "FIT" sets out the Fit and Proper Test for Approved Persons. The purpose of FIT is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an approved person.

2.21. FIT 1.3.1G provides that the Authority will have regard to a number of factors when assessing a person's fitness and

propriety. One of the considerations will be the person's competence and capability.

2.22. As set out in FIT 2.2, in determining a person's competence and capability, the Authority will have regard to matters including but not limited to:

i) whether the person satisfies the relevant Authority training and competence requirements in relation to the controlled function the person performs or is intended to perform; and

ii) whether the person has demonstrated by experience and training that the person is able, or will be able if approved, to perform the controlled function.

Enforcement Guide ("EG")

2.23. The Authority's approach to exercising its powers to withdraw approval under section 63 of the Act and make a Prohibition Order under section 56 of the Act is set out in Chapter 9 of EG.

2.24. EG 9.1 states that the Authority's power under section 56 of the Act to prohibit individuals who are not fit and proper from carrying out controlled functions in relation to regulated activities helps the Authority to work towards achieving its regulatory objectives. The Authority may exercise this power to make a prohibition order where it considers that, to achieve any of those objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities, or to restrict the functions which he may perform.

2.25. EG 9.4 sets out the general scope of the Authority's power in this respect. The Authority has the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant.

2.26. EG 9.5 provides that the scope of the prohibition order will depend on the range of functions which the individual concerned 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.

2.27. In circumstances where the Authority has concerns about the fitness and propriety of an approved person, EG 9.8 to 9.14 provides guidance. In particular, EG 9.8 states that the Authority may consider whether it should prohibit that person from performing functions in relation to regulated activities, and that the Authority will consider whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions.

2.28. EG 9.9 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. These may include, but are not limited to, the following:

i) whether the individual is fit and proper to perform the functions in relation to regulated activities. The criteria for assessing the fitness and propriety of approved persons in terms of competence and capability is set out in FIT 2.2;

ii) whether, and to what extent, the approved person has failed to comply with the Statements of Principle issued by

the Authority with respect to the conduct of approved persons, or been knowingly involved in a contravention by the relevant firm of a requirement imposed on the firm by or under the Act (including the Principles and other rules (EG 9.9(3)(a) and (b));

iii) the relevance and materiality of any matters indicating unfitness (EG 9.9(5));

iv) the length of time since the occurrence of any matters indicating unfitness (EG 9.9(6));

v) 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 or operated (EG 9.9(7)); and

vi) the severity of the risk which the individual poses to consumers and to confidence in the financial system (EG 9.9(8)).

2.29. EG 9.12 provides a number of examples of types of behaviour which have previously resulted in the Authority deciding to issue a prohibition order. The examples include serious lack of competence and serious breaches of the Statements of Principle.

2.30. EG 9.23 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.

Decision Procedure and Penalties Manual ("DEPP")

2.31. Guidance on the imposition and amount of penalties is set out in Chapter 6 of DEPP. Changes to DEPP 6 were introduced on 6 March 2010. The Authority has had regard to the appropriate provisions of DEPP that applied during the Relevant Period. Where the gravamen of the misconduct occurred after 6 March 2010, the Authority considers that the provisions of DEPP which applied after that date should apply.

2.32. DEPP 6.1.2G provides that the principal purpose of imposing a public censure 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. Public censures are therefore tools that the Authority may employ to help it to achieve its regulatory objectives.

2.33. DEPP 6.4.1G provides that the Authority will consider all the relevant circumstances of a case when deciding whether to impose a penalty or issue a public censure.

2.34. DEPP 6.4.2G sets out a non-exhaustive list of factors that may be relevant to determining whether a public censure or financial penalty is appropriate to be imposed on a person under the Act. The following factors are relevant to this case:

Deterrence: DEPP 6.4.2G(1)

2.35. When determining whether to issue a public censure rather than a financial penalty, the Authority will have regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business.

The nature, seriousness and impact of the breach in question: DEPP 6.4.2G(3)

2.36. The Authority will consider the nature, seriousness and impact of the breach on the basis that the sanction should reflect the seriousness of the breach. The more serious the breach, the more likely the Authority is to impose a financial penalty.

Co-operation with Authority and action since the breach: DEPP 6.4.2G(5)

2.37. The Authority will consider whether the person has admitted the breach, provided full and immediate co-operation to the Authority or taken steps to ensure that those who have suffered loss due to the breach are fully compensated for that loss. Actions of this kind taken by the person suggest that it may be more proportionate to issue a public censure than a financial penalty.

Other action taken by the Authority (or a previous regulator): DEPP 6.4.2G(7)

2.38. The Authority seeks to apply a consistent approach to determining the appropriate level of penalty. The Authority may take into account previous decisions made in relation to similar misconduct.

Impact on the person: DEPP 6.4.2G(8)

2.39. The Authority will also consider the impact on the person of a financial penalty. In exceptional circumstances only, the Authority may decide, based verifiable evidence, that the person does not have adequate resources with which to pay a financial penalty and may therefore, in those exceptional circumstances, lower the level of penalty or issue a public censure instead.