

---

**FINAL NOTICE**

---

To: **Policy Administration Services Limited**

Firm  
Reference  
Number: **307406**

Address: **Osprey House  
Ore Close  
Lymedale Business Park  
Newcastle-under-Lyme  
Staffordshire  
ST5 9QD**

Date: **1 July 2013**

**ACTION**

1. For the reasons given in this notice, the Authority hereby imposes on Policy Administration Services Limited ("PAS") a financial penalty of £2,834,700. This penalty is in respect of breaches of Principles 3 and 6 of the Authority's Principles for Businesses ("the Principles") during the period 19 June 2009 to 27 September 2011 ("the Relevant Period").
2. PAS agreed to settle at an early stage of the Authority's investigation. PAS therefore qualified for a 30% (stage 1) discount under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £4,049,637 on PAS.

## SUMMARY OF REASONS

3. PAS is an insurance intermediary, which administers mobile phone insurance products that are sold through its Appointed Representative, Phones 4u Limited ("AR"). PAS is responsible for customer relations, claims assessment, claims handling, claims fulfilment and complaints handling services in respect of these policies.
4. The Authority has found that during the Relevant Period PAS breached:
  - i. Principle 3 of the Principles by failing to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems, in that it failed to put in place:
    - a. adequate complaint handling procedures to ensure all complaints were handled in accordance with DISP rules; and
    - b. appropriate management controls and take reasonable steps to ensure that in handling complaints it fully identified and remedied any recurring or systemic problems, in accordance with DISP 1.3.3R, which meant that there was a risk that PAS may have failed to identify systemic problems; and
  - ii. Principle 6 of the Principles by failing to pay due regard to the interests of its customers and treat them fairly with regard to complaints handling, by failing to:
    - a. categorise and record all customer expressions of dissatisfaction about insurance policies sold by the AR as complaints with the risk that such complaints may not have been subsequently resolved in accordance with DISP 1.4.1R;
    - b. accurately and consistently record the details and outcomes of customer complaints;
    - c. investigate fully some customers' complaints in accordance with DISP 1.4.1R where allegations of mis-selling were made about the sale of its products by the AR, as, for example, PAS sometimes rejected mis-selling complaints solely on the basis that the customer had signed a Direct Debit Mandate for the payment of insurance premiums;

- d. resolve some customer complaints by taking appropriate remedial action and/or offering redress in accordance with DISP 1.4.1R, as in some cases PAS offered customers a gesture of goodwill, the amount of which was left to the discretion of the complaint handler; and
  - e. undertake a root cause analysis of customers' complaints in accordance with DISP 1.3.3R.
- 5. As a consequence of the above failings, customers who complained about the insurance policies sold to them were not all treated fairly, in that a number of the complaints were not dealt with appropriately or in full. The Authority considers these failings to be serious due to the risk of a significant number of customers who complained being affected over a period of more than two years and due to the risk of PAS failing to detect and address any systemic issues as a result of not conducting a full root cause analysis.
- 6. The Authority considers that the failings identified in this case have been aggravated by the fact that PAS failed to identify the breaches. In addition, the Authority's guidance and other published materials had already raised relevant concerns on the matter of treating customers fairly. This material is widely available and has been brought to the attention of all firms in this sector. PAS accepts the Authority's findings and the failings identified have been mitigated by the decision by PAS's senior management to take a wide range of steps to stop the breaches, once they were brought to their attention by the Authority. This included the retention of a professional services firm to review PAS's complaints and sales processes. PAS has also taken remedial steps since being notified of the breaches to identify and compensate any customers who have suffered a loss. At its own initiative, PAS has completed a review of all of the 7,099 recorded customer complaints about mis-selling received during the Relevant Period, re-investigated where applicable and compensated 1,438 customers.

## **DEFINITIONS**

- 7. The definitions below are used in this Final Notice.

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

"AR" means the Appointed Representative, Phones 4u Limited.

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

“the Authority’s Handbook” means the Authority’s Handbook of rules and guidance.

“Complaint Management Guide” means the guide that PAS had in place during the Relevant Period, which set out how the Customer Relations Department should record, investigate and resolve complaints.

“Customer Relations Department” means the department at PAS which deals with customer complaints that have been (i) escalated by the Customer Services Department; (ii) received in writing; or (iii) made in person by a complainant that has visited the PAS office.

“Customer Services Department” means the department at PAS which initially deals with customers that phone in to make a complaint.

“Direct Debit Mandate” means the direct debit instruction signed by a customer to that customer’s bank to pay the premiums for the insurance policy.

“DISP” means the Dispute Resolution: Complaints Sourcebook as set out in the Authority’s Handbook.

“DEPP” means the Decision Procedure and Penalties Manual as set out in the Authority’s Handbook.

“Glossary” means the part of the Authority’s Handbook which defines the terms used in the Authority’s Handbook.

“the New Penalty Regime” means that penalty regime which was effective on and from 6 March 2010.

“the Old Penalty Regime” means the penalty regime which was effective prior to 6 March 2010.

“PAS” means Policy Administration Services Limited.

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

“the Relevant Period” means the period from 19 June 2009 to 27 September 2011, being the period in which the Complaint Management Guide was in place.

“the Sample Review Period” means the period from 1 January 2010 to 28 July 2011, which is the period that the Authority used to review a sample of complaints recorded by PAS.

“the Tribunal” means the Upper Tribunal (Tax and Chancery Chamber).

## **FACTS AND MATTERS**

### **PAS Business**

8. PAS is an insurance intermediary, which has been authorised by the Authority since 14 January 2005. PAS provides mobile phone insurance policies through its AR. PAS is responsible for the customer relations, claims assessment, claims handling, claims fulfilment and complaints handling services. Customers can purchase the insurance policies either from PAS’s AR over the phone or in-store or from PAS directly.
9. During the Relevant Period, PAS sold approximately 1.6 million mobile phone insurance policies.

### **Complaints handling at PAS**

10. When customers phoned PAS to make a complaint during the Relevant Period, they were initially put through to the Customer Services Department. Complaints made related to either the original sale of the policy, the way that a claim had been handled, or the outcome of a claim which the customer did not accept. If the complaint related to an allegation of mis-selling it was immediately referred to the Customer Relations Department. In respect of other types of complaints, if the complaint handler in the Customer Services Department was unable to resolve the complaint, it was escalated to the team manager. If the team manager was unable to resolve the complaint, it was referred to the Customer Relations Department. It was only when the complaint was referred to the Customer Relations Department that it was officially recorded as a complaint.
11. During the Relevant Period, PAS had in place a Complaint Management Guide, which set out how the Customer Relations Department should record complaints. It also provided guidance on how to investigate and resolve complaints.

### **Failure to record all customer expressions of dissatisfaction as complaints**

12. The Complaint Management Guide defined a complaint as:

*'Any expression of dissatisfaction, whether justified or not, involving an allegation that the customer has suffered or may suffer financial loss, material distress or material inconvenience.'*

13. The Complaint Management Guide went on to provide that a complaint would only meet the definition outlined above, and would only be recorded as a complaint, if:
  - i. it was made in writing (though this was an error in the Complaint Management Guide and not followed in practice); or
  - ii. the original handler of a verbal complaint could not immediately resolve the complaint themselves and neither could their team manager if the call was escalated to them, and/or it was not resolved by the end of the same business day; or
  - iii. a complainant visited the PAS offices to make a complaint.
14. The above definition in the Complaint Management Guide meant that where a customer phoned in to make a complaint, and that complaint was resolved on the same business day, then it was not officially classed or recorded as a complaint. This does not correspond with the Glossary definition of a complaint in the Authority's Handbook, which for the purposes of DISP defines a complaint as *'any oral or written expression of dissatisfaction, whether justified or not'*.
15. DISP 1.5.2G provides that complaints resolved by close of business the next day are still subject to the resolution rules in DISP 1.4.1R. The resolution rules in DISP 1.4.1R include investigating the complaint competently, diligently and impartially and offering redress to the customer if it is decided that this is appropriate. Where customers phoned in to make a complaint, and PAS resolved those complaints on the same day, they were recorded against the customer's file but not recorded formally as a complaint and there was a risk that PAS would not deal with these complaints in accordance with all the requirements of DISP.
16. By not recording all customer expressions of dissatisfaction as complaints, PAS could not demonstrate that it had applied the above resolution rules to all complaints as required by DISP and subsequently there was a risk that it did not treat all its customers who made complaints fairly.
17. PAS's failure to categorise and record all customer expressions of dissatisfaction as complaints also meant that any management information collated in relation to the level of complaints was inaccurate. For example, a review of a sample of

complaints recorded by PAS during the period 1 January 2010 to 28 July 2011 ("the Sample Review Period") revealed that PAS recorded 7,024 complaints in respect of approximately 1.2 million sales which amounts to 0.58%. PAS considered that this low level of complaints, compared to the number of policies sold during the same period, was a positive reflection of its service and it did not realise that complaints were being categorised or recorded incorrectly. Therefore, although PAS recorded some complaints correctly, there remained a risk that PAS may have taken false comfort from the management information that was provided.

### **Failure to record complaints accurately and/or consistently**

18. The complaints data provided by PAS demonstrates that where a record of a complaint was made, sometimes that record did not accurately reflect the details and outcome of that complaint. Furthermore, the outcomes of complaints that were similar in nature were not always recorded in a consistent manner. This is addressed in more detail below.
19. Of 7,024 customer complaints received during the Sample Review Period, 3,652 (52%) were recorded by PAS as being unjustified. Of these, 814 customers (22%) received either (i) a full refund of the premiums paid or (ii) a refund of some of the premiums paid by the customer. Where some or all of the premiums paid by the customer were refunded, this was sometimes recorded by PAS as a 'refund', and sometimes as a 'gesture of goodwill'. There is no explanation in the complaints data provided by PAS to clarify why 814 of the 3,652 customer complaints that were recorded as 'unjustified', received a refund of either all or part of the premiums paid. There is also no explanation given as to why this was sometimes recorded as a 'refund' and sometimes as a 'gesture of goodwill'. It is unclear whether recording a payment either as a 'refund' or a 'gesture of goodwill' meant that PAS considered that some aspect of the complaint was in fact justified, or whether PAS considered that the entirety of the complaint was unjustified and was simply making an ex-gratia payment to keep the customer happy.
20. A review of 35 customer complaint files relating to allegations of mis-selling further revealed PAS's failure to record customer complaints accurately and consistently. For example, the Authority found the following.
  - i. Eight customer complaints were recorded by PAS as being justified. Of these, seven customers received either a full or partial refund. Six of these

refunds were recorded as being a 'gesture of goodwill', even though one of these refunds was recorded by PAS as being in relation to an insurance policy that had been set up 'fraudulently'. There is no record on the file to explain why some of these refunds were recorded as being a 'refund' or a 'gesture of goodwill' and no record to explain why PAS considered that a refund in respect of an insurance policy that had seemingly been set up 'fraudulently' should be recorded as a 'gesture of goodwill'.

- ii. The complaints data provided by PAS showed that 24 of the 35 customer complaints were recorded as being unjustified. However, a review of the customer complaint files by the Authority indicated that 20 of those 24 complaints (83%) were valid complaints. They were, therefore, incorrectly recorded as being unjustified although 5 had been refunded in full. One of these complaints, for example, concerned a customer who stated that they did not request the insurance policy and that it had been mis-sold to them. Despite the customer receiving a full refund, this complaint was still recorded by PAS as being unjustified. In addition, despite 24 of the complaints being recorded as unjustified, 12 customers were recorded as receiving either a full or partial refund, 8 of which were recorded as being a 'gesture of goodwill'. There is no record on the files to explain why 12 customers received a refund, despite PAS considering that their complaint was unjustified. Also, there is no record to explain why some of these refunds were recorded as being a 'refund' or a 'gesture of goodwill'. There is no correlation between whether a payment was recorded as a 'refund' or a 'gesture of goodwill' and whether the complaint was considered to be justified or unjustified. Furthermore, 3 out of the 24 customer complaints recorded as being unjustified, were incorrectly recorded as not having received a refund at all, despite the customers having received a refund.
21. The failure by PAS to accurately and consistently record (i) whether a complaint was justified or unjustified and/or (ii) the outcome of a complaint, led to PAS collating inaccurate management information in this regard.

**Failure to investigate complaints fully and resolve them appropriately and consistently**

22. The Complaint Management Guide in place during the Relevant Period provided that PAS would ensure that:



- i. complaints were investigated by a competent person who was not involved in the matter which was the subject of the complaint;
  - ii. the person responding to the complaints had authority to settle complaints, including offering redress, or have access to someone who had such authority; and
  - iii. responses to complaints adequately covered the subject matter and redress was offered as appropriate.
23. As referred to above, during the Sample Review Period PAS recorded that it received a total of 7,024 customer complaints. Out of those recorded complaints 4,797 customers (68%) alleged that they were mis-sold their insurance policy. This amounted to around 0.6% of customers during the Sample Review Period. A significant number of complaints were however unrecorded. These unrecorded complaints were those which were resolved by close of business the same day or complaints made in the AR's store.
24. A review of the 35 customer complaint files regarding allegations of mis-selling revealed that PAS's investigation of such complaints involved checking its internal records to determine whether the customer had signed a direct debit instruction to the customer's bank to pay the premiums for the insurance policy, which is referred to as the Direct Debit Mandate. If a signed Direct Debit Mandate was located by the complaint handler in the customer's file, PAS considered this to mean that the customer had agreed to purchase the insurance policy and generally rejected the complaint without further investigation. It is unclear why PAS considered that a signed Direct Debit Mandate alone would prove that a customer had not been mis-sold. Although this procedure was not documented in the Complaint Management Guide, PAS has confirmed that this is what took place. Further, there was no consistency regarding whether or not the Direct Debit Mandate was relied upon to prove that the customer had agreed to purchase the insurance policy and subsequently reject the claim. In addition, there is no record on the files to explain why some complaint handlers sought to rely on the existence of a Direct Debit Mandate and some did not.
25. Overall, the files did not demonstrate how the outcome of the complaint had been reached and there was little evidence in the files to show that a full review of the sale had taken place (although this may have been as a result of PAS's policy of finding in favour of the customer in the absence of firm evidence to the contrary). Furthermore, the outcomes of the complaints reviewed were inconsistent when

considering the nature of the complaints and depended on (i) the complaint handler that dealt with the complaint and/or (ii) how much the customer protested. For example, the Authority found the following.

- i. In 7 of the 35 complaint files reviewed, the complaint handler relied upon the existence of the signed Direct Debit Mandate from the customer without further investigation into the merit or otherwise of the complaint. No refund was provided and the complaint was rejected.
- ii. In 1 of the 35 complaint files reviewed, the complaint handler relied upon the existence of the signed Direct Debit Mandate in order to reject a claim, but a full refund was eventually paid to the customer as a 'gesture of goodwill'. The customer had already sought indemnity from the bank at the point that the complaint handler requested a copy of the Direct Debit Mandate, and when the signed copy was returned, the complaint handler informed the customer that they would not be provided with a refund, nor would they be able to claim indemnity from the bank. The customer insisted that they did not agree to the insurance policy and claimed they had been duped into signing the policy at the point of sale. When PAS received the indemnity claim from the bank for the full refund, the complaint handler agreed with the customer that as a 'gesture of goodwill' PAS would not counter claim. There is no record on the customer's file to explain why in this case, PAS decided to offer a full refund as a 'gesture of goodwill' despite the existence of a signed Direct Debit Mandate.
- iii. In 8 of the 35 complaint files reviewed, the complaint handler did not rely on the existence of the Direct Debit Mandate at all, yet provided the customers with either a full or partial refund. There is no record on these files to explain why some customers were provided with a full or partial refund. Where customers received a partial refund, there is no record to explain how this amount was calculated. In one of these complaints, the customer was initially told to claim the premiums paid for the insurance policy from the bank. After the customer protested, the complaint handler offered to refund half of the premiums paid. Following further protest by the customer, the complaint handler eventually offered a full refund as a 'gesture of goodwill'.
- iv. In 5 of the 35 complaint files reviewed, the complaint handler could not provide the customer with a copy of the Direct Debit Mandate because it could not be found, and offered the customer either a full or partial refund. There is no record on these files to explain why some customers were

provided with a full refund and some with a partial refund. Where customers received a partial refund, there is no record to explain how this amount was calculated.

- v. In 2 of the 35 complaint files reviewed, the complaint handler stated that they could not provide the customer with a copy of the Direct Debit Mandate because it was a paperless contract and the Direct Debit Mandate did not exist. Both customers were offered only a partial refund. There is no record on these files to explain how this amount was calculated.
  - vi. In 1 of the 35 complaint files reviewed, the customer was offered a partial refund by the complaint handler as a 'gesture of goodwill'. The complaint handler did not recall the Direct Debit Mandate from PAS's records, stating that if the Direct Debit Mandate was recalled and it was signed, the customer would not receive a refund.
  - vii. In 1 of the 35 complaint files reviewed, the customer was not provided with a copy of the Direct Debit Mandate, despite repeated requests. The complaint handler stated that PAS was unable to send old contracts out as they did not hold hard copies and refunded the customer some of the premiums paid. There is no record on the file to explain why the customer only received part of the premiums paid and/or how this amount was decided.
  - viii. In 1 of the 35 customer files reviewed, although the customer did not recall taking out the insurance policy, the complaint handler did not request a copy of the Direct Debit Mandate and did not carry out any further enquiries. The customer accepted the cancellation of the policy, but did not press for compensation and was not offered any redress by the complaint handler.
26. PAS did not always investigate adequately customers' complaints relating to allegations of mis-selling, nor did it investigate adequately instances where it found that customers may in fact have been mis-sold. Examples of where PAS found that customers may have been mis-sold policies include the instances referred to above in paragraph 25(iii) to (viii) where the complaint handler did not recall or was unable to locate and/or produce a signed Direct Debit Mandate to evidence that the customer had agreed to purchase the insurance policy, yet provided either a full or partial refund.

### **Failure to record complaints made to the AR**

27. The Complaint Management Guide provided that the AR was not allowed to handle customer complaints which related to the insurance policy and that processes were in place to ensure that any such complaints were referred to the Customer Relations Department at PAS. However, a report by a professional services firm dated 28 March 2012 about PAS's sales and complaint handling framework states that some insurance related complaints made to the AR were also dealt with by the AR, outside the prescribed complaints process. As the AR was not able to record complaints on a central system, it was not possible for PAS to validate the reason for any complaints received and resolved outside of the Customer Relations Department. This was a further reason why management information that was collated in relation to the number of complaints received by PAS was inaccurate, as it did not include any of the complaints made directly to the AR. Furthermore, it was not possible for PAS to ensure that such complaints were investigated fully and that any outcomes were appropriate, adequate, consistent, and in accordance with the Complaint Management Guide.

### **Failure to undertake a root cause analysis**

28. During the Sample Review Period 68% of the total complaints recorded by PAS (total recorded complaints being 7,024) were classified by PAS as being allegations of mis-selling. This amounted to around 0.6% of customers during the Sample Review Period. In a high proportion of these cases the customer claimed they:

- i. declined to take out the insurance policy in store;
- ii. were unaware that the insurance policy was in place;
- iii. did not receive any documentation in connection with the insurance policy;  
or
- iv. did not sign any paperwork in relation to the policy.

29. Furthermore, the complaints were spread across a number of the AR stores.

30. DISP 1.3.3R requires firms to take reasonable steps to ensure that when handling complaints, they identify and remedy any recurring or systemic problems. The Complaint Management Guide in place at PAS during the Relevant Period reflected this and stated that:

*'In order to establish the root cause of complaints received within the Firm, the system will allow the Customer Relations Department to identify the main issue of the complaint through MI reports and discussions can then take place to establish systematic/process/procedural/training issues.'*

31. Despite the fact that management information collated at PAS identified that 68% of its recorded complaints related to allegations of mis-selling (as set out in paragraph 28 above), senior management did not consider this to be a potential systemic issue in light of the number of policies sold. PAS did not conduct a full root cause analysis in line with its Complaint Management Guide in order to identify whether the causes for complaints constituted a systemic issue.

**Failure to put in place adequate management controls to handle complaints**

32. The Complaints Management Guide in place during the Relevant Period stated that PAS had implemented and developed appropriate management controls to ensure that it handled complaints fairly, consistently and promptly and identified and remedied any recurring or systemic problems.

33. However, PAS did not have in place adequate management controls to ensure that it:

- i. recorded all customer expressions of dissatisfaction as complaints;
- ii. recorded all complaints accurately and consistently;
- iii. investigated all complaints fully and resolved them appropriately or consistently; and
- iv. recorded any complaints made to its AR.

34. Consequently PAS did not deal with all complaints fairly and consistently. Also, any management information collated in relation to the number of complaints was incomplete to the extent that any complaints were not recorded.

35. PAS further failed to have in place adequate management controls in that it did not conduct a root cause analysis to identify and remedy any systemic or recurring problems.

## **FAILINGS**

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

### **Principle 3**

37. On the basis of the facts and matters described in paragraphs 32 to 35 above, the Authority considers that during the Relevant Period, PAS breached Principle 3 of the Principles in that it failed to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems, by failing to put in place:

- i. adequate complaint handling procedures to ensure complaints were handled in accordance with DISP rules; and
- ii. appropriate management controls and take reasonable steps to ensure that in handling complaints it fully identified and remedied any recurring or systemic problems in accordance with DISP 1.3.3R. This resulted in the risk of PAS failing to identify any systemic problems in relation to the complaints received.

### **Principle 6**

38. On the basis of the facts and matters described in paragraphs 10 to 31 above, the Authority considers that during the Relevant Period, PAS breached Principle 6 of the Principles in that it failed to pay due regard to the interests of its customers and treat them fairly with regard to complaints handling, by failing to:

- i. categorise and record all customer expressions of dissatisfaction about insurance policies sold by the AR as complaints with the risk that such complaints may not have been subsequently resolved in accordance with DISP 1.4.1R;
- ii. accurately and consistently record the details and outcomes of customer complaints;
- iii. investigate fully some customers' complaints in accordance with DISP 1.4.1R where allegations of mis-selling were made about the sale of its products by the AR, as, for example, PAS sometimes rejected mis-selling complaints solely on the basis that the customer had signed a Direct Debit Mandate for the payment of insurance premiums;

- iv. resolve some customer complaints by taking appropriate remedial action and/or offering redress in accordance with DISP 1.4.1R, as in some cases PAS offered customers a gesture of goodwill, the amount of which was left to the discretion of the complaint handler; and
- v. undertake a root cause analysis of customers' complaints in accordance with DISP 1.3.3R.

## **SANCTION**

39. The Authority has imposed a financial penalty of £4,049,637 (reduced to £2,834,700 after a 30% discount for early settlement) on PAS because of the failings outlined above.

40. The misconduct took place to a significant extent both before and after 6 March 2010. As set out at paragraph 2.7 of the Authority's Policy Statement 10/4, when calculating a financial penalty where the conduct straddles penalty regimes, the Authority will have regard both to the penalty regime which was effective before 6 March 2010 ("the Old Penalty Regime") and the penalty regime which was effective from 6 March 2010 ("the New Penalty Regime").

41. The Authority has adopted the following approach:

- i. calculated the financial penalty for PAS's misconduct from 19 June 2009 to 5 March 2010 by applying the Old Penalty Regime to the misconduct;
- ii. calculated the financial penalty for PAS's misconduct from 6 March 2010 to 27 September 2011 by applying the New Penalty Regime to the misconduct; and
- iii. added the penalties calculated under sub-paragraphs i and ii to produce the total penalty.

### **Financial penalty under the Old Penalty Regime**

42. The Authority's policy on the imposition of financial penalties relevant to the misconduct prior to 6 March 2010 is set out in Chapter 6 of the version of DEPP that was in force prior to 6 March 2010. All references to DEPP in this section are references to that version of DEPP. In determining the appropriate level of financial penalty the Authority has also had regard to Chapter 7 of the Enforcement Guide.

43. The period of PAS's breach for the purposes of calculating the financial penalty under the Old Penalty Regime is the period from 19 June 2009 to 5 March 2010.
44. The Authority will consider the full circumstances of each case to determine whether a financial penalty is appropriate. DEPP 6.5.2G sets out a non-exhaustive list of factors that may be relevant in determining the level of a financial penalty.
45. The Authority considers that the following factors are particularly relevant to this case.

***Deterrence (DEPP 6.5.2G(1))***

46. The financial penalty will deter PAS from further breaches of regulatory rules and Principles. In addition it will promote high standards of regulatory conduct by deterring other firms from committing similar breaches and demonstrating generally the benefit of compliant behaviour.

***The nature, seriousness and impact of the breach (DEPP 6.5.2G(2))***

47. In determining the appropriate level of financial penalty, the Authority has had regard to the seriousness of the breaches by PAS, including the nature of the requirements breached, the number and duration of the breaches, the number of customers who have been exposed to the risk of financial loss and the fact that the breaches revealed failings in PAS's systems and controls.
48. The Authority considers PAS's failings to be serious because they:
- i. persisted over a significant period of time (with approximately eight and a half months falling within the Old Penalty Regime) and there was a risk of small financial loss to any of its customers who may have complained and so on aggregate a larger risk of loss overall;
  - ii. placed any of PAS's customers who might have made complaints at risk of being treated unfairly; and
  - iii. revealed systemic weaknesses in PAS's procedures, management systems and internal controls relating to part of the firm's business.



***The size, financial resources and other circumstances of the firm (DEPP 6.5.2G(5))***

49. In determining the appropriate level of the financial penalty the Authority has considered PAS's size and financial resources. There is no evidence to suggest that PAS is unable to pay the financial penalty.

***Conduct following the breach (DEPP 6.5.2G(8))***

50. The Authority recognises the following factors which mitigate the seriousness of the failings identified in this case.

- i. PAS has been open and co-operative with the Authority's investigation and has worked with the Authority to ensure early resolution of the matter.
- ii. When the breach was brought to PAS's attention, PAS's senior management took a wide range of steps to stop the breaches.
- iii. Remedial steps have been taken since PAS was notified of the breaches to identify whether customers suffered loss and compensate them where they have.
- iv. PAS engaged a professional services firm to perform a review of its complaint handling framework.

***Disciplinary record and compliance history (DEPP 6.5.2G(9))***

51. PAS has not been the subject of previous disciplinary action by the Authority.

***Other action taken by the Authority (DEPP 6.5.2G(10))***

52. In determining the level of financial penalty, the Authority has taken into account penalties imposed by the Authority on other authorised persons for similar behaviour.

***Conclusion***

53. The Authority considers that a financial penalty is an appropriate sanction in this case, given the seriousness of the breach, the risks created for customers of PAS and the need to send out a strong message of deterrence to others. Applying those factors here, the appropriate level of financial penalty to be imposed under the Old Penalty Regime is £700,000 (reduced to £490,000 for early settlement at Stage 1).

## **Financial penalty under the New Penalty Regime**

54. The Authority's policy on the imposition of financial penalties relevant to the misconduct from 6 March 2010 is set out in Chapter 6 of the version of DEPP that was in force from 6 March 2010. All references to DEPP in this section are references to that version of DEPP. Under the New Penalty Regime, the Authority applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5A sets out the details of the five-step framework that applies in respect of financial penalties imposed on firms.

### **Step 1: disgorgement**

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

56. The Authority has not identified any financial benefit that PAS derived directly from its breach.

57. Step 1 is therefore £0.

### **Step 2: the seriousness of the breach**

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

59. The Authority considers that the revenue generated by PAS is indicative of the harm or potential harm caused by its breach. The Authority has therefore determined a figure based on a percentage of PAS's relevant revenue. PAS's relevant revenue is the revenue derived from the sale of mobile phone insurance by PAS during the period of the breach. The period of PAS's breach for the purposes of calculating the financial penalty under the New Penalty Regime is the period from 6 March 2010 to 27 September 2011. The Authority considers PAS's relevant revenue for this period to be £33,496,372.

60. In deciding on the percentage of the relevant revenue that forms the basis of the step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 20%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach; the more

serious the breach, the higher the level. For penalties imposed on firms there are the following five levels:

Level 1 – 0%

Level 2 – 5%

Level 3 – 10%

Level 4 – 15%

Level 5 – 20%

61. In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly. The Authority considers the following factors to be relevant.

*Impact of the breach*

- i. PAS's failings placed all of its customers who complained and who might have complained at risk of being treated unfairly, and presented a risk to the Authority's objective of securing protection for customers.
- ii. There was a risk of small losses to customers who complained and so on aggregate a larger risk of loss overall.
- iii. The breach did not affect particularly vulnerable people.
- iv. The breach had no adverse effect on markets.

*Nature of the breach*

- v. The breach occurred for approximately 18 and a half months that fell within the New Penalty Regime.
- vi. The breach revealed systemic weaknesses in PAS's procedures, management systems and internal controls relating to part of the firm's business. PAS failed to ensure complaint handlers investigated all complaints properly by taking into account all relevant information or that all complaints were assessed competently and fairly, and PAS's procedure for handling complaints produced inconsistent outcomes for customers with similar or identical complaints.

- vii. PAS took some steps to comply with Authority rules in providing training to complaints handlers and establishing complaints handling procedures. However, some aspects of the training and complaints handling procedures were inadequate and PAS did not make effective use of management information and root cause analysis to improve customer outcomes.

*Whether the breach was deliberate and or reckless*

- viii. The Authority has not found that the breach was intentional or reckless on the part of PAS's senior management
- ix. There was no attempt by PAS's senior management to conceal the misconduct.

62. Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 3 and so the Step 2 figure is 10% of £33,496,372.

63. Step 2 is therefore £3,349,637.

**Step 3: mitigating and aggravating factors**

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

65. The Authority considers that the following factors aggravate the breach.

- i. PAS failed to identify the breach.
- ii. The Authority's guidance and other published materials had already raised relevant concerns on the matter of treating customers fairly. This material is widely available and has been brought to the attention of all firms in this sector.

66. The Authority considers that the following factors mitigate the breach.

- i. PAS showed a significant degree of co-operation during the investigation of the breach by the Authority. Further to a requirement by the Authority, PAS contacted a sample of customers as part of a customer contact exercise in relation to its sales practices. Following this, PAS voluntarily extended the exercise and planned to contact all of its current customers in order to

identify whether any customers suffered a loss by reason of its sales practices and compensate them where they have.

- ii. When the breach was brought to PAS's attention, PAS's senior management quickly took a wide range of steps to stop the breach including completing a review of the customer complaints about mis-selling received during the Relevant Period.

67. As such, the Authority considers that the aggravating and mitigating factors are effectively balanced and that no adjustment at Step 3 should be made.

68. Step 3 is therefore £3,349,637.

#### **Step 4: adjustment for deterrence**

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

70. The Authority considers that the Step 3 figure of £3,349,637 represents a sufficient deterrent to PAS and others, and so has not increased the penalty at Step 4.

71. Step 4 is therefore £3,349,637.

#### **Step 5: settlement discount**

72. Pursuant to DEPP 6.5A.5G, if the Authority and the firm on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the firm reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.

73. The Authority and PAS reached agreement at Stage 1 and so a 30% discount applies to the Step 4 figure.

74. Step 5 is therefore £2,344,746, which has been rounded down to £2,344,700.

### **Conclusion on proposed financial penalty**

75. The Authority considers that combining the two separate penalties calculated under the Old Penalty Regime and New Penalty Regime produces a figure which is proportionate with similar fines. The Authority therefore proposes to impose a total financial penalty of £2,834,700 on PAS for breaching Principles 3 and 6.

### **PROCEDURAL MATTERS**

#### **Decision maker**

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

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

#### **Manner and time for Payment**

78. The financial penalty must be paid in full by PAS to the Authority by no later than 15 July 2013, 14 days from the date of the Final Notice.

#### **If the financial penalty is not paid**

79. If all or any of the financial penalty is outstanding on 16 July 2013, the Authority may recover the outstanding amount as a debt owed by PAS and due to the Authority.

#### **Publicity**

80. 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 PAS or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

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

### **Authority contacts**

82. For more information concerning this matter generally, contact Kate Tuckley (direct line: 020 7066 7086 /email: [kate.tuckley@fca.org.uk](mailto:kate.tuckley@fca.org.uk)) of the Enforcement and Financial Crime Division of the Authority.

**Bill Sillett**

**Financial Conduct Authority, Enforcement and Financial Crime Division**

## **Annex A**

### **RELEVANT STATUTORY AND REGULATORY PROVISIONS**

#### **STATUTORY PROVISIONS**

1. The Authority's statutory objectives, set out in section 2(2) of the Act include market confidence and the protection of consumers.
2. Section 138 of the Act provides that the Authority may make such rules applying to authorised persons with respect to the carrying on by them of regulated activities as appear to it to be necessary or expedient for the purpose of protecting consumers.
3. Section 206 of the Act provides:

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

#### **REGULATORY PROVISIONS**

##### **Principles for Businesses**

4. Under the Authority's rule-making powers the Authority has published in the Authority's Handbook the Principles, which apply in whole, or in part, to all authorised firms.
5. The Principles are a general statement of the fundamental obligations of authorised firms under the regulatory system and reflect the Authority's regulatory objectives. An authorised firm may be liable to disciplinary sanction where it is in breach of the Principles. The Principles relevant to this matter are the following.

*Principle 3*

6. Principle 3 provides that:

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



*Principle 6*

7. Principle 6 provides that:

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

**Dispute Resolution: Complaints Sourcebook**

8. DISP contains rules and guidance on how firms should deal with complaints.

9. During the Relevant Period, DISP 1.3.3R provided the following.

*In respect of complaints that do not relate to MiFID business, a respondent must put in place appropriate management controls and take reasonable steps to ensure that in handling complaints it identifies and remedies any recurring or systemic problems, for example, by:*

- (1) analysing the causes of individual complaints so as to identify root causes common to types of complaint;*
- (2) considering whether such root causes may also affect other processes or products, including those not directly complained of; and*
- (3) correcting, where reasonable to do so, such root cause.*

10. During the Relevant Period, DISP 1.4.1R provided the following.

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

- (1) investigate the complaint competently, diligently and impartially;*
- (2) assess fairly, consistently and promptly:*
  - (a) the subject matter of the complaint;*
  - (b) whether the complaint should be upheld;*
  - (c) what remedial action or redress (or both) may be appropriate;*
  - (d) if appropriate, whether it has reasonable grounds to be satisfied that another respondent may be solely or jointly responsible for the matter alleged in the complaint;*

*taking into account all relevant factors;*

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

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

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

11. During the Relevant Period, DISP 1.5.2G provided that complaints that are resolved by close of the next business day are still subject to the complaint resolution rules set out in DISP 1.4.

### **Decision Procedure and Penalties Manual**

12. The Authority's policy in relation to the imposition of financial penalties is set out in Chapter 6 of DEPP.

13. The Authority has revised Chapter 6 of DEPP. One version of Chapter 6 was in force up to and including 5 March 2010 and another version was in force on and from 6 March 2010.

14. In this case, the misconduct occurred between 29 June 2009 and 27 September 2011 and both versions of DEPP have been applied.

## **POLICY STATEMENTS**

### **Policy Statement 10/4 (March 2010)**

15. Policy Statement 10/4 relates to enforcement financial penalties. Paragraph 2.7, which relates to the transitional application of the new penalties regime, provides the following:

*"...when a breach begins before 6 March 2010 (when the new penalties regime takes effect) and continues after that date, two different penalty regimes will apply. The penalty regime in place before 6 March 2010 will apply to conduct before that date, and the new penalties regime will apply to conduct from that date onwards."*