
FINAL NOTICE

To: **Porta Verde Financial Services Limited**

Reference Number: **FRN 519508**

Address: **25 Watling Street London EC4M 9BR**

Date: **24 October 2013**

1. ACTION

- 1.1. For the reasons given in this notice, the Authority hereby imposes a financial penalty of £25,000 on Porta Verde Financial Services Limited ("Porta Verde") for breaches of Principles 3, 6 and 7 of the Authority's Principles for Businesses.
- 1.2. Porta Verde agreed to settle at an early stage of the Authority's investigation and produced evidence of serious financial hardship. Porta Verde therefore qualified for a 30% (stage 1) discount under the Authority's executive settlement procedures. Were it not for this discount and the fact that Porta Verde suffers from serious financial hardship, the Authority would have imposed a financial penalty of £353,800 on Porta Verde.

2. SUMMARY OF REASONS

- 2.1. The breaches of the Authority's Principles and Rules set out below relate to a number of failings by Porta Verde regarding its appointment, management and monitoring of two appointed representatives, Company A and Company B. For

the reasons set out in more detail in section 4 of this notice, the Authority has concluded that Porta Verde breached Principles 3, 6 and 7 during the period 5 October 2010 to 8 June 2012.

Principle 3

- 2.2. Porta Verde failed to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems. Specifically, Porta Verde:
- (1) appointed Company A and Company B as its appointed representatives ("AR"s) when it was aware that it had insufficient staff with the necessary skills, knowledge and expertise to maintain adequate control and oversight of the activities of those ARs;
 - (2) failed adequately to monitor and supervise Company A and Company B to ensure that they complied with the Authority's regulatory requirements; and
 - (3) failed to take adequate remedial action when it became aware of concerns regarding telephone sales of insurance contracts made by Company A and Company B.

Principle 6

- 2.3. Porta Verde failed to pay due regard to the interests of its customers and treat them fairly in breach of Principle 6. Specifically, Porta Verde failed to take reasonable steps to ensure that Company A and Company B:
- (1) did not pressurise or mislead customers to conclude insurance contracts for satellite television equipment or emergency home plumbing and drainage cover over the telephone; and
 - (2) obtained the appropriate consent from customers during telephone sales calls before concluding insurance contracts for satellite television or emergency home plumbing and drainage cover on behalf of those customers.

Principle 7

- 2.4. Porta Verde failed to pay due regard to the information needs of its customers and communicate information to them in a way which was clear, fair and not misleading, in breach of Principle 7. Specifically, Porta Verde failed to take reasonable steps to ensure that Company A and Company B:
- (1) did not mislead customers in the course of telephone sales calls by providing them with inaccurate information; and
 - (2) used telephone sales scripts that were fit for purpose to sell insurance contracts for satellite television equipment or emergency home plumbing and drainage cover to customers. The scripts contained information that was not clear, fair and not misleading.
- 2.5. Porta Verde failed to deliver fair outcomes for consumers because it did not ensure that its ARs, Company A and Company B, treated their customers fairly and provided customers with information during the sales calls that would have enabled them to make an informed decision before purchasing an insurance contract. As a result, customers were mis-sold insurance contracts for satellite

television equipment by Company A and emergency home plumbing and drainage coverage by Company B.

3. DEFINITIONS

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

“the Act” means the Financial Services and Markets Act 2000 as amended;

“the Agent” means the sales agents;

“AR” means appointed representative;

“the ARs” mean Company A and Company B;

“the Authority” means the Financial Services Authority until 31 March 2013 and the Financial Conduct Authority from 1 April 2013.

“ICOBS” means Insurance Conduct of Business Sourcebook;

“the Predecessor Company” means the firm from which Company A bought its renewals database;

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

“Porta Verde” means Porta Verde Financial Services Limited;

“the relevant period” means 5 October 2010 to 8 June 2012;

“the relevant revenue” means income generated by Company A and Company B during the relevant period;

“the Scripts/Scripts” means the telephone sales scripts; and

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

4. FACTS AND MATTERS

Background

4.1. Porta Verde was authorised by the Authority on 14 June 2010. During the relevant period it operated as a regulatory consultancy, providing compliance support and oversight to start-up businesses and was the principal to 22 ARs.

4.2. Porta Verde submitted an application to voluntarily cancel its part IV permission on 23 January 2013.

AR

4.3. An AR is a firm that is not authorised in its own right but conducts regulated activities on behalf of a directly authorised firm that acts as its principal. In accordance with section 39 of the Act, a written contract between the principal and the AR specifies the type of business that an AR is permitted to carry out on behalf of the principal. The principal takes regulatory responsibility for the AR and is ultimately accountable for the products and selling practices of its ARs.

Company B

- 4.4. On 5 October 2010, Company B became an AR of Porta Verde. Company B had previously sold regulated insurance contracts for home emergency cover without being authorised.
- 4.5. Company B sold home emergency plumbing and drainage insurance to approximately 3,000 customers during the relevant period. Company B bought information from lead generation companies about customers who had home emergency policies with utility providers, and then called these customers to sell its own policy. The cost of Company B's annual policy was £119, to be paid in quarterly instalments. During the Relevant Period Company B's sales calls generated a total income of £475,419 of which Porta Verde received £27,266.
- 4.6. In July 2011, a utility provider notified the Authority that it had received complaints from 28 of its customers who said they had received sales calls from a company they thought was the utility provider. The company making the calls was Company B.

Company A

- 4.7. On 18 May 2011, Company A became an AR of Porta Verde. Company A sold insurance for satellite television equipment to 21,310 customers between May 2011 and June 2012. 2,330 of these customers subsequently cancelled their policies. The cost of the policies ranged from £65 to £90 for an annual contract and from £170 to £240 for a three year policy. This was taken from customers as a non-refundable lump sum payment. Company A generated a total income of £1,883,772 from its sales calls, of which Porta Verde received £46,152 for the period May 2011 to June 2012.
- 4.8. Prior to becoming an AR, Company A bought a renewals database and took on some sales staff from a separate company ("the Predecessor Company") that had also sold regulated insurance contracts for satellite television equipment cover. In August 2011, the Authority received complaints from three customers who said that they had received sales calls from Company A and that the sales agents had incorrectly informed them that their satellite television equipment insurance had expired and that they were being contacted to renew the insurance cover.

Intervention by the Authority

- 4.9. As a result of these complaints, the Authority contacted Porta Verde on 5 September 2011 regarding the activities of Company A and Company B. The Authority conducted a desk based review of a sample of Company B's sales calls and listened to 18 sales calls made by Company A and 14 by Company B. The Authority's review identified a number of deficiencies with both ARs' sales scripts which meant that the sales calls did not comply with the Authority's regulatory requirements.
- 4.10. Between 14 September 2011 and 22 December 2011, Porta Verde made a number of amendments to the scripts used by Company A and Company B, following feedback from the Authority. Despite the script amendments, the Authority remained concerned about the quality of the sales calls, finding evidence of unacceptable sales practices such as pressure selling, failing to obtain proper consent from customers to purchase the product and providing customers with inaccurate or misleading information.

Sales scripts

Company B

- 4.11. The Authority found that Company B's sales scripts did not provide a complete description of the main characteristics of the product or appropriate information to enable customers to make an informed decision before consenting to purchase the product.
- 4.12. In all 14 calls reviewed, the Authority found that the information in the scripts was inaccurate, incomplete and/or misleading. Specifically, the scripts:
- (1) failed to identify the agent and his or her link with Company B. The script stated *"we are calling about your drainage and plumbing cover there at [customer's address]. It shows here that you have cover and pay around £12 a month..."* This statement may have given customers the misleading impression that the call was being made by their existing utility provider or that Company B was affiliated to their existing provider;
 - (2) did not make it clear that the insurance policy was for emergency situations or that the cover was restricted to temporary repairs and did not cover the cost of a permanent repair;
 - (3) stated that the customer had a 14 day cooling-off period but did not mention that the customer would be required to pay a cancellation fee of £25 if the policy was cancelled within the cooling-off period;
 - (4) failed to mention that there would be no refund of the premium if the customer cancelled the policy after the cooling-off period, nor did it inform customers who elected to pay on a quarterly basis but then cancelled that they could lose three months' premium in addition to paying a cancellation fee;
 - (5) stated *"you could no longer be on the best price plan available so what we can do is swap your insurance provider to Company B..."* This statement gave the impression that Company B's policy was the best priced plan available, which was incorrect and potentially misleading as Company B's policy did not necessarily provide comparable cover; and
 - (6) did not inform the customer when the new policy would start or that the customer could not claim for the first 14 days of the policy. This could result in potential gaps in cover, during which time customers would not have been insured.
- 4.13. Company B's scripts concluded abruptly and gave customers little opportunity to decline to take out the policy. For example, in one call despite the customer saying several times that she did not want the insurance cover as she could not afford it, the sales agent said: *"I understand that madam....I'm going to get the paperwork out today so you are fully covered for the year....so with your permission, I will process £30 today, okay?"*
- 4.14. The misleading nature of the scripts is borne out by the high cancellation rate for Company B's policies. For the period from March to August 2011, the cancellation rate ranged from 25% to 32%. Porta Verde admitted that a high proportion of these cancellations was because the services offered to customers under the new

policies were less comprehensive than those offered under the insurance contracts customers had with their existing utility provider.

Company A

- 4.15. Company A used two different scripts depending on whether the call was classified as a renewal because the customer had taken out a contract with the Predecessor Company. The Authority's review found the information in the scripts was inaccurate, incomplete and/or misleading in the following respects:
- (1) the introduction section did not make it clear that Company A was offering a new policy and was not connected to the satellite television provider;
 - (2) the agents informed customers that the initial breakdown cover for their satellite television equipment had expired, which in some cases was incorrect;
 - (3) the scripts failed to make it clear what type of policy Company A was replacing. One version referred to the "*initial breakdown coming to an end*" while another referred to the "*manufacturer's warranty coming to an end.*" In both instances, the scripts gave the impression that the new policy was a like-for-like replacement of the existing cover. This was misleading in cases where the policy replaced the manufacturer's warranty which was free and came automatically with the product. In contrast, the policy offered by Company A was not free, it was sold separately from the product and customers incurred a cost; and
 - (4) the scripts did not inform customers that a claim could not be made within the first 28 days of the policy.
- 4.16. Company A's scripts also adopted a pressure sales approach by stating that the call was to "*set up*" or "*sort out the policy...*" This gave customers less of an opportunity to decline to proceed.

Unacceptable sales practices

Pressure selling

- 4.16. The Authority identified a number of examples of pressure selling from its review of Company A and Company B's sales calls of which three cases are set out below:

Company A

- 4.17. Customers who agreed to take out the annual insurance cover were passed to sales agents (described as the supervisor or manager) who pressured customers to take out a longer contract, which invariably required customers to make a lump sum payment for two or three years instead of an annual payment.
- 4.18. Customer A, a 78 year old widow, initially thought that the sales call was from her satellite provider and asked for access to the sports channel to be cancelled as she could no longer afford to pay the additional subscription payments. Company A processed a payment of £170 for three years despite Customer A stating she had limited financial resources and an annual payment of £65 would be better for her. Another sales agent from Company A called Customer A a few days later to

ask if she was happy with the terms of her insurance policy (a follow up call was made to customers in cases where Company A's quality control department considered that the sales agents might not have obtained proper consent). Customer A was unaware that she had paid £170 for a longer contract and reiterated that she had not wanted three years cover because she: (i) could not afford it; and (ii) was unable to predict her requirements for the next three years. Company A's records do not reveal the outcome.

- 4.19. Customer B, an elderly gentleman, was contacted by a sales agent who informed him that *"Your initial satellite maintenance cover had expired and we're calling to set it up for you for the next 12 months."* Customer B thought that the sales call was from his existing satellite television provider. Despite customer B's obvious confusion about the purpose of the call (it was clear that Customer B thought that the call was about his satellite television monthly subscription fees) and stating to the agent 14 times that *"I'd rather stop as I am"*, the sales agent passed Customer B to a floor manager who attempted to sell him three years cover for £240. Customer B remained confused as to the purpose of the call and repeatedly said *"I'd rather stop as I am."* The floor manager's conversation with Customer B was terminated because the telephone line went dead. However, the sales agent called back Customer B and processed a payment of £90 to insure his satellite television equipment for one year. (Follow up calls were made to customers in cases where Company A's quality control department considered that the sales agent may not have obtained proper consent).

Company B

- 4.20. Customer C was informed by a sales agent from Company B that he was no longer paying the best price available for plumbing and drainage cover. The agent said *"....so what we can do is swap your insurance provider to Company B. It's a comprehensive cover and it's a lower price of just £9.99..."* During the call, Customer C queried four times why the cover needed to be swapped and asked a number of times if the sales agent was linked to his existing utility provider. The sales agent persisted with the call, even though Customer C insisted that he already had cover and would only consider reviewing his position when the existing insurance contract expired. The sales agent demanded to know why Customer C did not want to take out a new policy that would save him money and said *"there was no logical reason for such a decision..."* at which stage Customer C said goodbye and terminated the telephone call.

Inaccurate and misleading information

- 4.21. The Authority also identified the following examples of Porta Verde's ARs' sales agents providing customers with inaccurate and misleading information:

Company A

- 4.22. Customer D was contacted by a sales agent from Company A who was asked to call back when customer D's carer would be at home, because he had hearing difficulties. When the sales agent called back he made the following misleading statement to Customer D's carer, *"I called this morning in regards to maintenance of his [Customer D's] satellite television system. He's happy to go ahead with a monthly direct debit..."* On this basis, the sales agent obtained customer D's bank details from the carer to process a payment of £85. The next day, an agent from Company A's quality control department telephoned customer D to say that the sales call had been reviewed and found to be unclear in relation to the policy. The quality control agent explained that the policy was a new arrangement and that Company A was not affiliated to customer D's existing satellite provider. The

quality control agent stated which satellite equipment was covered but did not give any other details of the policy. The quality control agent also failed to identify that the sales agent had misled customer D's carer.

- 4.23. In eight cases customers took out policies with Company A when they had existing cover with another provider. One customer had been misled by a sales agent from Company A who told her that the contract had to be concluded at the time of the sales call because her previous contract had expired. This statement was untrue, as the customer contacted by Company A later discovered that the insurance policy with her satellite television provider was still valid.

Company B

- 4.24. In three cases, customers were told that quarterly payments for an annual contract would be taken over four consecutive months rather than every quarter, (which was the normal payment arrangement offered to customers) and that this was necessary because their bank cards had less than one year before the appointed expiry date. The expiry dates may not in fact have necessitated payment in this manner. These sales were completed in this manner without any consideration for the adverse effect this may have on customers' financial position or any potential detriment it might cause.

Misrepresentations by Company A and Company B sales agents

- 4.25. The Authority identified three cases in which agents misrepresented the identity of the company making the sales calls or failed to reveal their identity when asked to do so by the customer. In one case, an agent for Company B did not respond when asked if he was calling from the customer's existing utility provider. In two other cases, agents from Company A misrepresented their identity by telling the customers that they were calling from the Predecessor Company. Company A had taken on some of the sales staff from the Predecessor Company and incorrectly classified its existing customers as renewals.

Systems and Controls

Recruitment of appointed representatives

- 4.26. Porta Verde engaged a third party provider to conduct due diligence before taking on a firm as an AR. However, the Authority found no evidence to demonstrate that Porta Verde had carried out assessments to:
- (1) establish the degree of risk Company A and Company B could pose to the business of Porta Verde or their customers;
 - (2) ensure that Porta Verde was in a position to set an appropriate level of ongoing monitoring in relation to Company A and Company B; and
 - (3) ensure that the competence of Company A and Company B was sufficient to prevent an unreasonable risk to Porta Verde's business.

Inadequate monitoring resources

- 4.27. Porta Verde did not devote sufficient monitoring resources to Company B and Company A despite being aware that both ARs produced a higher volume of business than its other ARs. Porta Verde also failed to take into account that a significant number of Company A's sales staff had previously worked in an unregulated environment and therefore required enhanced monitoring to ensure their compliance with the Authority's regulatory requirements. Porta Verde was

not directly involved in the initial training Company A provided to sales staff, which the Authority considers a significant failing given the inexperience and background of these staff.

- 4.28. To comply with its regulatory responsibilities, Porta Verde needed to ensure that it had sufficient staff with the appropriate expertise to monitor the type of products sold (low value insurance products), the high risk manner in which customers were contacted (telephone cold-calling) and the high volume of sales. The low number of calls reviewed by Porta Verde together with the high level of non-compliant calls (particularly in the case of Company A) demonstrate that Porta Verde's monitoring resources and procedures were not adequate for the risks posed by Company A and Company B.

Call monitoring

- 4.29. Porta Verde carried out some routine call monitoring (about 24 calls a week for both Companies A and B in total). This level of call monitoring by Porta Verde was inadequate for them to be reasonably satisfied that the selling practices of Company A complied with regulatory requirements. During the relevant period Company A made sales of an average of 365 customers a week while Company B made an average of 50 sales a week.
- 4.30. However, even this level of call monitoring should have demonstrated to Porta Verde that it could not rely on the ARs' own call monitoring, which was itself inadequate.
- 4.31. In respect of Company B, Porta Verde advised the Authority in a letter dated 12 September 2011: "that in May 2011 it had been unhappy with the quality of Company B's calls and as a result had made changes to the AR's scripts but non-compliant calls continued to be made."
- 4.32. In respect of Company A, Porta Verde advised the Authority that it had made script changes in September 2011. Despite this there were significant discrepancies between Company A's call monitoring outcomes as reviewed by the Authority and Porta Verde's own call monitoring findings both of which revealed a high level of non-compliant calls.

Complaints handling - (Company A)

- 4.33. Company A's complaints log showed that most complaints received were resolved on the same or next day. Company A passed the complaints to Porta Verde, whose normal course of action was to cancel customers' policies, refund their premiums and remove them from the call list. The Authority found no evidence to demonstrate that Porta Verde had analysed its complaints data to identify systemic issues within its ARs' business processes.

Inadequate Remedial Action

- 4.34. In response to the Authority's concerns in September 2011, Porta Verde:
- (1) amended the sales scripts in an attempt to ensure that they complied with the Authority's Insurance Conduct of Business Rules; and
 - (2) implemented a review of its oversight and monitoring arrangements, including its remuneration policies, complaints handling procedures and cancellation rates.

- 4.35. However, call monitoring reports continued to identify a high level of non-compliant sales calls by both ARs.

Suspension of sales calls

- 4.36. As a result of Porta Verde's failure to sufficiently improve the quality of both its ARs' scripts and reduce the number of non-compliant sales calls, the Authority asked Porta Verde to suspend Company A and Company B's sales calls. On 23 September 2011 Porta Verde declined the Authority's request on the basis that it would rectify any problems with the ARs' calls by changing the scripts. On 28 September 2011, the Authority repeated its request. Porta Verde suspended Company A's sales calls on 18 November 2011 and recommenced the calls on 23 November 2011. It also suspended Company A and Company B's sales calls on 6 December 2011. The calls for both ARs were recommenced on 12 December 2011 after Porta Verde further revised the scripts. Due to the continued poor quality of both ARs' sales calls, Porta Verde imposed two further sales call suspensions on 23 December 2011 and 27 April 2012. The latter sales call suspension remained in place until both AR arrangements were terminated in June 2012.

Customer contact exercise

- 4.37. On 28 October 2011, the Authority asked Porta Verde to consider remedial action for customers. Porta Verde initially responded that it did not consider customers to have suffered any detriment. However, on 9 November 2011, Porta Verde agreed to conduct a customer contact exercise that commenced on 13 February 2012. Porta Verde sent customer contact letters to all customers who had taken out a contract with Company B since it had become an AR of Porta Verde in October 2010. An estimated 3,000 customers were contacted as a result of this exercise.
- 4.38. Of the 18,980 customer to whom Company A sold satellite television equipment insurance, customer contact letters were sent to 3,400 customers whose calls had been categorised as non-compliant in Company A's monitoring logs. Company A monitored all its sales calls, of which 3,400 customers accounted for 17% of all contracts concluded during the period it was an AR of Porta Verde. However, this figure might not be an accurate reflection of the non-compliant sales calls because there were many instances of Porta Verde's call monitoring outcomes conflicting with Company A's monitoring results. Porta Verde's review of the same sales calls identified a higher number of non-compliant calls. The Authority identified a call error rate of between 15 - 20%.
- 4.39. As a result of Company A's call error rate the Authority asked Porta Verde to ensure that all 18,980 customers were sent customer contact letters to give customers who may have suffered detriment an opportunity to obtain appropriate redress. However, Company A in conjunction with Porta Verde conducted a limited customer contact exercise and only sent letters to the 3,400 customers whose sales calls Company A had classified as non-compliant in its call monitoring reports.
- 4.40. The Authority is of the view that due to Company A's high call error rate of 15 – 20%, Porta Verde should have taken steps to ensure that Company A sent customer contact letters to all 18,980 customers.

5. FAILINGS

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

- 5.2. For the reasons set out above, Porta Verde has breached:
- (1) Principle 3, in that it failed to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems. In particular, Porta Verde failed to establish adequate controls and governance arrangements to effectively monitor its ARs, Company A and Company B.
 - (2) Principle 6, in that it failed to ensure that its ARs, Company A and Company B, paid due regard to the interests of its customers and treated them fairly. In particular, Porta Verde's ARs used unacceptable sales practices to conclude contracts which resulted in some customers being:
 - (i) pressurised into taking out insurance cover for satellite television equipment or emergency home plumbing and drainage they did not want or need; or
 - (ii) misled into believing that they were renewing their insurance contracts with their existing satellite television or utilities provider.
 - (3) Principle 7, in that it failed to ensure that its ARs, Company A and Company B, paid due regard to the information needs of its customers and communicated information to them which was clear, fair and not misleading. In particular, the ARs used scripts which contained inaccurate and misleading information.

6. SANCTION

- 6.1. The Authority considers the imposition of a financial penalty appropriate and proportionate in light of its findings.
- 6.2. The Authority's policy on the imposition of financial penalties and public censures is set out in the Authority's Decision Procedures and Penalties Manual (DEPP) and the Enforcement Guide. In determining the appropriate outcome in this case, the Authority has had due regard to this guidance. The Authority considers that the seriousness of this matter merits the imposition of a financial penalty.
- 6.3. DEPP 6.1.2G provides that the principal purpose of a financial penalty is to promote high standards of regulatory conduct. It seeks to do this by deterring firms who have breached regulatory requirements from committing contraventions and demonstrating generally to firms the benefit of compliant behaviour.
- 6.4. The Authority introduced a new policy for imposing a financial penalty in March 2010, which requires the Authority to apply a five-step framework to determine the appropriate level of the financial penalty. This policy is set out in Chapter 6 of DEPP. The relevant period is 5 October 2010 to 8 June 2012. As the breaches occurred after 6 March 2010, the Authority has applied the new policy to calculate the appropriate penalty for Porta Verde.
- 6.5. 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

- 6.6. The Authority seeks to deprive a firm of the financial benefit derived directly from the breach where it is practicable to quantify this.
- 6.7. The Authority has not identified any financial benefit that Porta Verde derived directly from its breaches of Principles 3, 6 and 7. Step 1 figure is therefore £0.

Step 2: the seriousness of the breach

- 6.8. 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 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.
- 6.9. The Authority considers that the revenue generated by Company A and Company B is indicative of the harm or potential harm caused by its breach. The Authority has therefore determined a figure based on a percentage of Porta Verde's relevant revenue. Porta Verde's relevant revenue is the revenue generated from Company A and Company B during the period of the breach. The period of Porta Verde's breach was from 5 October 2010 to 8 June 2012. The Authority considers Porta Verde's relevant revenue for this period to be £2,359,192.
- 6.10. In deciding the percentage of the relevant income that forms the basis of the step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 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%

- 6.11. 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.

Whether the breach was deliberate or reckless

- 6.12. In assessing the seriousness level, the Authority takes into account whether the breach was deliberate or reckless. DEPP 6.5A.2G (9) list factors that tend to show the breach was reckless, including whether the firm's senior management, or a responsible individual, appreciated there was a risk that their action or inaction could result in a breach and failed adequately to mitigate that risk. While the Authority does not consider that Porta Verde's breach was deliberate it does consider that the firm was reckless. Porta Verde's senior management was aware that there were weaknesses in the oversight of Company B in May 2011, prior to taking on Company A as an AR. Company A operated the same high risk cold-calling telephone sales strategy but had a significantly larger client book. Despite the increased risk posed by Company A, Porta Verde failed to take appropriate

steps to ensure that it had sufficient resources and adequate systems and controls to mitigate these risks.

- 6.13. The Authority also considers the following factors to be relevant to the seriousness of Porta Verde's breaches:

Impact of the breach

- (1) DEPP 6.5A.2G(6) lists factors relating to the impact of the breach. Of the factors listed the Authority considers that Porta Verde's inadequate oversight of Company A and Company B resulted in customers' (many of whom were vulnerable due to ill health or limited financial resources) being mis-sold insurance contracts for satellite television or emergency home plumbing and drainage coverage.

Nature of the breach

- (2) DEPP 6.5A.2G(7) lists factors relating to the nature of the breach. Of these the Authority considers the following to be relevant:
- (i) Porta Verde's senior management was aware of problems with Company B sales calls before it appointed Company A as an AR, but failed to ensure that it had sufficient resources and adequate systems and controls to effectively monitor both ARs;
 - (ii) Porta Verde took steps to address the concerns it had identified regarding Company B's sales calls in May 2011 by introducing a number of changes to the scripts, albeit these changes were inadequate; and
 - (iii) following the Authority's intervention in September 2011, Porta Verde also took steps to address the weaknesses in its oversight and monitoring of both ARs. However, these steps were ineffective as they did not significantly reduce the number of non-compliant sales calls made by both ARs.
- (3) DEPP 6.5A.2G(11) lists factors likely to be considered 'level 4 factors' or 'level 5 factors'. Of these, the Authority considers the following to be relevant:
- (i) the breaches indicate a serious weakness in Porta Verde's management systems relating to the monitoring of its two ARs that sold insurance contracts via cold call telephone sales;
 - (ii) the breaches were committed recklessly.

- 6.14. Taking all these factors into account, the Authority considers the seriousness of the breaches to be a level 4 and that the appropriate step 2 figure to reflect this is 15% of £2,359,192.

- 6.15. Step 2 is therefore £353,879.

Step 3: mitigating and aggravating factors

- 6.16. 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.

6.17. The Authority has taken account of the relevant factors and considers that the financial penalty arrived at after Step 2 should neither be increased nor decreased at Step 3.

6.18. Step 3 is therefore £353,879.

Step 4: adjustment for deterrence

6.19. 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.

6.20. The Authority considers that step 3 figure of £353,879 represents a sufficient deterrent to Porta Verde and other authorised firms who act as principal to ARs who fail to comply with the Authority's standards and regulatory requirements, and so has not increased the financial penalty at step 4.

6.21. Step 4 therefore remains £353,879.

Step 5: settlement discount

6.22. 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.

6.23. The Authority and Porta Verde reached agreement at Stage 1 and so a 30% discount applies to the Step 4 figure of £353,879.

6.24. The Step 5 figure is therefore £247,715. However, due to serious financial hardship, Porta Verde is only able to pay a financial penalty of £25,000.

Penalty

6.25. The Authority has therefore imposed a total financial penalty of £25,000 on Porta Verde for breaching Principles 3, 6 and 7 of the Authority's Principles for Businesses.

7. PROCEDURAL MATTERS

Decision maker

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

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

Manner of and time for Payment

7.3. The financial penalty must be paid in full by Porta Verde to the Authority by no later than 7 November 2013, 14 days from the date of the Final Notice.

If the financial penalty is not paid

- 7.4. If all or any of the financial penalty is outstanding on 7 November 2013, the Authority may recover the outstanding amount as a debt owed by Porta Verde and due to the Authority.

Publicity

- 7.5. 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 you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
- 7.6. The Authority intends to publish such information about the matter to which this final notice relates as it considers appropriate.

Authority Contacts

- 7.7. For more information concerning this matter generally, contact Anne Pike (direct line: 0207 066 8856 or e-mail Anne.Pike@fca.org.uk) of the Enforcement and Financial Crime Division of the Authority.

Tom Spender

Head of Department
Enforcement and Financial Crime Division
Financial Conduct Authority

Annex A

STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE

Statutory provisions

1. Section 1A(1) of the Act states that the body corporate previously known as the Financial Services Authority is renamed as the Financial Conduct Authority.
2. The Financial Services Authority's regulatory objectives, as previously set out in Section 2(2) of the Act, included the protection of consumers. Section 1B(3) of the Act provides that the Authority's operational objectives also include consumer protection. The ambit of this objective is set out more fully in s1C of the Act.
3. Section 206 of the Act provides:

"If the appropriate regulator 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."
4. The procedures to be followed in relation to the imposition of a financial penalty are set out in sections 207 and 208 of the Act.
5. Porta Verde is an authorised person for the purposes of section 206 of the Act.
6. The requirements imposed on authorised persons include those set out in the Authority's Principles and Rules made under section 138 of the Act. Section 138 empowered the Authority to make such rules in relation to authorised persons as appeared to be necessary or expedient for the purposes of protecting the interests of consumers.

The Authority's Principles for Businesses (PRIN)

7. The Principles are a general statement of the fundamental obligations of firms under the regulatory system and are set out in the Authority's Handbook. They derive their authority from the Authority's rule-making powers as set out in the Act and reflect the Authority's regulatory objectives. The Principles relevant to this case are as follows:
 - (1) Principle 3 which provides that:

"A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems."
 - (2) Principle 6 which provides that:

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

(3) Principle 7:

"A firm must pay due regard to the information needs of its customers and communicate information to them in a way which is clear, fair and not misleading."

The Authority's Handbook

8. The Authority's Insurance Conduct of Business Sourcebook (ICOBS) applied to authorised firms throughout the relevant period. Chapter 3 of ICOBS sets out the Authority's rules for distance marketing.
9. ICOBS 3.1.14R provides:
 - (1) *"In the case of voice telephony communication, and subject to the explicit consent of the consumer, only the abbreviated distance marketing information (ICOBS 3 Annex 3R) needs to be provided during that communication."*
 - (2) *"However, unless another exemption applies (such as the exemption for means of distance communication not enabling disclosure) a firm must still provide the distance marketing information (ICOBS 3 Annex 2 R) in writing or another durable medium available and accessible to the consumer in good time before conclusion of any distance contract."*
10. ICOBS 6.1.5R provides:

"A firm must take reasonable steps to ensure a customer is given appropriate information about policy in good time and in a comprehensible form so that the customer can make an informed decision about the arrangements proposed."