
FINAL NOTICE

To: **Simon John Varley**

**Individual
Reference
Number:** **SJV00009**

Date: **15 April 2021**

1. ACTION

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

- (1) imposes on Mr Varley, pursuant to section 63A and section 66 of the Act, a financial penalty of **£68,300**; and
- (2) makes an order against Mr Varley, pursuant to section 56 of the Act, prohibiting Mr Varley from performing any function in relation to any regulated activities carried on by an authorised or exempt person, or exempt professional firm.

1.2 Mr Varley has not referred the matter to the Tribunal within 28 days of the date on which the Decision Notice was issued to him.

1.3 Accordingly, the Authority has today imposed a financial penalty of £68,300 and made a prohibition order in respect of Mr Varley.

2. SUMMARY OF REASONS

2.1. In 2006 the Authority launched a wide-ranging review of the retail investment market: the Retail Distribution Review (RDR) The aim of the RDR was to make the retail investment market work better for consumers and one of the ways this was

to be achieved was by raising standards so that the minimum level of qualification for all retail investment advisers would be a level 4 qualification. With effect from 31 December 2012, the Authority implemented a new set of rules arising from that review. Under those rules, all firms authorised by the Authority with permission to conduct retail investment business are required to ensure that their retail investment advisers hold the minimum level of qualification (a Level 4 Qualification or DipPFS), a Statement of Professional Standing (SPS), and, until the introduction of the Senior Management and Certification Regime, needed to be approved by the Authority as CF30. Mr Varley failed to meet the qualification and SPS requirements; the approval requirement; and continued to advise retail customers from 2 January 2013 until 1 September 2017 while he was not qualified, or approved to do so, after 28 January 2013. The Level 4 qualification was required to maintain CF30 approval to provide regulated retail investment advice.

2.2. The Authority considers that Mr Varley:

- (a) Knowingly performed the CF30 (Customer) controlled function at Dickinsons without approval for the purposes of section 63A of the Act and provided investment advice to retail customers when he knew he was not qualified or approved to do so;
- (b) knowingly provided false information to Dickinsons in board meetings;
- (c) knowingly facilitated the provision of false information to Dickinsons' PII providers;
- (d) knowingly provided misleading information to the Authority in the RMARs; and
- (e) provided explanations to the Authority that were untrue.

2.3. When Mr Varley did (a) to (d) in paragraph 2.2 above, he was CF1 Director and the CF10 Compliance & Oversight holder at Dickinsons. The Authority considers that Mr Varley abused a position of trust as CF1 Director and CF10 Compliance Oversight holder. His misconduct amounts to a failure to act with integrity, in breach of Statement of Principle 1.

2.4. Mr Varley's conduct left Dickinsons without PII cover, which reduces Dickinsons' ability to meet any claims that may arise in respect of potentially unsuitable advice given by Mr Varley, and, in turn, reduced the protection that would have otherwise been available to Dickinsons and its customers.

2.5. The Authority has concluded, on the basis of the facts and matters described in the Warning Notice and in the Decision Notice, that Mr Varley lacks honesty and integrity and, therefore, is not a fit and proper person. The Authority also considers that Mr Varley poses a risk to consumers and to the integrity of the financial system. The nature and seriousness of the breaches outlined above warrant the imposition of a financial penalty and the imposition of an order prohibiting him from performing any function in relation to any regulated activities carried on by an authorised or exempt person or exempt professional firm.

2.6. The Authority therefore:

- (a) imposes on Mr Varley, pursuant to section 63A and section 66 of the Act, a financial penalty of £68,300; and

(b) makes an order against Mr Varley, pursuant to section 56 of the Act, prohibiting Mr Varley from performing any function in relation to any regulated activities carried on by an authorised or exempt person, or exempt professional firm. This order is effective from the date of this Notice.

3. DEFINITIONS

3.1. The following definitions are used in this Notice (and in the Annexes):

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

“APER” means the Statements of Principle and Code of Practice for Approved Persons;

“Approved Person” means an individual who the Authority approves to do one or more activities called 'controlled functions' for an authorised firm;

“the Authority” means the Financial Conduct Authority and before 1 April 2013, the Financial Services Authority;

“the CF1 Director” or “CF1” is an individual who performs the controlled function of director at an authorised firm;

“the CF10 Compliance Oversight” or “CF10” is an individual who performs the controlled function of compliance oversight at an authorised firm;

“CF11 Money Laundering Reporting” or “CF11” is an individual who performs the controlled function of money laundering reporting at an authorised firm;

“the CF30 Customer Function” or “CF30” is an individual who performs the controlled function of dealing with customers at an authorised firm;

“the CII” means the Chartered Insurance Institute;

“the CII’s Diploma in Regulated Financial Planning” means the CII’s RQF Level 4 diploma qualification (DipPFS) which meets the Authority's qualification requirements for retail investment advisers (i.e. the Level 4 Qualification), and develops core technical knowledge and financial planning capabilities across six compulsory units:

- R01 - Financial services, regulation and ethics;
- R02 - Investment principles and risk;
- R03 - Personal taxation;
- R04 - Pensions and retirement planning;
- R05 - Financial protection; and
- R06 - Financial planning practice;

“Decision Notice” means the notice given to Mr Varley dated 5 February 2021;

“DEPP” means the Decision Procedure and Penalties Manual section of the Handbook;

“Dickinsons” means Dickinsons Financial Management Limited;

“EG” means the Enforcement Guide;

“FIT” means the Fit and Proper Test for Employees and Senior Personnel section of the Handbook;

“FP1” means the Financial Planning Certificate Paper 1;

“FP2” means the Financial Planning Certificate Paper 2;

“FP3” means the Financial Planning Certificate Paper 3;

“FPC” means the Financial Planning Certificate, achieved on passing FP1, FP2 and FP3;

“FSCS” means the Financial Services Compensation Scheme the compensation scheme of last resort for customers of financial firms that have failed;

“the FS register” means the Financial Services Register;

“Gap-fill” means the study and/or exams to be successfully completed through an accredited body by an existing retail investment adviser that was deemed to be appropriately qualified prior to the RDR, in order to meet the new qualification requirements of the RDR;

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

“the Level 4 Qualification” or “DipPFS” means a qualification which meets the Authority’s qualification requirements/criteria for retail investment advisers as set out in the Training and Competence manual of the Handbook;

“Responsibility for MCD Intermediation” means a person such as a director or senior manager who is responsible for a firm’s MCD credit intermediation activity;

“Personalised Learning Statements” means a statement of record of the units and resultant credits held by an individual which can be used towards completing CII qualifications, issued by the CII;

“PII” means professional indemnity insurance;

“QCF” means the Qualifications Credit Framework;

“RDC” means the Regulatory Decisions Committee of the Authority (see further under Procedural Matters below);

“the RDR” means the Retail Distribution Review;

“the Relevant Period” means the period between 27 February 2013 and 1 September 2017;

“the RMAR” means the Retail Mediation Activities Return;

“SPS” means the Statement of Professional Standing which must be held by all retail investment advisers;

“the Statements of Principle” means the Statements of Principle as set out in APER;

“the TC” means the Training and Competence section of the Handbook;

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

“Mr Varley” means Mr Simon John Varley; and

“the Warning Notice” means the warning notice given to Mr Varley dated 17 December 2020.

4. FACTS AND MATTERS

Background

- 4.1. On 30 August 2005, Dickinsons was authorised by the Authority with permission to carry on regulated consumer credit, designated investment, home finance and consumer buy-to-let business. Dickinsons’ core business was providing financial advice to retail clients, primarily relating to investments, pensions and protection, serving veterinary practitioners and practices. Mr Varley was an adviser at Dickinsons.
- 4.2. On 30 August 2005, Mr Varley was approved as CF1 Director, CF8 Apportionment and Oversight, CF10 Compliance Oversight; and CF11 Money Laundering Reporting function holder. On 1 November 2007, he became a CF30 Customer function holder (on 21 March 2016, he also took responsibility for MCD Intermediation).
- 4.3. On 31 December 2012, the Authority implemented the RDR. On 28 January 2013, Mr Varley withdrew his CF30 function.
- 4.4. On 4 September 2017, Mr Varley’s co-director at Dickinsons called the Authority to query why Mr Varley was not showing as a CF30 on the FS Register. The Contact Centre asked that director to review the firm’s records and submit a breach notification in respect of Mr Varley, if required.
- 4.5. On 4, 19 and 31 October 2017, Dickinsons had meetings with Mr Varley in which Dickinsons raised concerns about his acting without approval whilst his application was still pending with the FCA. In these meetings, Mr Varley stated to Dickinsons that he had successfully completed the relevant RDR exams and had made the approval application for CF30. This statement made by Mr Varley to Dickinsons was false. Dickinsons then suspended Mr Varley from his position.
- 4.6. On 22 November 2017, Mr Varley’s approval as CF10 and CF11 was withdrawn by Dickinsons.
- 4.7. In November 2017, a compliance consulting firm carried out a review of eight customer files “in order to assess the potential for any client detriment arising from Mr Varley’s advice while he was not qualified to advise”. In three of the eight cases,

there was a finding of potential detriment. Dickinsons accepted that the demonstration of suitability could have been stronger in those cases but did not consider the advice provided by Mr Varley unsuitable.

- 4.8. On 21 December 2017, Dickinsons informed the Authority that Mr Varley had been giving retail investment advice without holding an SPS and that Mr Varley had misled the directors of Dickinsons about his approval and qualification status to provide advice to clients. Dickinsons provided the Authority with three client files as evidence that Mr Varley was advising retail customers during the Relevant Period. These included the following reports:
- a. a financial planning report dated 24 November 2015;
 - b. a pension switch report dated 11 December 2015; and
 - c. a suitability report dated 24 November 2016.

The suitability report includes the declaration by Mr Varley: "I confirm that I am authorised to provide advice on all areas addressed in this report", which was an active misrepresentation by Mr Varley that he was qualified and approved to provide retail investment advice. The financial planning report states that the adviser in that case was Mr Varley. The pension switch report states that it has been prepared by Dickinsons with Mr Varley, as the adviser. On 23 January 2018, Dickinsons notified its insurer that Mr Varley had provided advice without FCA approval.

- 4.9. On 19 April 2018, Mr Varley's approval as CF1 Director was withdrawn. Mr Varley is no longer approved to carry out any controlled functions.
- 4.10. On 10 May 2018, the PII insurers' solicitors wrote to Dickinsons' PII broker to confirm that Dickinsons' PII insurance would be avoided for the period of the cover, 4 September 2017 to 3 September 2018 and that the PII insurers' rights were reserved in respect of the 2015 and 2016 PII policies, whilst expressly refusing all claims for Mr Varley's advice in respect of the 2017-2018 period of the policy.
- 4.11. To date, Dickinsons has received one complaint against Mr Varley relating to the period when he provided advice whilst not meeting the requirements of the RDR. This complaint was considered by the FOS in November 2019, but not upheld. The FOS found that the advice provided by Mr Varley was not misleading and that the compensation Dickinsons had offered to pay the complainant for the trouble and upset caused, and for the time it had taken to investigate the complaint, was more than reasonable.
- 4.12. On 15 October 2019, Dickinsons was put into members' voluntary liquidation and is now dissolved.

The RDR and its requirements for retail investment advisers

- 4.13. On 31 December 2012, the Authority implemented the RDR, in part through the introduction of new training and qualification requirements in the TC. These new rules raised the benchmark qualification level for all retail investment advisers and introduced an overarching standard for continuing professional development, in order to raise professional standards. All firms authorised by the Authority to conduct retail investment business were required to ensure that their retail investment advisers had reached the QCF Level 4 or equivalent and held both an SPS and CF30 approval. An SPS is evidence that an accredited body, such as the

CII, has independently verified that the retail investment adviser holds an appropriate qualification, that the adviser satisfies the appropriate continuing professional development requirement (which includes any qualification Gap-fill for existing advisers) and has met the required standard.

Mr Varley's qualification and approval

- 4.14. The CII issues personalised Learning Statements, which provide a record of the units and resultant credits held by an individual which can be used towards completing CII qualifications (such as the Level 4 Qualification). This includes both CII units and examinations obtained through other awarding bodies which the individual has notified to the CII. Importantly, it also sets out in simple terms the requirements necessary to complete a qualification. The CII confirmed in an email to the Authority that Mr Varley's personalised Learning Statement shows that Mr Varley had completed the pre-RDR qualifications, FP1, FP2 and FP3 components of the Financial Planning Certificate. Mr Varley completed the FP1, FP2 and FP3 in July and October 2000. Mr Varley was a member of the CII between 1 November 2011 and 28 February 2014, when his membership lapsed. There is no record of the CII issuing an SPS to Mr Varley, or any record of any gap-fill, studies or examinations being taken by Mr Varley with the CII that meet the RDR requirements.
- 4.15. On 28 January 2013, Mr Varley filed a Form C to withdraw his own CF30 approval. He told the Authority that he had done so because he had failed one exam in respect of the Level 4 Qualification which he needed to have passed before the RDR deadline of 1 January 2013.
- 4.16. Mr Varley also stated that he thought that he had re-sat the failed exam sometime before 30 January 2013, and that on 6 February 2013, he had re-applied to the Authority for CF30 approval. The Authority has no record of receiving this application or a record of any communication with Mr Varley or Dickinsons on or around 6 February 2013. Mr Varley stated that, whilst he was waiting for the Authority to approve his CF30 application, he did not submit any pension or life assurance business for approximately six months, following which Mr Varley began to give advice again on the basis that he thought that the Authority had acknowledged receipt of his CF30 application. Mr Varley's new business register for 2013 does not indicate a break and shows that business was being submitted by Mr Varley from 2 January 2013 onwards. Mr Varley stated his belief was that "everything is in hand". Mr Varley was not able to provide evidence that he had made the online submission of his CF30 form or that he had received confirmation from the Authority that his application had been successful.
- 4.17. Mr Varley informed the Authority that he took the level 4 Qualification exams with the CII. On 22 November 2018, the CII responded to the Authority's information request and provided information held by it which showed that, according to the CII's records, Mr Varley had not taken any further exams since taking the FP1, FP2 and FP3 in 2000 and that Mr Varley's CII membership had lapsed in March 2014. Since Mr Varley's withdrawal of his CF30 approval on 28 January 2013, there is no record of Mr Varley re-applying to the Authority for approval as a CF30.

Mr Varley's role and responsibilities

- 4.18. The controlled functions held by Mr Varley at Dickinsons included CF1 Director and CF10 Compliance Oversight. Mr Varley stated that in his compliance role, his duties included ensuring that Dickinsons remained up to date with changes introduced by the Authority to rules and guidance applicable to Dickinsons' business. Mr Varley's

compliance responsibilities also included customer file reviews to ensure that regulatory requirements regarding, for example, know-your client, suitability, and treating customers fairly were being met. Mr Varley was also responsible for submitting the RMARs to the Authority on behalf of Dickinsons. He was not responsible for obtaining PII or completing PII forms, but his role required him to check that the information on PII forms was correct and sign off the PII forms on behalf of Dickinsons. Mr Varley was also responsible for ensuring that advisers were meeting the requirements of the RDR; for example, when the Authority was informed by the CII that an adviser's SPS had expired, it was Mr Varley that communicated with the Authority and confirmed what action was being taken by Dickinsons.

Mr Varley's conduct

- 4.19. Mr Varley knowingly performed the CF30 (Customer) controlled function at Dickinsons without approval for the purposes of section 63A of the Act and provided investment advice to retail customers when he knew he was not qualified or approved to do so.

On 28 January 2013, Mr Varley submitted a Form C on behalf of Dickinsons to withdraw his CF30 controlled function. The effective date of the withdrawal on the form was mistakenly back-dated to 1 January 2012, but should have been 1 January 2013 to account for Mr Varley not having met the RDR requirements as at that date. The Authority has no record of Mr Varley re-applying to hold the CF30 function. After submission of the Form C, Mr Varley continued to advise clients, knowing that he did not have approval. The first occasion was on 30 January 2013. Mr Varley confirmed that he checked the FS Register repeatedly and so knew that his name was not registered as a CF30. Mr Varley was advising retail clients, approving suitability reports and other advice documents, which named him as the adviser and which included the following statement about him: "authorised as an independent financial adviser". This was an untrue statement as Mr Varley did not hold the required qualifications under the RDR and was not approved by the Authority as a CF30 when the advice was given. Mr Varley stated to the Authority that he did not advise from January 2013 to June 2013. However, the 2013 new business register for Mr Varley provided to the Authority by Dickinsons shows that Mr Varley did provide retail investment advice between January 2013 and June 2013 and the new business registers for 2013-2017 show that Mr Varley continued to provide retail investment advice throughout the Relevant Period.

- 4.20. *Mr Varley knowingly provided false information to Dickinsons in board meetings*

Mr Varley knowingly provided false information to Dickinsons in board meetings on four separate occasions, on 27 November 2012; 27 February 2013; 24 June 2013; and 9 August 2017:

- a. The minutes of a board meeting held on 27 November 2012 state that under the heading "RDR/TCF", a fellow director declared that he had received his SPS and was "*all set to go*", after which Mr Varley is recorded as saying that "*he very much hopes to be, just needs to pass final exam. This is his priority for RDR, all part and parcel. He's not overly concerned.*" This statement was false; the CII's records show that Mr Varley had not sat or passed additional exams since the FP1, FP2, and FP3 in July and October 2000. The FP1 – FP3 exams are pre-RDR qualifications and Mr Varley told the Authority that he needed to sit and pass three or four RDR-compliant exams including

relevant gap-fill in order to be RDR qualified and apply for approval as CF30. As CF10 for Dickinsons, Mr Varley knew, or should have known this. It was therefore untrue to say that on 27 November 2012, he had only to pass one final exam to achieve the RDR-required Level 4 qualification.

- b. The minutes of a board meeting held on 27 February 2013 state that another Dickinsons director asked Mr Varley whether he had qualified yet and Mr Varley replied that he had not, explaining that he could not take the exam due to his expired passport and that he was waiting on a new one. Mr Varley was also asked whether he knew more about his previous exams, to which he responded "no". This indicates that Mr Varley continued to mislead the other directors in relation to his taking and passing the RDR exams in that he failed to correct the impression that, in addition to the final exam he stated that he was unable to take, he had taken previous exams relevant to the RDR, when there is no evidence that Mr Varley had taken any professionally relevant exams since 2000. When asked why he had not done his exams before the RDR deadline, Mr Varley informed his co-directors that *"he believed that he was there as the PFS said all okay with gap fill etc., then the week before Christmas [2012] they said no, so he booked the exam, but couldn't do it because of his passport."* Mr Varley also assured his co-directors that *"it's in the system, all submitted, and exams can be done every week"*. This implied that Mr Varley had submitted his CF30 application. There is no record of this, only of his CF30 withdrawal a month earlier. Mr Varley would also have known that he could not be approved as a CF30 without passing his exams and having a valid statement of professional standing.
- c. The minutes of a board meeting held on 24 June 2013 state that a fellow Director asked Mr Varley whether he is *"authorized yet"* referring to being approved, Mr Varley confirmed that he is *"qualified but awaiting sign off in order to be authorized"*. Mr Varley therefore implied that he had passed the final exam and was awaiting FCA approval. This was false; the CII's records showed that Mr Varley had not taken further exams after the FP1, FP2, and FP3 in July and October 2000 and the Authority had not received a re-appointment of CF30 form in respect of Mr Varley.
- d. The minutes of a board meeting dated 9 August 2017 under the agenda item *"FCA"*, record that Mr Varley was asked for an update and he responded that the FCA still have not updated the status of three directors, including himself, and that it has almost been twelve months since the FCA's acknowledgement, and so he would follow up with the FCA. This was a false statement because the Authority had neither received a new application for Mr Varley, nor received any query in respect of his name not showing on the FS Register, until Dickinsons reported this to the Authority in September 2017. The minutes of the previous board meeting held on 15 May 2017, also indicate that updating the status of individuals was brought up in the meeting before and on that occasion Mr Varley stated that *"the FCA are continuing their slow work on the variation of permissions and updating the register with individual's statuses"*.

4.21. *Knowingly provided misleading information to the Authority in the RMARs regarding the number of retail investment advisers working at Dickinsons*

Mr Varley was responsible for the submission of the RMARs every 6 months to the Authority and for ensuring that the information was correct. The RMARs provide

key information about a firm and its activities which is essential to the risk-based supervision of small flexible firms such as Dickinsons. This information includes the number of staff providing retail investment advice at Dickinsons and the number of advisers that had passed approved examinations. In 2013, 2014, 2015 and 2016, Mr Varley approved submission to the Authority of RMAR forms that stated that there was one person at Dickinsons providing retail investment advice and there was only one adviser that had passed approved examinations. In interview, Mr Varley confirmed to the Authority that he was referring to a fellow director. By deliberately excluding himself from the RMAR, Mr Varley concealed the fact that he was providing investment advice even though he was not qualified to do so; his co-director was the only person qualified to provide investment advice at Dickinsons. Mr Varley knowingly misled the Authority into believing that only one person was providing retail investment advice to customers instead of two.

4.22. *Facilitated the provision of false information to Dickinsons' PII provider*

Mr Varley confirmed to the Authority that as the CF10, he was responsible for pulling together the precise information that was required to be included on PII indemnity proposal forms, and checking that the completed forms were correct. A completed Professional Advisors' PII form dated 30 July 2015 stated that Dickinsons had two registered individuals. Mr Varley confirmed to the Authority that this was a reference to himself and another director, even though he was not himself registered with the CII or approved by the FCA when he approved the completed PII form. A PII proposal form dated 1 September 2016, which appears to be submitted on behalf of Dickinsons by Mr Varley states that Mr Varley's qualifications include DipPFS. This was false. A PII proposal form dated 21 August 2017 and manually signed by Mr Varley, also records "DipPFS" as one of Mr Varley's qualifications, with the date on which Mr Varley qualified given as "2013". The same PII form also confirmed to the PII provider that all the advisers at Dickinsons have RDR-compliant qualifications and hold a Statement of Professional Standing. These statements were false. Mr Varley claimed that the information was entered on the PII forms by Dickinsons' company secretary or office manager, as stated in the 2017 proposal form, but he accepted that ultimately he was responsible for the PII forms and the information they provided. Mr Varley acknowledged to the Authority that there was an inconsistency between the completed PII proposal forms (which stated that Dickinsons had two advisers) and the RMARs (which stated that there was only one adviser). Mr Varley sought to explain that the PII forms were about the number of advisers with qualifications, whereas for the RMARs he "was told" by the FCA that he could not put two as there is "only one of you". In fact, the PII forms required three categories of information: (a) the number of registered individuals giving advice; (b) the number of advisers meeting RDR qualification requirements; and (c) the number of advisers that held an SPS.

4.23. *Provided explanations to the Authority that were untrue*

- a. Mr Varley told the Authority that in January 2013 he had passed the relevant exams with the CII, whereas the CII has no record of his taking these exams. The Dickinsons Board minutes of 27 February 2013 indicate that Mr Varley had not qualified as at that date, and in that meeting when asked by another director about his qualification status, Mr Varley stated that he could not do the exam because his passport had expired. This is contrary to what Mr Varley later told the Authority in that he was able to re-take the final exam (pension exam) and he had qualified in January 2013.

- b. Mr Varley also stated that he thought that he had applied to the Authority for CF30 approval on 6 February 2013 and had spoken to various Authority staff by telephone to get updates on his status and that of his application. Qualifying in January 2013 is difficult to reconcile with Mr Varley's withdrawal of his CF30 function on 28 January 2013.
- c. Mr Varley also stated that when completing section G of the RMARs on Training and Competence, he put that Dickinsons had only one investment adviser because he was told by the Authority that they could not put down two and that it just "*won't go through*" on the online system. The Authority has no record of telephone calls with Mr Varley in which this matter was discussed.
- d. Mr Varley also claimed that he took level 4 exams and may have paid for them using a pre-paid credit card, but was unable to provide further information to support this because it was untrue.
- e. Mr Varley also specifically told the Authority that when Mr Varley's co-director's SPS expired in July/August 2014, the Authority had "*reviewed the book of business, which included my book of business and it was assessed then, you know, here's what [the co-director] has written here's what Simon has written, and there was no pick-up then from you of that there was an underlying issue with my status as an adviser*". In fact, the review was only of business conducted by his co-director during the 6-month period when his co-director lacked a valid SPS. Mr Varley provided the FCA with assurances as to Dickinsons' systems and controls after his co-director's SPS expired, but failed to disclose that he himself lacked an SPS but was nonetheless providing investment advice to the firm's clients. He did not instigate a review of his own advice but instead concealed his own misconduct from the Authority.

5. FAILINGS

- 5.1 The statutory and regulatory provisions relevant to this Notice are referred to in Annex A.
- 5.2 Based on the facts and matters described above, the Authority concludes that Mr Varley has knowingly performed a controlled function without approval for purposes of section 63A of the Act, breached Statement of Principle 1 and lacks fitness and propriety.

Section 63A of the Act

- 5.3 The Authority is satisfied that Mr Varley has performed the CF30 (Customer) controlled function at Dickinsons without approval and knew that he was performing a controlled function without approval. Mr Varley made an application for withdrawal of his CF30 controlled function on 28 January 2013 and would have therefore been aware that thereafter, he was not approved to perform the CF30 controlled function, a fact that was also evident from checking the FS Register. Mr Varley told us that he was aware of the RDR requirements and that it was because he did not meet the requirements on 1 January 2013 that he had applied to withdraw his CF30 approval. However, the new business registers for Mr Varley

provided to the Authority by Dickinsons show that Mr Varley continued to advise retail clients when he knew that he was not approved. Without the limitation set out in paragraph 5.4 below, the period of this breach would start when Mr Varley first performed the CF30 function after submission of the CF30 withdrawal, i.e. 30 January 2013. Mr Varley backdated the effective date on the withdrawal form (mistakenly to 1 January 2012 instead of 1 January 2013). The fact that he backdated the effective date indicates that he understood that he was not RDR-compliant and therefore could not apply for a CF30 customer function. Mr Varley did not hold the qualification required post-RDR to practise as a retail investment adviser.

- 5.4 Under section 63A of the Act, the Authority may impose a penalty on Mr Varley of such amount as it considers appropriate. On 4 September 2017, the Authority was asked about Mr Varley's regulatory status by another director of the firm. The Authority considers that this started time running for the purposes of section 63A(3) of the Act. Until 25 July 2014 the limitation period under section 63A(5B) of the Act was 3 years in relation to the performance of a controlled function. After that date the limitation period became 6 years. Taking 4 September 2017 as the start date, limitation for Mr Varley's performance of a controlled function without approval before 25 July 2014 (the 3-year period) expired on 4 September 2020. His behaviour after 25 July 2014 falls to be considered under the amended provisions. So, for the purposes of section 63A of the Act, a penalty may be imposed relating to the period from 11 August 2014 (the first occasion after 25 July 2014 on which Mr Varley gave regulated investment advice) until 1 September 2017 (the last occasion). As this overlaps with the longer period of breach in respect of APER 1 for purposes of section 66 of the Act (27 February 2013 to 1 September 2017), the Relevant Period is 27 February 2013 to 1 September 2017, which incorporates both the period of breach for purposes of s. 63A of the Act and the period of breach for purposes of s. 66 of the Act.

Failing to act with integrity in carrying out a controlled function: APER Statement of Principle 1

- 5.5 Mr Varley's misconduct during the Relevant Period demonstrates that whilst approved to perform the CF1 Director and CF10 Compliance Oversight controlled functions, he acted in breach of Statement of Principle 1 by failing to act with integrity. Mr Varley knowingly provided false information to Dickinsons in board meetings, stating that he was both qualified and awaiting sign-off from the Authority in respect of his CF30 status. He knowingly provided misleading information to the Authority in the RMARs in respect of the number of retail investment advisers working at Dickinsons by not including himself, and he facilitated the provision of false information to Dickinsons' PII providers. Mr Varley provided the FCA with assurances as to Dickinsons' systems and controls when his co-director's SPS expired, yet Mr Varley failed to disclose that he himself lacked an SPS but was nonetheless providing investment advice to the firm's clients. He did not instigate a review of his own advice but instead concealed his own misconduct from the Authority.

Not fit and proper

- 5.6 By reason of the facts and matters described above, the Authority considers that Mr Varley lacks both honesty and integrity and, therefore, is not a fit and proper person. Mr Varley has therefore failed to meet the criteria as set out in FIT 2.1 (honesty, integrity and reputation). Mr Varley's knowing involvement in the

provision of false and misleading information served to mislead Dickinsons, its PII providers and the Authority as to his own qualification status and activity. This created a risk of loss to consumers as he was not qualified to provide the advice and, subsequently, his advice was deemed to be uninsured. Taking into account the factors listed in FIT 2.1.3G, Mr Varley has contravened the requirements and standards of the regulatory system (FIT 2.1.3G(5)), was dismissed from his employment with Dickinsons as a result of the misconduct (FIT 2.1.3G(11)) and has not been candid and truthful in all his dealings with the Authority or demonstrated a readiness and willingness to comply with the requirements and standards of the regulatory system and with other professional requirements and standards (FIT 2.1.3G(13)). In failing to have regard to his obligations as a CF1 director of an authorised firm, and in concealing his own misconduct from his co-directors, Mr Varley acted without honesty and integrity in performing a controlled function.

- 5.7 Mr Varley was also a CF10 function holder and therefore had specific responsibility over regulatory compliance matters. This makes his conduct more serious as there was a breach of trust – Dickinsons, its PII providers and the Authority all relied on Mr Varley to ensure that Dickinsons provided accurate information and complied with its regulatory obligations. Mr Varley’s failures in this regard—by knowingly allowing the submission of false or misleading information to the Authority and the PII provider on behalf of Dickinsons—served to conceal his own breaches for much longer than if the firm’s CF10 responsibilities were held by another person. In this regard, it is relevant that on 27 November 2012, a month before the RDR requirements for investment advisers came into force, the board of Dickinsons considered using an external compliance provider for record keeping and regulatory returns, but Mr Varley insisted that he retain responsibility himself, ostensibly to ensure that it was done properly.
- 5.8 Mr Varley also later made statements to the Authority in interview that were untrue, including that he held relevant qualifications, that he had taken relevant examinations, that he was approved by the Authority, or had applied for approval, and that the Authority had reviewed his book of business and was thereby aware that he was providing investment advice. The Authority considers that, in making these untrue statements, Mr Varley lacks honesty and integrity.

6. SANCTION

Financial penalty

- 6.1. In accordance with section 63A and section 66 of the Act, the Authority imposes a penalty on Mr Varley. The Authority’s policy on the imposition of a financial penalty is set out in Chapter 6 of DEPP. In determining the financial penalty, the Authority has had regard to that guidance.
- 6.2. The application of the Authority’s penalty policy is set out in Annex B to this Notice in relation to Mr Varley’s conduct relevant to section 63A and section 66 of the Act, and Statement of Principle 1.
- 6.3. In determining the financial penalty to be attributed to Mr Varley’s breaches, the Authority has had particular regard to the following matters as applicable:
- 6.3.1. the need for credible deterrence;
 - 6.3.2. the nature, seriousness and impact of the breach; and

6.3.3. the aggravating factors relating to the breach.

- 6.4. The penalty calculation in relation to Mr Varley is set out in Annex B to this Notice. Having regard to all the circumstances, the Authority considers that **£68,300** is the appropriate financial penalty to impose on Mr Varley.

Prohibition

- 6.5. The Authority considers that Mr Varley is not a fit and proper person as he lacks both honesty and integrity and poses a serious risk to consumers and to confidence in the financial system. Consequently, the Authority has prohibited Mr Varley from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm. The Authority has previously taken action against retail investment advisers who advised whilst not meeting the training and qualification requirements of the RDR, whose misconduct showed a lack of honesty and/or integrity and where the Authority imposed financial penalties and full prohibitions. The Authority has also taken action against individuals who knowingly performed a controlled function without approval, who were required to pay a penalty pursuant to section 63A of the Act and were fully prohibited pursuant to section 56 of the Act. Mr Varley was in a senior position, a CF1 who abused this position of trust. He was also a CF10 function holder and therefore had specific responsibility for the firm's regulatory compliance. Mr Varley let his own misconduct continue for a number of years, and his actions were deliberate, which in effect left Dickinsons uninsured and customers exposed to losses. By excluding himself from the RMAR form, Mr Varley deliberately misled the Authority into believing that he was not providing retail investment advice to customers when he knew that he was. Mr Varley later provided explanations of his conduct to the Authority which were untrue. The Authority considers this relevant to the risk that Mr Varley would pose to consumers if he were permitted to perform any function in relation to a regulated activity carried on by an authorised person, exempt person or exempt professional firm.

7. PROCEDURAL MATTERS

- 7.1. This Notice is given to Mr Varley in accordance with section 390(1) of the Act.

Decision maker

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

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

Manner and time for payment

- 8.3. The financial penalty of £68,300 must be paid in full to the Authority by Mr Varley by no later than 29 April 2021, 14 days from this Notice.

If the financial penalty is not paid

- 8.4 If all or any of the financial penalty is outstanding on 30 April 2021, the Authority may recover the outstanding amount as a debt owed by Mr Varley and due to the Authority.

Publicity

- 8.5 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.
- 8.6 The Authority intends to publish such information about the matter to which this Notice relates as it considers appropriate.

Authority

- 8.7 For more information concerning this matter generally, contact Hema Rachhoya at the Authority (direct line: 020 7066 2770).

Anna Couzens
Enforcement and Market Oversight

ANNEX A

RELEVANT STATUTORY PROVISIONS

1. The Authority's operational objectives include securing an appropriate degree of protection for consumers (section 1C of the Act), and protecting and enhancing the integrity of the UK financial system (section 1D of the Act).
2. The Authority has the power, pursuant to section 56 of the Act, to make a prohibition order against an individual prohibiting that individual from performing a specified function, any function falling within a specified description, or any function, if it appears to the Authority that the individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, exempt person or exempt professional firm.
3. Section 66 of the Act provides that the Authority may take action against a person if it appears to the Authority that the person is guilty of misconduct and the Authority is satisfied that it is appropriate in all the circumstances to take action against him/her. Misconduct includes failure, while an approved person, to comply with a Statement of Principle issued under section 64 of the Act. The action that may be taken by the Authority pursuant to section 66 of the Act includes the imposition of a penalty on the approved person of such amount as it considers appropriate.
4. Section 63A of the Act provides that the Authority may impose a penalty on a person of such amount as it considers appropriate if the Authority is satisfied that the person performed a controlled function without approval and at that time the person knew, or could reasonably be expected to have known, that they were performing a controlled function without approval.

RELEVANT REGULATORY PROVISIONS

5. In exercising its power to make a prohibition order, the Authority must have regard to guidance published in the Handbook and in Regulatory Guides, such as EG. The relevant main considerations in relation to the action specified above are set out below.

The Enforcement Guide

6. The Authority's policy in relation to exercising its power to issue a prohibition order is set out in EG.
7. EG 9.1 explains the purpose of prohibition orders in relation to the Authority's statutory objectives.
8. EG 9.2 sets out the Authority's general policy on making prohibition orders:
 - (a) EG 9.2.1 states that the Authority will consider all relevant circumstances, including whether enforcement action has been taken against the individual by other enforcement agencies, in deciding whether to make a prohibition order;
 - (b) EG 9.2.2 states that the Authority has the power to make a range of prohibition orders depending on the circumstances of each case; and

- (c) EG 9.2.3 states that the scope of a prohibition order will depend on, amongst other things, the reasons why the individual is not fit and proper and the severity of risk he poses to consumers or the market generally.
9. EG 9.5.1 states that where the Authority is considering whether to make a prohibition order against someone who is not an approved person, the Authority will consider the severity of the risk posed by the individual and may prohibit him where it considers that it is appropriate to achieve one or more of the Authority's statutory objectives.
10. EG 9.5.2 provides that, when considering whether to exercise its power to make a prohibition order against such an individual, the Authority will consider all the relevant circumstances of the case. These may include, but are not limited to, the factors set out in EG 9.3.2. Those factors include: whether the individual is fit and proper to perform functions in relation to regulated activities (noting the criteria set out in FIT 2.1, 2.2, and 2.3); the relevance and materiality of any matters indicating unfitness; the length of time since the occurrence of any matters indicating unfitness; and the severity of the risk which the individual poses to consumers and to confidence in the financial system.

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

11. APER sets out the fundamental obligations of approved persons and sets out descriptions of conduct, which, in the opinion of the Authority, does not comply with the relevant Statements of Principle. It also sets out, in certain cases, factors to be taken into account in determining whether an approved person's conduct complies with a Statement of Principle.
12. APER 2.1.2P, which applied up to 31 March 2013, sets out Statement of Principle 1, which stated that an approved person must act with integrity in carrying out his controlled functions.
13. APER 2.1A.3P, which applies from 1 April 2013, sets out Statement of Principle 1, which states that an approved person must act with integrity in carrying out his accountable functions.
14. APER 3.1.3G provides that, when establishing compliance with, or a breach of, a Statement of Principle, account will be taken of the context in which a course of conduct was undertaken, including the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour expected in that function.
15. APER 3.1.4G provides that an approved person will only be in breach of a Statement of Principle if they are personally culpable, that is, where their conduct was deliberate or where their standard of conduct was below that which would be reasonable in all the circumstances.
16. APER 4.1.3G provides that deliberately misleading (or attempting to mislead) by act or omission a firm is, in the opinion of the Authority, conduct that does not comply with Statements of Principle 1 (APER 4.1.3G(2)).
17. APER 4.1.4G sets out examples of behaviour which the Authority considers does not comply with Statement of Principle 1. Including: providing false or inaccurate documentation, including details of training, qualifications, past employment record or experience (APER 4.1.4G(9)); providing false and misleading information to the

firm (APER 4.1.4G(10)); and providing false or inaccurate information to the FCA or the PRA (APER 4.1.4G(11)).

Fit and Proper Test for Employees and Senior Personnel

18. The Authority has issued guidance on the fitness and propriety of individuals in FIT.
19. FIT 1.3.1BG states that the most important considerations when assessing the fitness and propriety of a person to perform a controlled function include that person's honesty, integrity and reputation (FIT 1.3.1BG (1)) and competence and capability (FIT 1.3.1BG (2)).
20. FIT 2.1.1G states that in determining a person's honesty, integrity and reputation, the Authority will have regard to all relevant matters including, but not limited to, those set out in FIT 2.1.3G, which includes whether the person has contravened any of the requirements or standards of the regulatory system (FIT 2.1.3G(5)).

ANNEX B

PENALTY ANALYSIS

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

Step 1: Disgorgement

1. Pursuant to DEPP 6.5B.1G, at Step 1, the Authority seeks to deprive an individual of the financial benefit derived directly from the breach where it is practicable to quantify this.
2. The Authority has not identified any financial benefit that Mr Varley derived directly from his breaches. The structure of payments received by Mr Varley from Dickinsons appear to show that his remuneration was received by way of salaried employment rather than gaining a direct benefit from his misconduct.
3. Step 1 is therefore £0.

Step 2: Seriousness of the breach

Relevant Income

4. Pursuant to DEPP 6.5B.2G, at Step 2, the Authority determines a figure that reflects the seriousness of the breach. That figure is based on a percentage of the individual's relevant income. The individual's relevant income is the gross amount of all benefits received by the individual from the employment in connection with which the breach occurred, and for the period of the breach. The employment in connection with the breach for purposes of s. 63A of the Act and for purposes of s. 66 of the Act is the same.
5. The period of Mr Varley's breach was from 27 February 2013 to 1 September 2017 (this incorporates the periods of breach for purpose of s.63A and for purpose of s.66 of the Act). The Authority considers Mr Varley's relevant income for this period to be **£216,886.50**.
6. In deciding on the percentage of the relevant income that forms the basis of the Step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 40%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach; the more serious the breach, the higher the level. For penalties imposed on individuals in non-market abuse cases there are the following five levels:

Level 1 – 0%

Level 2 – 10%

Level 3 – 20%

Level 4 – 30%

Level 5 – 40%

7. 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. DEPP 6.5B.2G(12) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the Authority considered the following factors to be relevant:
 - a. Whilst there was no evidence of actual detriment to consumers as a result of the misconduct, there was a risk of loss to consumers. Mr Varley's actions resulted in Dickinsons' PII being avoided and the advice provided by Mr Varley was expressly uninsured. Dickinsons was left in a position that it would have had to pay any successful claims directly to a customer and if that had caused the firm to become insolvent, then it would have fallen to the FSCS to pay these and any other claims. Any losses above FSCS limits would not have been recoverable.
 - b. Mr Varley failed to act with integrity;
 - c. Mr Varley abused a position of trust as CF1 and CF10; and
 - d. Mr Varley committed the breaches deliberately.
8. DEPP 6.5B.2G(13) lists factors likely to be considered 'level 1, 2 or 3 factors'. The Authority does not consider those factors to be relevant in relation to Mr Varley's breach.
9. The Authority also considers that the following factors are relevant in determining the seriousness of the breaches:
 - DEPP 6.5B.2G(9)(b) – Mr Varley continued to advise retail customers for more than four years without taking any action to bring himself into compliance.
 - DEPP 6.5B.2G(9)(k) – Mr Varley held a senior position at the firm as CF1 and CF10 and his conduct was not befitting that position.
 - DEPP 6.5B.2G(9)(r) - Mr Varley could reasonably be expected to have known that he was performing a controlled function without approval.
 - DEPP 6.5B.2G(10) – Mr Varley knowingly and repeatedly performed a controlled function without approval and provided or facilitated the provision of false and misleading information to Dickinsons, the PII providers and the Authority, as he was responsible for submitting the RMARs, PII forms and for general compliance as the CF10 Compliance Oversight. Mr Varley knew his actions were not in accordance with internal procedures or consistent with the standard of conduct expected of a CF10 and CF1.
10. Taking all of these factors into account, the Authority considers the seriousness of Mr Varley's breaches to be level 4, and so the Step 2 figure is 30% of **£216,886.50**.
11. Step 2 is therefore **£65,065.95**.

Step 3: Mitigating and aggravating factors

12. Pursuant to DEPP 6.5B.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount disgorged at Step 1, to take into account factors which aggravate or mitigate the breach.
13. Having regard to the factors set out in DEPP 6.5B.3G, the Authority considers that there are factors that aggravate Mr Varley's breach. Mr Varley failed to bring his conduct to the Authority's attention (it was discovered by his co-director) and misled the Authority during his interview, during which Mr Varley claimed that he had taken and passed his RDR exams in early 2013 and had submitted an application for CF30 approval to the Authority in February 2013. Mr Varley also claimed in interview that the Authority had told him what information to put on Dickinsons' RMARs, and that the Authority had knowingly reviewed his book of business in August 2014. There is no evidence for any of these claims.
14. The Authority has not identified any mitigating factors.
15. The Authority is of the view that these aggravating factors justify an increase in the penalty at Step 3 by 5%. In reaching this view, the Authority has had regard to the case of Darren Cummings, who fabricated documents to mislead the Authority into believing that he was fully qualified to provide investment advice to retail customers. During the Authority's investigation, Mr Cummings provided explanations which the Authority considered implausible, untrue and intended to mislead. The Authority considered Mr Cummings' conduct during the investigation was an aggravating factor that justified an increase in the penalty of 15%. A distinct feature of the Cummings case that contributed to this higher percentage is that, in the course of providing misleading and implausible statements to the Authority, Mr Cummings also sought to blame other individuals for much of his misconduct.
16. Step 3 is therefore **£68,318.95**.

Step 4: Adjustment for deterrence

17. Under DEPP 6.5B.4G, if the Authority considers that the figure arrived at after Step 3 is insufficient to deter the individual who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty. The Authority considers that the figure at Step 3 is sufficient to act as a deterrent to Mr Varley and others, so the Authority has not increased the penalty at Step 4.
18. Step 4 is therefore **£68,318.95**.

Step 5: Settlement discount

19. Pursuant to DEPP 6.5B.5G, if the Authority and the individual on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the individual reached agreement. The settlement discount does not apply.
20. Step 5 is therefore **£68,318.95**.

Penalty

21. The Authority has therefore decided to impose a total financial penalty of **£68,300.00** (the Step 5 figure rounded down to the nearest £100) on Mr Varley pursuant to section 63A of the Act for performing the CF30 (Customer) controlled function without approval and pursuant to section 66 of the Act for breaching Statement of Principle 1 of APER.