Financial Services Authority

FINAL NOTICE

To: **Swinton Group Limited**

Of: **6 Great Marlborough Street**
Manchester
Lancashire
M1 5SW

Date: **28 October 2009**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (the FSA gives you final notice about a requirement to pay a financial penalty.

1. ACTION

1.1. The FSA gave Swinton Group Limited (Swinton or the firm) a Decision Notice on 15 October 2009 which notified the firm that pursuant to section 206 of the Financial Services and Markets Act 2000 (the Act), the FSA had decided to impose a financial penalty of £770,000 on Swinton. This penalty is in respect of breaches of Principles 3, 6, 7 and 9 of the FSA's Principles for Businesses (the Principles) and associated rules between December 2006 and March 2008 (the Relevant Period) in relation to sales of payment protection insurance (PPI).

1.2. Swinton confirmed on 9 October 2009 that it will not be referring the matter to the Financial Services and Markets Tribunal.

1.3. Accordingly, for the reasons set out below and having agreed with Swinton the facts and matters relied on, the FSA imposes a financial penalty on Swinton in the amount of £770,000.

1.4. Swinton has agreed to carry out a redress exercise contacting over 500,000 customers who paid for PPI, and offer them a refund in the terms of the letters attached. In the absence of agreement, the FSA would have taken steps to exercise its powers under section 384 of the Act.

2. REASONS FOR THE ACTION

Summary of conduct in issue

2.1. The FSA has decided to impose a financial penalty on Swinton for breaches of the FSA's Principles and rules in relation to the firm's advised sales of single premium payment protection insurance (PPI) to customers who wanted to pay for their home or motor insurance by instalments.

2.2. These breaches, which are described in more detail below, relate to Swinton's failure to:

(a) take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems (Principle 3);

(b) pay due regard to the interests of its customers and treat them fairly (Principle 6);

(c) pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading (Principle 7);

(d) to take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgement (Principle 9).

2.3. In addition, the firm has breached a number of the rules contained in the parts of the FSA Handbook (the Handbook) entitled "Insurance: Conduct of Business" (ICOB) and equivalent provisions which replaced ICOB on 6 January 2008, entitled "Insurance: Conduct of Business sourcebook" (ICOBS). Details of the specific ICOB and ICOBS rules and relevant Guidance are set out in the annex to this Notice.

2.4. Swinton sold single premium annual PPI to customers who chose to pay for motor or home insurance in instalments by monthly direct debit payments. Subject to various conditions, limitations and exclusions, the PPI was designed to pay some of the instalments for the customer's home or motor insurance if the customer was made redundant or was unable to work through disability, injury or sickness. In effect, the firm was selling add-on PPI to insure their customers' ability to make their insurance payments.

2.5. Swinton sold this PPI on an advised basis in its telephone sales and face to face branch sales. The firm's sales process for PPI was flawed in its design. The problems stemmed from an 'assumptive' selling technique, in which PPI was automatically included in insurance quotes when customers asked to pay for their home or motor insurance by instalments, without first establishing that the customer had any real demand or need for the PPI cover. Overall, this resulted in unacceptable levels of non-compliant sales being carried on over a considerable period of time.

2.6. In particular, the FSA has identified the following failings (which continued throughout the Relevant Period unless otherwise stated):

(a) Swinton's sales process added PPI onto customers' insurance quotations without the customer having asked for it, and without establishing a genuine need for the PPI. The sales process was designed to assume that all customers paying for their home or motor insurance by instalments would want or need PPI. The firm did not put in place any or any adequate system for establishing that the customer had a real need for the PPI before a recommendation was made. Whilst over 500,000 policies were sold, only 266 claims were paid out;

(b) Swinton did not put in place any or any adequate system for establishing that the PPI was suitable for the customer before the recommendation was made. When customers asked to pay by instalments, Swinton added the cost of the single premium PPI to the initial quotation without the customer asking for it. The firm then automatically recommended the PPI to all customers who met a basic eligibility check, without checking whether the PPI was suitable for the individual customer;

(c) the eligibility check was itself defective, and as a result Swinton recommended and sold PPI to over 40,000 customers who were not eligible or who may not have been eligible for the PPI policy at the point of sale;

(d) Swinton's sales process did not make it sufficiently clear to customers at the point of sale that PPI was a separate insurance policy which was entirely optional;

(e) Swinton's sales process did not properly disclose the cost of the PPI at the point of sale. The additional cost of taking the PPI was bundled within the initial quote for home or motor insurance rather than being separately disclosed. Later in the sales script, the firm disclosed that it charged an additional £15 (£20 from September 2007) for the PPI but failed to disclose prior to completion of the sale that only £1.21 of that was the cost of the policy itself and the remainder was a fee taken by Swinton;

(f) Swinton's sales process provided customers with inadequate information about the significant features of the PPI at the point of sale and the firm's sales process included statements about the extent of the PPI cover which did not adequately explain the features and benefits whilst at the same time explaining the complex limitations and exclusions;

(g) where customers declined the PPI, Swinton offered to include the PPI "for free" on the basis that the policy would be charged for the following year on renewal. The PPI was not in fact free[1]. Renewal quotes automatically included PPI and the firm automatically recommended the PPI, including in its renewal letters,

[1] The PPI was charged for, but the total price of the insurances was discounted by an amount equal to the amount which Swinton charged its customers for the PPI (i.e. the £15 or £20).

despite the fact that Swinton had no adequate systems for verifying that the PPI was suitable for the customer at the point of renewal; and

(h) Swinton's system for monitoring compliance was inadequate. This was not only because the systems required sales staff to follow the flawed sales process identified above but also because the level of monitoring was insufficient and the checks performed were in any event inadequate to ensure that staff followed the firm's own (defective) procedure. A review by the FSA of a sample of 89 telephone sales from Swinton call centres of PPI identified operational failures, including:

- failing to ask the minimum scripted questions necessary to establish the customer's eligibility for PPI;
- failing to disclose significant features in accordance with the script;
- failing to obtain customer consent to proceed with the sale on the basis of limited information; and
- failing to inform the customers about their PPI cancellation rights (or lack thereof).

Overall, the review of the sample found operational breaches in approximately half of the firm's telephone sales calls reviewed[2]. These were in addition to the breaches inherent in Swinton's sales process.

2.7. Swinton's breaches are viewed as particularly serious because:

(a) the failings arose primarily from the sales process which was designed to sell PPI assumptively. The firm made a decision to adopt an assumptive sales process and set its branch mangers a target of 60% penetration rate for PPI sales;

(b) Swinton began selling PPI in late 2006, at a time when the FSA had already issued a number of high profile communications highlighting the need for firms to ensure their PPI sales processes were meeting FSA requirements. In 2006 and early 2007 the FSA also issued a number of disciplinary notices in relation to PPI sales. It is an aggravating feature that Swinton's conduct carried on despite these communications;

(c) Swinton knew that it was obliged to disclose the amount of its fees separately from the PPI premium but did not disclose to customers at the point of sale the fact that the PPI policy itself cost £1.21, with the remaining £13.79 or £18.79 being retained by Swinton as a "claims supervision fee"; and

[2] Call centre sales accounted for approximately 3% of Swinton's PPI sales

(d) during the relevant period, Swinton sold over 500,000 PPI policies generating gross PPI premium of approximately £8.5 million, of which approximately £7.8 million was retained by the firm.

2.8. Swinton's failures therefore merit the imposition of a substantial financial penalty. In deciding upon the level of disciplinary sanction, the FSA has taken account of a number of factors, including the following:

(a) Swinton sold PPI which cost the customer £15 or £20. The impact of any individual customer detriment from a non-compliant sale of such a product would have been low;

(b) Swinton proactively implemented a remedial action plan to provide redress to certain categories of ineligible customers to whom PPI had been sold;

(c) following a request from the FSA, Swinton stopped telephone and branch sales of PPI on 27 March 2008; and

(d) Swinton has worked in an open and co-operative way with the FSA throughout the investigation.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

Statutory provisions

3.1. Section 206 of the Act provides:

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

FSA Principles

3.2. The FSA's Principles are a general statement of the fundamental obligations of firms under the regulatory system. They derive their authority from the FSA’s rule-making powers as set out in the Act and reflect the FSA’s regulatory objectives.

3.3. The FSA’s rule-making powers are set out in Chapter I of Part X of the Act (Rules and Guidance). In accordance with the powers and provisions under this part of the Act, the FSA has made rules, in particular, the Chapter of the FSA’s Handbook entitled “Insurance: Conduct of Business” (ICOB). This Chapter was in force from the start of the Relevant Period until 5 January 2008 when, subject to transitional provisions, it was replaced by a Chapter in the Handbook entitled “Insurance: New Conduct of Business” (ICOBS). The relevant ICOB and ICOBS rules are set out in Appendix 1 to this Notice.

4. FACTS AND MATTERS RELIED ON

Background

4.1. Swinton is a limited company which has been authorised by the FSA to perform a number of regulated activities, including advising on and arranging non-investment insurance contracts, since 14 January 2005.

4.2. Swinton provides a wide range of insurance services including motor and home insurance. It is responsible for over 2 million insurance policies and with over 400 branches it is one of the largest high street insurance broking chains in the UK.

4.3. Swinton first became involved in the sale of PPI following the acquisition of an existing business which offered PPI to its customers who wanted to pay by instalments. Swinton amended the PPI policy, redesigned the sales process and started to sell PPI across its branch and telephone network from 4 December 2006.

The PPI product sold

4.4. As stated above, Swinton sold single premium PPI to customers who chose to pay for motor or home insurance in instalments by monthly direct debit payments. Subject to various conditions, limitations and exclusions, the PPI was designed to pay some of the instalments for the customer's home or motor insurance if the customer was made redundant or was unable to work through disability, injury or sickness.

4.5. Throughout the Relevant Period, the cost of the PPI sold by Swinton included three elements:

(a) the premium for the insurance benefit;

(b) IPT (Insurance Premium Tax); and

(c) what the firm referred to as its "claims supervision fee".

4.6. From December 2006 until September 2007, Swinton charged customers £15 for PPI. This was made up of a premium of £1.21 (inclusive of IPT) and Swinton's claims supervision fee of £13.79. In September 2007, Swinton increased the cost of the PPI to £20; the premium remained at £1.21 (inclusive of IPT) and the firm increased its claims supervision fee to £18.79.

4.7. During the Relevant Period Swinton sold in excess of 500,000 PPI policies[3] generating gross PPI premium of approximately £8.5 million, of which approximately £7.8 million was retained by the firm.

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[3] This figure includes new business and renewals for advised sales and non-advised internet sales. In addition, a further 116,646 PPI policies were provided to customers at no cost.

The sales processes

4.8. During the Relevant Period, Swinton sold PPI both as new business sales and renewals, through a number of different channels. Swinton sold PPI on an advised basis during:

(a) face-to-face sales in Swinton's high street branches; and

(b) telephone sales from Swinton's branches and call centres.

In both cases, the firm used a software package which captured customer details, searched for quotes for the motor and home insurance, and prompted sales staff about what to say to customers.

4.9. In the case of renewals of motor and home insurance, the firm attempted to contact customers by telephone before the renewal date of the motor or home insurance. If telephone contact was made, the sales staff used the Swinton software package (following a separate but similar process to that used for new business sales) to effect the renewal of the motor or home insurance and the PPI. If no contact was made, Swinton sent a renewal letter to the customer and made further attempts to contact the customer by telephone. If still no contact was made and the customer had previously paid for their insurance product and PPI by direct debit, the insurance policy and the PPI were renewed automatically.

FSA publications on PPI

4.10. Prior to and during the relevant period, the FSA issued a number of publications highlighting to firms the importance of having in place robust systems and controls, and the importance of treating customers fairly when selling PPI. It has also highlighted various areas where firms were not complying with the FSA's requirements. In November 2005, the FSA published the results of the first phase of its thematic work on PPI and wrote a Dear CEO letter to firms who sold PPI, outlining its findings. A second phase of PPI thematic work was reported on in October 2006. From September 2006 (when Swinton was developing its PPI sales process) to March 2008 (when Swinton ceased to sell PPI) the FSA released in excess of forty publications which made clear the FSA's expectations, concerns and intentions regarding the sale of PPI.

4.11. During the Relevant Period, a significant number of disciplinary final notices were issued by the FSA in relation to PPI. Taken as a whole, these publications highlighted as risks many of the issues which the FSA has now found to have been present within Swinton's sales process.

Swinton's sales process

Including PPI without the customer asking for it

4.12. Swinton's sales process added PPI onto customers' insurance quotations without the customer having asked for it, and without establishing that the individual customer had a genuine need for the PPI. Swinton's sales process was designed to assume that all customers paying for their home or motor insurance by instalments would want or need PPI. When customers asked to pay by instalments, Swinton added the cost of the single premium PPI to the quotation for motor or home insurance without the customer asking for it.

Recommending PPI without assessing suitability

4.13. Swinton sold PPI on an advised basis. However, the firm did not put in place any system for establishing that the PPI was suitable for the customer before the recommendation was made. The firm's sales process did not seek any information from customers about their circumstances other than that required for the main home or motor insurance, and did not include any process for assessing customers' demands and needs for the PPI. Swinton's sales process did not include any procedure requiring its staff to gather adequate information from customers which would enable the firm to determine whether or not the PPI policy was suitable for the particular customer to whom the recommendation had been made. The sales process did not require staff to obtain information to establish the demands and needs of the customer or which would have enabled the firm to determine whether the PPI was suitable to meet those demands and needs. The firm automatically recommended PPI to all customers who wished to pay by instalments and who met a basic eligibility check.

Eligibility

4.14. Initially, the eligibility check carried out by Swinton related only to the age of the customer. Subsequently, basic eligibility questions regarding UK residency and employment were added. However, these checks were inadequate to determine basic eligibility for the PPI policy and as a result Swinton recommended and sold PPI to over 40,000 customers who were not eligible or who may not have been eligible for the PPI policy.

4.15. To be eligible for the PPI policy, the customer had to meet a number of conditions at the date of purchase. These conditions included, amongst other things, that the customer had to be aged 18 or over and under 65 years of age and have been actively in work for a continuous period of 12 months (or on statutory maternity, paternity or adoption leave) at the time of purchase.

4.16. In August 2007, Swinton began to identify that the firm had sold PPI to customers who, according to Swinton's own records, were outside of the applicable age range or who did not satisfy the employment eligibility criteria (i.e. they were unemployed, had not been in work for a continuous 12 months or did not work over 16 hours per week) at the time of the purchase. In total, 15,933 customers were not eligible for the PPI they had been sold by reason of their age or employment status. Further investigation revealed that Swinton had recommended and sold PPI to an additional 24,722 customers when the firm had not recorded sufficient information to enable the firm to determine later whether or not the customers met the relevant employment criteria at the point of sale.

4.17. These breaches arose as a result of Swinton's failure to establish and maintain appropriate systems and controls for the sale of PPI, their failure to train staff adequately and their failure to monitor staff to ensure that the eligibility checks which were in place were properly applied.

Optionality

4.18. Swinton's sales process did not make it clear to customers at the time of the initial quote that PPI was a separate insurance policy which was entirely optional and which the customer could choose not to have. The sales process included a factually inaccurate statement which stated "*I've got a great policy for you its only £xx per month payable by direct debit which includes payment protection*". This statement does not make it clear that the firm is selling the customer two separate policies – the main policy which the customer has requested a quote for, and a separate PPI policy which the customer has not asked for. Towards the end of the sales process, and after the customer had indicated their agreement to the quote given, the sales process required staff to read out a standard phrase which included the sentence: "*The optional Legal Protection at £xx and Payment Protection at £xx are made up of our claims supervision fee and the premium for the insurance benefit.*" The inclusion of the word 'optional' at this late point in the sales process created an unacceptable risk that customers would not be clear that the PPI was a separate, optional insurance policy because:

(a) the PPI was included automatically;

(b) the price was initially bundled together with the price of the motor or home insurance;

(c) the customer was not informed that PPI was a separate policy; and

(d) the customer was not specifically asked whether they wanted the separate PPI policy.

4.19. A review of a sample of Swinton sales calls carried out by the FSA revealed that in a large proportion of the sales reviewed by the FSA, the firm failed to state expressly that PPI was a separate insurance policy which was entirely optional.

Disclosure of the main characteristics of the PPI policy

4.20. Swinton's PPI sales process did not ensure that customers were properly informed at the point of sale as to the main characteristics (including significant features, benefits, limitations, exclusions, cost and term) of the PPI policy being sold. During the sales discussion, Swinton did not provide adequate information about the PPI.

4.21. Swinton's sales process provided information to customers about PPI which was factually incorrect because it was incomplete. Swinton's sales process did not at that point draw attention to the existence of other limitations which appeared in the policy summary.

Disclosure of cost

4.22. Swinton's sales process did not adequately disclose the cost of the PPI to the customer at the point of sale. As set out above, the cost of the PPI was bundled together with the price of the main insurance and presented to the customer as the cost of a single home or motor policy which "included" PPI. Towards the end of the sales process, after the customer had indicated acceptance of the quote, the Swinton script stated the following:

"The total amount due is £xx which includes Insurance Premium Tax and our service charge of £xx. The optional Legal Protection at £xx and Payment Protection at £15 / £20 are made up of our claims supervision fee and the premium for the insurance benefit. The credit charge is £xx and total amount payable is £xx."

4.23. At no point during the sale did Swinton disclose the amount of the premium or the amount of the fee charged. The breakdown of the cost was included amongst the various documentation subsequently provided to the customer; however, the cost breakdown was not prominent and the firm did not draw the customer's attention to the relevant documentation during the sales process.

4.24. In addition to the defects inherent in the process set out above, a review of a sample of Swinton sales calls carried out by the FSA revealed that in approximately 40% of call centre telephone sales reviewed the firm did not give the customer a separate cost for the add-on PPI at all, even though the firm's sales process required disclosure of the £15 to £20 total cost.

Review of Sales Calls

4.25. A review by the FSA of a sample of 89 call centre telephone sales of PPI identified operational failures, including:

(a) failing to ask the minimum scripted questions necessary to establish the customer's eligibility for PPI;

(b) failing to disclose significant features in accordance with the script;

(c) failing to obtain customer consent to proceed with the sale on the basis of limited information; and

(d) failing to inform the customers about their PPI cancellation rights (or lack thereof).

4.26. Overall, the review of the sample found operational breaches in approximately half of the firm's telephone sales calls reviewed. These were in addition to the breaches inherent in Swinton's sales process. The firm failed to detect or remedy this high level of non-compliance.

Monitoring

4.27. Swinton's system for monitoring compliance with regulatory standards was inadequate. Swinton's compliance monitoring failed to identify the systemic defects detailed above. In addition, Swinton had no systems-based controls for monitoring whether it had sold PPI to customers who were not eligible for the PPI policy. Swinton realised it was selling PPI to age-ineligible customers in August 2007 as a result of a new management information report related to the use of direct debit as a payment method rather than directly related to PPI sales.

4.28. Swinton's procedures for monitoring PPI sales at an operational level were also inadequate. Branch managers monitored their sales staff on an ad-hoc basis by observing sales and providing feedback. The checklists used by branch managers contained generic questions regarding PPI and were insufficient to determine whether the sale of the PPI was compliant. Area and regional managers did not undertake any monitoring of PPI, other than checking that their branch managers had undertaken the required number of observed sales. Swinton also used head office resource to audit each branch at least once every 2 years. The audit schedule was planned according to risk factors that did not include PPI-related issues. The nature of the branch monitoring system was such that it was difficult for the firm to draw common findings across sales staff, branches, areas and regions in order to identify patterns of compliance failings and to identify training needs.

4.29. Swinton also used mystery shopping to monitor compliance with its sales process. From February 2007 to June 2007, Swinton carried out a small scale pilot exercise to incorporate PPI monitoring into its existing mystery shopping programme. During the pilot phase, 40% of the mystery shops failed the PPI elements of the firm's own assessment.

4.30. The mystery shopping exercise was itself inadequate in identifying non-compliant sales practices. The design of the monitoring was such that it was possible to fail the PPI parts of the assessment yet still mark the sale as an overall 'pass'. The FSA reviewed 70 mystery shopping recordings provided by Swinton. 17% of these were found to be inadequate in that they failed to detect or record non-compliant conduct. Examples included passing shops as compliant when it was acknowledged that PPI was offered to an ineligible customer.

4.31. Despite the 40% failure rate findings of the pilot mystery shopping exercise, after the pilot phase had finished, the number of PPI related questions incorporated in to the score sheet used in ongoing shopping was reduced, thereby making the firm's mystery shopping even less effective in identifying PPI failings.

5. BREACHES OF THE FSA'S PRINCIPLES FOR BUSINESSES AND RULES

5.1. On the basis of the facts and matters set out above, the FSA considers that Swinton has breached Principles 6, 7, 9 and 3 of the FSA's Principles for Businesses.

Principle 6

5.2. Principle 6 states that:

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

5.3. By reason of the matters set out above, Swinton has breached Principle 6 of the FSA's Principles for Businesses by:

(a) adding the cost of PPI into insurance quotations for all customers who wanted to pay by instalment without the customer asking for PPI and without taking any or any adequate steps to establish whether the customer had a genuine need for PPI;

(b) failing to conduct adequate eligibility checks for a significant proportion of its PPI customers (48% in the sample of telephone sales analysed by the FSA);

(c) recommending PPI to over 500,000 customers without assessing whether the PPI was suitable to meet the customers' demands or needs;

(d) selling PPI to over 500,000 customers without having an adequate system to ensure that it was sufficiently clear that the PPI was a separate insurance policy which was optional;

(e) selling PPI to over 500,000 customers without adequately disclosing the cost of the PPI, including failing to disclose the amount of Swinton's fee, to customers prior to completion of the sale; and

(f) renewing customers PPI policies without taking any or any adequate steps to revisiting suitability at the point of renewal.

5.4. In addition to breaching Principle 6, the firm has breached the following rules contained in the part of the FSA Handbook entitled Insurance: Conduct of Business (ICOB): ICOB 4.3.2 R (1), 4.3.6 R, 4.3.1 R (1), 4.2.15 R, 4.7.1 R, 5.5.14 R and 2.10.1 R.

Principle 7

5.5. Principle 7 states that:

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

5.6. By reason of the matters set out above, Swinton has breached Principle 7 of the FSA's Principles for Businesses by:

(a) failing to ensure that information provided about the PPI was clear, fair and not misleading;

(b) failing orally to provide customers with adequate information about the features, benefits, exclusions and limitations of PPI;

(c) selling PPI to over 500,000 customers without disclosing the cost of the PPI premium, and the amount of Swinton's fee, to customers prior to conclusion of the contract; and

(d) failing to provide customers with a statement of demands and needs that related to the customers personal circumstances in relation to PPI.

5.7. In addition to breaching Principle 7, Swinton has also breached ICOB 2.2.3 R and 5.3.6 R.

Principle 9 - Suitability

5.8. Principle 9 states that:

"A Firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgement."

5.9. By reason of the matters set out above, Swinton has breached Principle 9 of the FSA's Principles for Businesses by:

(a) advising over 500,000 customers to take PPI without taking any or any adequate steps to establish whether the customer had a genuine demand or a need for PPI and to ensure that the advice was suitable for the customer's demands and needs at the time the original sale and at renewal; and

(b) failing to provide customers with a statement of demands and needs explaining why the recommended PPI was suitable for their specific circumstances.

5.10. In addition to breaching Principle 9, the firm has breached ICOB 4.3.1 R, 4.3.6 R and 4.4.1 R.

Principle 3

5.11. Principle 3 states that:

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

5.12. By reason of the matters set out above, Swinton has breached Principle 3 of the FSA's Principles for Businesses by implementing a defective sales process for PPI which:

(a) failed to establish whether the customer had any genuine need for the PPI;

(b) did not adequately establish whether the customer was eligible for the PPI being sold;

(c) recommended PPI without assessing whether the PPI was suitable for the customer;

(d) failed to make it sufficiently clear that PPI was a separate insurance policy which was entirely optional;

(e) failed properly to disclose the cost of the PPI, including the amount of Swinton's fee, to customers prior to completion of the contract; and

(f) renewed customers PPI policies without taking any or any adequate steps to revisit eligibility or suitability at the point of renewal.

5.13. In addition, Swinton failed to implement an adequate system for monitoring the compliance of its PPI sales and as a result failed to detect the non-compliant sales which were made.

ICOBS

5.14. On 6 January 2008, the part of the FSA Handbook entitled “Insurance: Conduct of Business” (ICOB) was replaced by a part of the Handbook entitled “Insurance: Conduct of Business sourcebook” (ICOBS). In the period from 6 January 2008 until the firm stopped sales of PPI on 27 March 2008, the relevant rules were those contained in ICOBS. Accordingly, the conduct set out above in relation to breaches of ICOB became from 6 January 2008 breaches of the equivalent rules in ICOBS, in particular the equivalent parts of: ICBOS 2.2.2 R, 3.1.3 R, 3.1.5 R, 3.1.8 R, 3.1.14 R, 3.1.17 R, 4.1.7 R, 4.1.9 R, 4.3.1 R, 5.1.2 R, 5.2.2 R, 5.2.3 R, 5.3.1 R, 6.1.5 R, 6.1.13 R, 6.1.14 R, 6.4.2 R, 6.4.5 R, and 6.4.9 R.

6. RELEVANT GUIDANCE ON PENALTY

Determining the level of financial penalty

6.1. The FSA's policy in relation to the imposition of financial penalties is set out in Chapter 6 of the Decision Procedure and Penalties Manual (DEPP) which forms part of the FSA Handbook. It was previously set out in Chapter 13 of the Enforcement Manual (ENF). These Manuals set out the factors that may be of particular relevance in determining the appropriate level of financial penalty for a firm or approved person. The FSA has had regard to the relevant provisions of ENF and DEPP in reaching its conclusions as to the appropriate sanction for this case. The criteria set out in ENF and DEPP are not exhaustive and all relevant circumstances of the case will be taken into consideration.

The seriousness of the breaches

6.2. The FSA has had regard to the seriousness of the breaches, including the nature of the requirements breached, the number and duration of the breaches, the extent to which the breaches revealed serious or systemic weaknesses of the management systems or internal controls, the number of customers who were exposed to loss or the risk of loss and the number of customers likely actually to suffer financial detriment.

The extent to which the breach was deliberate or reckless

6.3. The breaches were deliberate in that Swinton was aware of the FSA rules referred to above, requiring firms to seek information about customers’ circumstances, to assess customers’ demand and needs, and to take reasonable steps to ensure the suitability of the PPI being recommended. Swinton determined that, given the low cost of the PPI and the fact that the policy would pay out irrespective of whatever other insurance or provision a customer had, it was not reasonable or necessary for it to seek to obtain information to establish the circumstances, objectives, demand and needs of individual customers over and above their wish to pay by direct debit prior to recommending the product.

The size, financial resources and other circumstances of the firm

6.4. There is no evidence to suggest that Swinton is unable to pay the financial penalty.

The amount of profits accrued or the loss avoided

6.5. Swinton has accrued fees of approximately £7.8 million from its sales of PPI. Swinton has agreed to a redress programme, in which it will contact all of its customers who paid for PPI and offer them a refund.

Conduct following the breach

6.6. Swinton notified the FSA of its eligibility failings during the ARROW II assessment visit of September 2007.

6.7. Further to a request by the FSA, Swinton exited the PPI market in March 2008.

6.8. The FSA has had regard to the fact that Swinton has agreed to carry out a redress exercise contacting over 500,000 customers who paid for PPI, and offer them a refund in the terms of the letters attached.

Previous action taken in relation to similar failings

6.9. In determining the level of financial penalty, the FSA has taken into account penalties imposed by the FSA on other authorised persons for similar behaviour. However, the FSA has also had regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory conduct by deterring persons from committing breaches as well as demonstrating generally the benefits of compliant business.

FSA guidance and other published materials

6.10. As set out above, Swinton's failings arose against a background of a series of high profile communications by the FSA highlighting the need for firms to ensure their PPI sales processes were meeting FSA requirements as set out above.

7. CONCLUSION

7.1. Having regard to the seriousness of the breaches and the risk they posed to the FSA's statutory objectives of market confidence and the protection of consumers, the FSA has decided to impose a financial penalty of £770,000 on Swinton.

8. DECISION MAKER

8.1. The decision which gave rise to the obligation to give this notice was made by the Settlement Decision Makers on behalf of the FSA.

9. IMPORTANT

9.1. This Final Notice is given to Swinton in accordance with section 390 of the Act.

Manner of and time for Payment

9.2. The financial penalty must be paid in full by Swinton to the FSA by no later than 11 November 2009, 14 days from the date of the Final Notice.

If the financial penalty is not paid

9.3. If all or any of the financial penalty is outstanding on 12 November 2009, the FSA may recover the outstanding amount as a debt owed by Swinton and due to the FSA.

Publicity

9.4. 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 FSA must publish such information about the matter to which this notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to you or prejudicial to the interests of consumers.

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

FSA contacts

9.6. For more information concerning this matter generally, you should contact Samantha Carruthers (direct line: 020 7066 0174/fax: 020 7066 0175) of the Enforcement & Financial Crime Division of the FSA.

William Amos

Head of Retail 1
FSA Enforcement & Financial Crime Division

APPENDIX A - Letter for non-claimant customers

- **You were sold payment protection insurance (PPI) by Swinton**
- **The FSA has found failures with our process for selling PPI**
- **You may be entitled to a refund**
- **Please read this letter carefully and respond if necessary**

Dear [***]

When you took out insurance with us in [year ***] you were also sold a type of payment protection insurance (PPI) for £15 or £20. Details of the PPI policy you held are set out on the reverse of this letter. Following an investigation by our regulator, the Financial Services Authority, we are contacting our customers who bought the PPI policy. It is important that you read and, if necessary, respond to this letter.

Subject to certain limitations and exclusions the PPI policy provided cover in respect of certain outstanding direct debit payments due from you to Swinton in the event that you were made involuntary unemployed or were off work due to accident and sickness during the period of your PPI policy cover.

What you need to do

We have attached a copy of an overview document and a copy of the PPI policy. Please read these documents carefully. If you have concerns about the PPI policy or the way it was sold to you, we will provide a refund. Please contact us on [XXX XXXX] between 9am – 5.30pm, Monday to Friday or 9am - 1.00 pm on Saturdays.

We are sorry for any inconvenience or confusion this has caused you.

Yours etc.

NB: This issue relates only to the PPI insurance mentioned above. If you are a current policy holder for motor, home or any other insurance sold by Swinton, your existing cover is not affected by this issue. Responding to this letter will not have a negative impact on your ability to obtain insurance in the future

APPENDIX B - Letter for claimant customers where claim to be paid

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- **You were sold payment protection insurance (PPI) by Swinton**
- **The FSA has found failures with our process for selling PPI**
- **You may be entitled to a refund**
- **Please read this letter carefully and respond if necessary**

Dear [***]

When you took out insurance with us in [year***] you were also sold a type of payment protection insurance (PPI) for £15 or £20. Details of the PPI policy you held are set out on the reverse of this letter. Following an investigation by our regulator, the Financial Services Authority, we are contacting our customers who bought the PPI policy. It is important that you read and, respond to this letter.

You made a claim on your PPI policy which was turned down. We have reviewed your claim and have decided that the claim should be paid.

What you need to do

Please contact [XXXX] between 9am - 5.30pm on Monday to Friday to help us to calculate the correct amount of your claim.

We are sorry for any inconvenience or confusion this has caused you.

Yours etc.

NB: This issue relates only to the PPI insurance mentioned above. If you are a current policy holder for motor or home insurance sold by Swinton, your existing cover is not affected by this issue. Responding to this letter will not have a negative impact on your ability to obtain insurance in the future.

APPENDIX C - Letter for claimant customers where rejection upheld

- **You were sold payment protection insurance (PPI) by Swinton**
- **The FSA has found failures with our process for selling PPI**
- **You may be entitled to a refund**
- **Please read this letter carefully and respond if necessary**

Dear [***]

When you took out insurance with us in [year***] you were also sold a type of payment protection insurance (PPI) for £15 or £20. Details of the PPI policy you held are set out on the reverse of this letter. Following an investigation by our regulator, the Financial Services Authority, we are contacting our customers who bought the PPI policy. It is important that you read and, if necessary, respond to this letter.

Subject to certain limitations and exclusions the PPI policy provided cover in respect of certain outstanding direct debit payments due from you to Swinton in the event that you were made involuntary unemployed or were off work due to accident and sickness during the period of your PPI policy cover.

You made a claim on your PPI policy which was turned down. We have reviewed your claim and have decided that your claim should still be rejected because [***]. However, you may still be entitled to a refund.

What you need to do

We have attached a copy of an overview document and a copy of the PPI policy. Please read these documents carefully. If you have concerns about the PPI policy or the way it was sold to you, we will provide a refund or if you have concerns about the rejection of your claim, we will reconsider the claim for you. In either case, please contact us on [XXX XXXX] between 9am – 5.30pm, Monday to Friday or 9am - 1.00 pm on Saturdays.

Yours etc.

NB: This issue relates only to the PPI insurance mentioned above. If you are a current policy holder for motor or home insurance sold by Swinton, your existing cover is not affected by this issue. Responding to this letter will not have a negative impact on your ability to obtain insurance in the future

APPENDIX D - Letter for multiple policyholders

- **You were sold payment protection insurance (PPI) by Swinton**
- **The FSA has found failures with our process for selling PPI**
- **You may be entitled to a refund**
- **Please read this letter carefully and respond if necessary**

Dear [***]

When you took out insurance with us in [year ***] you were also sold a type of payment protection insurance (PPI) for £15 or £20 per policy. Details of the PPI policies you held are set out on the reverse of this letter. Following an investigation by our regulator, the Financial Services Authority, we are contacting our customers who bought the PPI policy. It is important that you read and, if necessary, respond to this letter.

Subject to certain limitations and exclusions the PPI policy provided cover in respect of certain outstanding direct debit payments due from you to Swinton in the event that you were made involuntary unemployed or were off work due to accident and sickness during the period of your PPI policy cover.

What you need to do

We have attached a copy of an overview document and a copy of the PPI policy. Please read these documents carefully. If you have concerns about the PPI policies or the way they were sold to you, we will provide a refund. Please contact us on [XXX XXXX] between 9am – 5.30pm, Monday to Friday or 9am - 1.00 pm on Saturdays.

We are sorry for any inconvenience or confusion this has caused you.

Yours etc.

NB: This issue relates only to the PPI insurance mentioned above. If you are a current policy holder for motor, home or any other insurance sold by Swinton, your existing cover is not affected by this issue. Responding to this letter will not have a negative impact on your ability to obtain insurance in the future.

EXPLANATORY NOTE TO THE FINAL NOTICE FOR SWINTON GROUP LTD DATED 28 OCTOBER 2009

Since agreeing the facts and matters relied on in the Final Notice with the FSA, Swinton has provided additional information relating to the number of customers sold a PPI policy. The statements in the Final Notice should be read in accordance with the below clarification.

The total number of PPI policies sold by Swinton Group Ltd during the Relevant Period was over 500,000, representing over 400,000 customers. The figure for the total number of PPI policies sold includes new business renewals for advised sales, non-advised internet sales and policies which were provided to customers free of charge.

Paragraphs 1.4 and 6.8 of the Final Notice refer to the customer contact and redress exercise Swinton has agreed to conduct. Swinton will be contacting over 350,000 customers who paid for the PPI and offer them a full refund in the terms of the letters attached to the Final Notice.

The references to “over 500,000 customers” in paragraphs 5.3 and 5.9 should be read as “over 400,000 customers”.

29 October 2009