FINAL NOTICE

To: **Lloyds TSB Bank plc**

Of: **25 Gresham Street**
London
EC2V 7HN

Date: **24 September 2003**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives Lloyds TSB Bank plc ("LTSB") final notice about a requirement to pay a financial penalty

THE PENALTY

1.1 The FSA gave LTSB a Decision Notice dated 23 September 2003 which notified LTSB that, pursuant to section 206 of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to impose a financial penalty on LTSB in the amount of £1,900,000.

1.2 LTSB has confirmed that it does not intend referring the matter to the Financial Services and Markets Tribunal.

1.3 Accordingly, for the reasons listed below and having agreed with LTSB the facts and matters relied upon, the FSA imposes a financial penalty of £1,900,000 on LTSB ("the Penalty").

REASONS FOR THE ACTION

2.1 The FSA has decided to impose the Penalty on LTSB in respect of breaches of SIB Adopted Rule S5.01 ("the SIB Rule") and Principles 2 and 9 of the Statements of Principle of the Securities and Investments Board ("the SIB Principles") arising from the sale of some 51,000 policies of the Extra Income and Growth Plan ("EIGP") in four tranches between October 2000 and July 2001. In particular:

2.1.1 the EIGP was a new product with a medium/high risk rating designed by Scottish Widows Group ("Scottish Widows") and distributed by the LTSB Branch Network ("the Network") shortly after Scottish Widows was acquired by Lloyds TSB Group plc.

2.1.2 LTSB did not have in place sufficiently rigorous procedures and controls for considering all of the issues surrounding the selling of the EIGP, in that LTSB:

i) did not emphasise sufficiently to the Network financial consultants the need for investors, when buying the EIGP, to have appropriately balanced portfolios and the need for investors to retain sufficient liquid resources (together "concentration levels"). In particular:

a) there was not sufficiently bespoke guidance on acceptable concentration levels in LTSB's suitability rules in relation to the EIGP;

b) there was not sufficiently specific training of Network financial consultants in terms of the suitability of the EIGP for investors on grounds of concentration levels; and

c) in the absence of such guidance, the sales verification process did not identify potential unsuitable sales through the Network on grounds of concentration levels.

ii) did not ensure an adequate balance between the general pressures of its sales targets and the suitability of EIGP for investors; and

iii) failed to analyse the reasons for the high level of sales through the Network of Tranche 1 of the EIGP;

2.1.3 as a result, some 22,500 EIGP sales (44% of the total number of policies sold) were made through the Network to investors when it was an unsuitable product for them and LTSB has agreed, in the circumstances particular to this matter, to pay compensation in respect of:

i) approximately 16,500 sales to investors who had not, before their purchase of the EIGP, purchased an equity related investment product and who purchased the EIGP with over 20% of their financial assets; and

ii) approximately 6,000 sales to other investors who had, before their purchase of the EIGP, purchased one or more other equity related investment products and who purchased the EIGP with over 35% of their financial assets;

2.1.4 in relation to the EIGP, LTSB failed in the above respects to act with due skill, care and diligence and to have adequate arrangements to ensure that its financial consultants were adequately trained with regard to concentration levels and that it had sufficiently well defined compliance procedures;

2.1.5 in so doing, LTSB has demonstrated serious failings which demand a substantial financial penalty. These failings are viewed by the FSA as particularly serious in the light of the following factors:

i) LTSB's failure to ensure that sufficiently adequate procedures and controls were put in place to sell the EIGP throughout the Network occurred notwithstanding that LTSB had clearly identified in advance the potential risk of misselling the EIGP and had put in place a number of measures intended to mitigate those risks;

ii) LTSB's failure resulted in the EIGP being missold to a large number of inexperienced investors, exposing them to the risk of substantial loss;

iii) specifically, the failings in respect of certain EIGP sales meant that:

- approximately 84% of the total number of sales to customers who had no previous experience of equity related investment products resulted in such customers having over 20% of their total financial assets invested in the EIGP; and

- approximately 18% of the total number of sales to customers who did have previous experience of equity related investment products resulted in such customers having over 35% of their total financial assets invested in the EIGP;

2.1.6 in deciding the level of penalty to be imposed, the FSA has recognised that these failings have been mitigated by LTSB. In particular:

i) LTSB has co-operated fully with the FSA since the identification of these issues by the FSA in October 2001;

ii) LTSB has conducted a comprehensive investigation into its sales of the EIGP;

iii) LTSB has agreed to pay the compensation referred to in paragraph 2.1.3, at a total cost of approximately £98 million in respect of approximately 22,500 sales;

iv) LTSB's conduct was not deliberate or reckless; and

v) LTSB has put in place remedial steps to address the issues in relation to the EIGP referred to above.

2.2 It appears to the FSA having regard to its statutory objectives, which include the protection of consumers, that, in the circumstances, £1,900,000 is an appropriate financial penalty. Were it not for the remedial action taken by LTSB and for the co-operation demonstrated by LTSB resulting in the early settlement of the matter, the Penalty would have been significantly higher.

RELEVANT STATUTORY PROVISIONS AND REGULATORY RULES

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 contravention, of such amount as it considers appropriate."

3.2 The Financial Services and Markets Act 2000 (Transitional Provisions and Savings)(Civil Remedies, Discipline, Criminal Offences etc)(No 2) Order 2001 provides, at Article 8(2), that the power conferred by Section 206 of the Act can be exercised by the FSA in respect of failures by a firm to comply with any of the provisions specified in Rule 1.3.1(6) of the Rules of the Personal Investment Authority ("PIA") as if the firm had contravened a requirement imposed by the Act.

3.3 PIA Rule 1.3.1(6) provided that a PIA Member which failed to comply with the PIA Rules or any of the Principles was liable to disciplinary action.

3.4 PIA Rule 1.3.1(2) provided that a PIA Member had to obey the Rules of the PIA, which included the SIB Adopted Rules and SIB Principles.

3.5 The SIB Principles are universal statements of the standards expected by firms that were issued by the SIB and applied to PIA Members.

3.6 SIB Adopted Rule S5.01 provides:

"A Member shall not make a recommendation to a person…to purchase, sell or exchange any investment…unless it has reasonable grounds for believing that the transaction is suitable for that person having regard to the facts known, or which ought reasonably to be known, to the Member, about that investment…and as to that person's other investments and his personal and financial situation…"

3.7 Principle 2 of the SIB Principles ("Principle 2") provides:

"A firm should act with due care, skill and diligence."

3.8 Principle 9 of the SIB Principles ("Principle 9") provides:

"A firm should organise and control its internal affairs in a responsible manner…and where the firm employs staff…should have adequate arrangements to ensure that they are suitable, adequately trained and properly supervised and that it has well-defined compliance procedures."

3.9 LTSB would therefore have been liable to disciplinary action under PIA Rule 1.3.1(6). Accordingly, the FSA may impose a financial penalty on LTSB pursuant to Section 206 of the Act.

BACKGROUND

4.1 LTSB was regulated by the PIA from 23 January 1995 to 30 November 2001 and since then has been regulated by the FSA. LTSB's registered offices are at 25 Gresham Street, London, EC2V 7HN.

4.2 During March 2000, Lloyds TSB Group plc acquired Scottish Widows. The Network of branches and the financial consultants based at these branches were authorised to sell Scottish Widows investment products. Prior to the merger such products were designed by Lloyds TSB Life but after the merger Scottish Widows became the product provider for the Network.

4.3 During or about May 2000 Scottish Widows designed, in conjunction with LTSB, the EIGP, a high-income equity-linked bond. The EIGP was sold in four tranches between October 2000 and July 2001 through the distribution channels available to Scottish Widows, including the Network.

DISCOVERY OF CURRENT ISSUES

a) FSA Supervision Visits

5.1 The Supervision Division of the FSA ("Supervision") visited Scottish Widows in October 2001 to review, *inter alia*, the selling practices (including those for the EIGP) through both the Scottish Widows Direct Sales Force and the Network. Following a review of 39 advised sales through the Network, concerns were raised over the suitability of some sales and whether clients had been provided with an adequate explanation of the risks associated with the product. As a result of these concerns a further visit was undertaken to review the Advice Quality Review (AQR) work (a process to check the quality of sales documentation and processes) carried out by LTSB.

5.2 The findings of these two visits were communicated to LTSB in a letter issued by Supervision in January 2002, which stated:

"...the suitability of the recommendation could not be demonstrated in all cases. Of particular concern was that, in a number of cases, the bond, which was categorised as medium high risk, appeared to be inconsistent with the client's attitude to risk. Specifically, a proportion of clients with no previous equity investments had invested a substantial proportion of their money held on deposit into the bond".

5.3 On 7 February 2002, Supervision issued a report detailing further their concerns and requiring extensive corrective action to be undertaken. This consisted of writing to clients explaining the risks associated with the product, a detailed retrospective review of sales of the EIGP assessing the suitability of the recommendation in each case and a detailed high level review to address the wider concerns in relation to certain perceived system and control failings.

b) Past Business Review

5.4 The FSA required LTSB to undertake a sample past business review of the EIGP sales ("the PBR"). To assist in the PBR, skilled persons were appointed under Section 166 of the Act during June 2002. The PBR initially included a sample of customers who had no recorded previous equity investment and who invested over 50% of their available capital in the EIGP, EIGP complainants at that time and cases identified by LTSB as "inadequate" during the AQR process. The review aimed to determine the product's suitability to the customer under review and whether the product risk had been adequately explained to the customer.

5.5 The results of the initial review of the PBR suggested a significant level of *prima facie* unsuitable sales.

5.6 LTSB was referred to the FSA's Enforcement Division during January 2003. At that time, LTSB had received 2,436 complaints from investors who bought the EIGP through the Network, highlighting concerns in relation to product suitability.

FACTS AND MATTERS RELIED UPON

Background

6.1 The EIGP was a product offering a high investment return linked to a basket of selected shares. The investment limits were a minimum of £5,000 up to £1 million. It is a single instalment product which was offered in four tranches with investors' capital subject to equity market risk. The investment term was 3 years and 2 months for each tranche.

6.2 For Tranches 1, 2 and 3 of the EIGP investors could elect to receive a fixed income of 10.25% per annum for three years or 33% of their initial capital investment at the end of the 38 month period. For Tranche 4 the fixed income was 9.75% per annum or 30% of initial capital at maturity.

6.3 The return of an investor's capital was dependent on the individual performance of 30 equally weighted stocks selected from the FTSE 100 Index. However, the amount of return of the initial capital invested was not guaranteed and depended on a series of put options on each of the 30 stocks.

6.4 The options in each tranche had a "safety margin", a percentage by which a stock's price could fall without triggering the option rights and thereby risking the investor's original capital invested. If an individual stock decreased in value to below the safety margin, the investor's capital was at risk. For Tranches 1 and 2 this was 20% and for Tranches 3 and 4 it was 33%. Having fallen below the safety margin, if a stock did not recover to its initial value before maturity date, then the investor's return of capital would be reduced by up to 1/30th of the initial investment value. However, if that stock's value fully recovered by maturity date, or its value never fell below the safety margin, then the investor would not lose any portion of his initial investment in relation to that stock. The calculation would be performed in the same way for each of the 30 stocks. The investor would not benefit from any increase in the value of the stocks beyond their value as at the investment date nor could they offset between strong and poor performing stocks.

6.5 The Network made some 51,000 EIGP sales at a total initial value of some £720 million.

6.6 By September 2003 capital losses on the EIGP were calculated by LTSB as being between 30% and 48% before taking into account income received.

Sale of the EIGP through the Network

6.7 When compared to the other available distribution channels, the substantial majority of EIGP sales were made through the Network. The sales for the four Tranches were as follows:

	Tranche 1	**Tranche 2**	**Tranche 3**	**Tranche 4**
Offer opened	25 Oct 2000	11 Dec 2000	7 Mar 2001	16 May 2001
Offer closed	6 Dec 2000	21 Dec 2000	4 Apr 2001	4 Jul 2001
End of investment term	13 Feb 2004	5 Mar 2004	18 June 2004	17 Sept 2004
Network sales	**£120m**	**£50m**	**£268m**	**£280m**
Number of policies sold	**8,226**	**3,509**	**19,493**	**20,100**

6.8 The high level controls for any new product to be launched into the Network required that all products should be formally approved by the Network and LTSB Group Risk Management ("Group Risk Management"). There was no formal process in place at Group level within LTSB for considering the relative suitability of different distribution channels for different products, or for approving products on a channel-by-channel basis. There is also no evidence of formal approval at Group level for the EIGP to be offered through the Network.

6.9 On 31 July 2000 the LTSB Branch Network Committee approved the sale of the EIGP through the Network in principle, subject to the satisfactory resolution of issues regarding training and the ability to mitigate the risks associated with the product.

6.10 On 31 July 2000, Scottish Widows submitted the initial product approval request to Group Risk Management. This indicated that, in all likelihood, it would not be offered through the Network as a distribution channel. Group Risk Management provided its approval, on this basis, on 21 August 2000. On 22 August 2000, the LTSB Branch Network Committee's decision to approve the sale of the EIGP though the Network was communicated to the Head of LTSB Group Operational Risk.

6.11 The EIGP was classified by LTSB as a medium high risk Category 4 product. The Network had previously offered capital at risk products but sales of products in this risk category had been relatively low. EIGP was a new type of capital at risk product for LTSB in that it offered a high headline income return, but with capital return linked to equity markets.

6.12 The potential risk of misselling of the EIGP through the Network was identified within LTSB on the following occasions, among others, prior to the launch of Tranche 1 in October 2000:

6.12.1 LTSB Network Compliance identified the potential risk during July 2000;

6.12.2 during August 2000, prior to approving the product, Group Risk Management identified the risk of misselling as the primary risk in respect of the EIGP; and

6.12.3 on 16 August 2000, the Branch Network Committee were informed that the potential risk of misselling of the EIGP could be mitigated by the product's risk rating, a total verification of Network sales, prohibiting sales to customers over the age of 75, clear training and process rules for advisers and strong representation of product risks in the marketing material.

6.13 The safeguards referred to in paragraph 6.12.3 were introduced by LTSB but were insufficient to ensure that unsuitable sales did not occur, as more fully discussed below.

Unsuitable sales of the EIGP

6.14 The identification of the risks of misselling the EIGP through the Network and the measures put in place to mitigate these, as set out above, did not result overall in sufficiently adequate procedures and controls to ensure suitable sales throughout the Network, and a number of potentially unsuitable sales of the EIGP were identified by the FSA, the PBR and the Financial Ombudsman Service.

6.15 Unsuitable sales of the EIGP meant that:

- approximately 84% of the total number of sales to customers who had no previous experience of equity related investment products resulted in such customers having over 20% of their total financial assets invested in the EIGP; and

- approximately 18% of the total number of sales to customers who did have previous experience of equity related investment products resulted in such customers having over 35% of their total financial assets invested in the EIGP.

6.16 Among the factors that contributed, in combination, to these inappropriate sales of the EIGP were:

6.16.1 the attractive nature of the product in the market environment at the time (including the long bull market in equities), and the high headline rate of return;

6.16.2 the fact that LTSB did not have sufficiently rigorous procedures and controls in place for considering all of the issues surrounding the selling of the EIGP through the Network and as a result did not ensure that there was sufficiently bespoke suitability guidance in respect of the EIGP regarding the issue of concentration levels in the training and suitability rules for financial consultants. This also affected the subsequent verification of sales made through the Network where these rules were applied; and

6.16.3 the assistance that the product could give to meeting sales targets.

a) Nature of the product and the high headline rate of return

6.17 LTSB recognised from June 2000 onwards, that due to the inherent risk of capital loss implied in any equity linked product and the high headline rate of over 10% income offered by the EIGP, there was a potential risk that customers would not understand the implied risks, including misunderstanding the maturity return and that a full return of capital was not guaranteed.

b) Lack of sufficiently bespoke suitability guidance and verification

6.18 The EIGP was a different type of product to those previously sold within the Network, and it was therefore important to emphasise these differences to the financial consultants to mitigate the identified risk of misselling and ensure the suitability of sales. In particular the EIGP was:

6.18.1 a capital at risk product linked to the performance of a basket of 30 stocks rather than an index, and with a risk category 4 rating;

6.18.2 a product with an attractive headline rate of return in the then current market environment; and

6.18.3 a product with the potential to appeal to some investors who might not be able to recover from significant capital loss.

6.19 It was suggested that the risks of misselling of the EIGP could be mitigated by means of, *inter alia,* a refined sales process and a total verification of EIGP sales.

6.20 In respect of the suitability of EIGP sales, the issue of concentration levels (i.e. the over-concentration of a customer's total financial assets in a medium to high-risk product) was not sufficiently highlighted to financial consultants within the Network.

6.21 As discussed below, the fact that LTSB did not ensure that there was sufficiently bespoke suitability guidance in respect of the EIGP regarding the issue of concentration levels in the EIGP training and suitability rules for financial consultants also caused the subsequent sales verification process to be ineffective in detecting unsuitable sales early on.

6.22 Both the EIGP training and suitability rules were developed under tight timetables and, in the case of training, standard procedures were not used although the training packs and suitability rules specifically developed for the EIGP were reviewed and signed-off by the relevant stakeholders within the LTSB Group in accordance with standard procedures. However, ways in which that documentation could have been improved so as to ensure sufficient emphasis on the criterion of concentration levels were not identified.

<u>EIGP training</u>

6.23 Prior to the EIGP being offered through the Network, all financial consultants within the Network received (in addition to their general training relating to all products sold through the Network) specific EIGP training. This included training regarding product suitability in relation to the EIGP.

6.24 Although the issue of concentration and the need for a balanced portfolio were referred to, the training materials for the EIGP did not sufficiently emphasise for Network financial consultants the need to avoid over-concentration, including the need to ensure adequate liquidity after making an investment, when considering suitability of the EIGP for investors.

Suitability rules

6.25 The Network suitability rules in respect of the EIGP were derived from two sources:

6.25.1 the generic suitability rules; and

6.25.2 specific EIGP suitability rules developed during September/October 2000 and circulated to financial consultants in October 2000.

6.26 In respect of the EIGP, the suitability rules contained additional specific guidance reminding financial consultants to consider (among other things) the following aspects for ensuring suitability:

6.26.1 whether the customer had "*adequate cash reserves*";

6.26.2 whether the customer was prepared to accept risk to capital and was a risk category 4;

6.26.3 whether access to capital was required within 3 years; and

6.26.4 that consideration must be given to the repayment of debts, liabilities and pensions before making investment recommendations.

6.27 An internal briefing document was also prepared in October 2000 for financial consultants which stated that the EIGP product may be suitable for customers who:

6.27.1 were looking for a high level of income or growth over the short term and were prepared to take a higher risk with their capital in order to achieve this;

6.27.2 did not want access to their money during the investment period;

6.27.3 had sufficient investments offering security of capital and who may be adding this product to the top of their investment pyramid;

6.27.4 were willing to accept some risk to their capital to achieve better rates than those currently available from building society accounts; or

6.27.5 needed to plan for set expenditure and may be attracted by the fixed rates available.

6.28 Neither the generic suitability rules nor those developed specifically for the EIGP sufficiently emphasised the issue of concentration levels.

Sales verification

6.29 To address the potential risk of misselling in respect of the EIGP, a risk based verification model was employed which was extended beyond LTSB's normal new product procedures. Cases were selected for checking through the Central Verification Unit ("CVU") and to this end 100% of EIGP sales were verified initially and the majority of applications verified passed first time. The CVU reviewed the sales documentation for each sale selected to ensure that it was compliant and in accordance with LTSB's internal procedures.

6.30 However, the CVU applied the suitability rules developed for the financial consultants in relation to the EIGP and as these did not provide sufficient guidance in respect of concentration levels, it affected the subsequent verification process. It was considered within LTSB that one of the mitigating factors addressing the potential risk of misselling was the proper verification of EIGP sales. However, the absence of sufficient guidance in respect of suitability meant that the verification process was flawed in this respect and that inappropriate sales were not identified early on during the verification process.

Contribution to unsuitable sales

6.31 Although the suitability rules stated that the customer had to have "*adequate cash reserves*" available after the EIGP purchase (as referred to in paragraph 6.26.1), a definition of the word "adequate*"* or guidance in this regard was not provided. This raised the risk that customers could invest in the EIGP at levels where their remaining liquidity level was too low when taking into account their circumstances.

6.32 By not sufficiently addressing the issue of concentration levels in the training packs for financial consultants or in the suitability rules, the issue of concentration was not properly taken into account by financial consultants within the Network. This was especially so since the EIGP was a new type of product sold through the Network. Similarly, the issue of concentration levels was not properly identified or given sufficient emphasis by the CVU.

c) Assistance of EIGP sales in meeting targets

6.33 During May 2000, it was considered that sales of the EIGP was a possible way of getting high volumes of business, thus helping distribution channels reach their sales targets. The EIGP was regarded as a potentially successful and popular product due to the high headline rate of income or growth, which could assist financial consultants in meeting their sales targets.

6.34 The financial consultants within the Network were under general pressure to perform and to meet sales targets for all products. The numbers of sales made within the Network were regularly monitored. Area Managers within the Network regularly emphasised the importance of selling the EIGP.

6.35 In addition, as discussed in paragraph 6.18, the EIGP was a new type of product, which was different from the traditional products sold within the Network. These differences were not sufficiently emphasised to the financial consultants.

6.36 LTSB did not have in place sufficiently rigorous procedures and controls for ensuring an adequate balance between its sales targets and the suitability of the EIGP for investors, and this, in combination with the lack of sufficiently bespoke suitability rules, contributed to unsuitable sales of the product.

d) Pattern of sales

6.37 In deciding the notional amount of underlying derivative that needed to be purchased for the EIGP, Scottish Widows required an estimate of the likely Network sales of Tranche 1 of the EIGP. An estimate was put forward for £50 million sales via the

Network. Prior to the launch of the EIGP, a relatively low amount of sales of medium/high Risk category 4 products were made to the Network customer base.

6.38 At the end of Tranche 1, the Network had sold EIGP policies to the value of £120 million. As a result, estimates of Network sales were rebalanced for the further Tranches of the EIGP.

6.39 An analysis of the unexpectedly high level of Network sales of the EIGP in Tranche 1 was not conducted although:

6.39.1 the potential risks of misselling of the EIGP had been identified, as referred to in paragraph 6.12; and

6.39.2 the EIGP was a different type of investment product to the products traditionally sold via the Network.

6.40 Beyond the suitability rules developed for the EIGP, verifiers within the CVU were also not expected to look for particular trends or warning signs over and above their normal brief. Although verifiers noted at the time that a sharp increase had occurred in the number of Network customers with a medium-to-high attitude to risk (where the majority in the past were low/medium), there were no formal mechanisms in place for escalating concerns in this regard for further review. Had these mechanisms been in place at the time, they could have contributed to the early detection of unsuitable EIGP sales.

CONTRAVENTIONS OF RELEVANT STATUTORY REQUIREMENTS

6.41 In consequence of the above, the Penalty is imposed pursuant to Section 206 of the Act in respect of breaches of SIB Adopted Rule S5.01 and SIB Principles 2 and 9.

RELEVANT GUIDANCE ON SANCTION

6.42 The FSA's policy on the imposition of financial penalties is set out in Chapter 13 of the Enforcement manual which forms part of the FSA Handbook ("Enf"). The principle purpose of the imposition of a financial penalty is to promote the high standards of regulatory conduct by deterring firms who have breached regulatory requirements from committing further contraventions, helping to deter other firms from committing contraventions and demonstrating generally to firms the benefit of compliant behaviour.

6.43 Article 8(4) of the pre-N2 Misconduct Order provides that, where the FSA proposes to impose a financial penalty it must have regard to:

"any statement made by the self-regulating organisation…which was in force when the conduct in question took place with respect to the policy on the taking of disciplinary action and the imposition of, and amount of penalties (whether issued as guidance, contained in the rules of the organisation or otherwise)".

6.44 Relevant PIA guidance is contained in Annex D of "PIA's Approach to Discipline-Statement of Policy" issued in December 1995. In all material respects this required consideration of the same factors as identified in Chapter 13 of the Enforcement manual. It has been taken into account by the FSA in determining the appropriate sanction in this case.

6.45 PIA's Statement of Policy makes it clear however that criteria for determining the level of sanction are not to be applied rigidly, as stated in paragraph 2 of Annex D:

"Each case is different and needs to be treated on its own merits. It is not possible to apply a mechanistic approach to the determination of the circumstances in which disciplinary action should be taken or of the sanctions to be applied. The criteria…should not be treated as exhaustive. Nor should it be assumed that regard would necessarily be had to a particular criterion in any given circumstances."

6.46 Similarly it is stated in Chapter 13 of the Enforcement manual at paragraph 13.3.4 that the criteria listed in the manual are not exhaustive and all relevant circumstances of the case will be taken into consideration.

6.47 In determining whether a financial penalty is appropriate and its level, the FSA is required to consider all the relevant circumstances of the case. The FSA considers the following factors to be particularly relevant in this case:

6.48 <u>Enf 13: The seriousness of the misconduct or contravention</u>

<u>PIA Guidance: The seriousness of the breaches. The scale of any investor losses and/or the extent to which investors were exposed to risk of such losses</u>

The level of financial penalty must be proportionate to the nature and seriousness of the contravention. The breaches in this case arose from unsuitable sales of the EIGP in four Tranches between October 2000 and July 2001.

The nature of these breaches is described in paragraph 2.1 and the factors which causes the FSA to view them as particularly serious are set out in paragraph 2.1.5.

6.49 <u>Enf 13: The extent to which the contravention is deliberate or misconduct was deliberate or reckless</u>

<u>PIA Guidance: Whether the member intentionally or recklessly failed to meet PIA's requirements</u>

LTSB's conduct was not deliberate or reckless.

6.50 <u>Enf 13: The amount of profit accrued or loss avoided</u>

<u>PIA Guidance: The extent to which, as a result of the breaches, the Member gained a benefit or avoided suffering a loss</u>

Notwithstanding LTSB's failings, the FSA considers that, as and when compensation is paid, there will be nothing to suggest that LTSB will have benefited financially from the EIGP policies missold to customers.

6.51 Enf 13: Conduct following the contravention

PIA Guidance: The firm's response once the breaches were identified

Since identification of the breaches, LTSB has put in place remedial steps to address the issues in relation to the EIGP.

LTSB has co-operated fully with the FSA since identification of the breaches and, by moving quickly to agree the facts of the case and to settle the matter, has helped the FSA to work expeditiously towards achieving its statutory objectives, which include the protection of consumers.

6.52 Enf 13: Disciplinary record and compliance history

PIA Guidance: The firm's regulatory history

LTSB has not previously been the subject of disciplinary action.

6.53 Enf 13: Action taken by other regulatory authorities and the FSA in relation to similar failings

PIA Guidance: The way in which PIA has dealt with similar cases in the past

In setting the level of the Penalty, the FSA has taken into account penalties levied by previous regulators and the FSA.

IMPORTANT NOTICES

6.54 This Final Notice is given to LTSB in accordance with Section 390 of the Act.

Manner of Payment

6.55 The Penalty must be paid to the FSA in full.

Time for payment

6.56 The Penalty must be paid to the FSA no later than 8 October 2003, being not less than 14 days beginning with the date on which the Notice is given to LTSB.

If the Penalty is not paid

6.57 If all or any of the Penalty is outstanding on 8 October 2003, the FSA may recover the outstanding amount as a debt owed by LTSB and due to the FSA.

Publicity

6.58 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 these 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 a 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 LTSB or prejudicial to the interests of consumers.

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

FSA Contact

6.60 For more information concerning this matter generally, you should contact Jeremy La Niece (direct line: 020 7066 1346/fax: 020 7066 1347) of the Enforcement Division of the FSA.

Julia MR Dunn
Head of Retail Selling
FSA Enforcement Division