Financial Conduct Authority

PURSUANT TO THE DECISION OF THE UPPER TRIBUNAL ON 6 NOVEMBER 2018, THIS DECISION NOTICE HAS BEEN SUPERSEDED BY A FINAL NOTICE DATED 16 JANUARY 2019.

DECISION NOTICE

To: **Mark John Owen**

IRN: **MJO01090**

Date: **7 November 2014**

1. ACTION

1.1. For the reasons set out below, the Authority has decided to:

(1) impose on Mr Owen, pursuant to section 66 of the Act, a financial penalty of £4 million for breaches of Statements of Principle 1 (integrity) and 4 (relations with regulators); and

(2) make an order, pursuant to section 56 of the Act, prohibiting Mr Owen from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm.

2. SUMMARY OF REASONS

2.1. Keydata designed, launched and, via IFAs, distributed structured investment products to retail customers. Keydata went into administration on 8 June 2009 and was dissolved on 2 July 2014. Prior to its administration, Keydata had £2.8 billion of

its own and other institutions' investment products under administration. During the Relevant Period (26 July 2005 to 8 June 2009) Keydata designed, launched and distributed four investment products which invested primarily in US senior life settlement policies: the SIB, the SIP, the Income Plan and the DIP.

2.2. The Products offered retail customers an income or growth investment, by way of ISA, personal equity plan or direct investment. The income option paid a fixed percentage income (payable quarterly or annually) and aimed to ensure the full return of capital to the investor at the end of a five, seven or ten year term. The growth option rolled up and accrued the income payments to provide a compound growth over the life of the Product and aimed to ensure the full return of capital to the retail investor at the end of a five, seven or ten year term. Keydata purchased, on behalf of the investors, bonds issued by a special purpose vehicle incorporated in Luxembourg (either SLS or Lifemark). The SLS Products were underpinned by investments in the SLS Bonds and the Lifemark Products were underpinned by investments in the Lifemark Bonds. The SLS Bonds and the Lifemark Bonds were to be listed on the Luxembourg Stock Exchange.

2.3. The funds raised through the issue of the SLS Bonds would then be invested by SLS in the SLS Portfolio, and similarly the funds raised through the issue of the Lifemark Bonds would then be invested by Lifemark in the Lifemark Portfolio. The structures of the SLS and Lifemark Portfolios were broadly similar: they contained US senior life settlement policies and required an amount of the funds raised to be kept in cash (or liquid securities) to fund the payment of fees, income and insurance premiums. The target spread for the SLS Portfolio was 40% cash and 60% policies and for the Lifemark Portfolio was 30% cash and 70% policies.

2.4. Mr Owen was on the Keydata board of directors and held the post of Sales Director. During the Relevant Period, Mr Owen held Controlled Functions 1 (Director) (throughout the Relevant Period), 16 (Significant Management (Designated Investment Business)) (from the start of the Relevant Period until 31 October 2007) and 29 (Significant Management) (from 1 November 2007 onwards). As Sales Director, Mr Owen's responsibilities included: assessing and researching new product ideas for board approval; overseeing the work and training of the sales team that promoted the Products; and compliance monitoring in respect of the sales team.

2.5. During the Relevant Period, Mr Owen:

(3) failed to act with integrity in carrying out his controlled functions, in breach of Statement of Principle 1, in that he:

(a) recklessly agreed to Keydata's funding income payments due from

SLS to investors, when he was aware that the likely consequence was that investors and IFAs would be misled as to the performance of the SLS Products;

(b) recklessly placed reliance on repeated assurances from Keydata's CEO, Stewart Ford, that he would resolve the problems with SLS's performance and solvency, without taking any steps to evaluate and mitigate the risk that Mr Ford would not be able to resolve the problems;

(c) deliberately failed to disclose to Keydata's Compliance Officer or Keydata's Finance Director his conflict of interest arising from his receipt of the Undisclosed Commissions from Mr Ford;

(d) was aware that:

(i) Keydata had received professional advice that its financial promotions contained unclear, incorrect and misleading statements and had failed to take the steps recommended by its advisers to address those matters;

(ii) Keydata had received professional advice that its due diligence was inadequate and had failed to take the steps recommended by its advisers to address the failings; and

(iii) Keydata had received professional advice regarding the risk of the Lifemark Portfolio not performing, and that Keydata had failed to take adequate steps to ensure that the risk was being effectively managed and that investors and IFAs were aware of this risk;

but recklessly failed either to ensure that Keydata addressed the issues and risks that had been identified or to stop Keydata from marketing and selling the Lifemark Products until effective remedial steps were taken;

(e) recklessly failed to ensure that Keydata took steps to explain or mitigate the risk to investors who had invested in the Lifemark Products, and that material circulated to such investors gave an accurate impression of the risks to the performance of the Lifemark Portfolio, despite becoming increasingly aware of the severe risks affecting the Lifemark Portfolio;

(f) recklessly permitted Keydata to continue marketing and selling the Lifemark Products as fulfilling the conditions set out in the ISA Regulations, when he was aware that it was highly likely that they did not do so; and

(g) deliberately misled the Authority, by representing to the Authority during a compelled interview that the Products were on target to meet their obligations, despite being aware of the ongoing failure of SLS to make income payments and the severe liquidity and other risks with the Lifemark Portfolio, and deliberately consented to Keydata's Compliance Officer's misleading the Authority at a meeting.

(4) failed to deal with the Authority in an open and cooperative way, in breach of Statement of Principle 4, in that he:

(a) made false representations to the Authority during a compelled interview;

(b) consented to Keydata's Compliance Officer's misleading the Authority at a meeting;

(c) failed to disclose to the Authority the Undisclosed Commissions when he was specifically asked by the Authority for details of any commissions or other benefits he had received in respect of the Products;

(d) was aware that a spreadsheet provided by Keydata to the Authority on 5 June 2009, by an email from Keydata's solicitors which was copied to him, was highly likely to mislead the Authority by representing that future income was expected from SLS, , and failed to correct the information provided; and

(e) failed to ensure the Authority was made aware that SLS was failing to make income payments due under the SLS Bonds on an ongoing and regular basis, that Keydata was funding income payments for the SLS Products or that there were serious concerns about the solvency of SLS.

2.6. The Authority considers that Mr Owen's failings in this regard are of the most serious nature in light of:

(1) the significant level of consumer detriment which has arisen from the sales of the Products and the impact which this level of consumer detriment has had on the financial services sector. During the Relevant Period over 37,000 investors purchased the Products, investing over £475 million, and the FSCS has subsequently made payments to investors in the Products of over £330 million; and

(2) the fact that Mr Owen had an undisclosed conflict of interest on account of the Undisclosed Commissions, totalling over £2.5 million, which he received from Mr Ford in addition to his remuneration from Keydata, the amount of which was related to the volume of sales of the Lifemark Products. He therefore had an additional and undisclosed personal interest to ensure that the Lifemark Products continued to be sold.

2.7. The Authority considers that Mr Owen's conduct demonstrates that he is not fit and proper to perform any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm.

2.8. The Authority considers that the nature and seriousness of Mr Owen's misconduct warrant the action set out at section 1 above.

3. DEFINITIONS

3.1. The following definitions are used in this Decision Notice.

(a) "2008 Actuarial Review" means the final text of the actuarial review conducted by the Lifemark Actuary described in paragraph 4.54;

(b) "the Act" means the Financial Services and Markets Act 2000;

(c) "the Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;

(d) "Brochure Advice" has the definition set out in paragraph 4.34;

(e) "CEO" means Chief Executive Officer;

(f) "CRT" means CRT Capital Investment Banking Group, an SEC regulated firm;

(g) "DEPP" means the version of the Decision Procedure and Penalties Manual section of the Handbook which was in force up to and including 5 March 2010;

(h) "DIP" means the Defined Income Plan;

(i) "Draft Lifemark Valuation Report" has the definition set out in paragraph 4.50;

(j) "EG" means the Authority's Enforcement Guide;

(k) "ENF" means the Authority's Enforcement Manual, which was in force between 1 December 2004 and 27 August 2007;

(l) "exempt professional firm" means a person to whom, as a result of Part XX of the Act, the general prohibition does not apply in relation to that activity;

(m) "February 2008 Brochure Report" has the definition set out in paragraph 4.39;

(n) "FIT" means the Fit and Proper Test for Approved Persons section of the Handbook;

(o) "FSCS" means the Financial Services Compensation Scheme;

(p) "Handbook" means the Authority's Handbook of Rules and Guidance;

(q) "HMRC" means Her Majesty's Revenue and Customs;

(r) "IFA" means Independent Financial Adviser;

(s) "ISA" means Individual Savings Account;

(t) "ISA Regulations" means the Individual Savings Account Regulations 1998 (SI 1998/1870);

(u) "June 2008 Extract Review" has the definition set out in paragraph 4.46;

(v) "Keydata" means Keydata Investment Services Limited;

(w) "Keydata's Compliance Officer" means the individual who, from prior to the start of the Relevant Period until 1 December 2008, was the compliance officer of Keydata and the holder of the CF10 (Compliance oversight) controlled function, and retained responsibility thereafter for Keydata's dealings with the Authority in relation to the Products;

(x) "Lifemark" means Lifemark SA;

(y) "Lifemark Actuary" means the actuary for the Lifemark Portfolio;

(z) "Lifemark Bonds" means the bonds issued by Lifemark;

(aa) "Lifemark Companies" means the various companies within the Lifemark structure described in paragraph 4.17 of which Mr Ford personally and/or his family, through trusts he set up on behalf of his family, were the beneficial owner(s) or from which they were entitled to the full benefit;

(bb) "Lifemark Investment Manager" means the investment manager appointed to manage the Lifemark Portfolio;

(cc) "Lifemark Portfolio" means the portfolio of US senior life settlement policies and cash in which the funds raised from investors through the issue of the Lifemark Bonds were invested by Lifemark;

(dd) "Lifemark Products" means issue 4 of the SIB, issues 1 to 12 of the SIP, issues 1 to 12 and 14 of the Income Plan and issues 1 to 9 of the DIP;

(ee) "Luxembourg Regulator" means the Commission de Surveillance du Secteur Financier, the Luxembourg financial regulator;

(ff) "March 2008 Due Diligence Report" has the definition set out in paragraph 4.42;

(gg) "October 2008 Lifemark Report" has the definition set out in paragraph 4.54;

(hh) "Offshore Arranger" means the company, incorporated in the British Virgin Islands, which was party to a Professional Services Agreement dated 16 October 2006 with Lifemark relating to services including the negotiation of contracts, introductions and support for operational matters in relation to the Lifemark Portfolio;

(ii) "Offshore Consultancy" means the company, incorporated in the British Virgin Islands, which entered into a fee sharing agreement with a US originator of life settlement policies for purchase by Lifemark;

(jj) "Offshore Partnership" means the offshore partnership, with which Mr Ford was a consultant, which carried out services for Keydata in relation to the SLS Products and was subsequently engaged by Keydata to negotiate and control the activities of all parties to the Lifemark Bonds, pursuant to a Corporate Management Services Agreement dated 25 May 2007 with Keydata;

(kk) "Offshore Promoter" means the company, incorporated in Panama, which was party to a promotion and distribution agreement with Lifemark dated 17 March 2006 in relation to the Lifemark Bonds;

(ll) "Products" means the SIB, the SIP, the Income Plan and the DIP;

(mm) "RAC" means Required Asset Cover;

(nn) "Relevant Period" means the period from 26 July 2005 to 8 June 2009;

(oo) "SIB" means the Secure Income Bond;

(pp) "SIP" means the Secure Income Plan;

(qq) "SLS" means SLS Capital SA;

(rr) "SLS Bonds" means the bonds issued by SLS;

(ss) "SLS Investment Manager" means the investment manager appointed to manage the SLS Portfolio;

(tt) "SLS Portfolio" means the portfolio of US senior life settlement policies and cash in which the funds raised from investors through the issue of the SLS Bonds were invested by SLS;

(uu) "SLS Products" means issues 1, 2 and 3 of the SIB;

(vv) "Statement of Principle" means one of the Authority's Statements of Principle for Approved Persons in the Handbook;

(ww) "Summary Report" has the definition set out in paragraph 4.45;

(xx) "the Tribunal" means the Upper Tribunal (Tax and Chancery Chamber); and

(yy) "Undisclosed Commissions" means the undisclosed commission payments relating to the performance of the Lifemark Portfolio which Mr Owen received from Mr Ford and which are described in paragraph 4.19.

4. FACTS AND MATTERS

Keydata

4.1. Keydata was the wholly owned subsidiary of Keydata UK Limited, a company incorporated in Scotland. Mr Owen was a director and minority shareholder of Keydata UK Limited and a director of Keydata. From 16 September 2005 there were only two other directors of Keydata: Mr Ford and the Finance Director. Keydata had permissions under Part IV of the Act to carry on regulated activities and was therefore an "authorised person" as defined in section 31 of the Act.

4.2. Keydata designed, launched and, via IFAs, distributed structured investment products to retail customers. It launched its first investment products in 2001. The majority of Keydata's products were structured products involving the purchase of bonds and it offered a range of five to six such products at any one time. As at June 2009 Keydata had £2.8 billion of investment products under administration (including £2.1 billion of assets held on behalf of major financial services firms whose products Keydata administered).

4.3. Keydata's business in relation to the Products was primarily managed and controlled by Mr Ford, who held, among other controlled functions, Controlled Function 3 (Chief Executive) (which he held throughout the Relevant Period). Mr Ford sought to resign from his position as CEO of Keydata during 2007 and entered into a Non-Executive Service Agreement with Keydata dated 19 July 2007, which

described him as a non-executive director. That agreement provided that Mr Ford was not expected to devote more than 20 hours per month to Keydata's business. However, Mr Ford did not notify the Authority of his purported resignation, he continued to hold Controlled Function 3, nobody replaced him as Keydata's CEO, and he continued to be regarded by Mr Owen, and others, as Keydata's CEO. The Authority therefore considers that Mr Ford was Keydata's CEO throughout the Relevant Period. Mr Ford was also a director and the majority shareholder and controller of Keydata UK Limited.

The SLS Products

4.4. The SLS Products were underpinned by investments in bonds issued by SLS. They were promoted to investors as being eligible for ISA status. SLS was a special purpose vehicle incorporated in Luxembourg. The SLS Bonds were purchased by Keydata on behalf of investors in the SLS Products. From 26 July 2005 to 16 December 2005 £103 million was invested in the SLS Products by 6,486 retail investors, via IFAs.

4.5. The funds in the SLS Bonds were invested in US senior life settlement policies and cash, which comprised the SLS Portfolio. The reason for keeping a portion of the investments in cash was to fund the payment of fees, income and insurance premiums. The investment mix for the SLS Portfolio was targeted to be 60% policies and 40% cash for the SLS Products. The policies and cash were intended to produce income and a full return of capital at the end of the term of the SLS Product (through the death of an insured individual or the re-sale of the policy in the secondary market), although the return of capital was not guaranteed. The terms of the SLS Products were intended to mirror the terms and conditions of the SLS Bonds; for example the SLS Bonds paid income quarterly or annually (which was mirrored by the investment options available for the SLS Products, although the SLS Products had lower income rates than the SLS Bonds).

4.6. The investors did not pay a fee to Keydata in respect of the investment in the SLS Products. Keydata received an initial commission from SLS which was 5.5% of the total funds invested in the SLS Products. This was not disclosed to investors (and there was no requirement for it to be disclosed). Keydata retained 2.5% of the initial commission and passed 3% on to IFAs. Keydata also received quarterly fees from SLS in respect of each of the SLS Products. These payments amounted to 1.81% per annum of the funds invested in the SLS Products. In addition, SLS paid Keydata 0.5% in annual trail commission which Keydata paid on to IFAs. The total amount of the fees and commission paid by SLS to Keydata in relation to the SLS Products was £5,426,707.

4.7. Prior to September 2007 the shareholders of SLS included BWT Capital, CRT and David Elias, a British businessman based in Singapore, who held a minority shareholding in SLS. However, from September 2007 Mr Elias acquired a controlling interest in SLS as a result of purchasing CRT's shares in the company. It was reported in the press that Mr Elias died in Singapore on 8 May 2009.

4.8. The SLS Products were high risk in nature and as such the returns offered to investors, both in respect of income and the return of capital at maturity, would be subject to a high level of risk. The high risk nature of the SLS Products resulted from the following:

(1) the SLS Portfolio invested in assets which were highly illiquid and very expensive to maintain. The costs of funding the premiums for the policies were extremely high and failure to make these payments would result in the policies lapsing and all capital value being lost; and

(2) the performance of the SLS Portfolio (and therefore the returns to investors) was dependent on the date of death of the individuals insured under the senior life settlement policies occurring broadly in line with the forecast life expectancies.

4.9. The SLS Portfolio operated on the basis of a 2:1 RAC ratio. In respect of all the SLS Products this meant that the face/maturity value of the policies within the SLS Portfolio should at all times be at least twice the amount of the principal outstanding on the SLS Bonds (the amount of subscription monies invested) minus cash. For example, if the face value of the SLS Portfolio was £20 million and the principal amount outstanding under the SLS Bonds was £5 million with a cash surplus of £1 million, this RAC ratio would be met as the RAC calculation would be 20 ÷ (5 - 1) = 5.

4.10. On or around 21 April 2008, SLS entered into an agreement with a company owned by Mr Elias under which all the policies in the SLS Portfolio and other assets of SLS were transferred to that company in return for a guarantee in relation to SLS's liabilities. From that date, the guarantee was the only asset in the SLS Portfolio; however, RAC certificates were issued subsequently, indicating that the RAC ratio was being met even though there was, from that date, no proper basis for such certificates to be issued. Neither Keydata nor Mr Owen were involved in, or informed at the time of, the arrangements between SLS and the guarantor to put in place the guarantee. SLS was put into liquidation on 1 October 2009.

The Lifemark Products

4.11. Following the launch of the SIB 3, Keydata was advised by CRT that it would not support any further issues of the SIB. The SIB 3 closed to retail investors on 16 December 2005 and, on 19 December 2005, Keydata instead started to launch the Lifemark Products, which were underpinned by investments in bonds issued by Lifemark, and which were also promoted to investors as being eligible for ISA status. Lifemark was a special purpose vehicle incorporated in Luxembourg on 12 January 2006 and regulated by the Luxembourg Regulator. Lifemark was set up by Mr Ford who was also one of its directors.

4.12. Mr Ford advised the Authority that he had been required to be a director of Lifemark by the Luxembourg Regulator as it wished Lifemark to have a representative of Keydata on its board. While this was correct, the Authority discovered after Keydata went into administration that Lifemark was also beneficially owned by Mr Ford through a structure under which the assets were held by a Dutch "stichting" or trust arrangement set up on his behalf. Mr Ford had no formal control over the actions of the trustees but in practice they would act in accordance with his instructions. Under this arrangement, Mr Ford would have benefited from any residual value in the assets of Lifemark once all holders of the Lifemark Bonds had been paid in full.

4.13. The Lifemark Bonds were purchased by Keydata on behalf of investors in the Lifemark Products. Keydata designed, marketed and sold over 30 issues of the Lifemark Products from 19 December 2005 to 8 June 2009. £373,162,684 was invested in the Lifemark Products by 30,906 retail customers, via IFAs.

4.14. The funds in the Lifemark Bonds were invested in US senior life settlement policies and cash, which comprised the Lifemark Portfolio. The investment mix for the Lifemark Portfolio was intended to be 70% policies and 30% cash for the Lifemark Products. The policies and cash were intended to produce income and a full return of capital at the end of the term of the Lifemark Product (through the death of an insured individual or the re-sale of the policy in the secondary market), although the return of capital was not guaranteed. The terms of the Lifemark Products were intended to mirror the terms and conditions of the Lifemark Bonds.

4.15. The investors did not pay a fee to Keydata in respect of the investment in the Lifemark Products. Keydata was entitled under an agreement with Lifemark to a 2.5% upfront commission on the funds invested in each Lifemark Product and a 1% per annum ongoing trail commission (this does not include any fees and commissions

received by Keydata from Lifemark and passed on to IFAs). The commissions paid by Lifemark to Keydata up to 8 June 2009 in relation to the Lifemark Products totalled £22,791,932 (excluding fees and commissions paid on to IFAs).

4.16. The Lifemark Products were high risk in nature and as such the returns offered to investors, both in respect of income and the return of capital at maturity, would be subject to a high level of risk. The high risk nature of the Lifemark Products resulted from the following:

(1) the Lifemark Portfolio invested in assets which were long-term, highly illiquid and very expensive to maintain. The costs of funding the premiums for the policies were extremely high and failure to make these payments would result in the policies lapsing and all capital value being lost;

(2) the Lifemark Portfolio was not in existence when the Lifemark Products were launched and therefore it would take some time for the Lifemark Portfolio to reach the required size where it would be self-funding (i.e. policy maturities were able to fund the premium payments and obligations under the Lifemark Bonds). This meant that Lifemark needed to have the ability to continue to issue the Lifemark Bonds or raise funds by other means, including borrowing, until such time as the Lifemark Portfolio became self-funding; and

(3) the performance of the Lifemark Portfolio (and therefore the returns to investors) was dependent on the deaths of the individuals insured under the US senior life settlement policies occurring broadly in line with the forecast life expectancies.

4.17. In addition to his beneficial ownership of Lifemark, Mr Ford personally and/or his family, through trusts he set up on behalf of his family, were the beneficial owner(s) of, or entitled to the full benefit from, the Lifemark Companies, which comprised:

(1) the Offshore Promoter, which was paid fees of £5,283,739 under its agreement with Lifemark, which provided for it to *"promote and distribute the asset backed securitization bonds being issued from time to time by Lifemark";*

(2) the Offshore Consultancy, which was paid fees of £31,106,469 by US brokers for introductory services in respect of the sale of US senior life settlement policies to Lifemark; and

(3) the Offshore Arranger, to which Lifemark agreed to pay 10% of the funds

invested in the Lifemark Bonds pursuant to a Professional Services Agreement dated 16 October 2006 in return for the provision of a number of services including: the negotiation of contracts with "*investment activity parties*" and "*administration parties*"; the provision of "*introductions to distribution opportunities*" and advice on "*distribution opportunities to allow* [Lifemark] *access to key distribution opportunities*"; and the provision of support to Lifemark's contract counterparties for operational matters. Lifemark paid fees to the Offshore Arranger of £36,074,852.

4.18. As set out above, the Lifemark Companies took over £72.4 million from the Lifemark structure (a sum equivalent to 19.4% of all the investment funds invested in the Lifemark Products). The Authority considers that the Lifemark Companies performed no, or no meaningful, services in return for the sums received by them in respect of their involvement in the Lifemark structure.

4.19. Between 7 November 2006 and 31 August 2008 Mr Owen received £2,540,787 through three commission payments (the "Undisclosed Commissions"), pursuant to an undisclosed commission arrangement between Mr Owen and Mr Ford, which related to twelve issues of the Lifemark Products (the SIB 4 and the SIP 1 to 11). The Undisclosed Commissions were calculated on the basis of a percentage (1.5%) of the amount of investment in these Lifemark Products raised by Keydata. The first two payments, made on 7 November 2006 and 9 May 2007 respectively, and totalling £1,291,287, were paid directly from Mr Ford's personal bank account in Liechtenstein, and from the bank account of a trust controlled by Mr Ford, to Mr Owen's personal bank account in Liechtenstein. The third payment, of £1,249,500 on 31 August 2008, was paid indirectly from the bank account of a trust controlled by Mr Ford to a corporate entity of which Mr Owen was a 50% shareholder. Mr Owen did not disclose these payments to Keydata's Compliance Officer or to Keydata's Finance Director.

4.20. The risk to investors in the Lifemark Products of not receiving the returns promised was made considerably more likely by the very high level of fees paid to Keydata and the Lifemark Companies (see paragraphs 4.15 and 4.17 above). The Provisional Administrator of Lifemark stated in his report to the Luxembourg Regulator that:

(1) the level of fees payable under the Lifemark structure, a number of which were undisclosed and paid to companies owned or controlled by Mr Ford, was directly responsible for the failure of Lifemark: "*the current model was torpedoed by the high cost structure, which prevented Lifemark from reaching the required level of assets in light of its debts*"; and

(2) Lifemark had a liquidity problem:

> *"It could be thought that Lifemark issued bonds each time liquidity was at risk. This situation was inevitable given the significant fees which had been paid. … If the fees had been less significant, then the available funds would normally have been used to:*
>
> *- retain a cash reserve, as provided for in the general conditions*
>
> *- acquire more policies (which would therefore potentially have generated more mortalities and therefore more revenue)*
>
> *In simple terms, the initiators probably pushed their luck a bit too much and the survival link became considerably weaker."*

4.21. The Lifemark Portfolio operated on the basis of a 2:1 RAC ratio (which is described at paragraph 4.9 above in relation to the SLS Portfolio). The Luxembourg Regulator closed Lifemark to new business in mid-2009 and Lifemark was subsequently put into administration and, on 11 May 2012, liquidation.

Failure of the SLS Products to perform

4.22. Mr Owen was aware from 8 January 2007 that there were problems with the performance of the SLS Portfolio, and accordingly that there could be problems with the SLS Products.

4.23. In January 2007, Keydata's Compliance Officer specifically drew to Mr Owen's attention the fact that the SLS Bonds had failed to pay the required income payments and the possibility of the SLS Bonds going into default. Keydata's Compliance Officer's email of 8 January 2007 to Mr Owen stated: *"Mark. This is a major issue! How should we take forward?"*

4.24. On 16 April 2007 the Offshore Partnership attended a conference call with the SLS Investment Manager to discuss, among other things, the failure of SLS to make an income payment in respect of the SLS Bonds which underpinned the SIB 3. On 26 April 2007 Mr Owen received an attendance note of the call in which it was noted that the SLS Investment Manager had advised the Offshore Partnership that this payment was missed due to the failure of the SLS Portfolio to meet the RAC ratio. Mr Owen's comment on the attendance note was "*looks good*".

4.25. The minutes of the meetings of the Keydata board of directors (which Mr Owen

attended) from 28 April 2008, 19 May 2008 and 14 July 2008 confirmed that Keydata's fees (which were also intended to be met from income payments made under the SLS Bonds) remained outstanding.

4.26. Mr Owen was aware that Keydata did not receive the income payable under the SLS Bonds but funded the income payments due under the SLS Products from its own corporate resources. On 29 July 2008 Mr Owen was advised in an email from the Finance Director of Keydata that SLS had *"defaulted on quarterly income payments on SIB1 and SIB3"*. The email stated that Keydata's cash flow was being negatively affected by funding the income payments due under the SLS Products: "*We need to resolve* [this situation] *fast as we have limited room to increase the funding position… We may not have sufficient funding to fund any further income distributions on SIB1-SIB3…*".

4.27. On 10 October 2008 the board minutes of Keydata noted that Mr Ford had updated the Keydata board of directors on SLS and that "[SLS] *have defaulted on income payments for SIB1/2 claiming under contract they have up to 8 weeks to fund.* [Keydata] *has funded income payments pending a meeting between* [Mr Ford] *and SLS to resolve*".

4.28. On 13 November 2008 the board minutes of Keydata noted that Mr Ford advised the Keydata board of directors that "*following discussion with David Elias of* [SLS], [Mr Elias] *had intimated* that *there was insufficient liquidity in the fund to make income payments in the short term*".

4.29. On 5 February 2009 the board minutes of Keydata noted that Mr Ford had advised the Keydata board of directors in relation to SLS that "[Keydata] *has funded £2.95m of income payments and IFA commission to date."* They continued: "[Mr Ford] *reported discussions were ongoing with SLS to resolve matters*".

4.30. On 30 April 2009 the board minutes of Keydata noted that Mr Ford had advised the Keydata board of directors that no real progress was being made with SLS.

4.31. Between April 2008 and April 2009 Mr Ford provided assurances to the Keydata board of directors that the issues with the performance of the SLS Products would be resolved. Mr Owen agreed that Keydata would fund the payments to investors. This had the effect of concealing from investors the problems with the SLS Portfolio. Mr Owen recklessly relied on Mr Ford's assurances and failed to challenge or seek corroborative evidence from him in order to satisfy himself that the issues would be

resolved, despite being aware that there was a risk that Mr Ford would not be able to resolve the problems, especially as during that period Mr Ford was not committing as much time to Keydata's business as would be reasonably expected from a CEO.

4.32. As a director of Keydata, Mr Owen should have ensured that the Authority was made aware that SLS was failing to make income payments on an ongoing and regular basis, that Keydata was funding income payments for the SLS Products and that there were serious concerns about the solvency of SLS. Mr Owen failed to disclose, or ensure that others within Keydata disclosed, these matters to the Authority.

4.33. Mr Owen would have been aware that the likely consequence of Keydata's action in making payments in lieu of SLS was that SLS's failures would be concealed from investors in the SLS Products and from the IFAs who had been or who were still marketing the SLS Products, but took no steps to ensure investors and IFAs were informed of the problems with SLS's performance and solvency.

Financial promotions for the Products

4.34. In late 2005 Keydata instructed its legal advisers to assess the brochures for the SLS Products for the purposes of compliance with the Authority's financial promotion rules. Mr Owen received a draft copy of this advice on 28 November 2005. The Authority does not know whether Mr Owen saw the final version of this advice dated 5 December 2005 (the "Brochure Advice"). However, the final version was not substantially different to the draft.

4.35. The Brochure Advice stated: "[a]*s currently drafted we think the SIB brochures are not sufficiently compliant with the* [Authority's] *financial promotion rules and we think the brochure should not be used until certain amendments have been made*".

4.36. In particular the Brochure Advice stated that the comparison between the SIB and other income products (for example a bank account) lacked sufficient clarity and had the effect of suggesting that the risk of the SIB was *"low per se, which is not strictly accurate".* The Brochure Advice also pointed out that the brochures for the SLS Products did not adequately set out the risks of the investment, as the section entitled *"Is there any risk?"* was not comprehensive and later in the Key Features documents other risks were mentioned.

4.37. From 19 December 2005 Keydata issued financial promotions for the Lifemark Products, which were materially similar in content to those for the SLS Products,

despite the Brochure Advice, and were unclear, incorrect and misleading in a number of areas:

(1) the brochures for the Lifemark Products did not adequately explain the risks associated with the operation of the products. For example: that the Lifemark Products were inherently high risk contrary to the brochures which stated that they were "*lower risk*" in comparison to other types of investments such as equities; that both income and capital were at risk; that the date of maturity of the policies in the Lifemark Portfolio was entirely uncertain; that the information about the projected future performance of the products was not based on reasonable assumptions supported by objective data, and did not make it clear that a forecast is not a reliable indicator of future performance; and that the risk warnings that were given were misleading and were often undermined by positive language or by their positioning;

(2) a number of the brochures for the Lifemark Products failed to disclose the currency risk as one of the risks of the Product. The lack of a currency hedge would affect the valuation of the Lifemark Products upon redemption or maturity and the currency risk was an unknown quantity. However, the contractual arrangements to secure a currency hedge were not in place (from the launch of the Lifemark Products and the issue of the brochures) to mitigate the foreign exchange risk inherent in the Lifemark Products. Hedging arrangements using a US dollar to pound sterling currency swap were later put in place, between late 2007 and early 2008;

(3) the brochures for the SIB 4 contained references to the existence of a credit facility to provide the Lifemark Portfolio with liquidity funding to enable it to continue to pay the premiums due on the senior life settlement policies comprising the Lifemark Portfolio in the event that they did not generate a sufficient return to fund these expenses. No such credit facility was in place; and

(4) the brochures for each of the SIB 4, the SIP 1 to 4 and the DIP 1 to 8 stated that the investment was into a bond listed on the Luxembourg Stock Exchange and that this would make the Product eligible for ISA status. The SIB 4 and the SIP 1 to 4 (which were issued between 19 December 2005 and 31 July 2006) were not listed on the Luxembourg Stock Exchange until 6 June 2007 and the DIP 1 to 8 (which were issued

between 5 March 2008 and 12 January 2009) were not so listed until 24 June 2009.

4.38. As a holder of the CF1 (Director) controlled function at Keydata, and as its Sales Director, Mr Owen had operational responsibility for sales and promotional activity. He should have ensured that the Brochure Advice was evaluated and followed in any further sales of the Products, in order to ensure that further promotional materials used in such sales were clear, fair and not misleading.

4.39. On 7 February 2008 Mr Owen received a review of the contents of the brochure for the SIP 14 from one of Keydata's professional advisers (the "February 2008 Brochure Report"). This advised: "[w]*e believe that the way this information is presented is not clear or fair enough and that it does not meet the standards applied by the* [Authority] *or the industry generally.… A number of the individual points we have raised may not seem that significant in isolation. Taken together, though, the effect is sufficiently serious that you should consider suspending sales on the basis of this material.*"

4.40. Following receipt of the February 2008 Brochure Report, on 19 February 2008 Keydata's Compliance Officer informed Mr Ford and Mr Owen that Keydata's professional advisers had advised Keydata to "*not issue SIP 15 until we receive the extra due diligence*". Keydata did not issue any further issues of the SIP. Instead, it renamed the product through which it offered investments in Lifemark as the DIP. The DIP was in all material respects an identical product to the SIB 4 and the SIP. In an email to IFAs Keydata described it as a "*replacement product*" for the SIP, which "*has been set up in exactly the same way and utilises the same robust investment process and criteria as the SIP*".

4.41. Keydata developed and packaged the Lifemark Products, produced promotional material and selected the IFAs who were to market them, and therefore had responsibility for (among other things): having systems and controls to manage adequately the risks imposed by the product design; and, when providing information to distributors, ensuring the information was sufficient, appropriate and comprehensible in substance and form, including considering whether it would enable distributors to understand it enough to give suitable advice (where advice was given) and to extract any relevant information and communicate it to the end customer.

4.42. The Authority considers that Keydata's due diligence into the Lifemark Products was limited and was not completed prior to the launch of the Lifemark Products. On 3 March 2008 Mr Owen received a copy of advice from one of Keydata's professional

advisers (the "March 2008 Due Diligence Report") which concluded that Keydata's due diligence in relation to the SIP was inadequate and incomplete. The March 2008 Due Diligence Report concluded that Keydata's due diligence did not evidence:

(1) the roles of, or contractual arrangements with, various counterparties within the Lifemark structure;

(2) the terms, including the impact and cost, of any currency hedge;

(3) whether Keydata had tested whether the rates of return on the Lifemark Products were achievable or the risk parameters within which they were achievable and the costs which were payable under the Lifemark structure;

(4) whether Keydata had considered all the risks to the return of investor capital; and

(5) what protections existed within the Lifemark Portfolio to deal with a cross-subsidy risk: *"In the event that losses are suffered, it is not clear from the papers* whether *any procedures exist to ensure that investors in earlier issues would not receive returns at the expense of investors in later issues"*.

4.43. Further, the March 2008 Due Diligence Report advised Keydata that while it was not possible to be definitive about the quantity or nature of the due diligence required, "*as a high level indicator*", as Keydata was *"marketing and distributing this complex offshore product to UK investors who are generally unable to penetrate the product's structures"*, its due diligence should have been sufficient to:

(1) *"be assured that the product will, in the normal course of events and within reasonable parameters, perform as intended*";

(2) *"be able to describe those characteristics and risks to potential investors in terms that are clear, fair, not misleading and are likely to be understood by potential investors"*; and

(3) *"enable the directors to explain the characteristics and risks and to describe and evidence the processes that have been put in place to manage those risks*".

4.44. The March 2008 Due Diligence Report concluded that a number of Keydata's failings in respect of its due diligence were connected to potentially misleading statements in its financial promotions. For example:

(1) in order to ensure that the principal risks to the Lifemark Products were adequately explained in the brochures, Keydata should undertake (or

commission a third party to undertake) some additional work to:

(a) model the Lifemark Products – to show the expected returns "*allowing for all charges deducted by the various parties at each stage*";

(b) run a number of test scenarios to assess the probability of investor capital being returned in full: "*Keydata then needs to demonstrate that the probability of investor expectations not being met is acceptably low and is presented appropriately in promotions*";

(c) obtain quarterly valuations of the Lifemark Portfolio on a market value basis;

(d) regularly review the actuarial model "*especially before embarking on a series of purchases or sales*" from the Lifemark Portfolio;

(e) review the currency hedging arrangements: "*check that these are appropriate to the underlying risks and that the underwriting organisation has the financial strength to honour its obligations. If the whole currency risk is not hedged, assess the probability of exchange impairment and whether this is acceptable*"; and

(f) address a concern about cross-subsidy between investors: "*as all assets are held in one fund and the demarcation of assets between tranches of business is opaque, Keydata should consider how the demarcation operates and how it can ensure and demonstrate that final payouts to investors are a true reflection of the assets held on their behalf*";

(2) references in the brochures were unsubstantiated: *"We note also that Keydata's marketing material* [in fact, only the brochure for the SIB 4] *referred to a bank overdraft facility. We have not seen any papers relating to the overdraft facility and so we recommend that any such arrangements should be properly documented, as it has been alleged that this facility is available to provide liquidity in adverse trading conditions".*

4.45. Following the March 2008 Due Diligence Report Keydata obtained a series of reports by the Lifemark Investment Manager, including a summary report dated 31 March 2008 (the "Summary Report"). The Summary Report was provided by Keydata to its professional advisers to address the matters raised in the March 2008 Due Diligence Report. On 16 April 2008 Mr Owen was provided with a copy of Keydata's professional advisers' review of the Summary Report. Keydata's

professional advisers concluded that the Summary Report did not provide enough information to deal with their concerns raised in the March 2008 Due Diligence Report, stating "*In our view, none of the recommendations in our report have been addressed adequately in this document.*" The professional advisers recommended that Keydata address each of the outstanding matters, but Keydata did not do so.

4.46. Keydata's professional advisers issued a further report to Keydata on 18 June 2008 (the "June 2008 Extract Review") which considered a report Keydata had obtained on the Lifemark Portfolio. Mr Owen saw a copy of this report on 19 June 2008. In the June 2008 Extract Review the professional advisers advised Keydata that they agreed with the professional firm that had written the report on the Lifemark Portfolio that the number of senior life settlement policies within the Lifemark Portfolio (229 lives) was small, and commented that this "*directly contradicts assertions made by Keydata in its financial promotions for the SIP that the portfolio contains a large pool of lives and is therefore less exposed to the random fluctuations associated with small pools of lives*".

4.47. Mr Owen failed to ensure that Keydata took the steps recommended by its professional advisers to address the deficiencies identified in the February 2008 Brochure Report, the March 2008 Due Diligence Report and the June 2008 Extract Review, including amending its financial promotions, or to stop Keydata selling or marketing the Lifemark Products until those steps had been taken. Keydata continued to market the SIP 14 on the basis of the unamended brochure which was the subject of the February 2008 Brochure Report and allowed investors who had already agreed to invest in the SIP 14 to be placed into it until it closed to investment on 22 February 2008. Keydata then marketed the Income Plan 12 and 14 and the DIP 1 to 9 after 3 March 2008 by issuing financial promotions which were materially similar in content to those for the earlier Lifemark Products. The DIP 1 and Income Plan 12 were launched on 5 and 7 March 2008 respectively. Mr Owen was aware that Keydata had not taken the steps recommended by its professional advisers and he failed to stop Keydata from continuing to market and sell the Lifemark Products until it had made the necessary amendments to its financial promotions.

The risk of failure of the Lifemark Products

4.48. On 12 March 2008 Keydata was provided with the first of the Lifemark Investment Manager's reports mentioned in paragraph 4.45. This report was based on a 0% rollover assumption; i.e. all investors would seek the return of their capital when the initial term of their investment in the Lifemark Products had expired. It indicated that the Lifemark Portfolio could not return investors' capital in full unless a

number of steps were taken, including ensuring that a low interest credit facility was put in place, and that there were cross-subsidy concerns about investors buying different Lifemark Products at different times. The Lifemark Investment Manager concluded that "*If the portfolio is maintained using a buy and hold strategy, we expect that the* [Lifemark] [P]*ortfolio will experience a negative cumulative cash flow at year end 2009 of ($6,567,351) and will continue to be impacted negatively at an increasing rate until year 2014*". On 27 March 2008 Mr Owen was forwarded Keydata's Compliance Officer's comments on the contents of this first report, which stated: "*In conclusion, the report does not give me comfort that the* [Lifemark] *Investment Manager is in control of the Investment Management process!*".

4.49. As mentioned in paragraph 4.45, Keydata sought its professional advisers' views on the Summary Report. Keydata's professional advisers raised a number of queries (through Mr Ford) with the Lifemark Investment Manager. These queries focused on the performance of the Lifemark Portfolio, currency risk and cross-subsidy concerns. In their review of the Summary Report, a copy of which was received by Mr Owen on 16 April 2008, the professional advisers concluded that the report "*suggests that the portfolio will experience negative cashflow but no arrangements are currently in place to address this*". Mr Owen was therefore aware that the Lifemark Investment Manager had predicted that the Lifemark Portfolio faced a liquidity problem and that no credit facility was in place to deal with this.

4.50. On 30 May 2008 Mr Owen received a draft valuation of the Lifemark Portfolio (the "Draft Lifemark Valuation Report") provided to Keydata by the Lifemark Actuary. The Draft Lifemark Valuation Report projected that the Lifemark Portfolio would face a deficit of approximately US$172 million to US$84 million between 2011 and 2013 and stated that the number of lives in the Lifemark Portfolio was small. It confirmed that any deviations from its assumptions in respect of currency rates, interest rates or life expectancies could have a significant impact on the overall profitability of the Lifemark Portfolio.

4.51. On 19 June 2008 Mr Owen received Keydata's professional advisers' review of the information regarding the SIB and SIP provided to the Authority by Keydata on 21 May 2008 in response to statutory information requirements. Keydata's professional advisers advised Keydata that the RAC ratio was a "*red herring*", and that a more useful indicator of value would be the market value of the policies within the portfolio versus the obligations owed under the relevant bonds. Keydata's professional advisers also commented that the SLS Portfolio was very small in size and that "*luck will play a key role unless Lifemark/Keydata insures*

against light mortality".

4.52. The June 2008 Extract Review, also received by Mr Owen on 19 June 2008, concluded that:

(1) the extract would "*lead an informed reader to conclude that the probability of Keydata meeting investors' expectations is not better than 50:50, and potentially a lot less*";

(2) the number of senior life settlement policies within the Lifemark Portfolio (229 lives) was small; and

(3) "*Lifemark will have to sell a significant proportion of the policies to meet redemption* payments*, and it is therefore materially exposed to market conditions at that time, costs of disposal and changes to mortality assumptions*".

4.53. Mr Owen was aware that Keydata circulated the Lifemark Investment Manager's update on the Lifemark Portfolio to IFAs on or around 25 July 2008. This stated that the Lifemark Portfolio was "*expected to provide a steady stream of returns covering the bond coupon payments as well as the return of principal and capital to bond investors in a timely manner*". Mr Owen had good reason to doubt that the Lifemark Investment Manager's update gave an accurate impression of the risks to the performance of the Lifemark Portfolio in light of the various reports produced by the Lifemark Investment Manager, the Draft Lifemark Valuation Report and the June 2008 Extract Review. Mr Owen failed to ensure that this update gave an accurate impression of the risks to the performance of the Lifemark Portfolio.

4.54. On 3 November 2008 Keydata, by an email copied to Mr Owen, provided its professional advisers with a further report by the Lifemark Investment Manager dated 30 October 2008 (the "October 2008 Lifemark Report"), which considered a draft of an actuarial review conducted by the Lifemark Actuary dated 12 October 2008. This report concluded that the Lifemark Portfolio would face a very significant negative cash balance between 2009 and 2014 (during which time the majority of the Lifemark Products would be due to mature) that would peak at minus $196 million, and that thereafter the cumulative cashflow of Lifemark would be negative until 2023 but the Lifemark Portfolio would reach a positive cash balance at 2027. The Lifemark Investment Manager expressed the view that the Lifemark Portfolio could meet all of its obligations and that the risk to bondholders' capital was minimal.

4.55. At no time during the Relevant Period did Mr Owen:

(1) take any effective action, or ensure that Keydata took effective action, to manage the risks that had been clearly identified by Keydata's advisers (including those arising out of its inadequate due diligence for the Lifemark Products) and which threatened the ability of the Lifemark Products to deliver the investment returns that had been promised and permit a return of capital, or consider or address the need to ensure that the Authority, investors and IFAs were notified of these risks;

(2) ensure that Keydata suspended or ceased the promotion or sales of the Lifemark Products; or

(3) consider or address the actions that Keydata could or should take to mitigate the potential loss to investors who had invested in the Lifemark Products.

4.56. The Authority concludes that Mr Owen permitted Keydata to proceed with the promotion and sale of the Lifemark Products to investors with a reckless disregard to the risks that they posed to such investors and the risks that had been identified by Keydata's professional advisers, and despite being aware that IFAs and investors were unaware of such risks. As a result of the professional advice and other information that he received, Mr Owen could not have been in any doubt that material risks to the performance of the Lifemark Portfolio existed and needed to be addressed as a matter of urgency. Despite this knowledge, Mr Owen took no effective steps to ensure that such risks were managed or that others, including the Authority, IFAs and investors, were alerted to the existence of such risks. He thereby recklessly exposed investors in the Lifemark Products to very significant risks.

4.57. The payment to him of the Undisclosed Commissions further underlines Mr Owen's culpability for Keydata's reckless actions in respect of the Lifemark Products. As the amount of the Undisclosed Commissions was related to the volume of sales by Keydata of the Lifemark Products, Mr Owen had a substantial personal interest in ensuring that the Lifemark Products continued to be sold.

4.58. Further, by 15 June 2008 at the latest, Mr Owen was aware that he had a conflict of interest. On that date Mr Owen received an email from Keydata's Compliance Officer which made it clear that Mr Ford, as a director of both Keydata and Lifemark,

would have a conflict of interest if he was benefiting financially from Lifemark. Keydata's Compliance Officer was not aware of the Undisclosed Commissions which Mr Owen had received from Mr Ford. However, despite being put on notice by this email that he himself had a conflict of interest as a result of the Undisclosed Commissions, Mr Owen did not disclose the Undisclosed Commissions to Keydata's Compliance Officer or to Keydata's Finance Director. Further, Mr Owen did not take any steps, in light of the Undisclosed Commissions, to clarify the interest that Mr Ford had in Lifemark and any conflict this might give rise to in relation to Mr Ford's responsibilities at Keydata.

Failure of the Products to comply with the ISA Regulations

4.59. Keydata offered the Products for investment with the benefit of a tax-efficient ISA wrapper. In order to be eligible for ISA status the Products had to comply at all times with the ISA Regulations. The ISA Regulations provided that in order to be a qualifying investment for a stocks and shares ISA the securities in question must have at least a five year investment term and must be listed on the official list of a recognised stock exchange. For the purposes of the ISA Regulations the main market of the Luxembourg Stock Exchange was a recognised stock exchange.

4.60. The brochures for the Products stated that either the relevant bonds were listed on the Luxembourg Stock Exchange or that they would be so listed and (in many cases) stated that they were therefore eligible for ISA status. However at the time the Products were sold the counterparties had not listed the relevant bonds.

4.61. Keydata was aware at the time of the launch of the Products that listing was necessary to ensure that the investments were eligible for investment with an ISA wrapper. However, Keydata's Compliance Officer wrongly understood that if the relevant bonds were listed at some stage within the five year investment term of the Products, the ISA requirements would be met. Mr Owen relied upon that view and Keydata did not seek professional advice on this point prior to the launch of the Products.

4.62. Keydata also failed to ensure that each individual issue of the Products would comply with the requirement under the ISA Regulations that the investment had at least a five year term. In respect of one tranche of the SIB 2 the relevant SLS Bond was issued five days later than Keydata had expected, and hence had a maturity date falling less than five years after its inclusion in the relevant ISA. Keydata did not notice this mistake at the time, and it was only discovered in June

2008.

4.63. Mr Owen was aware at the time of the launch of the SIB 1 on 26 July 2005 that the SLS Bonds were not listed on the Luxembourg Stock Exchange. He was also aware at the time of the launch of the SIB 4 on 19 December 2005 that the Lifemark Bonds were not listed on the Luxembourg Stock Exchange.

4.64. Mr Owen was aware by 23 December 2008 (when he received a copy of a letter from the Authority to Mr Ford) that the Authority was extremely concerned by the risk of the SLS Products not fulfilling the conditions of the ISA Regulations (following confirmation from Keydata's Compliance Officer during a compelled interview on 18 November 2008 that the SLS Bonds remained unlisted and that listing was necessary to secure ISA status) and was insisting that Keydata urgently refer the matter to HMRC as the proper agency to determine the tax status of the Products. When the Authority followed this up in January 2009, however, Keydata's Compliance Officer advised the Authority that Keydata would only take the matter up with HMRC once the SLS Bonds were in fact listed. The Authority advised Keydata that the delay in dealing with this matter was an unacceptable risk to retail investors and asked that Keydata consent to the Authority referring the matter to HMRC. Despite Keydata's representations to the Authority that the matter had been reported to HMRC, Keydata did not make the formal notification to HMRC until 4 March 2009. Keydata's letter of notification to HMRC acknowledged that if the relevant bonds were not listed then this would amount to a breach of the ISA Regulations.

4.65. On 22 May 2009 HMRC wrote to Keydata confirming that the SLS Bonds were not qualifying investments for an ISA and that there had therefore been a breach of the ISA Regulations. In addition, HMRC stated that the SIB 2 also breached the ISA Regulations as the SLS Bonds would mature within 5 years of the date on which they were first held in the SIB. The letter stated that as these investments were not qualifying ISA investments, any return on them was not exempt from tax and consequently HMRC would be seeking to recover the tax.

4.66. Despite being aware by 23 December 2008 that the Lifemark Products had either not been listed or had not been listed for the full five year investment term, and so it was highly likely that they failed to comply with the ISA Regulations, Mr Owen recklessly permitted Keydata to continue to sell the Lifemark Products to investors with an ISA wrapper. On and after 23 December 2008 Keydata sold DIP 7, DIP 8 and DIP 9 to 2,213 investors, amounting to a further £18 million in ISA investment.

Misleading the Authority

4.67. Mr Owen (and Keydata's Compliance Officer, to the knowledge of Mr Owen) misled the Authority about the performance of the Products. Mr Owen deliberately provided factually incorrect and misleading answers during a compelled interview and consented to Keydata's Compliance Officer's misleading the Authority during a meeting.

4.68. Mr Owen represented to the Authority during a compelled interview on 11 November 2008 that the Products were "*performing in line with how they're meant to*" and said "*I think we are comfortable as a company that those products are on course to deliver what the investor is* [expecting]*, which is their income or their growth and a full return of capital*". When he made those statements, Mr Owen could not have held any honest belief that either the SLS Products or the Lifemark Products were performing, as he was aware that SLS had failed to make income payments and was facing severe liquidity problems and that the Lifemark Portfolio faced very significant and unresolved risks to achieving the performance that investors had been led to expect. In responding as he did, he deliberately misled the Authority.

4.69. Mr Owen consented to Keydata's Compliance Officer's misleading the Authority about the performance of the Products and withholding key information during a meeting with the Authority on 23 January 2009. On 18 January 2009 Keydata's Compliance Officer informed Mr Owen by email that he intended to confirm that the "[c]*urrent financial position of Lifemark is good*" and that the "[c]*urrent financial position of the bonds is good – all income paid and up to date*", and added "*I do not propose talking about the* [2008 Actuarial Review] *at this stage*". Mr Owen responded that he agreed. Mr Owen was therefore aware that the Authority continued to be concerned about the performance of the Lifemark Products and that Keydata's Compliance Officer intended to mislead the Authority in this regard by making incorrect statements and withholding relevant information. He deliberately consented to Keydata's Compliance Officer misrepresenting the position in this way.

4.70. On 7 May 2009 the Authority issued a statutory requirement to Mr Owen which sought "*details of any commission(s) in respect of the Products*" from 2005 to 2009 and "*details of any other income earned (or benefits) in respect of the Products*". On 22 May 2009 Mr Owen responded that he had received no commission payments and had earned no income or other benefits relating to the Products. As is described in paragraph 4.19 above, Mr Owen had in fact received the Undisclosed Commissions.

4.71. On 5 June 2009 by an email from Keydata's solicitors (which was copied to Mr Owen), in response to a direct question from the Authority as to when Keydata would receive the next income payments on the SLS Bonds which underpinned the SLS Products, Keydata sent the Authority a spreadsheet setting out forthcoming payments dates in 2009 and 2010 on which Keydata "*will receive income for distribution*" from SLS. The spreadsheet clearly represented that future income was expected from SLS. At the time this spreadsheet was sent, however, Mr Owen knew that SLS had not been paying income since March 2008 and that it was highly unlikely that it would do so in future. Therefore, Mr Owen would have known that the information provided to the Authority was highly likely to mislead the Authority, but failed to correct the information provided.

5. FAILINGS

5.1. The statutory and regulatory provisions relevant to this notice are set out in Annex A.

Statement of Principle 1

5.2. The Authority considers that Mr Owen failed to act with integrity in carrying out his controlled functions at Keydata in breach of Statement of Principle 1.

5.3. Mr Owen was aware by 8 January 2007 that there were problems with the performance of the SLS Portfolio and from 28 April 2008 that SLS was failing to make income payments on an ongoing and regular basis. Mr Owen recklessly agreed that Keydata would fund the income payments due from SLS to investors, when he was aware that the likely consequence was that investors and IFAs would be misled as to the performance of the SLS Products.

5.4. Between April 2008 and April 2009 Mr Ford provided repeated assurances to the Keydata board of directors that he would resolve the problems with SLS's performance and solvency. Mr Owen recklessly placed reliance on these assurances without taking any steps to evaluate and mitigate the risk that Mr Ford would not be able to resolve the problems.

5.5. Mr Owen deliberately failed to disclose to Keydata's Compliance Officer and to Keydata's Finance Director his conflict of interest arising from his receipt of the Undisclosed Commissions from Mr Ford.

5.6. Mr Owen received professional advice on 28 November 2005 (in relation to the SLS Products) and on 7 February 2008 and 19 June 2008 (in relation to the Lifemark Products) that Keydata's financial promotions contained unclear, incorrect and misleading statements (and as such were not clear, fair and not misleading). He received professional advice on 3 March 2008 that Keydata's due diligence in relation to the Lifemark Products was inadequate. He received professional advice or other information on 27 March 2008, 16 April 2008, 30 May 2008, 19 June 2008 and 3 November 2008 that identified risks to the ability of the Lifemark Products to perform in the manner that investors had been led to expect by Keydata's financial promotions.

5.7. Mr Owen was aware that the issues with the due diligence and the financial promotions set out in paragraph 5.6 had not been addressed, and that the risks set out in that paragraph of the Lifemark Portfolio not performing were not being effectively managed and that investors and IFAs were not aware of these risks. Mr Owen acted recklessly, from the launch of the Lifemark Products on 19 December 2005 onwards in that, despite being aware of these matters, he failed either to ensure that Keydata addressed the issues and risks that had been identified or to stop Keydata from marketing and selling the Lifemark Products until effective remedial steps were taken.

5.8. From the launch of the Lifemark Products on 19 December 2005, and despite becoming increasingly aware thereafter of the severe risks affecting the Lifemark Portfolio, Mr Owen recklessly failed to ensure that Keydata took steps to explain or mitigate the risks to existing and potential investors in the Lifemark Products, and that material circulated to such investors gave an accurate impression of the risks to the performance of the Lifemark Portfolio. For example, he failed to ensure that the Lifemark Investment Manager's update on the Lifemark Portfolio, which was approved by Keydata and circulated to IFAs on or around 25 July 2008, gave an accurate impression of the risks to the performance of the Lifemark Portfolio.

5.9. Mr Owen recklessly permitted Keydata to continue to market and sell the Lifemark Products as fulfilling the conditions set out in the ISA Regulations after becoming aware by 23 December 2008 that it was highly likely that they did not do so.

5.10. Mr Owen deliberately misled the Authority by representing to it in a compelled interview on 11 November 2008 that the Products were on target to meet their obligations, despite being aware of the ongoing failure of SLS to make income payments and the serious liquidity issues with the Lifemark Portfolio, and deliberately consented to Keydata's Compliance Officer's misrepresenting the

position regarding the performance of the Products at a meeting with the Authority on 23 January 2009.

Statement of Principle 4

5.11. The Authority considers that Mr Owen failed to deal with the Authority in an open and cooperative way and failed to disclose appropriately information of which the Authority would reasonably expect notice in breach of Statement of Principle 4.

5.12. The Authority has reached this conclusion having regard to the matters set out at paragraph 5.10 above, and to the following matters.

5.13. On 22 May 2009, in response to a statutory requirement issued by the Authority to Mr Owen that he disclose details of any commissions or other benefits he had received in respect of the Products, Mr Owen informed the Authority that he had received no commission payments related to the Products and failed to disclose the Undisclosed Commissions.

5.14. On 5 June 2009 Keydata (through an email from its solicitors which was copied to Mr Owen) provided the Authority with a detailed spreadsheet which represented that Keydata was anticipating receipt of payments throughout 2009 and 2010 from SLS (income under the SLS Bonds) which would fund income payments for the SLS Products. The spreadsheet clearly represented that future income was expected from SLS. However, at this time Mr Owen was aware that SLS had not been paying income since March 2008 and that it was highly unlikely that it would do so in future. Therefore, Mr Owen would have known that the information provided to the Authority was highly likely to mislead the Authority, but failed to correct the information provided.

5.15. Mr Owen failed to ensure that the Authority was made aware at any stage that SLS was failing to make income payments on an ongoing and regular basis, that Keydata was funding income payments for the SLS Products or that there were serious concerns about the solvency of SLS.

Fit and Proper

5.16. By reason of the facts and matters set out above, the Authority considers that Mr Owen is not fit and proper, because he lacks integrity and has failed to demonstrate a readiness and willingness to comply with the requirements and standards of the regulatory system.

5.17. Mr Owen's misconduct included many instances of deliberate and reckless behaviour, it extended throughout the whole of the Relevant Period, and his actions were material and as such contributed to the extensive consumer detriment which has arisen from the sale of the Products.

6. SANCTION

Financial penalty

6.1. The Authority has decided to impose a financial penalty on Mr Owen for his breaches of Statements of Principle 1 and 4.

6.2. The Authority's policy on the imposition of financial penalties is set out in Chapter 6 of DEPP, which came into force on 28 August 2007.

6.3. In determining whether a financial penalty is appropriate, and the appropriate level of any financial penalty, the Authority is required to consider all the relevant circumstances of a case. Applying the criteria set out in DEPP 6.2, the Authority considers that a financial penalty is an appropriate sanction in this case, in particular given the serious nature of Mr Owen's breaches, the amount by which he personally benefited as a direct result of his breaches, the risk of loss to which UK consumers were exposed as a result of those breaches and the actual loss which they have suffered.

6.4. DEPP 6.5 sets out a non-exhaustive list of factors that may be of relevance in determining the appropriate level of financial penalty to be imposed on a person under the Act. The Authority considers that the following factors are particularly relevant in this case.

Deterrence

6.5. The Authority has had regard to the need to promote high standards of regulatory conduct by deterring those who have committed breaches from committing further breaches and by helping to deter others from committing similar breaches.

If the person has made a profit or avoided a loss as a result of the breach

6.6. The Authority has considered the extent to which Mr Owen has benefited from his breaches and considers that, through the Undisclosed Commissions, Mr Owen

personally benefited to the amount of approximately £2.5 million. The Authority has also had regard to Mr Owen's earnings from Keydata over the Relevant Period, which amounted to over £5 million.

The nature, seriousness and impact of the breach

6.7. The Authority has had regard to the seriousness of Mr Owen's breaches, including their nature, number and long duration, the number of investors who were exposed to risk of loss as a result of the breaches, and the significant amount of investor loss actually caused. For the reasons set out above the Authority considers that Mr Owen's breaches are of the most serious nature.

The extent to which the breach was deliberate or reckless

6.8. In many of the instances set out above Mr Owen either deliberately or recklessly contravened or disregarded regulatory requirements or permitted Keydata to do so.

The size, financial resources and other circumstances of the person

6.9. The Authority has been mindful of the benefit which Mr Owen personally received from his breaches. Mr Owen was given the opportunity to provide evidence of his financial position, but only provided incomplete details.

Difficulty of detecting the breach

6.10. The Authority may impose a higher penalty where it considers that a person committed a breach in such a way as to avoid or reduce the risk that the breach would be discovered. Mr Owen's deliberate efforts to mislead the Authority meant that his (and Keydata's) breaches were harder to detect.

Conduct following the breach

6.11. The Authority has taken account of the fact that Mr Owen failed to make the Authority aware of his (and Keydata's) breaches.

Disciplinary record and compliance history

6.12. Mr Owen has not previously been the subject of disciplinary action by the Authority.

Other action taken by the Authority

6.13. The Authority has taken into account action taken by the Authority in respect of other approved or authorised persons for similar behaviour.

6.14. In light of these factors, but especially the amount of approximately £2.5 million by which Mr Owen personally benefited as a direct result of his breaches, the seriousness of the misconduct, the length of time over which it took place, the risk of loss to which UK consumers were exposed and the actual loss which they have suffered, the Authority has decided to impose a penalty of £4 million on Mr Owen.

Prohibition

6.15. Mr Owen's misconduct demonstrates that he is not fit and proper. As a result the Authority, having regard to its statutory objectives, including protecting and enhancing the integrity of the UK financial system and securing an appropriate degree of protection for consumers, has decided to prohibit him from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm.

7. REPRESENTATIONS

7.1. Annex B contains a brief summary of the key representations made by Mr Owen and how they have been dealt with. In making the decision which gave rise to the obligation to give this Notice, the Authority has taken into account all of the representations made by Mr Owen, whether or not set out in Annex B.

8. PROCEDURAL MATTERS

Decision Maker

8.1. The decision which gave rise to the obligation to give this Notice was made by the Regulatory Decisions Committee.

8.2. This Decision Notice is given to Mr Owen under sections 57 and 67 and in accordance with section 388 of the Act. The following statutory rights are important.

The Tribunal

8.3. Mr Owen has the right to refer the matter to which this Decision Notice relates to the Tribunal. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, Mr Owen has 28 days from the date on which this Decision Notice is given to him to refer the matter to the Tribunal. A reference to the Tribunal is made by way of a signed reference notice (Form FTC3) filed with a copy of this Decision Notice. The Tribunal's current contact details are: The Upper Tribunal, Tax and Chancery Chamber, 45 Bedford Square, London WC1B 3DN (tel: 020 7612 9730; email fs@hmcts.gsi.gov.uk), but from 17 November 2014 the Tribunal's address will be: Fifth Floor, Rolls Building, Fetter Lane, London EC4A 1NL. Further information on the Tribunal, including guidance and the relevant forms to complete, can be found on the HM Courts and Tribunal Service website: http://www.justice.gov.uk/forms/hmcts/tax-and-chancery-upper-tribunal

8.4. A copy of the reference notice (Form FTC3) must also be sent to the Authority at the same time as filing a reference with the Tribunal. A copy of the reference notice should be sent to Alexandra Stableforth at the Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS.

Access to evidence

8.5. Section 394 of the Act applies to this Decision Notice. In accordance with section 394, Mr Owen is entitled to have access to:

(1) the material upon which the Authority has relied in deciding to give him this Notice; and

(2) the secondary material which, in the opinion of the Authority, might undermine that decision.

Third Party Rights

8.6. A copy of this Notice is being given to SLS and Lifemark as third parties identified in the reasons above and to whom in the opinion of the Authority the matter is prejudicial. Those parties have similar rights of reference to the Tribunal, and of access to material, in relation to the matters which identify them.

Confidentiality and publicity

8.7. This Decision Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). Section 391 of the Act provides that a person to whom this Notice is given or copied may not publish the Notice or any details concerning it, unless the Authority has published the Notice or those details.

8.8. However, the Authority must publish such information about the matter to which a decision notice or final notice relates as it considers appropriate. Mr Owen, SLS and Lifemark should be aware, therefore, that the facts and matters contained in this Decision Notice may be made public.

Contacts

8.9. For more information concerning this matter generally, contact Alexandra Stableforth at the Authority (direct line: 020 7066 5866).

Peter Hinchliffe
Acting Chairman, Regulatory Decisions Committee

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. RELEVANT STATUTORY PROVISIONS

1.1. The Authority's statutory objectives, set out in section 1B(3) of the Act, include protecting and enhancing the integrity of the UK financial system, and securing an appropriate degree of protection for consumers.

1.2. The Authority has the power pursuant to section 56 of the Act to make an order prohibiting an individual from performing a specified function, any function falling within a specified description, or any function, if it appears to the Authority that that 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. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities.

1.3. Section 66 of the Act provides:

"*(1)* [The Authority] *may take action against a person under this section if –*

(a) it appears to the [Authority] *that he is guilty of misconduct; and*

(b) the [Authority] *is satisfied that it is appropriate in all the circumstances to take action against him.*

(2) …a person is guilty of misconduct if, while an approved person –

(a) the person has failed to comply with a statement of principle issued by the [Authority] *under section 64…*

(3) If the [Authority] *is entitled to take action under this section against a person, it may…*

(a) impose a penalty on him of such amount as it considers appropriate.

(4) [The Authority] *may not take action under this section after the end of the period of three years beginning with the first day on which the* [Authority] *knew of the misconduct, unless proceedings in respect of it against the*

person concerned were begun before the end of that period.

(5) For the purposes of subsection (4) –

(a) [the Authority] *is to be treated as knowing of misconduct if it has information from which the misconduct can reasonably be inferred; and*

(b) proceedings against a person in respect of misconduct are to be treated as begun when a warning notice is given to him under section 67(1)."

1.4. The three-year period in section 66(4) took effect from 8 June 2010, following an amendment made to that section by section 12(1) of the Financial Services Act 2010. Prior to that amendment, the period provided for in section 66(4) was two years.

1.5. Throughout the Relevant Period, the ISA Regulations provided as follows:

"7.— Qualifying investments for a stocks and shares component

(1) This regulation specifies the kind of investments ("qualifying investments for a stocks and shares component") which may be purchased, made or held under a stocks and shares component…

(2) Qualifying investments for a stocks and shares component to which paragraph (1) refers are–

…

(b) securities ("qualifying securities") –

(i) issued by the company wherever incorporated…

(ii) which satisfy at least one of the conditions specified in paragraph (5) and the condition specified in paragraph (6)…

…

(5) The conditions specified in this paragraph are –

(a) that the shares in the company issuing the securities are listed on the official list of a recognised stock exchange;

(b) that the securities are so listed;

(c) that the company issuing the securities is a 75 per cent. subsidiary of a company whose shares are so listed.

(6) The condition specified in this paragraph is that, judged at the date when each of the securities is first held under the account, the terms on which it was issued do not–

(a) require the loan to be repaid or the security to be re-purchased or redeemed, or

(b) allow the holder to require the loan to be repaid or the security to be repurchased or redeemed except in circumstances which are neither certain nor likely to occur,

within the period of five years from that date."

2. RELEVANT REGULATORY PROVISIONS

2.1. The Statements of Principle are issued under section 64 of the Act.

2.2. During the Relevant Period, Statement of Principle 1 stated:

"*An approved person must act with integrity in carrying out his controlled function.*"

2.3. During the Relevant Period, Statement of Principle 4 stated:

"*An approved person must deal with the* [Authority]… *and other regulators in an open and cooperative way and must disclose appropriately any information of which the* [Authority] *would reasonably expect notice.*"

2.4. One of the purposes of FIT is to set out and describe the criteria that are relevant in assessing the continuing fitness and propriety of approved persons.

2.5. FIT 1.1.1G provides that it applies to an approved person.

2.6. FIT 1.3.1G sets out that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person to perform a particular controlled function. One of the most important considerations will be the person's

honesty, integrity and reputation.

2.7. FIT 2.1.1G sets out 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. FIT 2.1.3G(13) includes, as one of the relevant matters the Authority will consider, whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards.

2.8. The Authority's general approach to determining whether to impose a financial penalty and the appropriate level of any such penalty is set out in DEPP. The principal purpose of imposing a financial penalty is to promote high standards of regulatory conduct by deterring persons who have breached regulatory requirements from committing further contraventions, helping to deter others from committing similar breaches and demonstrating generally the benefits of compliant behaviour (DEPP 6.1.2G). DEPP 6.2 sets out a non-exhaustive list of factors that may be relevant to determining whether to impose a financial penalty. DEPP 6.5.2G sets out a non-exhaustive list of factors that may be relevant to determining the appropriate level of financial penalty.

2.9. In considering whether to impose a financial penalty and the amount of the penalty to impose, the Authority has also had regard to the provisions of ENF which were in force during the Relevant Period.

2.10. Guidance relating to prohibition orders is contained in EG at EG 9. This states that the Authority may exercise its power to prohibit individuals where it considers that, to achieve any of its statutory objectives, it is appropriate to prevent an individual from performing any function in relation to regulated activities (EG 9.1).

2.11. EG 9.8 provides:

"*When the* [Authority] *has concerns about the fitness and propriety of an approved person, it may consider whether it should prohibit that person from performing functions in relation to regulated activities, withdraw its approval, or both. In deciding whether to withdraw its approval and/or make a prohibition order, the* [Authority] *will consider in each case whether its statutory objectives can be achieved adequately by imposing disciplinary sanctions, for example, public censures or financial penalties, or by issuing a private warning*".

2.12. EG 9.3 provides:

"*In deciding whether to make a prohibition order… the* [Authority] *will consider all the relevant circumstances including whether other enforcement action should be taken*".

2.13. When deciding whether to make a prohibition order, the Authority will consider all relevant circumstances of the case which may include but are not limited to the following criteria set out in EG 9.9:

"*(2) Whether the individual is fit and proper to perform functions in relation to regulated activities.* [The criteria for assessing this are set out in FIT.]

(3) Whether and to what extent the approved person has:

(a) failed to comply with the Statements of Principle issued by the [Authority] *with respect to the conduct of approved persons;*

…

(5) The relevance and materiality of any matters indicating unfitness.

(6) The length of time since the occurrence of any matters indicating unfitness.

(7) The particular controlled functions the approved person is (or was) performing, the nature and activities of the firm concerned and the markets in which he operates.

(8) The severity of the risk which the individual poses to consumers and to confidence in the financial system."

2.14. EG 9.5 provides:

"*The scope of a prohibition order will depend on the range of functions which the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of risk which he poses to consumers of the market generally.*"

2.15. EG 9.10 provides:

"*The* [Authority] *may have regard to the cumulative effect of a number of factors which, when considered in isolation, may not be sufficient to show that the individual is fit and proper to continue to perform a controlled function or other function in relation to regulated activities. It may also take account of the particular controlled function which an approved person is performing for a firm, the nature and activities of the firm concerned and the markets within which it operates.*"

2.16. EG 9.12 provides a non-exhaustive list of examples of behaviours which have previously resulted in a prohibition order:

"*(1) Providing false or misleading information to the* [Authority]*; including information relating to identity, ability to work in the United Kingdom, and business arrangements;*

…

(3) Severe acts of dishonesty, e.g. which may have resulted in financial crime;

(4) Serious lack of competence; and

(5) Serious breaches of the Statements of Principle for approved persons, such as failing to make terms of business regarding fees clear or actively misleading clients about fees; acting without regard to instructions; providing misleading information to clients, consumers or third parties; giving clients poor or inaccurate advice; using intimidating or threatening behaviour towards clients and former clients; failing to remedy breaches of the general prohibition or to ensure that a firm acted within the scope of its permissions."

ANNEX B

REPRESENTATIONS

2. Mr Owen made the following representations:

Time bar

1.1. Section 66(4) & 66(5)(a) of the Act required the Authority to issue a warning notice against an individual proposing action under section 66 no more than two years after it became aware of facts suggesting he was guilty of misconduct. The clock started running on the two year time limit, at the latest, in August 2008 when he was informed he was under investigation by the Authority. The Authority had also been informed by Keydata's Compliance Officer at an interview in June 2008 that the SLS Bonds had not been listed. The Warning Notice in these proceedings was not issued until 26 October 2010, well after the two year time limit expired.

1.2. With effect from 8 June 2010, the two year time limit in section 66(4) was extended to three years. Mr Owen queried the Authority's interpretation of that amended provision as entitling it to take action three years after acquiring the relevant knowledge in this case.

1.3. Further, section 69(8) of the Act required the Authority, in determining whether to take action against an individual, to have regard to any statements of policy published by it and in force at the time the misconduct in question occurred; the Authority was considering issues about due diligence and financial promotions in 2006, well outside the two year time limit that was in place at the time.

Nature of the Products

1.4. The Products were not considered high risk at the time they were launched or at the time they were being sold from 2005 to 2009. Furthermore, the Authority had only stated since the end of the Relevant Period that it considered life settlement backed products to be high risk.

Mr Owen's role within Keydata

1.5. The Authority had not had sufficient regard to the role of Keydata's Finance Director, who was more senior than Mr Owen and who, along with Mr Ford, was the only person who at all times knew Keydata's financial position.

Keydata's advisers

1.6. The Authority had failed to give due credit to the fact that Keydata employed the services of a range of reputable professional firms including compliance consultants, on whose advice Keydata relied.

The Undisclosed Commissions

1.7. The Undisclosed Commissions, provided to him by Mr Ford, were actually long term loans which were not based on the success of Lifemark. The fact they were loans was evident from an email he received from Mr Ford's solicitors in November 2011, asking for repayment of them (he also said that he had initially thought they were commission payments but it was later made clear they were loans). At the time he thought the money came from additional profitability on the Lifemark Bonds and did not think there was any conflict. Mr Ford had many business arrangements and was not just associated with Lifemark or Keydata. Keydata's Finance Director had told him that after Mr Ford entered into the Non-Executive Service Agreement with Keydata dated 19 July 2007 Mr Ford was paid offshore through the Offshore Partnership.

Failure of the SLS Products to perform

1.8. He had believed during the Relevant Period that the SLS Portfolio was performing well, and this appeared to be the case from the information he received from the SLS Investment Manager. Its default was due to the replacement of its assets by a guarantee, of which he had been unaware. He did not attend the meetings Mr Ford had with, among others, Mr Elias in relation to SLS, nor did he see key documents such as an SLS notice of default, and Mr Ford was not fully open in board meetings about the situation. He was aware of issues with delays in income payments from January 2006 to September 2008, but he was initially told this was a matter of timing rather than default, and the later delays were to be covered off by Mr Ford's arrangements with Mr Elias.

1.9. The SLS Portfolio did fail to meet the RAC in 2007, but under the terms of the bond SLS had a period of time to rectify this, SLS did so during that period, and Keydata received the payment due.

1.10. In the 2008 and 2009 meetings of Keydata's board of directors he was given comfort by Mr Ford, who confirmed that discussions were ongoing with Mr Elias to resolve the situation and that there was going to be a remedy which meant that neither the investors nor Keydata would be out of pocket.

Financial promotions for the Products

1.11. Keydata acted upon the Brochure Advice and reviewed the brochures to cover all points raised, and subsequently reviewed the brochures (both for existing Products and those issued subsequently) on an ongoing basis. However, the conclusion of the Brochure Advice that the brochures presented Keydata as considering the Products to be low-risk was wrong.

1.12. He disputed that the financial promotions were misleading. The brochures were compliant with the rules in place at the time. Compliance consultants retained by Keydata had reviewed the brochures and not raised any issues.

1.13. Keydata discussed the February 2008 Brochure Report with its authors, together with Keydata's compliance consultants, and the matters raised in it on which the Authority relied were resolved in those discussions.

1.14. He disputed the conclusion in the June 2008 Extract Review that the number of lives (229) in the Lifemark Portfolio was small; other analysts considered a portfolio size of 150 lives was acceptable.

1.15. He did not act recklessly in failing to stop Keydata from launching the DIP. Keydata's Compliance Officer was satisfied that Keydata's professional advisers' concerns had been covered off, and the product was launched on the instructions of Mr Ford, who also gave comfort to the rest of the Keydata board of directors, including Mr Owen, that the steps recommended in the March 2008 Due Diligence Report had been taken and that it was therefore appropriate to launch the DIP.

1.16. Keydata was a distributor, not a product provider, and its due diligence responsibilities were limited accordingly. That Keydata was a distributor is demonstrated by the fact it signed distribution agreements with both SLS and Lifemark.

1.17. This view of Keydata's role was also supported by the finding of the Court in its judgment in respect of the application for judicial review of the FSCS's treatment of Keydata losses.

1.18. Keydata's due diligence was extensive and adequate, and the Authority's criticisms of it were unjustified. He disputed the conclusions of the March 2008 Due Diligence Report which were relied upon by the Authority, but in any case Keydata, as a precaution, did take some of the steps recommended by that report. The work stated by the report as necessary to verify statements in the financial promotions was either unnecessary or was carried out, at Keydata's request, by third parties.

The risk of failure of the Lifemark Products

1.19. The various reports by the Lifemark Investment Manager and others, relied on by the Authority, set out stress-testing scenarios, not forecasts of what was expected to happen. The projections based on particular rollover percentages were "what if" scenarios, not predictions that those percentages would occur. They did not take into account key controls such as the RAC ratio.

1.20. He disputed the conclusion of Keydata's professional advisers that the RAC was a "red herring", and their conclusions in the June 2008 Extract Review. During the Relevant Period, he believed the Lifemark Portfolio to be performing well and that there were no liquidity issues. He reasonably based this view on information received from Mr Ford, Lifemark, the Lifemark Investment Manager and the Offshore Partnership, and he was provided with no information which said otherwise. Mr Ford did not pass on such information to him. As the Lifemark Investment Manager was continually clarifying that it was carrying out the required activities, there was nothing to report to the Authority about the performance of the Lifemark Portfolio. The Lifemark Investment Manager was still reporting that the Lifemark Portfolio was performing well months after Keydata went into administration.

1.21. In respect of the size of the Lifemark Portfolio, by 2009 it had grown to over 300 lives and over £1 billion in face value, so it was developing and maturities were coming through.

1.22. It was reasonable for him to rely on, among other things, the information in the July 2008 Lifemark Investment Manager's update to investors as being correct. He considered the cash flow issue identified in the October 2008 Lifemark Report as being remediable (for example, by a credit facility, which was not required at that time but which the Lifemark Investment Manager was looking at putting in place and which would have been readily available) and regarded the 95% probability of a positive outcome for the Lifemark Portfolio, which was mentioned in that report (and orally to him also by Mr Ford and others), as being very favourable for the Lifemark Portfolio.

Failure of the Products to comply with the ISA Regulations

1.23. Keydata had been working with its lawyers to address the failure to comply with the ISA Regulations in respect of the Products, with a view to repairing the breaches using "simplified voiding". It had powerful arguments in this regard, and could have been expected to succeed, but was undermined by the Authority intervening with HMRC.

1.24. He disputed HMRC's interpretation of the ISA Regulations as requiring continuous listing.

1.25. Notwithstanding that formal notification by Keydata with regard to the issues was not made until 4 March 2009, the Authority had been kept fully informed of the discussions with HMRC.

Misleading the Authority

1.26. He did not seek to mislead the Authority in interview about the performance of the SLS Bonds and the Lifemark Bonds, as he honestly believed they were performing well.

1.27. He did not intend to mislead the Authority in respect of what Keydata's Compliance Officer told the Authority at the meeting on 23 January 2009. He thought Keydata's Compliance Officer was referring to the secondary market and the pricing of products. At that time the Lifemark Portfolio was performing well according to the Lifemark Investment Manager and advisers to Lifemark.

1.28. In respect of the spreadsheet provided to the Authority, via Keydata's solicitors, on 5 June 2009, he was one of many individuals copied into the solicitors' email and could not remember it, but Mr Ford at all times portrayed SLS as a situation he would personally sort out.

1.29. In a number of instances, his and/or Keydata's alleged failure to provide the Authority with documentation they ought to have provided (or details of the conclusions contained in those documents), was due to the fact the documents were (or were at the time advised by Keydata's lawyers to be) subject to legal professional privilege which Keydata had been advised by its lawyers not to waive. If Keydata's lawyers had advised him to disclose the documents or information to the Authority, he would have done so.

The Authority's conduct

1.30. The Authority acted improperly in the following respects.

(1) It acted aggressively and unfairly, including by bringing about the administration of Keydata by an unfair process. It involved the administrator in the drafting of the Warning Notice despite a conflict of interest on the part of the administrator. It intervened with HMRC to prevent the repair of the ISA status of the Products.

(2) It conducted an unfair investigation which assumed his guilt, and repeatedly failed to give him or Keydata an adequate opportunity to respond, and in some instances relied on documentation that had been fabricated by certain individuals (outside the Authority). The allegations in the Warning Notice went beyond the scope of the Authority's investigation as notified to him in its Memorandum of Appointment of Investigators. The Authority put the Warning Notice and Supplementary Preliminary Investigation Report into the public domain before he had the opportunity to comment on allegations made.

(3) It repeatedly failed to provide him with complete documentation, or provided it late or only on his request; this hampered the preparation of his defence to these proceedings.

Financial penalty

1.31. A substantial penalty was not appropriate in respect of the alleged misconduct, taking into account action taken by the Authority against other individuals in comparable or more serious cases.

1.32. His financial position had changed since 2009 as he had not been in employment on a continual basis, but the Authority had not made any enquiries with respect to this.

2. The Authority has reached the following conclusions:

Time Bar

2.1. With effect from 8 June 2010, the two-year period in section 66(4) of the Act was replaced by a period of three years. The Authority's position is that if the case against the individual was already time-barred under section 66(4) by that date, the two-year period still applies, but if not, then the three-year period applies. The Authority had not, by 8 June 2008, acquired information from which the

misconduct set out in this Notice could reasonably be inferred. The mention by Keydata's Compliance Officer at an interview (actually in May 2008) that the SLS Bonds had not been listed occurred prior to Mr Owen's misconduct in relation to Keydata's non-compliance with the ISA Regulations, and it is not relevant to any other issues in this matter.

2.2. Even if (contrary to the Authority's position) the correct approach were to apply a strict two-year period in cases where the investigation had begun prior to the change to section 66(4), the defence that the case was time-barred would not apply in this case. On that approach, the Authority would be precluded from taking action in respect of misconduct if it knew of the misconduct (i.e. it had information from which the misconduct could reasonably be inferred) two years before the issue of the Warning Notice (that is, by 26 October 2008). However, the fact that the Authority commenced an investigation in August 2008 into whether Mr Owen had committed misconduct does not mean that it knew at that time that he had committed the misconduct set out in this Notice and, as a matter of fact, it did not know.

2.3. The Authority is not precluded from taking action in respect of particular instances of misconduct at any time by the fact it has previously expressed concern about the type of matter to which the misconduct relates. It is a misreading of section 69(8) of the Act to suggest that it precludes the Authority from taking action against Mr Owen in respect of misconduct relating to due diligence and financial promotions because it had considered issues in those areas before the start of the limitation period in this case.

Nature of the Products

2.4. The Authority is satisfied that the Products were of a type generally considered high risk when they were launched. As set out in this Notice, during the Relevant Period Mr Owen was aware of numerous pieces of advice from Keydata's own professional advisers which mentioned the risks of the Products.

Mr Owen's role within Keydata

2.5. The Authority has had regard to the fact that, along with Mr Ford and the Finance Director, Mr Owen was one of only three members of the Keydata board of directors. Although the Authority has taken account of the roles and responsibilities of the Finance Director, given the small number of directors on the

Keydata board, it was particularly important that Mr Owen provide effective challenge to Mr Ford's actions and effective supervision of Keydata.

Keydata's advisers

2.6. The Authority has taken into account the fact that Keydata sought and received advice from professional advisers, and has taken account of the advice received to the extent relevant and insofar as this has been made available to it. However, as well as seeking and receiving advice, Keydata should have taken appropriate steps in response to the advice. The Authority considers that Mr Owen acted recklessly in failing to ensure that Keydata addressed the issues identified by its professional advisers.

The Undisclosed Commissions

2.7. Mr Owen's position on the Undisclosed Commissions was inconsistent: he first stated, without qualification, that they were characterised as loans, but later said that he initially believed them to be commission payments; and also, there was a conflict in his representations as to whether he believed the sums came from additional profitability on the Lifemark Products or from Mr Ford's other business arrangements. The Authority considers that they were paid as commissions and recharacterised as loans later, but in any event they were benefits which created a conflict of interest on the part of Mr Owen, and fell within the scope of the Authority's question about benefits received. The Authority does not accept that it was intended for Mr Owen to repay the sums, notwithstanding the request for repayment made in November 2011. No action has been taken in respect of this request. Mr Owen was aware that Mr Ford was the ultimate source of the funds and that their amount was tied to sales of the Lifemark Products by Keydata.

Failure of the SLS Products to perform

2.8. While it accepts that Mr Owen was not aware of the fact that the assets of the SLS Portfolio had been replaced by a guarantee, the Authority is satisfied that from 8 January 2007 onwards, Mr Owen was aware that the SLS Products were not performing well, by reason of the matters set out in paragraphs 4.22 to 4.31 of this Notice, notwithstanding that Mr Ford was not fully open with him regarding his own knowledge of the issues.

2.9. The terms and conditions of the SLS Bonds required the RAC ratio to be met at all times, albeit there was a procedure for remedying a failure to issue an RAC certificate. The failure was remedied but, as a result of the failure, Mr Owen was alerted to problems with the ability of SLS to pay income when it fell due.

2.10. Mr Owen should not have relied on Mr Ford's assurances that the discussions with Mr Elias would resolve the situation. Mr Owen should have challenged or sought corroborative evidence from Mr Ford in order to satisfy himself that the issues would be resolved, especially as he was aware that Mr Ford was not committing as much time to Keydata's business as would be reasonably expected from a CEO.

Financial promotions for the Products

2.11. The Authority is satisfied that the Brochure Advice was correct in identifying that Keydata did not adequately describe the risks of the SLS Products. The Brochure Advice should have been taken into account and acted upon when the financial promotions for the Lifemark Products were produced. Instead, these were materially similar in content to those for the SLS Products.

2.12. The Authority is satisfied that the financial promotions for the Lifemark Products were unclear, incorrect and misleading in the ways set out in paragraph 4.37 of this Notice. Keydata's Compliance Officer was entitled to take account of advice provided by compliance consultants, but he had an obligation to evaluate any conflicting opinions amongst advisers and take any necessary steps to ensure that concerns raised by any of them were resolved. Mr Owen had to satisfy himself that such steps had been taken.

2.13. Mr Owen produced evidence of discussions between the Keydata compliance team and the authors of the February 2008 Brochure Report about their conclusions but this did not provide evidence that the issues raised by the report were "resolved".

2.14. The Authority does not accept Mr Owen's argument that 229 senior life settlements (let alone a much lower figure) was not a small portfolio and it should have been significant to him on reading the June 2008 Extract Review that its authors took a different view.

2.15. While Mr Owen pointed to discussions between Keydata's compliance team and the authors of the February 2008 Brochure Report about the issues raised in it, as set out above he did not provide evidence that the issues had been resolved. Nor did he state that he had received assurances at the relevant time of Keydata's

Compliance Officer's satisfaction that all issues had been covered off, or enquired as to that individual's view, and the Authority has concluded that he did not do so. As the Sales Director of Keydata, Mr Owen should not have relied on Mr Ford's assurances that the steps recommended in the March 2008 Due Diligence Report had been taken and that it was appropriate to launch the DIP: he should have satisfied himself of this and continued to exercise care with regard to the risks arising out of the report.

2.16. Even if it might properly be regarded for some purposes as a "distributor", Keydata's role in relation to the Products was to design, launch and distribute via IFAs (rather than, in general, direct to investors) the Products. As such, it was a "provider" within the meaning of the Authority's July 2007 Policy Statement (PS07/11) on "Responsibilities of providers and distributors for the fair treatment of customers". The responsibilities of providers (set out in that publication) on which the Authority relies are as described in paragraph 4.41 of this Notice, and Mr Owen should have been aware of these during the Relevant Period. (While PS07/11, and its preceding Discussion Paper (DP06/4), was published during the Relevant Period, it was summarising the existing position rather than introducing new requirements.) Further, there is contemporaneous evidence from Keydata's records that both Keydata's Compliance Officer and advisers to the firm considered it to have those responsibilities during the Relevant Period. For example: the March 2008 Due Diligence Report regarded it as Keydata's responsibility to consider all the risks to the return of investor capital; and Keydata's Compliance Officer sent an email to Mr Owen on 30 March 2007 commenting on Keydata's responsibilities as outlined in PS07/11 from the perspective of its being a provider. In practice, Keydata did package the Lifemark Products, select the IFAs who were to sell the Lifemark Products and provide them with promotional material in respect of the Lifemark Products.

2.17. The judgment referred to by Mr Owen (*R (on the application of ABS* Financial *Planning Ltd and others) v FSCS and FSA*), where it had allocated the losses to the "investment intermediaries" levy class, relates only to the treatment by the FSCS of particular claims against Keydata, and is not conclusive for all purposes; the "investment intermediaries" levy class does not map across to the concept of "distributor" in PS07/11. Nor is the fact of the distribution agreements which Keydata entered into with SLS and Lifemark conclusive: they merely demonstrate that Keydata had a place in the distribution chain for the Products. The Authority is satisfied that the Products were Keydata's own products. For example, they had different features to the Lifemark Bonds, including different rates of income and a commitment to eligibility for an ISA.

2.18. The Authority does not dispute that some due diligence was carried out by Keydata in relation to the launch of the Lifemark Products; however, it was inadequate in the respects set out in this Notice; in particular, in paragraphs 4.42 to 4.46. Mr Owen's reasons for disputing the conclusions of the March 2008 Due Diligence Report as to the work required, and for disputing that it was the responsibility of Keydata, were largely based on his limited view (which the Authority does not accept) of Keydata's due diligence responsibilities.

The risk of failure of the Lifemark Products

2.19. The Authority agrees that mention of particular rollover rates in the various reports produced in relation to the Lifemark Portfolio did not equate to a forecast that any of those rates would actually occur; nevertheless, a number of the rollover projections indicated potentially serious consequences if they did occur.

2.20. The Authority does not agree that either Keydata's professional advisers' view that the RAC ratio was a "red herring", or the conclusions of the June 2008 Extract Review, were wrong; the fact that these views had been expressed formed part of the cumulative evidence which, in the Authority's view, meant Mr Owen was aware of the serious risk of a liquidity issue with the Lifemark Portfolio. Accordingly, the Authority does not accept that Mr Owen believed the Lifemark Portfolio was performing well notwithstanding any positive assurances he may have received.

2.21. Regarding the representation that the Lifemark Portfolio had grown significantly by 2009, the Authority has not made any finding as to whether or not a portfolio of 300 senior life settlements should be considered to be small; in the Authority's view, if this were not the case, it would not of itself be sufficient to alleviate concerns about the liquidity issue, since this was only one of the concerns which Keydata's advisers had raised.

2.22. The Authority considers that Mr Owen had good reason to doubt that the Lifemark Investment Manager's July 2008 update to investors gave an accurate impression of the risks to the performance of the Lifemark Portfolio in light of the various reports produced by the Lifemark Investment Manager, the Draft Lifemark Valuation Report and the June 2008 Extract Review. The Authority considers that the issues identified in the October 2008 Lifemark Report provide further evidence that Mr Owen was aware of the problems with the performance of the Lifemark Portfolio.

Failure of the Products to comply with the ISA Regulations

2.23. While HMRC does have a "simplified voiding" process by which it is sometimes possible to resolve issues over compliance with the ISA Regulations, it is not applicable in all cases. It was HMRC's decision whether to apply that process to the Products. It was not guaranteed that HMRC would agree to allow the non-compliance to be remedied, and the Authority considers that Mr Owen acted recklessly in not taking steps to cease or suspend sales of the Lifemark Products or otherwise act to protect the position of investors in the face of this substantial risk.

2.24. The Authority is satisfied that HMRC's interpretation of the ISA Regulations as requiring continuous listing is correct and in any event the view of HMRC on tax matters should have been regarded by Mr Owen as so serious that it was reckless to proceed with the marketing and sale of the Lifemark Products.

2.25. The Authority accepts that Keydata was in contact with HMRC prior to its formal notification of its failure to comply with the ISA Regulations, but the delay by Keydata in making the formal notification while continuing to promote the Lifemark Products as being eligible for an ISA, is evidence of a reckless disregard for the risk to new investors.

Misleading the Authority

2.26. While it accepts that Mr Owen was not aware of the fact that the assets of the SLS Portfolio had been replaced by a guarantee, the Authority is satisfied that at the time of his interview Mr Owen was aware that there were issues with the performance of the SLS Portfolio and in particular that income payments on the SLS Bonds had been missed. There was therefore no basis on which he could say that the Products were performing well, or on course to deliver what investors were expecting. He was also well aware of the liquidity issues with the Lifemark Bonds (as set out at paragraphs 4.48 to 4.54 of this Notice).

2.27. The Authority does not accept that Mr Owen considered the email dated 18 January 2009 from Keydata's Compliance Officer to Mr Ford and himself was referring to the secondary market and the pricing of products; in the Authority's view it does not reasonably bear that construction.

2.28. The Authority considers that Mr Owen did receive the email attaching the spreadsheet provided to the Authority by Keydata's solicitors. He was copied into it and it would have been regarded as an important communication.

2.29. The fact that Keydata took legal advice (or other professional advice which it mistakenly believed at the time to be subject to legal professional privilege) did not excuse it, or Mr Owen as Keydata's Sales Director, from the responsibility to make appropriate disclosure to the Authority of issues (that gave rise to the need to take advice) which the Authority would expect to be told about (as distinct from the advice itself).

The Authority's conduct

2.30. The Authority does not consider that any of Mr Owen's complaints against the Authority undermine the evidence relied upon by it in reaching its decision (which has been made by the Regulatory Decisions Committee, a committee of the Authority which is independent from the Authority's Enforcement and Financial Crime Division). Mr Owen's complaints about the conduct of the Authority may be pursued by him using the Complaints Scheme established under the Financial Services Act 2012, and the Authority does not address their substance in this Notice.

Financial penalty

2.31. The Authority has considered Mr Owen's representations and considers the level of the penalty set out in this Notice is appropriate in respect of Mr Owen's misconduct. The Authority has taken into account all relevant circumstances, including the level of penalty imposed in comparable cases, in reaching this conclusion.

2.32. The Authority gave Mr Owen the opportunity to provide evidence of his financial position, but he only provided incomplete details. The Authority has therefore seen no verifiable evidence as to his current financial position.