Financial Conduct Authority

FINAL NOTICE

To:	**Swinton Group Limited**
FRN:	**309599**
Address:	**6 Great Marlborough Street Manchester M1 5SW**
Date:	**16 July 2013**

ACTION

1. For the reasons given in this Final Notice the Authority hereby imposes on Swinton a financial penalty of £7,380,400.

2. Swinton agreed to settle at an early stage of the Authority's investigation. Swinton therefore qualified for a 30% (Stage 1) discount under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £10,543,500 on Swinton.

SUMMARY OF REASONS

3. On the basis of the facts and matters described below, Swinton breached Principles 3 (Management and control), 6 (Customers' interests) and 7 (Communications with clients) of the Authority's Principles for Businesses between April 2010 and April 2012 in relation to its telephone sales of monthly add-on insurance products, as defined below (the "monthly policies").

4. Swinton breached Principle 7 (Communications with clients) as it did not pay due regard to the information needs of its customers at the point of sale by failing to:

   (1) disclose adequate information, including the exclusions and limitations of the monthly policies;

   (2) explain that the monthly policies were separate from the core products (as defined below) and could be declined; and

   (3) communicate with customers in a clear, fair and not misleading way.

5. Swinton breached Principle 3 (Management and control) as it did not take reasonable care to organise and control its compliance procedures with regard to the monthly policies responsibly and effectively. In particular:

   (1) its monitoring of sales calls was too narrow and focused on the sale of core products that Swinton sold, not the monthly policies; and

   (2) its compliance reports, which were based on the aggregated call monitoring results of different business units, were inadequate for Swinton to identify poor compliance, compliance risk or trends in a particular area.

6. Swinton breached Principle 6 (Customers' interests) as it did not pay due regards to the interests of its customers and treat them fairly. Its business strategy of maximising sales of the monthly policies was implemented at the cost of the fair treatment of its customers. In particular, this was reflected in:

   (1) the development and alterations it made to the structure of the monthly policies, such as the different levels of cover that were available;

   (2) the way it rushed the launch of the monthly policies without ensuring the adequacy of the sales processes, scripts and staff training; and

   (3) its sales strategies, including on handling objections from potential customers and sales incentive schemes, which led to significantly greater numbers of sales (and therefore exacerbated the number of customers exposed to the risk of mis-selling).

7. The Authority has concluded that the nature of Swinton's breaches warrants a financial penalty. The Authority therefore imposes a financial penalty on Swinton in the amount of £7,380,400 pursuant to section 206 of the Act.

8. This action supports the Authority's operational objective of consumer protection.

DEFINITIONS

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

   the "Act" means the Financial Services and Markets Act 2000;

   the "Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2012 as the Financial Conduct Authority;

   the "core products" means motor or home insurance products;

   "DEPP" means the Decision Procedures and Penalties Manual;

the “FCA” means the Financial Conduct Authority;

“HEP” means home emergency product;

the “monthly policies” means the monthly add-on insurance products sold by Swinton. These included HEP, PA and SBI;

“PA” means personal accident insurance;

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

the “relevant period” means the period between April 2010 and April 2012;

“SBI” means Swinton’s breakdown insurance;

“Swinton” means Swinton Group Limited; and

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

FACTS AND MATTERS

Background

10. Swinton is a general insurance intermediary offering a wide range of insurance services, including motor, home, travel, business and life insurance, and specialist products. It has been authorised since 14 January 2005, and is one of the largest high street insurance broking chains.

The monthly policies

11. Swinton sold the monthly policies to existing customers with core products, and to new customers alongside these core products. It also sold the monthly policies on a stand-alone basis to customers who had purchased core products through other brokers.

12. Customers were offered free cover for an initial period of three months before monthly premiums became payable and taken automatically from their accounts if they did not cancel. Customers were not tied into annual or multi-year contracts, and could cancel the monthly policies at any time without incurring any charges.

13. Swinton launched its PA monthly add-on insurance product in April 2010. PA was designed to provide cover for accidental physical injury, or the disappearance of the insured person who was presumed dead as a result of accidental injury. PA offered three levels of cover, which could be extended to include the insured person’s partner or unmarried dependent children. The monthly premiums for PA ranged from £7.98 to £17.99.

14. In February 2011 Swinton launched its SBI monthly add-on insurance product. SBI was designed to provide cover for motor breakdown assistance. SBI offered four levels of cover for vehicle recovery within the UK and Europe. The monthly premiums for SBI ranged from £3.98 to £13.49.

15. Swinton launched its HEP monthly add-on insurance product in July 2011. HEP was designed to provide cover in cases where a skilled tradesman was required to attend and repair a home emergency. HEP offered two levels of cover which provided different amounts of reimbursements for repairs. The monthly premiums for HEP ranged from £4.99 to £6.99.

16. During the relevant period, Swinton sold approximately 2.37 million monthly policies, generating an income for accounting purposes of £92.9 million.

Sales of the monthly policies

17. During the relevant period, Swinton sold the monthly policies on a non-advised basis face-to-face in Swinton's high street branches and by telephone in Swinton's 528 branches and nine call centres.

18. In both cases, Swinton used a computer software package to capture customer details and search for quotes on core products. The computer software package prompted the sales executives to introduce the monthly policies during sales of the core products and provided links to the relevant sales scripts.

Information at the point of sale

19. Swinton's sales scripts did not provide customers with adequate information about the monthly policies at the point of sale.

Optionality and obtaining consent

20. The sales scripts prompted sales executives to introduce the monthly policies at the end of a sale for core products. However, the sales scripts did not prompt the sales executives to clarify that the monthly policies were separate from the core products and could be declined. The sales scripts also did not prompt the sales executives to ask customers specifically whether they wanted these policies.

21. The Authority's review of a sample of Swinton's sales calls found that in 73% of the sales (19 of 26 sales), the sales executives did not expressly state that the monthly policies were optional and separate from the core products. In some sales calls, the monthly policies were introduced by the sales executives when discussing the core products in a way that gave the impression that they were linked. For example, phrases such as "*you're getting three months PA cover which I can sort out now for you......*" or "*you got three months free...*" were used.

22. Swinton sent details of the monthly policies to the customers after the sales which stated that they were separate insurance products.

Features of cover

23. The sales scripts prompted the sales executives to describe briefly the benefits, limitations and exclusions of the monthly policies. However, the Authority's review of a sample of Swinton's sales calls found that in 92% of the sales (24 of 26 sales), the sales executives did not disclose information about the limitations and exclusions *before* customers agreed to buy. For example, the key exclusions would be explained only after the customer had stated that they would take the monthly policy on a three months free basis.

24. Although the scripts only required a brief description of the benefits, limitations and exclusions (and even this was not adhered to in all cases), they failed to prompt sales executives to seek the customers' consent to proceed with sales on a limited information basis.

Levels of cover and prices

25. Although the monthly policies each had a number of levels of cover, Swinton did not provide customers with details and prices for these different levels of cover. The sales scripts prompted the sales executives to ask a series of questions to

channel customers towards a specific level of cover, which was always the highest level available. For example, they would ask "*would you like to be covered for…*" or "*do you want cover if…*". The sales scripts did not have any questions that would lead customers to select the most basic level of cover.

26. The Authority's review of a sample of Swinton's sales calls found that in 92% of the sales (24 of 26 sales), the sales executives did not explain to customers the different levels of cover and prices.

Cancellation rights

27. The sales scripts prompted the sales executives to explain that the monthly policies were free for the first three months of cover, that customers could keep the policies for as long as they wanted to and that they could cancel at any time without any charge. However, the sales scripts did not prompt the sales executives to explain what happened if the customers did not cancel at the end of the free period. It also did not prompt the sales executives to clarify that customers needed to cancel at the end of the free period to avoid premiums automatically being taken from their accounts, or explain what steps the customers needed to take to cancel.

28. The Authority's review of a sample of Swinton's sales calls found that in 96% of the sales (25 of 26 sales), the sales executives did not provide clear information on how and when customers should cancel to avoid the monthly policies continuing at the end of the free period.

Failing to communicate information clearly

29. The Authority's review of a sample of Swinton's sales calls also identified operational failures, including:

    (1) in 50% of the sales (13 of 26 sales), the sales executives spoke to customers quickly, particularly when describing limitations, exclusions and cancellation rights, and were inaudible at times; and

    (2) in 38% of the sales (10 of 26 sales), the sales executives did not correct customers when it was apparent that they had misunderstood the information given. In one example, the sale executive failed to correct the customer's assumption that SBI was being provided by a different insurer.

Findings by Swinton's independent auditor and customer survey exercise

30. Swinton's independent auditor reviewed 40 sales calls (covering 54 monthly policies sold between 1 January and 31 December 2011) during its audit of Swinton's accounts for the year ended 31 December 2011. The auditor also reviewed the marking and assessment of sales calls carried out retrospectively by Swinton's compliance team.

31. Specifically, Swinton's auditor examined whether sales executives had made clear during sales calls that the monthly policies were separate and could be declined, whether customers had consented to the sale and whether they understood that payments would be taken after the free period.

32. The auditor found that Swinton's sales executives had failed to:

    (1) give sufficient information to customers about different levels of cover;

    (2) explain that the policies were optional;

(3) explain that sending out details of the policies to the customer constituted a sale and meant that payments would be taken from their account at the end of the three month free period unless the customer cancelled;

(4) obtain sufficient authority to proceed with sales as customers were confused about what was being sold and whether it constituted an integral part of the core product; and

(5) adequately and clearly answer customer's questions to clarify customers' misunderstandings of the nature of the policies.

33. The auditor concluded that Swinton had failed to identify that sales of the monthly policies were made in an inappropriate or non-compliant manner.

34. Following the auditor's findings, Swinton commissioned a market research company to conduct an independent survey of the monthly policies sold between 16 and 23 March 2012 to assess the extent of potential customer detriment and whether customers should receive redress.

35. Over 900 customers were interviewed about their purchase experience and their knowledge about the monthly policies. The survey found that:

(1) 32% of customers (294 customers) who purchased multiple monthly policies could not recall what they had bought;

(2) 20% of customers (184 customers) were not aware or did not understand that payments for the monthly policies would start automatically at the end of the free period; and

(3) 8% of customers (74 customers) were not aware that the monthly policies were separate from their core products.

36. As a result of this, in July 2012, Swinton commenced a comprehensive customer contact exercise. It set aside provisions of £11.2 million for meeting compensation claims and to date has paid over £1.9 million in redress to customers.

Swinton's call monitoring and internal compliance reporting

37. Swinton regularly conducted call monitoring during the relevant period, using the information gathered to monitor its sales of both the core products and the monthly policies. The call monitoring and analysis focused, however, on sales of the core products. Sales of the monthly policies were not separately monitored, the scope of the monitoring of the monthly policies was narrow and there was little useful analysis of the results.

Flaws in score cards

38. Swinton's call monitors listened to recorded sales calls and scored them against a list of questions on score cards. The score cards were divided into topics and comprised sections to score the sale of core products, as well as sections for each of PA, SBI and HEP. Different score cards were used by Swinton's branches and call centres to reflect the different approaches within their specific business units but the questions on the various score cards were almost identical.

39. Until April 2012, call monitoring of the monthly policies only took place where the sale followed the sale of core products. There was therefore no monitoring at all of sales made to customers who had core products with another provider.

40. The score cards used by Swinton during the relevant period were primarily designed to monitor sales of the core products, and not the monthly policies. Sales of the core products were assessed against 50-70 monitoring questions to check whether specific information was provided during sales calls, whereas the monthly policies sales were assessed against approximately 13 monitoring questions. Of these 13 questions, only one could be categorised as relating to treating customers fairly, rather than being necessary for the legal sale of insurance. That question was to check that the sales executive had adhered to the script and had not given advice or made any recommendations. There were no questions which checked whether the exclusions had been explained prior to the purchasing decision, whether it had been made clear that the monthly policies were optional or whether the sales executive had explained that payments would be taken at the end of the three month period.

41. Although call monitoring assessed handling of customer concerns for sales of the core products, no such checks were done with sales of the monthly policies. There were no questions on the frequency with which sales executives employed techniques to handle objections raised by customers, or the nature of the objections handling, for example where the customer initially refused the monthly policy on grounds of duplicate cover or cost.

42. The Authority also found that the score cards did not check the manner in which information was communicated to customers. There were no questions which assessed whether sales executives had:

(1) spoken quickly or articulately in the sales calls;

(2) ensured customer understanding of the product before a purchase was made; and

(3) answered customer questions accurately and comprehensively or addressed any misunderstandings.

43. Swinton's independent auditor also reviewed Swinton's call monitoring of the monthly policies. The auditor found that the score cards used:

(1) were difficult to follow;

(2) did not include adequate consideration of whether the sales executives had obtained sufficient authority to proceed with sales, or had disclosed information on a timely basis and of a comprehensive nature; and

(3) had not been designed to monitor multiple sales of add-on insurance products within the same call.

The compilation and escalation of compliance reports

44. Before October 2011, only call monitoring results from the branches were reported to Swinton's Compliance Board, not those from the call centres. After this date, the results of both branch and call centre monitoring were included in compliance reports and provided to the Compliance Board for consideration at its monthly meetings. The results were also circulated to Swinton's Audit Committee and field management to assist with their oversight responsibilities, and to enable them to take appropriate action.

45. These call monitoring reports were designed to assess compliance of Swinton's sales of the core products. The reports were inadequate for determining actual or

potential customer detriment and regulatory risks associated with the monthly policies.

46. The call monitoring results for the monthly policies from Swinton's different business units were aggregated. Poor performances in a particular branch or call centre could therefore have been hidden by good performances in others. The compliance reports recognised the risk that results could spike where these emanated from a small sample size of monitored calls. However, there was no recognition of the opposite risk, namely that results from a large sample which were aggregated could hide poor performance in certain areas or with certain sales channels.

47. Swinton monitored whether specific information had been provided during sales calls by adding together the scores given for each monitoring question. A high score meant that the relevant monitoring question passed the compliance check. However, the questions were not weighted to take account of their impact. For example, a pass mark for a question asking whether the sales executive had answered the phone correctly carried the same importance as a question asking whether the sales executive had sought sufficient authority to make the sale.

48. Compliance reporting focused on sales of the core products. Only the call monitoring results for sales of the core products were discussed and analysed in the main section of the compliance reports. There was no interpretation, commentary or analysis in this main section about the monthly policies. The results of the call monitoring for the monthly policies were contained in an appendix without analysis or commentary. This meant that failures or low scores in compliance on the monthly policies could be overlooked. The appendices reported that Swinton's sales executives had failed to obtain payment details correctly in respect of PA sales for seven consecutive months between December 2010 and July 2011 but Swinton did not identify or comment on this failure in the main section of the compliance reports.

Swinton's business strategy

49. Swinton's business strategy during the relevant period was focused on maximising sales of the monthly policies to address a general decline in its income from sales of core products. The monthly policies were considered by Swinton to be attractive products as they required little or no discounts to be offered to customers to make sales.

50. Swinton's aim was to sell more products (i.e. the monthly policies) to existing customers, rather than generate new customers through marketing activities.

51. This strategy fostered a culture of placing the drive for profit over the fair treatment of customers. This culture manifested itself in four key areas: in Swinton's development of HEP and SBI, in its launch of PA and SBI, in its sales processes and its sales incentive schemes.

Product development

Implementing different levels of cover for HEP

52. Swinton put in place two different levels of cover for HEP, Gold and Standard. There was an internal discussion about whether offering two levels of cover for HEP may become unduly complicated for customers to understand, and concerns were raised that there might be a risk of mis-selling. Despite these warnings, Swinton decided to implement the two levels of cover in order to give sales executives two chances to sell the product; in the event that customers rejected

the initial, more expensive level of cover a second, cheaper level of cover could be offered.

53. As mentioned above, Swinton's auditor found that, during sales calls, sales executive had failed to give sufficient information to customers about different levels of cover.

54. In order to ensure sales executives promoted the more expensive Gold cover over the cheaper Standard cover, Swinton designed a sales script that directed its sales executives to offer the more expensive Gold cover from the outset of a sale and to only "trade down" to a lower level of cover if the customer objected to Gold cover. Provided the customer was offered the higher Gold cover first, if they rejected that on the grounds of price, the sales executive would have a second chance to make the sale by offering the customer the cheaper Standard cover. In effect, by offering Gold cover first, the sales executive could avoid having to mention the existence of an alternative level of cover or attempt to "upsell" from the cheaper Standard cover.

55. As mentioned above, the sales scripts for HEP also contained a series of questions designed to channel customers towards the highest level of cover.

Altering SBI

56. In order to maximise sales, Swinton altered the terms and conditions of the SBI product to enable it to sell it to customers who had existing or similar cover in place with other providers.

57. Swinton identified that the terms and conditions for SBI contained a "duplicate cover" exclusion clause which prevented customers from recovering costs under the new SBI product where they had pre-existing insurance. This meant that if a customer purchased SBI, they would then be insured twice for the same risk but only be able to claim under their pre-existing cover. Effectively the exclusion clause prevented customers being over-insured for the same risk.

58. Swinton asked its underwriter to remove the exclusion clause so that sales executives could persuade customers with pre-existing insurance that there was value to purchasing SBI. The underwriter agreed to this request and the exclusion clause was removed from subsequent SBI policy documents. This allowed Swinton to sell SBI to customers with existing breakdown cover.

59. The key disadvantage to customers was that they could potentially be paying for two policies but have only one benefit; that is, only one policy would pay for the loss suffered.

60. This concern was raised internally at Swinton when the amendment to the policy was deliberated. However, despite being aware that there could be a disadvantage to customers from the removal of the exclusion clause, Swinton still removed it in order to overcome the potential barrier to sales which it represented and did not take any steps, such as amending the sales script, to address this risk.

Launching PA and SBI

61. Swinton launched PA and SBI without providing adequate training to its sales executives and without ensuring the sales tools were adequate.

62. When launching PA, concerns were raised that sales executives were struggling to learn about the new product and sales process, that they were not getting

adequate training and support to do their job and were therefore making mistakes. In addition, concerns were raised about field managers failing to conduct quality checks over sales and not developing sales executives or helping them to embed the new requirements because they lacked time. However, Swinton did not halt sales of PA to resolve these difficulties.

63. When launching SBI, training for the sales executives was inadequate and delivered hastily so that Swinton could meet its aspirational launch date of December 2010. This meant training was delivered whilst the sales process and scripts were still being designed. Further, the decision was made not to conduct any pilot training for SBI to avoid pushing back the launch date.

Sales of the monthly policies

Training for sales executives

64. Swinton adopted a process called the "new concept" which taught its sales executives firstly to secure the core products, secondly to upsell or upgrade any connected add-on products and finally to introduce the monthly policies. Sales executives were taught that they should always offer the monthly policies after the sale of core products.

65. During this training, sales executives were reminded about the importance of giving customers clear information, providing what they are promised, fixing things if they go wrong, that customers should expect to be provided with suitable products and should not be taken advantage of. The call monitoring of sales of monthly policies did not monitor any of these elements.

66. Swinton told sales executives that, to achieve these objectives, they must follow the prescribed processes and procedures. In particular, the sales executives were instructed not to deviate from sales scripts and to adhere to them "word for word". However, because the sales scripts were flawed, sticking to the scripts did not achieve the objectives set out in the training.

Using free periods to make sales

67. Although the training emphasised the need to treat customers fairly, it also focused heavily on the drive for sales. Sales executives were trained to mention that the monthly policies were free for three months to persuade customers to buy them even where they had existing insurance with an alternative provider:

(1) in 92% of the sales (24 of 26 sales), sales executives used this free month period successfully to persuade customers to take the monthly policies; and

(2) in 38% of the sales (10 of 26 sales), the sales executives used this free month period successfully to persuade customers to take the higher level of cover on the basis that they could cancel or downgrade to a lower level of cover at the end of the three months.

68. However, the sales executives did not inform customers that they needed to take action to cancel the policy prior to the end of the free period to avoid payments being taken from their accounts.

69. In April 2010, Swinton identified that some of its trainers had informed sales executives that customers would receive a reminder before payments started. Swinton missed this opportunity to consider whether to introduce a policy of reminding customers at the end of the free period. Instead it revised its sales

scripts to avoid any assumptions that reminder letters would be sent to customers.

Handling customer objections

70. The sales executives were trained to handle customer concerns by describing the features, functions and benefits of the policies, and they were also provided with hand-outs that contained stock phrases in response to customer objections (such as *"I'm not interested"* or *"I have cover elsewhere"*) so that they could sell more effectively.

71. The sales executives were trained to override customers' objections even if they already had cover by mentioning that the monthly policies could be set up to start when their existing cover ended, by using the free period to make sales (as described above), or by asking leading questions indicating a need for the monthly policies to persuade customers to purchase cover.

72. As mentioned above, the frequency with which these techniques were used during a sales call was only monitored for sales of the core products, not for sales of the monthly policies.

Shortening HEP sales scripts

73. Swinton decided to shorten its sales scripts, including for the monthly policies, to reduce customer talk time and improve sales effectiveness.

74. HEP sales scripts were reviewed in May 2011 following feedback given by the sales executives and field managers that they were too long, and contained too much information about cover benefits. The HEP sales scripts were subsequently shortened to reduce information relating to Standard cover. This meant that customers were even less likely to understand the difference between the more expensive Gold cover and the cheaper Standard cover.

75. By shortening sales scripts and reducing product information, Swinton increased the risk of providing customers with inadequate information at the point of sale.

Sales incentive schemes

76. Swinton used both cash and non-cash incentive schemes to help achieve its sales targets during the relevant period. The schemes were aimed at motivating the sales behaviour of sales executives and their immediate management.

77. Swinton's incentive schemes fell into two broad categories: core schemes and tactical schemes. Swinton's core schemes for its branches and call centres were subject to income and case count targets. If a branch met its income target at the month end, a branch incentive pot equivalent to 1-2% of the target income would be available for sharing between the branch manager and their sales executives in proportion to their sales contribution. If the branch exceeded its income target at the month end, then 15% of the target income would be allocated to the branch for incentive payments.

78. Case count targets also affected the size of the branch pot available for incentive payments. If 95% of the case count target was met at the month end, 50% of the branch incentive pot was made available for sharing. If this target was not met, the branch pot was not made available for incentive payments.

79. Sales executives were set individual case count targets based on the targets of their branches. Those who met their monthly targets earned incentive payments equivalent to around 25% to 30% of their base salary.

80. In contrast, Swinton's tactical schemes were either set locally by field managers or by head office. These were short term schemes introduced to respond to specific events, issues or business needs and followed no set structure, although they were usually based on sales performance.

81. Whilst both schemes applied to sales of the monthly policies, there were variations which made it easier to achieve rewards for the monthly policies than for the core products. Whilst rewards for the core products were subject to an income or case count target, this did not apply to sales of monthly policies. Instead, sales executives accrued payment of fixed amounts in respect of each and every sale. In addition, sales of monthly policies contributed to the branch incentive pot and would be added to the income and case count target for that pot so the branch benefitted as a whole. For example, in relation to PA, sales executives were typically rewarded an amount of money in the range of £3 to £4 per sale and £40 would also be paid into the branch incentive pot. The schemes in place during the relevant period were highly effective. Sales of the monthly policies grew steadily from 476,700 in 2010 to 1,425,100 in 2011.

82. Consequently, some branches focused on selling the monthly policies rather than the core products. A number of field managers also actively encouraged their teams to focus on sales of the monthly policies to help meet their monthly targets by instructing their sales executives to offer the monthly policies to every customer they dealt with.

83. Call monitoring was done centrally to check that sales were compliant prior to the payment of any individual incentives. If the sale was compliant, the sales executive would receive the relevant incentive payment at the end of the quarter and the sale would count towards branch target income. If the sale was non-compliant, an initial deduction of 25% from that quarter's bonus could be made and the sale would be excluded from the branch pot. However, there were a number of reasons why the monitoring was not effective to ensure Swinton treated customers fairly, including:

    (1) until April 2012, regular call monitoring was done on monthly policies only where the sale followed a sale of core products;

    (2) the call monitoring (as set out above) was in itself deficient focusing only on script adherence and ensuring that advice had not been given, not on the quality of the sale; and

    (3) there was no possibility of a bonus being completely eliminated for non-compliance. The only incidence that could lead to the total elimination of a bonus related to manipulation of the incentive scheme by the sales executive, for example, putting through a renewal as a new policy.

FAILINGS

84. The statutory and regulatory provisions referred to in this Final Notice are set out in the Annex.

85. Swinton breached Principles 3 (Management and control), 6 (Customers' interests) and 7 (Communications with clients) of the Authority's Principles for Businesses for the reasons set out in detail below. In summary:

(1) Swinton breached Principle 7 as a result of its failures to give adequate information to customers about the monthly policies at the point of sale and to communicate with customers in a way that was clear, fair and not misleading;

(2) Swinton's compliance monitoring was inadequate to detect these flaws in its sales process or potentially unsuitable sales of the monthly polices. Swinton therefore breached Principle 3 for failing to take reasonable care to organise and control its affairs responsibly and effectively with adequate risk management systems; and

(3) the Authority considers that the root cause of these failings was the aggressive sales strategy that Swinton adopted during the relevant period which focused on maximising sales at the expense of treating customers fairly and putting them at the heart of its business. This failure to pay due regard to the interests of its customers and treat them fairly amounts to a Principle 6 breach.

Principle 7 - failure to give adequate information

86. Swinton breached Principle 7 by failing to provide customers with adequate information about the monthly policies at the point of sale or communicate with customers in a clear, fair and non-misleading way.

87. Sales executives were instructed to follow sales scripts, and not deviate from them. However, the sales scripts lacked adequate information on the optionality of the monthly policies, significant conditions and exclusions, the varying levels available and prices for these levels and cancellation rights. Further the rate of the delivery was too fast to be clear and sales executives failed to correct obvious customer misunderstandings.

88. The need to ensure that customers were aware of this relevant information was particularly important because Swinton provided a non-advisory service. Swinton therefore placed the onus on its customers to determine their own demands and needs and whether the product matched those demands and needs. Customers were unable to do this because they were not provided with adequate information in a way and at a rate they could understand.

89. Although the scripts were altered from time to time, these failings were never recognised and so persisted throughout the relevant period.

Principle 3 - failure to adequately monitor sales

90. Swinton breached Principle 3 by failing to organise and control its affairs responsibly and effectively with adequate risk systems through putting in place adequate compliance monitoring arrangements over sales of the monthly policies.

91. Firstly, the level and nature of its call monitoring was inadequate. Until April 2012, no monitoring at all was done on sales of the monthly policies unless they were sold alongside core products. This meant that there was a population of sales which, although counted for sales executives' incentive awards, were not checked for compliance.

92. The scorecards used were primarily designed for core products and were inadequate for checking sales of the monthly policies. They were difficult to complete and there were relatively few questions about the sale of the monthly policies compared to the number of questions on core products. Only one of these questions could be categorised as going to the fair treatment of customers (rather

than legal requirements for sales of insurance). There were no checks on whether adequate and balanced information had been provided, that customers questions had been answered or that customer objections to a sale had been handled properly.

93. This meant that the scorecards were not effective as a tool to measure the fair treatment of customers in sales of the monthly policies.

94. Secondly, the results of the monitoring were not escalated adequately. Before October 2011, the monitoring of call centre sales was not escalated to the Compliance Board. This meant that for a large part of the relevant period results received by the Compliance Board were incomplete and did not present an accurate reflection of compliance for all business units.

95. Further problems were caused by the fact that the monitoring results for sales of the monthly policies were aggregated, which had the effect of "smoothing" the results out, i.e. poor performance in one area could be hidden or disguised by high performance in other areas. Swinton also failed to analyse the results in any detail, they were included merely as an appendix to the main report. There was therefore a significant risk that the Audit Committee and Compliance Board would overlook such information as was provided in their review of the report.

96. The combined effect of flawed scripts and flawed compliance monitoring and escalation meant that there was a risk that every sale of a monthly policy could have been a mis-sale and Swinton would not have become aware of this.

Principle 6 - pursuit of an aggressive sales strategy at the expense of treating customers fairly

97. Swinton breached Principle 6 by failing to consider sufficiently the interests of its customers with regard to the monthly policies and to treat them fairly. Swinton's business strategy during the relevant period was focused on maximising sales of the monthly policies to address a general decline in its income from sales of core products. This overarching strategy was reflected in Swinton's approach to its development, launch and sales of the monthly policies, and its sales incentive schemes, all of which were designed to increase sales without having due regard to the interests of customers. The culture that this engendered meant Swinton missed key opportunities to advance its fair treatment of customers.

Development of the monthly policies

98. The Authority expects firms at all stages of the sales process to consider customer interests. In its development of HEP and SBI, Swinton made decisions about the structure of those products designed to increase sales but which were not in the interests of customers. In particular:

(1) in the case of HEP, there were discussion about whether two levels of cover may be unduly complicated and difficult for customers to understand, but the decision was nevertheless taken to implement the two levels of cover to give sales executives two chances to sell the product. Further, the sales scripts for HEP were designed to channel customers towards the highest level cover, irrespective of need; and

(2) in the case of SBI, Swinton negotiated with the underwriter to remove a "duplicate cover" exclusion clause which had the effect of ensuring that customers did not pay twice for insurance covering the same risk. This decision was made to increase Swinton's ability to make sales (i.e. to

customers who already had insurance cover) without adequate consideration of the need to protect customers' interests.

Launch of the monthly policies

99. The roll out of both PA and SBI was rushed. Training and technical and developmental support for sales executives was insufficient and under-resourced and this led to an increased risk of mistakes being made in the sales of these products. During the relevant period, Swinton was more concerned with commencing sales for these products than to ensure the training and processes around them was adequate to ensure mistakes were not made.

Sales of the monthly policies

100. There were a number of indications in the sales delivery itself which should have alerted Swinton to the risk that its drive for sales was perceptibly overcoming the fair treatment of its customers and when Swinton missed the opportunity to correct that balance. For example:

(1) the use of the free periods to increase sales, without reminding customers those payments would commence. Although Swinton's training emphasised the need to treat customers fairly, it focused heavily on the drive for sales and a key point was the use of the free period to influence customers to buy, even if they already had existing cover. Further, when Swinton identified that some of its trainers were telling sales executives that customers would receive a reminder before payments started at the end of the free period, the scripts were changed to avoid assumptions about this but the decision was taken not to send customers reminders in case this prompted them to stop the insurance. This was a key opportunity for Swinton to adopt a practice which would have been a fair and positive treatment of its customers. Instead, it chose not to put its sales at risk;

(2) the use of objection handling techniques without monitoring the frequency and manner of that handling such as to mitigate the risk that sales executives could pressure customers into a purchase; and

(3) the adaptations made to the HEP scripts to shorten them, providing less information, to increase the sales rates. Swinton considered the length and complexity of the HEP script in May 2011. This presented an opportunity to review whether the script itself was fair to customers. Swinton's decision to shorten the script was made in order to facilitate sales. The effect was to reduce the amount of information provided to customers on the cheaper Standard cover. This represents a missed opportunity by Swinton to consider customer needs and exacerbated the inadequacy of information being provided to customers.

Sales incentive schemes

101. The incentives schemes favoured sales of the monthly policies over the core products and drove a rapid increase in the sales figures without Swinton introducing qualitative or quantitative changes to its compliance monitoring to ensure customer fairness.

102. Swinton's incentive schemes were effective in driving sales and motivating its sales force. However, there were inadequate checks in place to ensure that the effect of the schemes did not negatively impact upon customers. The identification of mis-selling risk was unlikely due to the deficiencies in the call monitoring process and escalation. Further, the risk of a possible 25% bonus deduction rather

than a total elimination of the bonus (if the compliance score was not achieved) may not have adequately deterred non-compliance. Sales executives were better off in monetary terms to make the sale, even if it was not wholly compliant. In the event, the effect of the schemes was to promulgate more widely the risk of mis-selling of the monthly policies.

103. The incentive schemes of themselves were not fundamentally flawed, however when combined with the poor sales processes and scripts, the absence of adequate compliance monitoring and the drive for profits manifesting in the launch, development and sales of the monthly policies, the effect was that Swinton's culture was one of putting sales ahead of its customers interests.

Conclusion

104. Having regard to the facts and matters, the Authority considers that Swinton has breached Principles 3 (Management and control), 6 (Customers' interests) and 7 (Communications with clients). Consequently, it is appropriate and proportionate in all the circumstances to take disciplinary action against Swinton for the breach.

SANCTION

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

Step 1 – disgorgement

106. Pursuant to DEPP 6.5A.1G, at Step 1 the Authority seeks to deprive a firm of the financial benefit derived directly from the breach where it is practicable to quantify this.

107. DEPP 6.5A.1G(2) states that where a firm agrees to carry out a redress programme to compensate those who have suffered loss as a result of the breach, or where the Authority decides to impose a redress programme, the Authority will take this into consideration. In such cases the final penalty might not include a disgorgement element, or the disgorgement element might be reduced.

108. The Authority estimates that Swinton has made profits of £34,945,960 from its sale of the monthly policies during the relevant period. However, following a comprehensive past business review, it set aside provisions of £11,200,000 for meeting continuing compensation claims and has paid £1,932,696 in redress to customers to date. In these circumstances, the Authority proposes no disgorgement.

109. Step 1 is therefore £0.

Step 2 – the seriousness of the breach

110. Pursuant to DEPP 6.5A.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. Where the amount of revenue generated by a firm from a particular product line or business area is indicative of the harm or potential harm that its breach may cause, that figure will be based on a percentage of the firm's revenue derived during the relevant period from the relevant products or business area.

111. In this case the Authority considers that the lifetime value of the monthly policies sold by Swinton during the relevant period is indicative of the harm or potential harm caused by the breach and has therefore used this to calculate the relevant revenue. Lifetime value reflects the projected commission income due to Swinton over a period of time, and takes into account various actuarial assumptions. The lifetime value allocated in Swinton's accounts for telephone sales of the monthly policies during the relevant period is £92,900,000. Since March 2012 the sum Swinton anticipates receiving from policies sold in the relevant period has reduced by £6.8 million, and is anticipated to reduce by a further £8 million. The Authority therefore considers Swinton's relevant revenue to be £78,100,000.

112. In deciding on the percentage of the relevant revenue that forms the basis of the Step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 20%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach; the more serious the breach, the higher the level. For penalties imposed on firms there are the following five levels:

(1) Level 1 – 0%;

(2) Level 2 – 5%;

(3) Level 3 – 10%;

(4) Level 4 – 15%; and

(5) Level 5 – 20%.

113. In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly.

114. DEPP 6.5A.2G(11) lists factors likely to be considered "level 4 or 5 factors". Of these, the Authority considers the following factors to be relevant:

(1) the failings revealed serious and systemic weaknesses in Swinton's procedures and internal controls relating to sales and compliance such that a complete review of Swinton's systems and controls was required to be taken to remedy the failings; and

(2) the breaches caused a significant loss or risk of loss to individual consumers. Over 2.3 million monthly policies were sold during the relevant period. The systemic nature of the failings means there is a risk that every one of these sales may have been a mis-sale. Therefore a significant proportion of Swinton's customers may have suffered loss. Swinton is unable to identify the total number of affected customers but has issued over 650,000 letters to customers who may potentially be affected.

115. DEPP 6.5A.2G(12) lists factors that are likely to be considered "level 1, 2 or 3 factors". Of these, the Authority considers relevant the fact that the breaches were committed negligently or inadvertently.

116. Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 4 and so the Step 2 figure is 15% of £78,100,000.

117. Step 2 is therefore £11,715,000.

Step 3 – mitigating and aggravating factors

118. Pursuant to DEPP 6.5A.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2 to take into account factors which aggravate or mitigate the breach.

119. The Authority considers that the following factors aggravate the breach:

(1) Swinton was previously disciplined and fined £770,000 in October 2009 for similar failings in relation to the sale of payment protection insurance ("PPI"); and

(2) the failings in sales of monthly policies were identified by Swinton's independent auditor during its 2011 year end audit rather than by Swinton's internal compliance function.

120. The Authority considers that the following factors mitigate the breach:

(1) once the failings had been identified, Swinton brought the matter quickly to the Authority's attention and took a number of remedial steps of its own initiative. In particular, Swinton, of its own volition: commissioned a market research company to conduct an independent survey to assess the extent of customer detriment; conducted a comprehensive customer contact exercise offering to compensate all customers who were identified as having suffered loss (including paying £1,932,696 in compensation to date); instructed external consultants to assist in conducting call monitoring and review its compliance function; and amended its sales and monitoring processes in relation to the monthly policies including the introduction of new sales scripts, call monitoring procedures and score cards;

(2) Swinton participated in a research study conducted by the Authority to increase the effectiveness of its customer contact exercise;

(3) Swinton replaced its executive management who were in place during the relevant period; and

(4) Swinton co-operated proactively with the Authority's investigation which has enabled a highly productive working relationship and the Authority to conclude the investigation swiftly.

121. Where the Authority has previously disciplined a firm in respect of similar breaches, the Authority would usually seek to impose a higher financial penalty on the firm for failing to improve its standards. In this case, the Authority would have increased the Step 2 figure to reflect Swinton's previous PPI failings. In selling PPI, Swinton similarly failed to disclose adequate information to customers at the point of sale about the cost, the significant features and that the policy was optional. It also had inadequate compliance monitoring procedures over its PPI sales.

122. However, the Authority has also noted Swinton's participation in the research study, the results of which will help the FCA and the industry design more effective contact letters, and therefore be beneficial to consumers. The study focused on how to encourage customers who may be due redress to respond to contact letters. With the Authority's guidance, Swinton amended the content and layout of its initial contact letters and agreed to send out reminder letters. The changes increased the customers' response rate to Swinton's contact letters by seven times, from 1.5% to 12%. More details about the study were published on

the FCA's website in April 2013 in an occasional paper entitled "Encouraging consumers to claim redress: evidence from a field trial".

123. Having taken into account these aggravating and mitigating factors, the Authority considers the Step 2 figure of £11,715,000 should be decreased by 10%.

124. Step 3 is therefore £10,543,500.

Step 4 – adjustment for deterrence

125. Pursuant to DEPP 6.5A.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the firm who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.

126. The Authority considers that the Step 3 figure of £10,543,500 represents a sufficient deterrent to Swinton and others, and so has not increased the penalty at Step 4.

127. Step 4 is therefore £10,543,500.

Step 5 – settlement discount

128. Pursuant to DEPP 6.5A.5G, if the Authority and the firm on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the firm reached agreement.

129. The Authority and Swinton reached agreement at Stage 1 and so a 30% settlement discount applies to the Step 4 figure of £10,543,500.

130. Step 5 is therefore £7,380,450.

Proposed penalty

131. The Authority therefore imposes a financial penalty of £7,380,400 (rounded down from £7,380,450) on Swinton for breaching Principles 3 (Management and control), 6 (Customers' interests) and 7 (Communications with clients).

PROCEDURAL MATTERS

Decision maker

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

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

Manner of and time for payment

134. The financial penalty must be paid in full by Swinton to the Authority by no later than 30 July 2013, 14 days from the date of this Final Notice.

If the financial penalty is not paid

135. If all or any of the financial penalty is outstanding on 31 July 2013, the Authority may recover the outstanding amount as a debt owed by Swinton and due to the Authority.

Publicity

136. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Final Notice relates. Under those provisions, the Authority must publish such information about the matter to which this Final Notice relates as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to Swinton or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

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

Authority contacts

138. For more information concerning this matter generally, contact Rachel West of the Enforcement and Financial Crime Division at the Authority (direct line: 020 7066 0142 / fax: 020 7066 0143).

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Bill Sillett
Head of Department, Enforcement and Financial Crime Division
for and on behalf of the Authority

ANNEX

STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY

STATUTORY PROVISIONS

1. The Authority's operational objectives are set out in section 1B(3) of the Act and include consumer protection.

2. The Authority has the power, pursuant to section 206 of the Act, to impose a financial penalty of such amount as it considers appropriate where the Authority considers an authorised person has contravened a requirement imposed on him by or under the Act.

REGULATORY PROVISIONS

3. In exercising its power to impose a financial penalty, the Authority has had regard to the relevant regulatory provisions, guidance and policy published in the Authority Handbook. The main provisions that the Authority considers relevant to this case are set out below.

Principles for Businesses ("Principles")

4. Under the Authority's rule-making powers, the Authority has published in the Authority Handbook the Principles which apply either in whole, or in part, to all authorised persons.

5. The Principles are a general statement of the fundamental obligations of firms under the regulatory system and reflect the Authority's operational objectives. A firm may be liable to disciplinary sanction where it is in breach of the Principles.

6. Principle 3 (Management and control) states that:

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

7. Principle 6 (Customers' interests) states that:

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

8. Principle 7 (Communications with clients) states that:

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