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## FINAL NOTICE

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To: **The Co-operative Bank plc**

FSA Reference Number: **121885**

Address: **13<sup>th</sup> Floor, Miller Street, Manchester, M60 0AL**

Date: **4 January 2013**

### 1. ACTION

- 1.1. For the reasons given in this Notice, the FSA hereby imposes on The Co-operative Bank plc (Co-op or the Firm) a financial penalty of £113,300 for breaches of Principle 6 (Customers' interests) of the FSA's Principles for Businesses (the Principles) and Rules in the Dispute Resolution: Complaints Sourcebook (DISP). This relates to the period 21 January 2011 to 9 May 2011 (the Relevant Period).
- 1.2. Co-op agreed to settle at an early stage of the FSA's investigation. The Firm therefore qualified for a 30% (Stage 1) discount under the FSA's executive settlement procedures. Were it not for this discount, the FSA would have imposed a financial penalty of £161,910 on Co-op.

### 2. SUMMARY OF REASONS

- 2.1. In the Relevant Period there were serious failings in Co-op's handling of complaints arising from sales of Payment Protection Insurance (PPI).
- 2.2. In August 2010, the FSA published Policy Statement 10/12, 'The Assessment and Redress of Payment Protection Insurance complaints' (PS 10/12). On 8 October 2010, the British Bankers' Association (BBA) and Nemo Personal Finance Limited (NPF) began judicial review proceedings (the JR) challenging the FSA's decision to introduce the measures set out in PS 10/12.
- 2.3. On 21 January 2011, the FSA sent a letter to various trade associations (which was also published on the FSA website at the same time) setting out its expectations for PPI complaint handling during the course of the JR (the FSA Letter). The FSA Letter was a reminder that, despite the legal challenge to the PPI complaint handling measures, the FSA expected firms to progress PPI complaints received which were not affected by the issues raised in the JR. The FSA Letter outlined at a high level the types of complaint

that the FSA considered could be progressed notwithstanding the JR, and provided examples of these.

- 2.4. The JR was rejected by the High Court on 20 April 2011. On 9 May 2011, the BBA and NPF decided not to appeal against the judgment bringing the JR proceedings to an end.
- 2.5. In dealing with PPI complaints in the Relevant Period, Co-op breached Principle 6 by failing to pay due regard to the interests of its customers and treat them fairly. Co-op's process for dealing with PPI complaints during the JR was inadequate and was likely to lead to a failure to identify complaints capable of being progressed during that period. As a result, Co-op incorrectly stayed PPI complaints that were capable of being progressed (and in circumstances specifically identified in the FSA Letter as the type of complaints which should be progressed during the JR).
- 2.6. Co-op also failed to send a final response to some complainants within the eight-week timescale prescribed by DISP 1.6.2R.
- 2.7. The FSA regards these failings as serious. The reasons for this are:
  - (1) the failings occurred despite the FSA issuing the FSA Letter. This should have prompted Co-op to review its Policy and consider whether changes needed to be made in light of the FSA Letter. In fact, Co-op reviewed its Policy and decided no amendment was required notwithstanding the contents of the FSA Letter;
  - (2) the FSA warned in the FSA Letter that action could be taken if failures were identified in the handling of PPI complaints during the Relevant Period; and
  - (3) it is likely that a significant proportion of the complaints received in the Relevant Period were delayed without appropriate justification.
- 2.8. The FSA also recognises that:
  - (1) Co-op's process delayed rather than denied consumers redress;
  - (2) in order to address the undue delay in the resolution of complaints, interest was paid to consumers in a manner which Co-op considered to be in line with FSA guidance. Accordingly, the FSA understands that no customer suffered additional financial loss as a result;
  - (3) there is no evidence that the breach indicates a widespread problem or weakness at Co-op; and
  - (4) Co-op has cooperated with the FSA in relation to this matter.

### **3. DEFINITIONS**

- 3.1. The definitions below are used in this Notice:

**“the FSA”** means the Financial Services Authority of 25 The North Colonnade, Canary Wharf, London, E14 5HS.

**“Co-op”** means The Co-operative Bank plc.

**“the Firm”** means The Co-operative Bank plc.

**“the Principles”** means the FSA’s Principles for Businesses as set out in the FSA Handbook.

**“DISP”** means the Dispute Resolution: Complaints Sourcebook as set out in the FSA Handbook.

**“the Relevant Period”** means the period between 21 January 2011 and 9 May 2011.

**“PPI”** means Payment Protection Insurance.

**“PS 10/12”** means Policy Statement 10/12, ‘The assessment and redress of Payment Protection Insurance complaints; feedback on the further consultation in CP 10/6 and final Handbook text’

**“BBA”** means the British Bankers’ Association.

**“NPF”** means Nemo Personal Finance Limited.

**“the JR”** means the Judicial Review proceedings challenging the FSA’s decision to introduce the measures set out in PS 10/12.

**“the FSA Letter”** means the FSA’s letter from Christina Sinclair to Trade Associations dated 21 January 2011.

**“the Group”** means The Co-operative Banking Group Limited.

**“CP 09/23”** means Consultation Paper 09/23, ‘The assessment and redress of payment protection insurance complaints’.

**“the Open Letter”** means the FSA’s letter to the industry dated 29 September 2009.

**“CP 10/6”** means Consultation Paper 10/6, ‘The assessment and redress of payment protection insurance complaints; feedback on CP 09/23 and further consultation’.

**“the FOS”** means the Financial Ombudsman Service.

**“the Policy”** means Co-op’s Interim Payment Protection Insurance Complaints Policy.

**“ICOB” or “ICOBS”** means the Insurance: Conduct of Business sourcebook as set out in the FSA Handbook.

**“DEPP”** means the FSA’s Decision Procedure & Penalties Manual.

**“the Act”** means the Financial Services and Markets Act 2000.

## 4. FACTS AND MATTERS

### Background

#### *The Firm*

- 4.1. Co-op is an operating subsidiary of The Co-operative Banking Group Limited (the Group). It offers a range of financial products, including current accounts, savings accounts, credit cards and loans. The Firm has been authorised to perform regulated activities by the FSA since 1 December 2001.

#### *Payment Protection Insurance (PPI)*

- 4.2. PPI is an insurance product which covers loan or debt repayments in certain circumstances where the consumer is unable to service the debt. Typically, PPI is offered or sold to the consumer at the same time the credit is taken out as either a single up front premium or as a separate monthly instalment.

- 4.3. Historically, Co-op offered PPI for loans, credit cards and mortgages. In the Co-operative Group Annual Report 2009, the Firm stated that:

*“There has been extensive regulatory scrutiny of the payment protection insurance (PPI) market over recent years, and, as a result of this, following a request by the FSA to a number of institutions in the market, the Bank stopped selling its single premium PPI product in January 2009.”*

#### **Policy Statement 10/12**

- 4.4. On 14 January 2005, the FSA became responsible for regulating firms selling general insurance products. Since that time the FSA has taken a series of steps to ensure that customers were treated fairly in the sale of PPI.

- 4.5. There have been extremely serious problems in relation to PPI across the financial services industry. There were widespread weaknesses in PPI selling practices and there have been a very high number of complaints about PPI.

- 4.6. In relation to the handling of PPI complaints, in 2009 the FSA developed serious concerns about the fairness with which firms were assessing consumer complaints about past PPI sales. These concerns were prompted by:

- (1) the increasing volume of PPI complaints being received by firms;
- (2) the large number of PPI complaints being referred to the Financial Ombudsman Service (the FOS);
- (3) the significant difference in consumer experience and outcome between PPI complaints to firms and those referred to the FOS;
- (4) the FSA’s discussions with the FOS concerning its dealings with some firms’ complaint handling departments concerning PPI complaints;

- (5) the FSA's own analysis of samples of complaints decisions made by some firms;
  - (6) findings from the FSA's thematic work, mystery shopping, and enforcement actions concerning firms' sales practices and views on applicable sales standards; and
  - (7) the FSA's dialogue with firms and other industry representatives about the approach adopted in assessing PPI complaints.
- 4.7. The FSA, therefore, took action to ensure that PPI complaints were dealt with properly by firms.
- 4.8. As part of this, on 29 September 2009, the FSA published Consultation Paper 09/23, 'The assessment and redress of payment protection insurance complaints' (CP 09/23). This set out the FSA's proposals for:
- (1) guidance on the fair assessment and (where appropriate) redress of complaints related to sales of PPI; and
  - (2) rules requiring firms to re-assess, against the proposed new guidance, complaints about PPI sales that the firm had previously rejected.
- 4.9. At the same time as CP 09/23, the FSA published a letter (the Open Letter) to the industry, detailing the common failings in PPI sales practices. This set out six common types of failings in PPI sales:
- (1) failings in the conduct of the sale;
  - (2) failings around eligibility and exclusions and limitations;
  - (3) failings around suitability;
  - (4) failings around price disclosure;
  - (5) additional failings specific to single premium policy sales; and
  - (6) additional failings specific to regular premium policies.
- 4.10. On 9 March 2010, the FSA entered into further consultation by publishing Consultation Paper 10/6, 'The assessment and redress of payment protection insurance complaints; feedback on CP 09/23 and further consultation' (CP 10/6). This provided an additional six weeks for consulting on the FSA's proposals.
- 4.11. On 10 August 2010, the FSA published Policy Statement 10/12, 'The assessment and redress of Payment Protection Insurance complaints; feedback on the further consultation in CP 10/6 and final Handbook text' (PS 10/12). This reported on the responses that the FSA received to the further consultation in CP 10/6, and on the decisions that were reached in light of them, including final Handbook text. The FSA anticipated that the package of measures would lead firms to:

- (1) handle PPI complaints more fairly and consistently, benefiting consumers who may have been mis-sold PPI and who complain, and reducing the heavy burden of cases on the FOS; and
- (2) deliver fairer outcomes to consumers who may have been mis-sold PPI but who have not complained.

4.12. At the same time as PS 10/12 was published, the FSA stated in a press release:

*“This remedy is fair to consumers and the industry alike. The onus is now on the industry to ensure it treats all customers fairly. We will be monitoring the implementation of our guidance closely to ensure real change is delivered.”*

4.13. The provisions of PS 10/12 came into force on 1 December 2010.

### **The Judicial Review**

4.14. On 8 October 2010, the British Bankers’ Association (BBA) and Nemo Personal Finance Limited (NPF) began Judicial Review (the JR) proceedings challenging the FSA’s decision to introduce the new PPI complaints handling measures.

4.15. Specifically, the BBA applied to the Courts for a judicial review of:

- (1) the FSA’s approach contained in PS 10/12; and
- (2) the FOS approach to PPI sales complaints contained in its guidance.

4.16. The JR was heard in the High Court during the week commencing 24 January 2011 and was subsequently rejected on 20 April 2011.

4.17. On 9 May 2011, the BBA and NPF announced that they had decided not to appeal against the judgment bringing the JR proceedings to an end.

### **Co-op’s Policy**

4.18. On 15 October 2010, Co-op introduced an initial draft of its ‘PPI Complaints Policy – Interim’ (the Policy). This was an interim policy to be followed pending the conclusion of the JR:

*“Any complaints received from 8<sup>th</sup> October 2010 or currently undergoing investigation as at 8<sup>th</sup> October 2010 will be handled in accordance with this Policy.”*

4.19. A key aspect of the Policy was that it set out the circumstances in which a complaint could be finally determined during the JR.

4.20. The Policy instructed staff to:

- (1) assess the customer’s eligibility to claim on the PPI policy at the time of the sale, where the eligibility assessment included:
  - *“customers age at the point when the product was taken out...*

- *UK residency...*
  - *Hours of paid employment per week...*
  - *a permanent job (rather than casual, seasonal, occasional or temporary)”*
- 2) If eligibility was not an issue, the Policy stated that *“In addition there are some infrequent situations where a decision would be able to be made”*. The following non-exclusive examples were given (with no guidance as to the other situations in which a decision may be possible):
- *“Mental Incapacity*
  - *PPI positive choice box not ticked but PPI still on loan contrary to customer request (e.g. processing error)*
  - *Loan and PPI premiums continue to be taken after agreed end date or repayment of loans (ie loan in credit due to Standing order problem or processing error)*
  - *CPI customer not aware that they had the product as initially provided for free under offer*
  - *Processing error where we have not cancelled the product following customer request. ”*

4.21. In addition to setting out the circumstances in which a complaint could be dealt with during the JR, where a complaint was to be put on hold, the Policy also provided for a customer’s financial hardship to be considered.

4.22. The Policy did not provide for complaints raising other common issues such as the suitability of the product or the disclosure of policy information (as set out in the FSA Letter – see further below).

4.23. The Policy was subsequently updated on 18 October 2010, 27 October 2010, 7 December 2010 and 21 February 2011. There were no significant amendments made to the Policy in these revisions.

### **Letter to Trade Associations**

4.24. Following the start of the JR, the FSA became increasingly concerned about the way in which firms were handling PPI complaints during the legal proceedings. The FSA became aware that some firms were placing on hold nearly all of their PPI complaints, citing the JR as the reason for this. Whilst the FSA recognised that there would be some complaints which would turn on the outcome of the JR and could not, therefore, be dealt with whilst the JR was in progress, the FSA considered it essential that firms did not adopt a strategy of putting all or the majority of complaints on hold pending the outcome of the legal proceedings. The FSA expects consumer complaints to be handled in a proper and timely manner. It was, therefore, crucial that firms gave due attention to points made in any publication by the FSA. Otherwise customers, who had

been mis-sold to, would be caused further detriment if their complaints were not dealt with fairly and appropriately.

4.25. On 21 January 2011, the FSA publicly set out its expectations for PPI complaint handling during the course of the JR in the FSA Letter. This was addressed to Trade Associations but also published at the same time.

4.26. The FSA Letter was to act as a reminder that, despite the legal challenge to the PPI complaint handling measures, the FSA still expected firms to carry out a full review of all PPI complaints received:

*“Following the launch of the judicial review, a number of trade associations approached us to discuss their interpretation of our Dispute Resolution: Complaints sourcebook (DISP), in particular DISP 1.6.2R, and whether this rule enabled their members to defer assessment of all PPI complaints pending the conclusion of the judicial review process...*

*We have made it clear to the trade associations that have approached us that in our view DISP 1.6.2R(2) does not permit firms to take a standard or generic approach to PPI complaints which could, for example, have the effect that all or substantially all complaints are not issued with a final response during the judicial review. Rather, we expect firms to consider each PPI complaint in order to be able to conclude whether or not its resolution is dependent on the outcome of the judicial review.”*

4.27. The FSA Letter outlined at a high level the types of complaint that the FSA considered could be progressed, and provided examples of these. The letter stated that where a complaint could be upheld under the general law and/or ICOB/ICOBS the complaint should be progressed notwithstanding the JR. Examples of complaints that should be progressed were given as follows:

- (1) complaints about a sale where the customer was not provided with a policy summary; and/or
- (2) complaints about an oral sale where the customer’s attention was not drawn to the importance of reading the policy summary; and/or
- (3) complaints about a sale where information was communicated to the customer in an unclear, unfair or misleading way; and/or
- (4) complaints where the firm advised on the sale of PPI policy without taking reasonable care to ensure its suitability.

4.28. The FSA acknowledged that some complaints would concern matters which were being challenged by the JR, but did not accept that all PPI complaints would do so.

4.29. The FSA Letter was reviewed and circulated internally by Co-op on the date of its issue. This bulletin set out the FSA’s expectations as follows:

*“The FSA has today issued a letter to remind firms of their obligations in handling PPI claims and to address the status of PS10/12 pending the outcome of the judicial review.*



*The FSA expects firms to conduct an initial review of all PPI complaints in order to determine whether its resolution is dependent on the outcome of the judicial review. Where the complaint relates to a breach of the general law and/or ICOB or ICOBS, and appropriate action can be taken, the firm should take action and/or grant redress. These complaints should not be put on hold.”*

4.30. The FSA Letter did not set new requirements. It was, however, a reminder to firms of their obligations and the FSA’s expectations. This should have prompted Co-op to review its Policy and consider whether changes needed to be made in light of the FSA Letter. In fact, Co-op reviewed its Policy and decided no amendment was required notwithstanding the contents of the FSA Letter.

### **FSA’s review of Co-op complaint files**

4.31. The FSA reviewed a small sample of complaints pertaining to regulated sales of PPI dealt with by Co-op during the Relevant Period. This found that 100% of cases reviewed were incorrectly stayed, in circumstances identified in the FSA Letter as those in which a complaint should be progressed during the JR.

4.32. For example, Co-op failed to progress two complaints where the customer claimed:

(1) *“When I took out the card, I was made to believe that my application would only be successful if I also buy a PPI policy...I do not believe being put under pressure to buy this policy as part of the credit card deal was a fair and reasonable obligation as I did not need this insurance...I was not told that PPI will only pay one year only of the monthly repayments if I needed to make a claim...I was not asked if my employers would pay me sick pay...I was made to believe that payment protection insurance was a condition of the agreement...”*

(2) *“I was not told that the PPI was optional...It was implied that the acceptance of the PPI element by me as part of [sic] the loan was expected....My personal situation with regards to my salary...in the event of accident/sickness/redundancy was not discussed with me.”*

4.33. Given the flawed guidance in the Policy combined with the high failure rate in the sample, it is likely that a significant proportion of the complaints received in the Relevant Period were delayed without appropriate justification.

4.34. The FSA reviewed a small sample of complaints about regulated sales of PPI which were dealt with by Co-op in the course of the JR to check whether they were dealt with within the eight-week timescale prescribed by DISP 1.6.2R. This found that Co-op failed to respond to some complainants within this time.

### **Stayed Complaints**

4.35. During the Relevant Period, Co-op received 1,629 complaints concerning sales of PPI. The Firm took the decision to stay 930 of these on the basis that they could not be finally determined until the JR was concluded. This was 57.1% of the complaints received during this time.

## **5. FAILINGS**

- 5.1. The regulatory provisions relevant to this Final Notice are referred to in Annex A.
- 5.2. In dealing with PPI complaints in the Relevant Period, Co-op breached Principle 6 by failing to pay due regard to the interests of its customers and treat them fairly. This was because:
- (1) Co-op's process for dealing with PPI complaints during the JR was inadequate and was likely to lead to a failure to identify complaints capable of being progressed during the JR. The Firm's PPI complaint handling process instructed staff to only check whether a complaint was alleging eligibility or whether it fell within limited but non-exhaustive additional categories with no guidance provided as to what other categories might be relevant. It did not provide for complaints raising issues such as the suitability of the product or the disclosure of policy information (as set out in the FSA Letter); and
  - (2) Co-op incorrectly stayed PPI complaints that were capable of being progressed (and in circumstances specifically identified in the FSA Letter as the type of complaints which should be progressed during the JR). This resulted in an unnecessary and unjustified delay in the resolution of a considerable number of customer complaints.
- 5.3. Co-op also failed to send a final response to some complainants within the eight-week timescale prescribed by DISP 1.6.2R.

## **6. SANCTION**

- 6.1. The FSA's policy on the imposition of financial penalties and public censures is set out in the FSA's Decision Procedure & Penalties Manual (DEPP) and the Enforcement Guide. In determining the appropriate outcome in this case, the FSA has had regard to this guidance. The FSA considers that the seriousness of this matter merits the imposition of a financial penalty.
- 6.2. DEPP 6.1.2G provides that the principal purpose of a financial penalty is to promote high standards of regulatory conduct. It seeks to do this by deterring firms who have breached regulatory requirements from committing further contraventions, helping to deter other firms from committing contraventions and demonstrating generally to firms the benefit of compliant behaviour.
- 6.3. The FSA introduced a new policy for imposing a financial penalty in March 2010, which requires the FSA to apply a five-step framework to determine the appropriate level of the financial penalty. This policy is set out in Chapter 6 of DEPP. In this case, as the Relevant Period is 21 January 2011 to 9 May 2011, the FSA has applied the new policy to calculate the appropriate penalty for Co-op's breach.

### **Step 1: disgorgement**

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

6.5. The FSA has not identified any financial benefit that Co-op derived directly from its breach.

6.6. Step 1 is therefore £0.

## **Step 2: the seriousness of the breach**

6.7. Pursuant to DEPP 6.5A.2G, at Step 2 the FSA 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 from the relevant products or business area.

6.8. The FSA considers that the revenue generated by Co-op is not an appropriate indicator of the harm or potential harm caused by its breach in this case. The FSA considers that a figure based on a percentage of Co-op's relevant redress is an appropriate indicator of the harm or potential harm caused by its breach in this case. In respect of all complaints relating to PPI that were stayed during the Relevant Period, Co-op's relevant redress is equal to the amount of redress (including any interest) paid out on these complaints. The period of Co-op's breach was from 21 January 2011 to 9 May 2011. The FSA considers Co-op's relevant redress for this period to be £3,238,202.

6.9. In cases where revenue is indicative of the harm or potential harm that may have been caused, in deciding on the percentage that forms the basis of the step 2 figure, the FSA 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:

Level 1 – 0%

Level 2 – 5%

Level 3 – 10%

Level 4 – 15%

Level 5 – 20%

6.10. For the purposes of this case, the FSA has applied the same range of percentages.

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

6.12. DEPP 6.5A.2(12) lists factors likely to be considered 'level 1, 2 or 3 factors'. Of these, the FSA considers the following factors to be relevant:

(1) Co-op did not make any profit or avoid any loss directly as a result of the breach;

- (2) the FSA understands that there was no loss to Co-op's consumers, individually or in general;
- (3) there is no evidence that the breach indicates a widespread problem or weakness at Co-op; and
- (4) the FSA has not found that the breach was committed deliberately.

6.13. DEPP 6.5A.2(6) lists non-exhaustive factors relating to the impact of the breach and DEPP 6.5A.2(7) lists non-exhaustive factors relating to the nature of the breach. Under the circumstances of this case, the FSA considers the following factors to be relevant to the impact and nature of the breach:

- (1) the failings unduly delayed resolution of complaints made by consumers who may have been mis-sold PPI products; and
- (2) the failings occurred despite the FSA issuing the FSA Letter, with Co-op failing to amend its Policy and incorrectly staying PPI complaints specifically identified as complaints to be progressed during the JR. The FSA warned in the FSA Letter that action could be taken if failures were identified in the handling of PPI complaints during the Relevant Period.

6.14. Taking all of these factors into account, the FSA considers the seriousness of the breach to be level 2 and so the Step 2 figure is 5% of £3,238,202.

6.15. Step 2 is therefore £161,910.

### **Step 3: mitigating and aggravating factors**

6.16. Pursuant to DEPP 6.5A.3G, at Step 3 the FSA may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the breach.

6.17. The FSA considers that the breach was aggravated by the high degree of awareness in the industry generally of the standards to be applied to complaints handling during the course of the JR following the FSA Letter (which Co-op received and was therefore aware of).

6.18. The FSA considers that the following factors mitigate the breach:

- (1) Co-op has no previous disciplinary findings recorded against it; and
- (2) Co-op has cooperated with the FSA in relation to this matter.

6.19. Having taken into account these aggravating and mitigating factors, the FSA considers that the Step 2 figure should not be increased or decreased.

6.20. Step 3 is therefore £161,910.

#### **Step 4: adjustment for deterrence**

- 6.21. Pursuant to DEPP 6.5A.4G, if the FSA 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 FSA may increase the penalty.
- 6.22. The FSA considers that the Step 3 figure of £161,910 represents a sufficient deterrent to Co-op and others, and so has not increased the penalty at Step 4.
- 6.23. Step 4 is therefore £161,910.

#### **Step 5: settlement discount**

- 6.24. Pursuant to DEPP 6.5A.5G, if the FSA 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 FSA and the firm reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.
- 6.25. The FSA and Co-op reached agreement at Stage 1 and so a 30% discount applies to the Step 4 figure.
- 6.26. Step 5 is therefore £113,337, which we have rounded to £113,300.

#### **6.27. Penalty**

- 6.28. The FSA therefore imposes a total financial penalty of £113,300 on Co-op for breaching Principle 6 and DISP 1.6.2R.

### **7. PROCEDURAL MATTERS**

#### **Decision maker**

- 7.1. The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.
- 7.2. This Final Notice is given under, and in accordance with, section 390 of the Act.

#### **Manner of and time for Payment**

- 7.3. The financial penalty must be paid in full by Co-op to the FSA by no later than 18 January 2013, 14 days from the date of the Final Notice.

#### **If the financial penalty is not paid**

- 7.4. If all or any of the financial penalty is outstanding on 19 January 2013, the FSA may recover the outstanding amount as a debt owed by Co-op and due to the FSA.

## **Publicity**

- 7.5. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the FSA must publish such information about the matter to which this notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to Co-op or prejudicial to the interests of consumers.
- 7.6. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

## **FSA contacts**

- 7.7. For more information concerning this matter generally, contact Andrew Wigston (direct line: 020 7066 286 /fax: 020 7066 287) of the Enforcement and Financial Crime Division of the FSA.

Tom Spender

Project Sponsor

FSA Enforcement and Financial Crime Division

## ANNEX A

### RELEVANT STATUTORY AND REGULATORY PROVISIONS

#### 1. STATUTORY PROVISIONS

1.1. The FSA's statutory objectives, set out in section 2(2) of the Act, are market confidence, financial stability, consumer protection and the reduction of financial crime.

1.2. Section 206 of the Act provides:

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

1.3. Co-op is an authorised person for the purposes of section 206 of the Act. The requirements imposed on authorised persons include those set out in the FSA's rules made under section 138 of the Act.

#### 2. REGULATORY PROVISIONS

##### Principles for Businesses (PRIN)

2.1. The Principles are a general statement of the fundamental obligations of firms under the regulatory system and are set out in the FSA Handbook. They derive their authority from the FSA's rule-making powers as set out in the Act and reflect the FSA's regulatory objectives. The Principles relevant to this case are as follows:

2.2. Principle 6 (customers' interests) provides:

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

##### Dispute Resolution: Complaints Sourcebook (DISP)

2.3. The Dispute Resolution: Complaints Sourcebook contains rules and guidance on how firms should deal with complaints promptly and fairly.

2.4. During the Relevant Period, DISP 1.6.2R provided that:

*“The respondent must, by the end of eight weeks after its receipt of the complaint, send the complainant:*

*1) a final response; or*

*2) a written response which:*

*a) explains why it is not in a position to make a final response and indicates when it expects to be able to provide one;*

- b) *informs the complainant that he may now refer the complaint to the Financial Ombudsman Service; and*
- c) *encloses a copy of the Financial Ombudsman Service standard explanatory leaflet.”*