
FINAL NOTICE

To: Mr Andrew John Deeney

Reference
Number: AXD00071

Date: 28 September 2023

1. ACTION

1.1. For the reasons given in this Notice, Financial Conduct Authority (the Authority) hereby:

- (1) imposes on Andrew Deeney a financial penalty of £397,400 pursuant to section 66 of the Act; and
- (2) makes an order prohibiting Mr Deeney from performing any function in relation to any regulated activities carried on by any authorised or exempt persons, or exempt professional firm pursuant to section 56 of the Act.

1.2 Mr Deeney agreed to resolve this matter and 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 £478,300 on Mr Deeney.

2. SUMMARY OF REASONS

2.1. The Authority has found that:

- (1) during his time as an adviser for Active Wealth (UK) Limited (Active Wealth) between 26 March 2015 and 12 December 2017 (the First Relevant Period), Mr Deeney breached Principle 1 (Integrity) of the Authority's Statements of Principle for Approved Persons by acting dishonestly and recklessly when performing his CF30 controlled function in relation to Active Wealth's pension business; and
- (2) during his time as a director and adviser at Fortuna Wealth Management Limited (Fortuna) between 16 May 2018 to 29 August 2019 (the Second Relevant Period) and 13 February 2018 to 5 December 2019 (the Third Relevant Period), Mr Deeney breached Principle 1 (Integrity) by acting dishonestly and recklessly when performing his CF1 and CF30 controlled functions in relation to Fortuna's business and misleading the Authority with respect to investments advised on or arranged by Fortuna.

2.2. Mr Deeney risked causing significant harm to Active Wealth's customers by providing them with unsuitable advice so that he could dishonestly receive commission payments that had been banned by the Authority. Mr Deeney made personal financial gains exceeding £200,000.

2.3. Pensions are a traditional and tax-efficient way of saving money for retirement. The benefits someone obtains from their pension can have a significant impact on their quality of life during retirement and, in some circumstances, may affect whether they can afford to retire at all. Customers who engage advisers and authorised firms to provide them with advice in relation to their pensions place significant trust in those providing the advice. Where an adviser fails to act with integrity, it exposes its customers to a significant risk of harm.

Active Wealth

2.4. Mr Deeney was an approved person at Active Wealth, a small financial advice firm which went into liquidation on 5 February 2018, and which has since been dissolved. Active Wealth was authorised by the Authority with permission to conduct regulated activities, including advising on investments, pension transfers and arranging (bringing about) deals in investments.

- 2.5. From 6 February 2015 to 12 December 2017, Mr Deeney held the CF30 (Customer) function at Active Wealth. Mr Deeney was one of two financial advisers at Active Wealth approved by the Authority to provide its customers with advice on their pensions.
- 2.6. The Authority's rules prohibited Mr Deeney from receiving commissions, remunerations or benefits of any kind apart from charging for advice provided. Mr Deeney contravened this rule by dishonestly accepting prohibited commission payments for recommending particular investments to Active Wealth's customers. These payments were funneled via apparently arm's length companies in a manner designed to disguise their true origins and Mr Deeney was aware that he was not permitted to receive these prohibited payments. When challenged by the Authority about these payments, Mr Deeney stated that they were bonus or consultancy payments. Mr Deeney knew this was not true.
- 2.7. The Authority's prohibition on commission payments was to prevent advisers having a conflict of interest between their own financial gain in recommending that customers invest their pensions in products that would produce the highest payment for the adviser as opposed the best outcome for the customer. The purpose of prohibiting these payments was to protect customers' pensions from being placed into investments that were unsuitable.
- 2.8. However, when advising customers to transfer or switch their pensions to SIPP and invest part of their SIPP funds in high risk, illiquid investments, Mr Deeney recklessly closed his eyes to the obvious risks that they were not suitable to recommend. This put customers at serious risk of receiving unsuitable advice and therefore at serious risk of investing in products that were not suitable for them.

Fortuna

- 2.9. Fortuna was a small firm based in Wombourne, Staffordshire. It was authorised from 1 June 2017 with permissions including advising on investments, pension transfers and opt outs, and arranging deals in investments.
- 2.10. Mr Deeney was Fortuna's sole director and shareholder. He was the only person at Fortuna approved to perform the controlled functions of CF1 (Director), CF10 (Compliance Oversight), CF11 (Money Laundering Reporting) and CF30 (Customer). Mr Deeney had sole responsibility for Fortuna's day-to-day conduct. Fortuna purported to take over from Active Wealth when it stopped trading by buying its goodwill including its client database in February 2018.

- 2.11. When asked by the Authority about Fortuna’s involvement in placing customers into certain high-risk investments, Mr Deeney repeatedly sought to mislead the Authority about what Fortuna had done. The Authority concludes that Mr Deeney did so in order to avoid the Authority examining his role in advising customers to make those high-risk investments, all of which have subsequently defaulted, with only one out of three defaults having been rectified.
- 2.12. Moreover, after Fortuna purchased Active Wealth’s client database, Mr Deeney allowed Fortuna to receive ongoing service fees and trail commission from about 150 customers that Active Wealth may have previously been entitled to receive. For 118 of those customers, Fortuna charged the ongoing service fees or received trail commission without the customers’ knowledge, consent or actually providing any ongoing service. Fortuna stopped the payments for some customers in January 2019, but Mr Deeney recklessly took no steps to stop the payments for most customers. It was only when challenged by the Authority that Mr Deeney took some steps to refund some customers, however, by the time Fortuna entered liquidation on 10 November 2020 it still had not repaid over £15,000 in fees and commission.

Conclusion

- 2.13. For the reasons given above, the Authority hereby:
- (1) imposes on Andrew Deeney a financial penalty of £397,400 pursuant to section 66 of the Act; and
 - (2) makes an order prohibiting Mr Deeney from performing any function in relation to any regulated activities carried on by any authorised or exempt persons, or exempt professional firm pursuant to section 56 of the Act.

3. DEFINITIONS

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

“the Act” means the Financial Services and Markets Act 2000;

“Active Wealth” means Active Wealth (UK) Limited (FRN 631415), the firm established and controlled by Darren Reynolds;

"the Active Wealth P6 Agreement" means the Portfolio Six Discretionary Portfolio Management Agreement between Active Wealth and Greyfriars dated 23 May 2015;

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

"the close family member" means the director of the Second Company who was a close family member of Darren Reynolds;

"COBS" means the Authority's Conduct of Business Sourcebook, part of the FCA Handbook of Rules and Guidance;

"DEPP" means the Decision Procedure and Penalties Manual, part of the FCA Rules and Guidance;

"DFM" means a discretionary fund manager, i.e. an authorised firm that provides investment management services for investment funds;

"the First Company" means the first company used by Darren Reynolds to funnel the prohibited commission payments;

"the First Relevant Period" means 26 March 2015 to 12 December 2017;

"Fortuna" means Fortuna Wealth Management Limited (FRN 774173), previously known as AWG Financial Ltd and Fidelis Wealth Management Ltd;

"FSCS" means the Financial Services Compensation Scheme;

"Greyfriars" means Greyfriars Asset Management LLP (FRN 229285), a DFM into which some Active Wealth customers were advised to invest;

"IFA" means independent financial adviser;;

"illiquid investment" means an investment the value of which cannot be easily realised through the availability of a secondary market;

"introducer" means any authorised or unauthorised entity or individual that referred customers to Active Wealth;

"introduction agreements" means agreements entered into to facilitate the payment of commission from the issuers to the Second Company;

"marketing agreements" means agreements entered into to facilitate the payment of commission from the issuers to the First or Second Companies;

"mini-bond" means an illiquid investment that is a debt instrument issued by an issuer, typically for a fixed interest rate repayable over a period of time;

"Portfolio Six" or "P6" means an investment portfolio created by Greymans consisting of mini-bonds;

"P6 Application Form" means Greymans' application form for investments in P6;

"the Retail Distribution Review" means the review of how investments are distributed to retail consumers in the UK commenced by the Authority in 2006;

"the Second Company" means the second company used by Darren Reynolds to funnel prohibited commission payments;

"the Second Relevant Period" means 16 May 2018 to 29 August 2019;

"SIPP" means a self-invested personal pension, a trust-based wrapper for an individual's pension investment;

"SSAS" means a small self-administered scheme, a type of employer-sponsored defined contribution workplace pension that can give the employer additional investment flexibility;

"suitability report" means the document or letter prepared by Active Wealth purporting to set out its advice to a customer;

"the Third Relevant Period" means 13 February 2018 to 5 December 2019;

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

“the UKFI instant access deposit monthly rate” means the historic average monthly interest rate of UK monetary financial institutions (excluding the Central Bank) sterling instant access deposits (excluding unconditional bonuses from households (in percent) not seasonally adjusted) (with reference IUMB6VK) published by the Bank of England;

“the Warning Notice” means the warning notice given to Mr Deeney dated 10 August 2022.

4. FACTS AND MATTERS

Background

Active Wealth

- 4.1. Active Wealth was a small firm based in Willenhall, West Midlands. It was authorised on 1 December 2014 with permission to conduct regulated activities, including advising on pension transfers and opt outs and advising on and arranging deals in investments. Active Wealth’s primary business was the provision of pension and investment advice to retail customers. Active Wealth’s sole director and shareholder was Mr Reynolds.
- 4.2. Mr Deeney held the CF30 (Customer) controlled function at Active Wealth from 6 February 2015 to 12 December 2017. Mr Deeney provided pension and investment advice to Active Wealth’s customers.
- 4.3. On 18 July 2017, Mr Reynolds undertook to the Authority that Active Wealth would not provide advice on investments into non-standard assets.
- 4.4. At the request of the Authority, on 24 November 2017 Active Wealth voluntarily agreed to cease accepting new retail customers in respect of its pensions business and to refrain from advising any existing customers, except where the advice had been signed off by an independent third party, until such time as agreed by the Authority.
- 4.5. The requirements were not lifted before Active Wealth entered into liquidation on 5 February 2018. Active Wealth was declared in default by the FSCS in March 2018, meaning that customers were eligible to claim compensation. Active Wealth was dissolved on 14 May 2019.

- 4.6. As at July 2021, the FSCS paid over £14 million in compensation to nearly 400 former Active Wealth customers. Many customers – at least 180 - suffered losses that exceeded the FSCS compensation cap of £50,000 and remain out of pocket as a result of the poor advice they received.

Pension switch and transfer advice

- 4.7. Pensions are a traditional and tax-efficient way of saving money for retirement. The benefits someone obtains from their pension can have a significant impact on their quality of life during retirement and, in some circumstances, may affect whether they can afford to retire at all. Customers who engage advisers and authorised firms to provide them with advice in relation to their pensions place significant trust in those providing the advice. It is therefore of paramount importance that advisers act with integrity when advising such customers regarding the switch or transfer of their pensions and ensure that the advice given to a customer is suitable for them, having regard to their circumstances as a whole.
- 4.8. An adviser may advise a customer to switch or transfer their pensions from their existing arrangements into a self-invested personal pension (SIPP). A SIPP is a trust-based wrapper for an individual's pension investment. It gives tax relief on the individual's contributions and tax-free growth and offers much wider investment powers than are generally available for other types of personal pensions and group personal pensions. In addition, a SIPP offers a greater degree of control over where and when funds are invested or moved than is permitted by traditional pension arrangements run by investment management and life assurance companies or defined benefit pensions.
- 4.9. When a financial adviser is advising on an investment wrapper product, such as a SIPP, that financial adviser ought to consider the suitability of the overall proposition i.e. the suitability of both the SIPP wrapper and the underlying investment, in order to be able to provide suitable advice to the customer. The recommendation must be suitable for the customer having regard to the customer's investment knowledge and experience, financial situation, and investment objectives.
- 4.10. SIPPs are sometimes used to invest in high risk, often highly illiquid unregulated investments. Such investments are unlikely to be suitable for many clients, and even for those clients for whom they may be suitable, it is likely only to be suitable

for them to invest a small proportion of their investable assets in such investments.

- 4.11. From about March 2015 to September 2016, Active Wealth recommended that at least 288 customers invest in – among other things - a portfolio of high risk, illiquid investments called “Portfolio Six” or “P6” managed by Greyfriars Asset Management LLP (Greyfriars), a discretionary fund manager (DFM). The Authority required Greyfriars to cease accepting new fund into P6 in October 2016.

Prohibited commission payments

- 4.12. COBS 6.1A.4R required firms to ensure that its advisers such as Mr Deeney did not receive commissions, remunerations or benefits of any kind apart from charging for advice provided. The purpose of this rule, introduced in 2012 as a result of the Authority’s Retail Distribution Review (RDR), was to ensure that advisers act in customers’ best interests and not simply recommend product providers that pay the highest commission.
- 4.13. During his time at Active Wealth, Mr Deeney received total income from Active Wealth of £94,773. In addition, Mr Deeney received total payments of £123,326 from the First Company and £83,023 from the Second Company.
- 4.14. As set out in paragraphs 4.15 to 4.17 below, Mr Reynolds set up the First Company purportedly to provide administration services for small self-administered pension schemes (SSASs), and a close family member set up the Second Company purportedly to provide administration services for IFA firms. However, in respect of both companies, the vast majority of their income derived from commission payments from issuers of investments into which Active Wealth’s customers invested on Active Wealth’s personal recommendations. Those payments reflected a percentage of the amounts invested. The First Company and the Second Company subsequently made payments to Mr Deeney in respect of the investments that clients he had advised had made, which was prohibited by COBS 6.1A.4R.

The First Company

- 4.15. During Mr Deeney’s time at Active Wealth, Mr Reynolds controlled the First Company that purported to carry out administration services for SSASs. However, only a small percentage of the First Company’s income was derived from administration services. Mr Reynolds primarily used the First Company as a mechanism to receive commission for investments that Active Wealth

recommended that its customers invested in, namely investments in P6 and one other investment. Once received, the First Company distributed the commission to bank accounts held by Mr Reynolds, Mr Deeney and other firms and individuals.

- 4.16. The First Company received commission pursuant to marketing agreements that it entered into with the issuers of the investments. Of the agreements obtained by the Authority, the commission ranged between 7% and 17% of the sums invested in the investments, and in one instance the percentage was not specified in the agreement. In addition, the First Company also received commission from firms that had their own marketing agreements with issuers for selling investments.
- 4.17. Mr Deeney gave the Authority contradictory explanations for the payments he received from the First Company. He told the Authority that Mr Reynolds told him that he would receive "bonus payments" from the First Company to cover his expenses in relation to Active Wealth including his time and his mileage. Mr Deeney also told the Authority that Mr Reynolds said that the payments were related to P6 and "*connected to the profitability of the portfolios and [...] he would share some of that with me*". In direct contradiction of this statement, Mr Deeney also told the Authority that in 2016 he determined on his own through observation that the payments were derived from investments through P6.
- 4.18. Mr Deeney told the Authority that once he understood that the payments he received were commission, he thought that he was permitted to receive them and that the Authority's rules did not prohibit the receipt of commission from unregulated products such as the investments in P6. This was an incorrect interpretation of the Authority's rules. He said that he did not turn his mind to consider whether his receipt of the commission presented a conflict of interest because he was just following Active Wealth's business model.
- 4.19. The Authority rejects Mr Deeney's explanations. In the Authority's view, Mr Deeney must have appreciated and did appreciate at all material times that the payments of £123,326 he received from the First Company were prohibited commission payments that were derived from investments made by Active Wealth's customers on Active Wealth's, and Mr Deeney's, personal recommendation.

The Second Company

- 4.20. In June 2016, Mr Reynolds' close family member established the Second Company. The Second Company purported to provide administration services to IFA firms and provided administration services to Mr Deeney's firm, Fortuna, in 2018. However, like the First Company only a small percentage of the Second Company's income was derived from administration services. In reality, it was another mechanism used by Mr Reynolds to receive commission from investments made by Active Wealth's customers on Active Wealth's personal recommendation, namely investments through P6 and four other investments. Once received, the Second Company distributed the commission to bank accounts held by Mr Reynolds, Mr Deeney and other firms and individuals.
- 4.21. The Second Company received commission payments pursuant to marketing and introduction agreements it entered into with issuers and intermediaries, in which the Second Company agreed to sell investments to prospective investors. According to the agreements obtained by the Authority, the commission ranged between 4% and 17% of the total amount invested and in several instances the percentage was not specified in the agreement.
- 4.22. Mr Deeney told the Authority that the payments he received from the Second Company related to "consultancy" he provided to Active Wealth to oversee the work of Active Wealth employees, including oversight of the processing of applications and answering questions regarding paperwork. Mr Deeney submitted invoices to the Second Company that specified that the payments were for "business support and consultancy work". However, Mr Deeney knew at all material times that the payments of £83,023 he received from the Second Company represented prohibited commission payments derived from investments made by Active Wealth's customers on Active Wealth's and Mr Deeney's personal recommendation. Mr Deeney's explanation to the Authority was untrue and the invoices were created as a sham to conceal the true nature of the payments.
- 4.23. Mr Deeney therefore financially benefited from the commission paid by issuers to the First and Second Company for Active Wealth's part, including his part, in the facilitation of the sale of investments to Active Wealth customers, contrary to COBS 6.1A.4R. This created a conflict of interest between Mr Deeney and the customers who trusted him to provide sound advice. Mr Deeney was aware of the conflict of interest and that the arrangements breached the Authority's Rules. Mr Deeney therefore acted without integrity in accepting the commission.

- 4.24. As set out below, Mr Deeney had a fundamentally flawed approach to providing pension advice and put customers at significant risk of receiving unsuitable advice. The Authority considers that Mr Deeney financially benefitted from the flawed approach by receiving the prohibited Commission payments.

Failures in Greymfriars P6 investment advice

- 4.25. During his time at Active Wealth, Mr Deeney advised about 65 customers to switch or transfer their existing pension arrangements to SIPP and subsequently advised them to invest part of their SIPP funds in P6. For the reasons set out below, Mr Deeney failed to provide proper advice to these customers.

Active Wealth's relationship with Greymfriars and P6

- 4.26. The Greymfriars DFM service operated a range of risk rated portfolios aimed at financial advisers. One of these portfolios was Portfolio Six (P6), which was made up of mini-bonds including overseas investments in real estate, car parks, renewable energy and holiday resorts. The bonds were not listed on a regulated market and promised returns of between 6% and 15% per annum. P6 investments were high risk and illiquid which were unlikely to be suitable for retail customers. Following intervention by the Authority, P6 closed to new investment in October 2016.
- 4.27. On 23 May 2015, Active Wealth entered into the Active Wealth P6 Agreement with Greymfriars. Under the agreement, Active Wealth was responsible for selecting and assessing the suitability of P6 when advising the customer to invest in the portfolio.
- 4.28. A firm is required to take reasonable steps to ensure that the investments that are recommended to its customers are suitable for those customers (COBS 9.2.1R). In order to determine whether an investment is suitable for a customer, a firm needs to undertake due diligence on the investment to understand how it works. This is the process a firm carries out to assess, among other things, the nature of the investment and its risks and benefits. Mr Reynolds was responsible for determining that P6 was potentially a suitable investment for Active Wealth's customers and did so based on due diligence conducted for Active Wealth by a third party.
- 4.29. However, as an approved person holding the CF 30 (Customer) function at Active Wealth, Mr Deeney was required, among other things, to act with integrity and to use due skill, care and diligence in discharging his function. In the circumstances,

while he was entitled to place a degree of reliance on the due diligence and assessment of P6 for which Mr Reynolds was responsible, he was not entitled to close his eyes to, or to be reckless as to, the obvious risks that recommending P6 would not be compatible with his customers' objectives and would expose them to losses that they could not bear.

- 4.30. Mr Deeney admitted to the Authority that he had limited knowledge of P6 and its underlying products and this knowledge was largely based on what Mr Reynolds told him about them. However, Mr Deeney knew that the underlying products in P6 were unregulated investments, including overseas property investments, and that those products relied on alternative funding because they could not receive funding from mainstream banks. Mr Deeney knew that the underlying products carried a higher risk that customers might lose some or all of their pension funds and were not protected by the FSCS.
- 4.31. Notwithstanding Mr Deeney's awareness of the significant risks of these underlying products, he usually recommended that customers, including those that he assessed as having a cautious attitude to risk or who were not sophisticated investors, invest in P6. He told the Authority that he did so because it was Active Wealth's "preferred" investment and that it was "part of Active Wealth's investment process" to recommend P6. He also believed that the product was liquid because it allowed clients to withdraw or move their investment, which meant he had no concern about recommending it. In taking that view, Mr Deeney ignored the risk warnings in the P6 documentation which made it clear that, in stressed market conditions, investors may find it very difficult or impossible to realise their investment.
- 4.32. As set out above, Mr Deeney was aware of the higher risk that the P6 investment carried. In these circumstances, it was wrong for Mr Deeney to ignore the obvious risk that the underlying investments were unsuitable.

Consequences of failure

- 4.33. Mr Deeney's failure put customers at serious risk of receiving unsuitable advice and therefore at serious risk of investing in products that were not suitable for them. Although Mr Deeney denied being aware that the substantial payments he received from the First Company and the Second Company were commission for putting customers into particular investments, the Authority does not believe this to be credible. It is not credible that Mr Deeney could have failed to appreciate the real nature of these payments, or that he did not take an interest in

understanding what they represented. Mr Deeney admitted that he was at some point aware that payments he received from Simple Pension related to investments in P6 but continued to accept the payments. Mr Deeney denied being incentivised to recommend those products as a result of the commission payments. Again, the Authority does not find this to be credible. The scale and frequency of the payments indicate that they were a powerful incentive.

Background – Fortuna

- 4.34. Prior to leaving Active Wealth in December 2017, Mr Deeney established Fortuna. Fortuna was a small firm based in Wombourne, Staffordshire. It was authorised from 1 June 2017 with permission to conduct regulated activities, including advising on investments, pension transfers and opt outs, and arranging deals in investments.
- 4.35. Mr Deeney was Fortuna’s sole director and shareholder. He was the only person at Fortuna approved to perform the controlled functions of CF1 (Director), CF10 (Compliance Oversight), CF11 (Money Laundering Reporting) and CF30 (Customer). Mr Deeney had sole responsibility for Fortuna’s day-to-day conduct.
- 4.36. In February 2018, after Active Wealth entered into liquidation, Fortuna purchased Active Wealth’s goodwill, including its client database containing the personal information of over 900 customers. Fortuna took on some of these clients.

Misleading the Authority with respect to the High-Risk Bonds

Fortuna customers’ investments in the High-Risk Bonds

- 4.37. Between February 2018 and August 2018, Fortuna arranged for 22 customers (most of whom were former Active Wealth customers) to invest in the High-Risk Bonds. In total, Fortuna’s customers invested around £1.6m in the High-Risk Bonds. Mr Deeney ultimately accepted that Fortuna advised two of those customers on the investments, although Fortuna had, at the time, submitted papers confirming to the investment broker that Fortuna had advised almost all of them. The investments were made after Active Wealth had undertaken to the Authority not to provide advice to investors on non-standard assets and the majority were made after Active Wealth had been placed into liquidation. The High-Risk Bonds were high-risk investments. All three of the series of the High-Risk Bonds in which Fortuna’s customers investors were invested have since defaulted, with the default for only one of the series having been subsequently rectified.

The New Business Registers

- 4.38. At regular intervals from December 2017, the Authority required Fortuna to provide it with New Business Registers (NBRs) setting out the investments it had arranged. None of the NBRs provided by Fortuna included the investments in the High-Risk Bonds. The first NBR that should have contained reference to the investments in the High-Risk Bonds was provided by Fortuna on 16 May 2018.
- 4.39. On 10 January 2019, Mr Deeney was informed that he was being investigated by the Authority in respect of his conduct whilst an adviser at Active Wealth. He was specifically informed that the investigation would examine whether Mr Deeney provided customers unsuitable advice and misleading information about the risks of the investments he recommended.
- 4.40. On 14 March 2019, the Authority asked Fortuna to provide it with an NBR with, amongst other things, details of underlying investments of all business, including the full name of the investments, and whether they were standard or non-standard, which Fortuna had arranged over the previous two years. On 28 March 2019, Mr Deeney provided an NBR to the Authority. Like all the other NBRs that Mr Deeney had provided, that NBR did not make any reference to the High-Risk Bonds.
- 4.41. Mr Deeney told the Authority that his failure to include the High-Risk Bonds was an honest mistake and that he did not think he had to include the investments because (a) it was not business on which Fortuna had advised or been remunerated and (b) he thought that the High-Risk Bonds were standard assets. There was nothing in the Authority's request to suggest that he could exclude such business. According to Mr Deeney, he had in fact advised on two cases, and in almost all cases he had represented to the broker arranging the investment and the platform provider that Fortuna had advised the client involved. By omitting the High-Risk Bonds from the NBR, Mr Deeney intended to mislead the Authority as to Fortuna's activities in relation to the High-Risk Bonds. Mr Deeney also intended to mislead the investment broker and the platform provider by falsely representing that Fortuna had given advice.

The June 2019 Information Requirement

- 4.42. On 12 June 2019, the Authority sent Fortuna an information requirement (the Fortuna Information Requirement), requiring it to provide certain information relating to debt instruments including mini-bonds, including whether it had been

involved in the distribution of or arranged customers to invest in such investments. The requirement indicated that it should be interpreted broadly. Mr Deeney responded that Fortuna did not advise on or arrange for customers to invest in any such investments.

- 4.43. Mr Deeney's responses were false and misleading because he failed to tell the Authority that Fortuna had arranged for customers to invest in the High-Risk Bonds and, in respect of two customers, advised them to invest.
- 4.44. Mr Deeney told the Authority that he provided the responses because he thought that the Fortuna Information Requirement related only to mini-bonds and did not believe that the High-Risk Bonds were mini-bonds. However, the Authority rejects Mr Deeney's explanation. He was told to interpret the questions broadly and knew that the High-Risk Bonds were debt instruments that were relevant to the Fortuna Information Requirement.
- 4.45. Mr Deeney also stated that he did not consider that Fortuna had been involved in the manufacture or distribution of the High-Risk Bonds because it only arranged the investments on an execution-only basis, meaning that Fortuna did not provide advice in respect of the investments. However, the Authority rejects that explanation because it must have been obvious to Mr Deeney that Fortuna had distributed the High-Risk Bonds by arranging customers to invest in them whether or not he had provided advice to those customers. Further, Mr Deeney's explanation was untrue because, as he subsequently told the Authority, Fortuna did not arrange two customers' investments on an execution-only basis, rather Fortuna arranged those investments after providing advice to those customers in respect of the High-Risk Bonds.
- 4.46. The Authority concludes that Mr Deeney sought to deliberately mislead the Authority as to Fortuna's involvement in the sale of the High-Risk Bonds.

The June 2019 supervisory visit

- 4.47. On 26 June 2019, the Authority conducted a supervisory visit to Fortuna's premises (the Fortuna Visit). During the Fortuna Visit, the Authority initially asked Mr Deeney whether Fortuna had arranged investments in the High-Risk Bonds. Mr Deeney replied, "[The High-Risk Bonds]? None in [the High-Risk Bonds]." He went on to say that Active Wealth advised customers about the High-Risk Bonds and that he had "taken over agency" of some of those customers who were now with Fortuna. The Authority asked him to explain this in more detail. Mr Deeney said

that Mr Reynolds may have written to “the provider” to ask them to change the customers to Fortuna, but they were originally Active Wealth’s customers.

- 4.48. The Authority then showed Mr Deeney an application form he had completed that indicated that Fortuna advised customers to invest in the High-Risk Bonds and arranged the investments. The Authority highlighted to Mr Deeney that the investments in the High-Risk Bonds took place from December 2017 to August 2018. It appeared unlikely to Authority that Active Wealth could have advised on the High-Risk Bonds when in July 2017 Mr Reynolds undertook that it would not provide advice on non-standard investments. Mr Deeney stated that he could not recall but suggested that Active Wealth may have advised those customers to invest in the High-Risk Bonds and that Fortuna “signed off” the investments after Active Wealth “could no longer complete the transaction.” It was only at this point, therefore, that Mr Deeney accepted that Fortuna may have arranged the investments in the High-Risk Bonds.
- 4.49. Mr Deeney’s initial statements during the Fortuna Visit were false because, although Active Wealth had initially arranged the investments for four customers before it went into liquidation in February 2018, Fortuna subsequently arranged for a further 22 customers to invest in the High-Risk Bonds. It was not until later, when pressed, that he accepted that Fortuna may have arranged the investments. His statements that Active Wealth had advised the customers were also misleading because he failed to tell the Authority that Fortuna had advised two customers in respect of the High-Risk Bonds.
- 4.50. On 29 August 2019, the Authority imposed requirements on Fortuna with immediate effect to, amongst other things, cease all regulated activity and refund the ongoing service fees. The requirements remained in place until Fortuna entered liquidation on 10 November 2020.
- 4.51. In response to the imposition of the requirements, Mr Deeney told the Authority on 24 October 2019 that his statements during the Fortuna Visit were caused by confusion and stress and were an honest misunderstanding. He thought that the Authority had not asked him whether Fortuna had arranged investments in the High-Risk Bonds, but rather had asked whether Fortuna had advised on those investments. He maintained that Fortuna had not provided advice on the High-Risk Bonds. However, this was also untrue. It was not until a subsequent oral representations meeting with the Authority’s Regulatory Decision Committee

(RDC) on 26 November 2019 that Mr Deeney first told the Authority that Fortuna had advised two of the customers in respect of the High-Risk Bonds.

4.52. The Authority concludes that Mr Deeney's series of statements during the Fortuna Visit were intended to mislead the Authority as to Fortuna's involvement in the sale of the High-Risk Bonds.

4.53. In summary, Mr Deeney acted without integrity when he:

- (1) dishonestly omitted the High-Risk Bonds from the NBRs provided at the request of the Authority;
- (2) misled the Authority about the High-Risk Bonds in response to the Fortuna Information Requirement from the Authority; and
- (3) misled the Authority during the Fortuna Visit about the High-Risk Bonds.

4.54. Mr Deeney's explanations that he was variously confused, stressed or genuinely thought that he was being open and honest are not supported by the evidence. Rather, Mr Deeney repeatedly acted dishonestly in attempting to mislead the Authority about Fortuna's dealings with the High-Risk Bonds. Given that Mr Deeney knew that he was already under investigation for advising on similar investments, the Authority concludes that he did so because he knew that if the Authority was aware that he had placed more customers into more potentially unsuitable investments, it would reflect poorly upon him. He also knew that he would be called to explain why he had misled the investment broker and platform provider by claiming that Fortuna had advised the customers. The Authority concludes therefore that Mr Deeney acted without integrity.

Ongoing service fees and trail commission

4.55. After Fortuna acquired Active Wealth's goodwill including its client database on 13 February 2018, it contacted various product providers with which Active Wealth's customers held accounts and arranged for Fortuna to take over from Active Wealth in a process known as a novation of agency. None of the customers were party to this novation. As a consequence, Fortuna began to receive ongoing service fees from the customers' accounts that Active Wealth may have previously been entitled to receive. In addition, Fortuna also received trail commission that resulted from advice provided by another IFA firm before those customers transferred to Active Wealth.

- 4.56. A firm can only charge an ongoing service fee or receive trail commission where it is providing an ongoing service to the customer, such as regularly reviewing the performance of a customer's investments. The firm must disclose both the fee and service to the customer.
- 4.57. The Authority understands that Fortuna wrote to each of Active Wealth's customers by letter dated 28 February 2018, informing them of Active Wealth's liquidation and Fortuna's acquisition of Active Wealth's client database and offering its services. The letter made no reference to the services Fortuna proposed to provide to those customers, the fees it intended to charge for doing so or the trail commission it intended to receive.
- 4.58. Fortuna charged ongoing service fees to, or received trail commission in relation to, about 155 Active Wealth customers. The Authority became aware during the Fortuna Visit on 26 June 2019 that Fortuna had received fees and commission but that it had only provided a service to a small number of customers. At the time, Mr Deeney told the Authority that he had provided ongoing advice for six or seven customers. Following the Fortuna Visit, Fortuna agreed to undertakings to stop collecting ongoing fees where it was not providing a service.
- 4.59. On 5 July 2019, the Authority invited Fortuna to apply for the imposition of requirements on its permissions which included ceasing all regulated activities and refunding ongoing service fees where no ongoing service was provided. On 1 August 2019, Fortuna declined to apply for the requirements but proposed to repay the fees.
- 4.60. Information provided to the Authority on 5 August 2019 indicated that only 40 customers entered into a service agreement with Fortuna that disclosed the service that Fortuna would provide and the fees that it would charge. The information further indicated that Fortuna had only carried out annual reviews for 23 customers.
- 4.61. As stated in paragraph 4.50, on 29 August 2019 the Authority imposed requirements on Fortuna including a requirement that it refund ongoing service fees that it charged without providing a service.
- 4.62. In response to the imposition of requirements, on 24 October 2019, Mr Deeney provided further information to the Authority about the fees and commission payments Fortuna received, including that Fortuna had only carried out annual reviews for around 27 of the customers it had acquired from Active Wealth.

Consequently, the information suggested that Fortuna had taken ongoing service fees and commission from about 120 customers without providing them with any service, and most of them without their knowledge or consent.

- 4.63. Mr Deeney told the Authority that in January 2019 Fortuna had asked one of the product providers to stop the payment of ongoing service fees in respect of 47 of the 120 customers because Fortuna “had not managed to make contact” with them. Although Fortuna stopped collecting fees from these customers this was nearly a year after it had purchased Active Wealth’s client database, during which time it had been receiving fees without providing any service. Fortuna did not take any meaningful or timely steps to refund these fees, or stop or refund any other fees or commission charged to the remaining 73 or so customers without providing a service, until September 2019 after the Authority required it to do so.
- 4.64. The Authority has analysed fees data subsequently provided by Fortuna in November 2019. According to that analysis, from February 2018 to November 2019, Fortuna improperly received £52,078 in fees and commission from 152 out of 155 customers. This includes £35,435 taken from 118 customers where Fortuna had not disclosed that it would take the fee or commission. It also includes £42,563 taken from 148 customers where either no service had been provided to the customer or they had been overcharged for a service that was provided.
- 4.65. Following the Authority’s intervention, Fortuna repaid nearly £30,000 in ongoing service fees and trail commission to customers that it wrongly charged. However, when Fortuna entered liquidation on 10 November 2020, over £15,000 in fees and commission remained outstanding to at least 65 customers where the service was not provided or the customers were overcharged. Only 14 of those customers had been made creditors of the company in liquidation, but the liquidator has informed the Authority that none of them are likely to receive any repayment.
- 4.66. Mr Deeney acted recklessly when he charged ongoing service fees and trail commission to a large number of customers without:
- (1) their knowledge;
 - (2) their consent; and
 - (3) actually providing an ongoing service.

- 4.67. It was only when the Authority discovered Mr Deeney's misconduct that he took steps to refund those customers, and by the time Fortuna entered liquidation, there were still some refunds outstanding.

5. FAILINGS

- 5.1. The regulatory provisions relevant to this Notice are referred to in Annex A.

Statement of Principle 1

- 5.2. Statement of Principle 1 required Mr Deeney to act with integrity in carrying out his controlled functions. The Authority concludes that Mr Deeney acted without integrity, by acting both dishonestly and recklessly as set out below.

- 5.3. Mr Deeney breached Statement of Principle 1 during his time as an adviser at Active Wealth as follows:

- (1) as set out in paragraphs 4.12 to 4.24, Mr Deeney dishonestly received substantial prohibited commission payments as a consequence of advice he provided to Active Wealth customers contrary to the Authority's ban on commission payments;
- (2) as set out in paragraphs 4.25 to 4.33, Mr Deeney recklessly ignored the obvious risk that P6 was unsuitable for his clients, and proceeded to recommend it.

- 5.4. Mr Deeney breached Statement of Principle 1 during his time as director and adviser at Fortuna as follows:

- (1) as set out in paragraphs 4.37 to 4.54, Mr Deeney dishonestly and repeatedly sought to mislead the Authority regarding Fortuna's dealings with the High-Risk Bonds; and
- (2) as set out in paragraphs 4.55 to 4.67, Mr Deeney recklessly allowed Fortuna to receive ongoing service fees and trail commission from Active Wealth's former customers without their knowledge, consent or even without actually providing an ongoing service and it was only when challenged by the Authority that Mr Deeney took steps to refund some fees.

6. SANCTION

Financial penalty

- 6.1. 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 6.5B sets out the details of the five-step framework that applies in respect of financial penalties imposed on individuals in non-market abuse cases.
- 6.2. Where the breaches stem from two or more separate and distinct areas of misconduct, the Authority will usually treat them as separate cases and calculate separate penalties. The Authority considers this an appropriate matter in which to calculate three separate penalties in respect of Mr Deeney's breaches.
- 6.3. The penalty calculations are set out at Annexes B, C and D to this Notice. Having regard to all the circumstances, the Authority considers the following financial penalties to be appropriate:
- (1) As set out in Annex B, £318,000 for breaching Statement of Principle 1 in respect of his conduct during the First Relevant Period in respect of his time at Active Wealth.
 - (2) As set out at Annex C, £39,500 for breaching Statement of Principle 1 during the Second Relevant Period by misleading the Authority with respect to the High-Risk Bonds; and
 - (3) As set out at Annex D, £39,900 for breaching Statement of Principle 1 during the Third Relevant Period in respect of Fortuna's ongoing service fees and trail commission.
- 6.4. The Authority therefore imposes a total penalty of £397,400.

Prohibition Order

- 6.5. The Authority has had regard to the guidance in Chapter 9 of EG in deciding to impose a prohibition order on Mr Deeney. The Authority has the power to prohibit individuals under section 56 of the Act.

6.6. The Authority considers that Mr Deeney is not a fit and proper person to perform any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm. The Authority therefore has decided that is appropriate and proportionate in all the circumstances to impose a prohibition order on him under section 56 of the Act in those terms. This follows from the Authority's findings that Mr Deeney lacks integrity by:

- (1) acting dishonestly and recklessly and by breaching Statement of Principle 1 during his time as an adviser for Active Wealth; and
- (2) acting dishonestly and recklessly by breaching Statement of Principle 1 during his time as a director and adviser at Fortuna.

7. PROCEDURAL MATTERS

7.1. This Notice is given to Andrew Deeney under and in accordance with section 390 of the Act.

7.2. The following statutory rights are important.

Decision maker

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

Manner and time for payment

7.4. The financial penalty must be paid in full by Mr Deeney to the Authority no later than 12 October 2023.

If the financial penalty is not paid

7.5. If all or any of the financial penalty is outstanding after 12 October 2023, the Authority may recover the outstanding amount as a debt owed by Mr Deeney and due to the Authority.

Publicity

7.6. 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 Authority must publish such information about the matter to which this notice

relates as the Authority considers appropriate. The information may be published in such manner 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 Mr Deeney or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

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

Authority contacts

- 7.8. For more information concerning this matter generally, contact Roshani Pulle at the Authority (direct line: 020 7066 6241/email: roshani.pulle3@fca.org.uk).

Nicholas Hills

Head of Department

Financial Conduct Authority, Enforcement and Market Oversight Division

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

RELEVANT STATUTORY PROVISIONS

1. The Authority's statutory objectives, set out in section 1B(3) of the Act, include the consumer protection objective. The consumer protection objective is defined at section 1C of the Act as securing an appropriate degree of protection for consumers.
2. Section 66 of the Act provides that the Authority may take action against a person if it appears to the Authority that he is guilty of misconduct and the Authority is satisfied that it is appropriate in all the circumstances to take action against him. A person is guilty of misconduct if, while an approved person, he has failed to comply with a statement of principle issued under section 64 of the Act, or has been knowingly concerned in a contravention by a relevant authorised person of a relevant requirement imposed on that authorised person.
3. Section 56 of the Act provides that the Authority may make an order prohibiting an individual from performing a specified function, any function falling within a specified description or any function, if it appears to the Authority that that individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, exempt person or a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities.

RELEVANT REGULATORY PROVISIONS

Statements of Principle for Approval Persons

4. The Authority's Statements of Principle and Code of Practice for Approved Persons ("APER") have been issued under section 64 of the Act.
5. Statement of Principle 1 states:

"An approved person must act with integrity in carrying out his accountable functions"
6. SUP 10A and SUP 10C.3 provide that accountable functions also include controlled functions.

The Fit and Proper Test for Approved Persons

7. The part of the Authority's Handbook entitled "The Fit and Proper Test for Approved Persons" ("FIT") sets out the criteria that the Authority will consider when assessing the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an approved person.
8. FIT 1.3.1G states that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person. The most important considerations will be the person's honesty, integrity and reputation, competence and capability and financial soundness.

The Authority's Conduct of Business Sourcebook (COBS)

9. COBS 6.1A.4R states that a firm must:

"(1) only be remunerated for the personal recommendation (and any other related services provided by the firm) by adviser charges; and

(2) not solicit or accept (and ensure that none of its associates solicits or accepts) any other commissions, remuneration or benefit of any kind in connection with a firm's business of advising or any other related services, regardless of whether it intends to refund the payments or pass the benefits on to the retail client; and

(3) not solicit or accept (and ensure that none of its associates solicits or accepts) adviser charges in relation to the retail client's retail investment product or P2P agreement which are paid out or advanced by another party over a materially different time period, or on a materially different basis, from that in or on which the adviser charges are recovered from the retail client."

The Authority's policy for exercising its power to make a prohibition order

10. The Authority's policy in relation to prohibition orders is set out in Chapter 9 of the Enforcement Guide ("EG").
11. EG 9.1 states that the Authority may exercise this power where it considers that, to achieve any of its regulatory objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities or to restrict the functions which he may perform.

DEPP

12. Chapter 6 of DEPP sets out the Authority's statement of policy with respect to the imposition and amount of financial penalties under the Act.

ANNEX B

PENALTY ANALYSIS – ACTIVE WEALTH BREACHES

1. 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 6.5B sets out the details of the five-step framework that applies in respect of financial penalties imposed on individuals in non-market abuse cases.
2. This Annex relates to Mr Deeney's breaches of Statement of Principle 1 during the First Relevant Period in respect of his time at Active Wealth.

Step 1: disgorgement

3. Pursuant to DEPP 6.5B.1G, at Step 1 the Authority seeks to deprive an individual of the financial benefit derived directly from the breach where it is practicable to quantify this.
4. Mr Deeney derived direct financial benefit from his breaches. He received prohibited commission payments totalling £206,349.
5. DEPP 6.5A.1G(1) states that the Authority will ordinarily charge interest on the financial benefit. Interest at the UKFI instant access deposit monthly rate on the commission payments that Mr Deeney received, starting from the date of the last payment, is £2,043.
6. Step 1 is therefore **£208,392**.

Step 2: Seriousness of the breach

7. Pursuant to DEPP 6.5B.2G, at Step 2, the Authority determines a figure that reflects the seriousness of the breach. That figure is based on a percentage of the individual's relevant income. The individual's relevant income is the gross amount of all benefits received by the individual from the employment in connection with which the breach occurred, and for the period of the breach.
8. The period of Mr Deeney's breaches was 26 March 2015 to 12 December 2017. The Authority considers Mr Deeney's relevant income during the period of his breaches to be £301,122, comprised of prohibited commission payments of £206,349 and payments from Active Wealth totalling £94,773.

9. In deciding on the percentage of the relevant income that forms the basis of the step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 40%. 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 individuals in non-market abuse cases there are the following five levels:

Level 1 – 0%

Level 2 – 10%

Level 3 – 20%

Level 4 – 30%

Level 5 – 40%

10. 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.

Impact of the breaches

11. Mr Deeney's financial gain stemming from his breaches was substantial (DEPP 6.5B.2G(8)(a)).
12. Mr Deeney's failings in respect of his advice to Active Wealth customers to invest in P6 meant that they were at a risk of having invested in investments that were unsuitable for them. The investments were unregulated investments and were not typically covered by the FSCS. Customers investing in unregulated investments were therefore at risk of losing all of their capital. Further, Mr Deeney's conflict of interest put customers at a significant risk of receiving unsuitable advice and therefore suffering loss ((DEPP 6.5B.2G(8)(c)).
13. The loss of substantial value in customers' pensions has caused substantial inconvenience and distress to those customers (DEPP 6.5B.2G(8)(e)).

Nature of the breaches

14. Mr Deeney's breaches spanned the entire period of his role at Active Wealth, being almost 3 years (DEPP 6.5B.2G(9)(b)).
15. Mr Deeney failed to act with integrity because he acted dishonestly and recklessly (DEPP 6.5B.2G(9)(e)).

16. Mr Deeney's misconduct meant that he did not comply with the Chartered Insurance Institute's Code of Ethics which required him to act with integrity and in the customers' best interests (DEPP 6.5B.2G(9)(g)).

Deliberate misconduct

17. Mr Deeney acted deliberately in respect of his receipt of commission in the manner set out in paragraphs 4.12 to 4.24 (DEPP 6.5B.2G(10)(b)).
18. Mr Deeney sought to conceal his knowledge about the commission he received from the Authority by misleading the Authority and creating invoices falsely recording the nature of the payments in the manner set out in paragraphs 4.17 to 4.22 (DEPP 6.5B.2G(10)(d)).

Reckless misconduct

19. Mr Deeney acted recklessly in respect of his advice to customers to switch or transfer out of their existing pension arrangements into SIPPs investing in P6 in the manner set out in paragraphs 4.25 to 4.33 (DEPP 6.5B.2G(11)(a)).

Level of seriousness

20. DEPP 6.5B.2G(12) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the Authority considers the following factors to be relevant:
 - a. The breaches caused a significant risk of loss to a large number of customers (DEPP 6.5B.2G(12)(a)).
 - b. Mr Deeney failed to act with integrity (DEPP 6.5B.2G(12)(d)).
 - c. Mr Deeney sought to conceal the purpose of the payments he received from the Second Company by creating false invoices (DEPP 6.5B.2G(12)(d)).
 - d. Mr Deeney abused the trust his customers placed in him as a financial adviser (DEPP 6.5B.2G(12)(e)).
 - e. The breaches were committed deliberately and recklessly (DEPP 6.5B.2G(12)(g)).
21. DEPP 6.5B.2G(13) lists factors likely to be considered 'level 1, 2 or 3 factors'. The Authority considers that none of these factors apply.
22. Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 5 and so the Step 2 figure is 40% of £301,122.

23. Step 2 is therefore **£120,449**.

Step 3: mitigating and aggravating factors

24. Pursuant to DEPP 6.5B.3G, at Step 3 the Authority 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.

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

a. Mr Deeney took no steps to bring the breach to the FCA's attention (DEPP 6.5B.3G(2)(a)).

b. Mr Deeney provided misleading and dishonest answers in relation to the commission payments he received when interviewed in the course of the Authority's investigation, and accordingly did not properly co-operate with the investigation (DEPP 6.5B.3G(2)(b)).

c. Mr Deeney did not take any steps to stop the breaches. In particular, he would have likely continued to receive prohibited commission had it not been for the Authority's intervention in Active Wealth's business (DEPP 6.5B.3G(2)(c)).

d. The Authority previously published alerts in 2013 and 2014 relating to the provision of advice on pension transfers or switches to SIPP's with a view to investing in unregulated, high-risk investments. Mr Deeney's conduct took place after the publication of the alerts (DEPP 6.5B.3G(2)(k)).

26. The Authority considers that there are no factors that mitigate the breach.

27. The Authority considers Mr Deeney's dishonesty with the Authority to be very serious warranting a substantial uplift to the Step 2 figure. Having taken into account these aggravating and mitigating factors, the Authority considers that the Step 2 figure should be increased by 30%.

28. Step 3 is therefore **£156,583**.

Step 4: adjustment for deterrence

29. Pursuant to DEPP 6.5B.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the individual who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.
30. The Authority considers that the Step 3 figure of £156,583 represents a sufficient deterrent to Mr Deeney and others, and so has not increased the penalty at Step 4.
31. Step 4 is therefore **£156,583**.

Step 5: settlement discount

32. Pursuant to DEPP 6.5B.5G, if the Authority and the individual 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 individual reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.
33. The Authority and Mr Deeney reached agreement at Stage 1 and so a 30% discount applies to the Step 4 figure, reducing it to **£109,608**.

Penalty

34. The Authority has therefore decided to impose a total financial penalty of **£318,000** on Mr Deeney for breaching Statement of Principle 1.

ANNEX C

PENALTY ANALYSIS – FORTUNA HIGH-RISK BONDS BREACHES

1. 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 6.5B sets out the details of the five-step framework that applies in respect of financial penalties imposed on individuals in non-market abuse cases.
2. This Annex relates to Mr Deeney's breach of Statement of Principle 1 during the Second Relevant Period by misleading the Authority with respect to the High-Risk Bonds.

Step 1: disgorgement

3. Pursuant to DEPP 6.5B.1G, at Step 1 the Authority seeks to deprive an individual of the financial benefit derived directly from the breach where it is practicable to quantify this.
4. The Authority identified no financial benefit to Mr Deeney derived directly from the breach.
5. Step 1 is therefore **£0**.

Step 2: Seriousness of the breach

6. Pursuant to DEPP 6.5B.2G, at Step 2, the Authority determines a figure that reflects the seriousness of the breach. That figure is based on a percentage of the individual's relevant income. The individual's relevant income is the gross amount of all benefits received by the individual from the employment in connection with which the breach occurred, and for the period of the breach.
7. The period of Mr Deeney's breaches was 16 May 2018 to 29 August 2019. Mr Deeney's income from Fortuna during this period was £75,250.
8. In deciding on the percentage of the relevant income that forms the basis of the step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 40%. 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 individuals in non-market abuse cases there are the following five levels:

- Level 1 – 0%
- Level 2 – 10%
- Level 3 – 20%
- Level 4 – 30%
- Level 5 – 40%

9. 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.

Impact of the breach

10. Mr Deeney did not gain any financial benefit from misleading the Authority in relation to the High-Risk Bonds. However, Mr Deeney misled the Authority because he knew that he was already under investigation for advising on similar investments and knew that Fortuna's involvement with the High-Risk Bonds may reflect poorly on him (DEPP 6.5B.2G(8)(a)).

Nature of the breach

11. Mr Deeney's breach involved providing misleading information to the Authority on multiple occasions (DEPP 6.5B.2G(9)(b)).
12. Mr Deeney failed to act with integrity because he acted dishonestly (DEPP 6.5B.2G(9)(e)).
13. Mr Deeney was an experienced industry professional (DEPP 6.5B.2G(9)(j)).
14. Mr Deeney held the only senior roles at the firm (DEPP 6.5B.2G(9)(k)).

Deliberate misconduct

15. Mr Deeney deliberately misled the Authority (DEPP 6.5B.2G(10)(a)).

Level of seriousness

16. DEPP 6.5B.2G(12) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the Authority considers the following factors to be relevant:
 - a. Mr Deeney failed to act with integrity (DEPP 6.5B.2G(12)(d)).
 - b. The breach was committed deliberately (DEPP 6.5B.2G(12)(g)).

17. DEPP 6.5B.2G(13) lists factors likely to be considered 'level 1, 2 or 3 factors'. Of these, the Authority considers the following factors to be relevant:
 - a. Mr Deeney did not make any profits as a result of the breach (DEPP 6.5B.2G(13)(a)).
18. 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 30% of £75,250.
19. Step 2 is therefore **£22,575**.

Step 3: mitigating and aggravating factors

20. Pursuant to DEPP 6.5B.3G, at Step 3 the Authority 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.
21. The Authority considers that the following factors aggravate the breach:
 - a. Mr Deeney failed to adequately co-operate with the Authority following the breach. As set out at paragraph 4.51, he continued to make false and misleading statements to the Authority after the end of the Second Relevant Period (DEPP 6.5B.3G(2)(b)); and
 - b. Mr Deeney was aware that the Authority had expressed concerns about his involvement with advising customers regarding investments similar to the High-Risk Bonds (DEPP 6.5B.3G(2)(f)).
22. The Authority considers that there are no factors that mitigate the breach.
23. The Authority considers that Mr Deeney's failure to cooperate with the Authority to be very serious warranting a substantial uplift to the Step 2 figure. Having taken into account these aggravating factors, the Authority considers that the Step 2 figure should be increased by 25%.
24. Step 3 is therefore **£28,219**.

Step 4: adjustment for deterrence

25. Pursuant to DEPP 6.5B.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the individual who committed the breach, or others, from

committing further or similar breaches, then the Authority may increase the penalty.

26. The Authority considers that the Step 3 figure of £28,597 does not represent a sufficient deterrent to Mr Deeney and others, and therefore has increased the penalty at Step 4. The Authority considers this to appropriate given that:
 - a. The Authority considers the value of the penalty too small in relation to breach to meet its objective of credible deterrence (DEPP 6.5B.4G(a));
 - b. The Authority relies on senior individuals at firms to provide adequate information to it to enable it to determine whether the firm is complying with relevant regulatory requirements. The Authority was able to detect Mr Deeney's breach because Fortuna was under greater scrutiny as a result of the investigation into his conduct at Active Wealth. However, ordinarily the likelihood of the Authority detecting a similar breach is low (DEPP 6.5B.4G(d)).
27. Taking the above factors into account, the Authority considers it appropriate to increase the figure at Step 4 by a multiple of two.
28. Step 4 is therefore **£56,438**.

Step 5: settlement discount

29. Pursuant to DEPP 6.5B.5G, if the Authority and the individual 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 individual reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.
30. The Authority and Mr Deeney reached agreement at Stage 1 and so a 30% discount applies to the Step 4 figure.
31. The Step 5 figure is therefore **£39,506**.

Penalty

32. The Authority has therefore decided to impose a total financial penalty of **£39,500** on Mr Deeney for breaching Statement of Principle 1.

ANNEX D

PENALTY ANALYSIS – FORTUNA FEES AND COMMISSION BREACHES

1. 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 6.5B sets out the details of the five-step framework that applies in respect of financial penalties imposed on individuals in non-market abuse cases.
2. This Annex relates to Mr Deeney's breach of Statement of Principle 1 during the Third Relevant Period in respect of Fortuna's ongoing service fees and trail commission.

Step 1: disgorgement

3. Pursuant to DEPP 6.5B.1G, at Step 1 the Authority seeks to deprive an individual of the financial benefit derived directly from the breach where it is practicable to quantify this. The Authority identified no financial benefit to Mr Deeney derived directly from the breach.
4. Step 1 is therefore **£0**.

Step 2: Seriousness of the breach

5. Pursuant to DEPP 6.5B.2G, at Step 2, the Authority determines a figure that reflects the seriousness of the breach. That figure is based on a percentage of the individual's relevant income. The individual's relevant income is the gross amount of all benefits received by the individual from the employment in connection with which the breach occurred, and for the period of the breach.
6. During the Third Relevant Period, Mr Deeney received total payments of £79,250 from Fortuna. Therefore, the Authority considers Mr Deeney's relevant income to be £79,250.
7. In deciding on the percentage of the relevant income that forms the basis of the step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 40%. 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 individuals in non-market abuse cases there are the following five levels:

Level 1 – 0%

Level 2 – 10%

Level 3 – 20%

Level 4 – 30%

Level 5 – 40%

8. 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.

Impact of the breach

9. Fortuna received a financial benefit from its breach which, while not large, was not insignificant as it accounted for about 26.7% of its income during this period, although Mr Deeney indirectly benefited from the breach through the income that he received from Fortuna.(DEPP 6.5B.2G(8)(a)).
10. Fortuna’s wrongful charging of ongoing service fees and trail commission caused a loss to at least 148 customers ranging from less than £100 to over £1,000 each. Not all of the fees and commission was repaid to customers by the time Fortuna went into liquidation. While the cumulative value of the loss was not large it was substantial and the individual losses likely would have been significant to some customers. It involved Fortuna taking funds from customers’ investments that it was not entitled to and inconvenience to some customers whose repayment depends on the outcome of Fortuna’s liquidation (DEPP 6.5B.2G(c) and (e)).

Nature of the breach

11. Mr Deeney’s breach was continual over two years and eight months (DEPP 6.5B.2G(9)(b)).
12. Mr Deeney failed to act with integrity because he acted recklessly (DEPP 6.5B.2G(9)(e)).
13. Mr Deeney’s misconduct meant that he did not comply with the Chartered Insurance Institute’s Code of Ethics which required him to act with integrity and in the customers’ best interests (DEPP 6.5B.2G(9)(g)).

Deliberate misconduct

The Authority has not identified any deliberate misconduct (DEPP 6.5B.2G(10)(a)).

Reckless misconduct

14. Mr Deeney acted recklessly in the manner set out in paragraphs 4.55 to 4.67 (DEPP 6.5B.2G(11)).

Level of seriousness

15. DEPP 6.5B.2G(12) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the Authority considers the following factors to be relevant:
 - a. Mr Deeney failed to act with integrity (DEPP 6.5B.2G(12)(d)).
 - b. The breach was committed recklessly (DEPP 6.5B.2G(12)(g)).
16. DEPP 6.5B.2G(13) lists factors likely to be considered 'level 1, 2 or 3 factors'. The Authority considers that none of these factors are relevant, particularly because:
 - a. Substantial profits were made as a result of the breach, both directly and indirectly (DEPP 6.5B.2G(13)(a));
 - b. As explained at paragraph 10 above, the cumulative value of the loss to customers was substantial and the individual losses would likely have been significant to some customers (DEPP 6.5B.2G(13)(b)).
17. 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 30% of £79,250.
18. Step 2 is therefore **£23,775**.

Step 3: mitigating and aggravating factors

19. Pursuant to DEPP 6.5B.3G, at Step 3 the Authority 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.
20. The Authority considers that the following factors aggravates the breach:
 - a. Although Mr Deeney identified the breach no later than January 2019 and knew that the Authority was interested in Fortuna's activities, he did not bring the breach to the Authority's attention at any time (DEPP.5B.3G(2)(a)).

21. The Authority considers that the following factors have both aggravating and mitigating components but on balance aggravate the breach:

Steps taken to stop the breach, remedial steps taken and failure to comply with undertaking (DEPP 6.5B.3G(2)(c), (d) and (g))

22. Mr Deeney took steps to partly stop the breach by instructing one of the product providers to cease paying some ongoing service fees to Fortuna in January 2019.
23. After January 2019, Fortuna continued to charge ongoing service fees and collect trail commission in respect of other customers. On 26 June 2019, Fortuna undertook to the Authority that it would stop collecting ongoing service fees where it was not providing a service. However, Fortuna continued to receive fees and commission for several months afterwards. It also did not take any steps to refund any of the fees or commission wrongly taken until after the Authority required it to do so. Further, Fortuna failed to repay all of the fees and commission before it entered liquidation.
24. The Authority considers that, on balance, Fortuna's failure to completely stop the breach in accordance with its undertaking and take remedial steps in a timely manner, and not until after the Authority required it to, more than negate the mitigatory effects of the January 2019 steps to the extent that they aggravate the breach.
25. The Authority considers that there are no other factors that mitigate the breach.
26. Having taken into account these aggravating and mitigating factors, the Authority considers that the Step 2 figure should be increased by 20%.
27. Step 3 is therefore **£28,530**.

Step 4: adjustment for deterrence

28. Pursuant to DEPP 6.5B.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the individual who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty. The Authority considers that the Step 3 figure of £28,530 does not represent a sufficient deterrent to Mr Deeney and others, and therefore has increased the penalty at Step 4. The Authority considers this to appropriate given that:

- a. The Authority considers the value of the penalty too small in relation to breach to meet its objective of credible deterrence (DEPP 6.5B.4G(a)); and
 - b. The Authority relies on senior individuals at firms to provide adequate information to it to enable it to determine whether the firm is complying with relevant regulatory requirements. The Authority was able to detect Mr Deeney's breach because Fortuna was under greater scrutiny as a result of the investigation into his conduct at Active Wealth. However, ordinarily the likelihood of the Authority detecting a similar breach is low (DEPP 6.5B.4G(d)).
29. Taking the above factors into account, the Authority considers it appropriate to increase the figure at Step 4 by a multiple of two.
30. Step 4 is therefore **£57,060**.

Step 5: settlement discount

31. Pursuant to DEPP 6.5B.5G, if the Authority and the individual 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 individual reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.
32. The Authority and Mr Deeney reached agreement at Stage 1 and so a 30% discount applies to the Step 4 figure.
33. Step 5 is therefore **£39,942**

Penalty

34. The Authority has therefore decided to impose a total financial penalty of **£39,900** on Mr Deeney for breaching Statement of Principle 1.