



Following the [decision](#) of the Upper Tribunal on 6 July 2021, the action to which this Decision Notice relates has been discontinued and no further action will be taken.

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## DECISION NOTICE

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To: **Mr Stuart Malcolm Forsyth**

Individual  
Reference

Number: **SMF01029**

30 September 2019

### 1. ACTION

1.1. For the reasons given in this Notice, the PRA has decided to:

- (1) make an order, pursuant to section 56 of the Act, prohibiting Stuart Malcolm Forsyth from performing any function in relation to any regulated activity carried on by a PRA-authorized person or an exempt person in relation to any PRA-regulated activity carried on by that person; and
- (2) impose, pursuant to section 66 of the Act, a financial penalty of £76,180 on Mr Forsyth.

### 2. SUMMARY OF REASONS

2.1. The PRA has decided to take the action set out in paragraph 1.1 because, for the reasons set out below, it considers that Mr Forsyth's conduct demonstrates a serious lack of integrity in breach of Statement of Principle 1 (Integrity) of the Statements of Principle of Approved Persons and Individual Conduct Standard 1 (Integrity) of the PRA's Insurance Conduct Standards. The PRA has concluded that Mr Forsyth is therefore not fit and proper to perform any function in relation to any PRA-regulated activity carried on by a PRA-authorized person, or by a

person who is an exempt person in relation to any PRA-regulated activity carried on by that person.

- 2.2. Mr Forsyth became the CEO of a mutual insurance firm, SBMIA, in September 2000. In 2003, Mr Forsyth arranged for Mrs Forsyth to sign an employment contract with SBMIA. He arranged for SBMIA to pay her a proportion of his salary. This arrangement was established without any formal approval from SBMIA.
- 2.3. Mr and Mrs Forsyth have asserted that Mrs Forsyth carried out administrative tasks for Mr Forsyth and hosted dinner parties for visiting SBMIA business persons who would sometimes also stay overnight at the Forsyths' house. The PRA accepts that Mrs Forsyth did carry out some work for the benefit of SBMIA as an employee.
- 2.4. Mr Forsyth instructed SBMIA's cashiers to pay Mrs Forsyth the equivalent of approximately 11.5% of his own gross salary until 2013.
- 2.5. There was a significant change from 2010 onwards, when Mr Forsyth also instructed SBMIA's cashiers to pay part, or all, of his bonus payments to Mrs Forsyth.
- 2.6. From 2013, including during a period in which both SBMIA's expense base increased and outturn after tax began to decrease from a surplus to a deficit, Mr Forsyth significantly increased the proportion of his salary which was paid to Mrs Forsyth. There can be no justification for the scale of payments by reference to any work that Mrs Forsyth was doing for SBMIA.
- 2.7. In the tax year 2015/2016, Mr Forsyth transferred £52,037 of his own remuneration to Mrs Forsyth. This sum was higher than the remuneration of any SBMIA employee apart from Mr Forsyth himself. The result of this arrangement was that between 2010 and 2016 Mr Forsyth paid approximately £18,000 less in income tax than he should have done.
- 2.8. Mr Forsyth created false minutes to give the impression that payments to Mrs Forsyth had been agreed by SBMIA's Remuneration Committee. Minutes for the Remuneration Committee for 2013, 2014 and 2015 were created by Mr Forsyth which purported to show the committee agreeing to Mrs Forsyth's salary. In fact, it was only Mr Forsyth's salary that had been agreed at those meetings.

- 2.9. When internal concerns were raised at SBMIA about certain matters, including the payment of part of Mr Forsyth's remuneration to Mrs Forsyth, Mr Forsyth improperly involved himself in the investigation by an external auditor.
- 2.10. Mr Forsyth took steps to ensure that the auditor did not include in its report to the SBMIA Board any details of what he and Mrs Forsyth were being paid and had been paid in the tax year to April 2015. Mr Forsyth's actions were in clear conflict with the interests of SBMIA, guided by self-interest and prevented any legitimate scrutiny by the Board of the substance of the allegation surrounding the payment of income tax.
- 2.11. Mr Forsyth then recklessly provided the PRA with the false minutes of the Remuneration Committee's meetings for 2013, 2014 and 2015. In doing this, he led the PRA to believe that Mrs Forsyth's remuneration had been agreed by the Remuneration Committee.

### **Breaches and failures**

- 2.12. As CEO of a small mutual insurer, Mr Forsyth occupied a position where considerable trust was placed in his integrity by SBMIA's board of directors and its members. Mr Forsyth abused that trust by improperly directing payment of a substantial amount of his remuneration to Mrs Forsyth. This was done for his financial benefit and took place over a period of time. Further, in falsifying minutes of the Remuneration Committee, Mr Forsyth concealed his salary-splitting arrangement. Mr Forsyth acted without integrity by involving himself inappropriately in the preparation of a report by the firm's external auditors, and by asking the auditors to exclude from the report information in relation to his splitting his salary with his wife. The effect of this was to mislead the Board. In recklessly sending false minutes to the PRA, he misled the PRA. In doing so, he acted without integrity.
- 2.13. Mr Forsyth failed to act with integrity in contravention of Statement of Principle 1 and Individual Conduct Standard 1 (Integrity) of the PRA's Insurance Conduct Standards.
- 2.14. Annexes A and B set out the full details of Mr Forsyth's failures.

### **PRA Powers**

- 2.15. On 1 April 2013, a new regulatory structure came into being, under which the FSA was replaced by the Financial Conduct Authority ("FCA") and the PRA. The

effective date of that change, 1 April 2013, is known as the date of Legal Cutover ("LCO").

- 2.16. Although the conduct to which this matter relates began prior to, and ended after, LCO, Part 2 of the Financial Services Act 2012 (Transitional Provisions) (Enforcement) Order 2013 ("the Transitional Provisions Order") permits the PRA to take action under section 66 of the Act in respect of misconduct occurring pre-LCO where: (a) the controlled function which the person was approved to perform is, on the LCO, a significant-influence function in relation to the carrying on of a regulated activity by a PRA-authorized person; and (b) the FSA had not, before the LCO, given a warning notice in accordance with section 67(1) of the Act in respect of the misconduct.
- 2.17. Pursuant to section 69(8) of the Act, the PRA must have regard to any statement published at the time when the contravention occurred when considering whether to impose a financial penalty (and if so, in what amount). Since the Relevant Period commenced before 1 April 2013 but continued until 8 July 2016, pursuant to article 3(4)(b) of the Transitional Provisions Order, the PRA's Penalty Policy is the relevant policy to which the PRA must have regard.

### **Sanctions**

- 2.18. As a result of Mr Forsyth's failure to act with integrity in contravention of Statement of Principle 1 and Individual Conduct Standard 1 (Integrity) of the PRA's Insurance Conduct Standards, the PRA has decided to impose a financial penalty on Mr Forsyth in the amount of £76,180, pursuant to section 66 of the Act.
- 2.19. As a result of Mr Forsyth's failure to act with integrity in contravention of Statement of Principle 1 and Individual Conduct Standard 1 (Integrity) of the PRA's Insurance Conduct Standards, Mr Forsyth's lack of fitness and propriety and the risk he poses to confidence in the financial system, the PRA has decided to make the Prohibition Order, pursuant to section 56 of the Act.

### **PRA's rationale for taking action against Mr Forsyth**

- 2.20. The PRA places great reliance on regulated individuals conducting themselves appropriately and with integrity. If senior individuals conduct themselves with a lack of integrity, it undermines the trust in financial institutions and the financial system itself. Mr Forsyth's lack of integrity had the potential to affect the safety

and soundness of the firm. The PRA's actions support its general objective of promoting the safety and soundness of PRA-authorized persons.

**Procedural Matters**

2.21. The procedural matters set out in Annex D are important.

*[[Sir William Blair], [Kishwer Falkner], [Dr. Philip Marsden]]*

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of the Enforcement Decision Making Committee, for and on behalf of the PRA

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## ANNEX A

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### **G1. PARTICULARS OF BREACHES AND FAILINGS**

#### **Facts and matters relied on**

##### **Background**

- A1.1. SBMIA is a mutual insurer that was founded in 1918 by fishermen in the area of Buckie, Scotland. It predominantly provided insurance for fishing vessels and associated insurance products. By 2016, SBMIA had one office in Buckie and had fewer than ten full-time employees. In 2017 it was acquired by another mutual insurer.
- A1.2. Mr Forsyth was the CEO of SBMIA from September 2000 until July 2016. He managed SBMIA's day-to-day operations and reported to the Board.
- A1.3. In April 2001, SBMIA established a Remuneration Committee. Its role was to decide the remuneration of all employees, including that of the CEO. Over time, both the Remuneration Committee and the Board comprised a varying number of non-executive directors, in addition to Mr Forsyth and a chairman.

##### **Difficulties facing SBMIA**

- A1.4. For most of its history SBMIA had an excess of loss policy in respect of its Hull and Machinery reinsurance. Under this arrangement SBMIA would receive and retain policy premiums from those it insured and would pay the reinsurers a set fee for entry into the reinsurance policy. Upon a claim being made, SBMIA would pay the first part of the claim up to a pre-defined limit and the reinsurers would then pay the remainder of the claim. Absent SBMIA suffering a loss beyond the limit of their cover, SBMIA's underwriting losses were capped at the retention level for the cover.
- A1.5. By 2011 SBMIA had moved 100% of its Hull and Machinery reinsurance on to a quota share policy under which both claims and premiums were passed on to the reinsurers without any retention of risk by SBMIA. SBMIA retained a small percentage of the premium to cover its business costs.

- A1.6. In 2013, after consultation with a reinsurance broker, SBMIA introduced loss corridors into its Hull and Machinery quota share reinsurance policy. Through the use of the loss corridors, SBMIA retained more of the risk in relation to the reinsurance arrangements in exchange for retention of a greater proportion of the premium.
- A1.7. Between 2013 and 2015 SBMIA's outturn after tax decreased from a surplus of £204,373 in 2013 to a deficit of £743,681 in 2015. Approximately £450,000 of losses in 2015 arose from the extra retention the insurer had from the loss corridor. Over this period, SBMIA had to put into effect arrangements to comply with Solvency II legislation.
- A1.8. Additionally, over the same time period, the expense base of the firm increased from £646,800.23 in 2013 to £912,889.82 in 2015, of which £131,389.88 related to increased personnel costs. Of the £131,389.88, £55,000 was due to an increase in Mr and Mrs Forsyth's salaries (see below).
- A1.9. Following the losses incurred during this period and subsequent PRA supervisory intervention, SBMIA, as of 18 November 2016, no longer accepted new business and entered a run-off arrangement whereby existing policies would be wound down over time.

#### **Mr Forsyth's arrangement to pay Mrs Forsyth**

- A1.10. On 7 February 2003, in response to an enquiry from Mr Forsyth, a memo was sent to Mr Forsyth by a SBMIA employee assessing the impact on SBMIA's National Insurance Employer contributions of reducing Mr Forsyth's salary by £5,000 and paying Mrs Forsyth a salary of £5,000. The net effect was stated to be a reduction of SBMIA's National Insurance Employer contributions.
- A1.11. Mr Forsyth subsequently arranged for Mrs Forsyth to become an employee of SBMIA and she signed an SBMIA employment contract on 12 February 2003. This was countersigned by Mr Forsyth. The contract described Mrs Forsyth's role as an "assistant" with a contractual salary of £5,000 per annum. The contract did not contain any specific duties or working hours.
- A1.12. SBMIA's usual procedure when deciding to employ a new member of staff was that Mr Forsyth and the Chairman of the Board would make the initial decision to employ. That decision would be ratified at Board level and the new employee's remuneration would then be subject to approval by the Remuneration Committee.

A1.13. There is no record of Mrs Forsyth's employment being agreed in any of the Board or Management Board minutes either in January or February of 2003 or anytime thereafter. Mr Forsyth arranged for Mrs Forsyth to sign a SBMIA employment contract without any scrutiny or oversight of the Board and contrary to the usual procedures for employing new staff.

A1.14. The Board was not aware of Mrs Forsyth's employment until she had already signed an employment contract. On 25 February 2004, the Chairman of the Board, on reviewing the draft audited accounts for 2003 at an SBMIA board meeting, questioned why staff numbers had increased by one. Mr Forsyth is recorded in the minutes as having told the Board that employing Mrs Forsyth *"had been a way of reducing the national insurance burden on the Association by taking an amount of his salary and paying it to his wife for entertaining at home and answering the phone."*

A1.15. Whilst Mrs Forsyth signed an employment contract with SBMIA, this was prepared by Mr Forsyth outside the usual governance procedures and it was only a year later that the Management Board was made aware of this arrangement. Furthermore, the primary effect of this arrangement was to reduce the payment of tax on Mr Forsyth's salary.

### **Work by Mrs Forsyth**

A1.16. Mr and Mrs Forsyth have asserted that Mrs Forsyth carried out some administrative tasks for Mr Forsyth, picked visitors up from the airport and hosted ad hoc entertainment at the Forsyths' family home, though there is no tangible evidence of work carried out by Mrs Forsyth.

A1.17. Further, Mrs Forsyth's work arrangements were not consistent with other employees at SBMIA in that:

- (1) Mrs Forsyth did not work from SBMIA's offices and had no set working hours;
- (2) There was no formal oversight or monitoring of her performance and no record of any hours being completed by Mrs Forsyth;
- (3) Mrs Forsyth was never issued with an SBMIA laptop;
- (4) Mrs Forsyth was not provided with an SBMIA email address;
- (5) Mrs Forsyth was not provided with payslips from SBMIA;



(6) The quantum of Mrs Forsyth's remuneration was never discussed by the Remuneration Committee, as was the case with all other SBMIA employees, and was not therefore subject to independent oversight and review; and

(7) Mrs Forsyth was not party to any discussions about her pay or bonus.

A1.18. Although an employment contract was signed, there is a question whether Mrs Forsyth can be considered to have held a genuine role at SBMIA. Though her work cannot be considered substantial, particularly after 2008 when the Forsyth family moved from the immediate vicinity of SBMIA's offices and began fostering children, the PRA accepts that Mrs Forsyth did some work as an employee. Given that up to 2010, her annual remuneration remained below £10,000, there is insufficient evidence to support a finding of lack of integrity on the part of Mr Forsyth up to this point.

#### **The payment of a proportion of Mr Forsyth's salary to Mrs Forsyth**

A1.19. The Remuneration Committee convened twice a year. The main purpose of one meeting was to agree Mr Forsyth's remuneration and the main purpose of the other meeting was to agree the salary of all other SBMIA employees. At the Remuneration Committee meetings in which Mr Forsyth's remuneration was discussed, Mr Forsyth set out his salary and bonus expectations to the committee. He then left the room to allow the committee to agree his salary and bonus. Upon re-entering the room, Mr Forsyth was informed of any pay increase and bonus (if applicable). He then typed minutes to record the decisions made by the Remuneration Committee which would be signed by the Chairman of the Remuneration Committee. The amount of Mrs Forsyth's remuneration was not discussed at any Remuneration Committee meeting and was not recorded in the minutes signed by the Chairman of the Remuneration Committee.

A1.20. From 2003 until June 2012, Mr Forsyth arranged for the equivalent of approximately 11.5% of his salary to be paid to Mrs Forsyth. The Remuneration Committee did not approve the payment of those sums of money to Mrs Forsyth.

A1.21. Between 2013 and 2016, and including during the period in which both SBMIA's expense base had increased and outturn after tax decreased from a surplus to a deficit, Mr Forsyth arranged for an increased proportion of his salary to be paid to Mrs Forsyth. This change was made without the approval of the Remuneration Committee, who did not discuss or agree any increased proportion of Mr Forsyth's salary to be paid to Mrs Forsyth. It was also made at a time when the

Remuneration Committee had agreed significant increases to the amount of Mr Forsyth's salary, and therefore resulted in large increases to the amount that Mrs Forsyth was paid.

A1.22. With respect to the May 2015 change, the Board had agreed SBMIA's Remuneration Policy, which Mr Forsyth reviewed before it was approved by the Board on 6 May 2015. This stated that SBMIA's remuneration framework was underpinned by a set of guiding principles, including that it should be applied consistently to all employees, with no 'special arrangements' inconsistent with the policy, that it should incorporate measures aimed at avoiding conflicts of interest, and that there should be a clear, transparent and effective governance structure around remuneration, incorporating independent oversight and review.

A1.23. The amount of the salary that the Remuneration Committee decided should be paid to Mr Forsyth for the years 2013/14 to 2015/16, and the split of that salary between Mr and Mrs Forsyth that was arranged by Mr Forsyth, is set out in the table below. The PRA considers that the salary that Mr Forsyth arranged to be paid to Mrs Forsyth in those years was in excess of what was reasonable for the work she was undertaking, and that Mr Forsyth arranged these levels of payments in order to reduce his tax liability.

<b>Date of Remuneration Committee meeting</b>	<b>Mr Forsyth's salary as decided by Remuneration Committee</b>	<b>Mr Forsyth's salary after split</b>	<b>Mrs Forsyth's salary after split</b>
05/06/2013	£125,000	£105,000	£20,000 (split arranged in September 2013)
28/05/2014	£140,000	£110,000	£30,000
06/05/2015	£180,000	£140,000	£40,000

### **Bonuses**

A1.24. Mr Forsyth's employment contract set out his entitlement to a performance related bonus. Annual operational and financial targets would be submitted by Mr Forsyth to the Board along with the financial budget for the coming year. The

Board determined the key targets for SBMIA for the coming year. If those targets were met, Mr Forsyth was entitled to receive a payment consisting of a percentage of his fixed salary (the percentage was to be agreed by Mr Forsyth and the Board).

A1.25. In August 2009, an addendum to Mr Forsyth's employment contract was signed by the Chairman of the Remuneration Committee stating that, with effect from 1 January 2009, if SBMIA had a surplus on ordinary activities before tax (as per the audited Financial Statements), Mr Forsyth's bonus was payable at 5% of that figure. The addendum stipulated that bonus payments were, at all times, subject to the underlying profitability of SBMIA. Sometimes, however, Mr Forsyth's bonus was not linked to SBMIA's performance, but was at the discretion of the Remuneration Committee up to a maximum of £25,000. There was no reference in Mrs Forsyth's employment contract to the payment of any bonus.

A1.26. Between 2010 and 2015, and again including during the period in which both SBMIA's expense base increased and outturn after tax began to decrease from a surplus to a deficit, Mr Forsyth arranged for a total of approximately £62,800 of his bonus payments to be paid to Mrs Forsyth. The Remuneration Committee had decided that these bonus payments should be paid to Mr Forsyth and this was recorded in documents signed by the Chairman of the Remuneration Committee. The Remuneration Committee did not approve the payment of any of these bonus payments to Mrs Forsyth.

A1.27. This marks a clear severance of any link between services provided by Mrs Forsyth and remuneration, because the bonus element was clearly linked to Mr Forsyth's work. Although a file note signed by Mr Forsyth and the Chairman of the Board dated 19 February 2010 refers to the bonus being paid to Mrs Forsyth for "additional duties" being carried out by her, there is no evidence of any such additional duties.

A1.28. To arrange for a proportion of his bonus payments to be paid to Mrs Forsyth, Mr Forsyth created documents setting out the amount of his bonus to be paid to Mrs Forsyth. Between 2010 and 2013, these documents were entitled "File Note" and stated that Mr Forsyth's bonus was to be paid to Mrs Forsyth "*in compensation for additional duties carried out*" in the previous year. In 2015 he took a different approach. After the Remuneration Committee had decided that Mr Forsyth should receive a bonus of £25,000, Mr Forsyth created two new documents, one stating that his bonus was agreed at £12,500 and the other stating that Mrs Forsyth's

bonus was agreed at £12,500.

A1.29. Mr Forsyth arranged for the documents he had created to be signed in a private meeting by the Chairman of the Board. However, this was done without the approval of the Remuneration Committee.

A1.30. In addition, on two occasions Mr Forsyth arranged for Mrs Forsyth to receive a bonus which, unlike the other bonus payments received by Mrs Forsyth, was not all or part of the bonus that the Remuneration Committee had approved to be paid to Mr Forsyth. First, in March 2011, the Chairman of the Remuneration Committee signed a document stating that Mrs Forsyth was to receive “*an additional, discretionary bonus payment of £10,000*”. Secondly, in February 2014, on the same day that the Chairman of the Remuneration Committee approved a bonus payment of £12,500 to Mr Forsyth, the Chairman of the Board signed a document stating that Mrs Forsyth was to receive a bonus payment of the same amount.

A1.31. On all other occasions when Mrs Forsyth received a bonus, the Remuneration Committee had approved bonus payments to be made to Mr Forsyth but did not approve payment of these to Mrs Forsyth. There is no evidence that Mrs Forsyth carried out any “additional duties” or any other work for SBMIA which could justify the bonus payments that she received.

A1.32. The amount of bonus payments that Mr Forsyth arranged to be paid to Mrs Forsyth during the Relevant Period is set out in the table below:

<b>Date bonus paid to Mrs Forsyth</b>	<b>Amount of bonus paid to Mrs Forsyth (£)</b>
28/02/2010	7,310
20/03/2011	9,296
20/03/2011	10,000
20/04/2012	12,500
20/03/2013	10,000
20/04/2013	11,260
20/03/2014	1,750
20/04/2014	10,750
20/05/2015	12,500

*Total payments of Mr Forsyth’s remuneration to Mrs Forsyth during the Relevant Period*

A1.33. During the Relevant Period, Mr Forsyth arranged for SBMIA cashiers to pay a

total of £200,785 of his remuneration to Mrs Forsyth, as well as the March 2011 and February 2014 bonus payments.

A1.34. This arrangement culminated in the 2015/2016 tax year, in which Mrs Forsyth received £52,037, which was more than any employee at SBMIA apart from Mr Forsyth himself.

A1.35. While the PRA considers the remuneration paid to Mrs Forsyth in this period was excessive, it considers that it is reasonable for Mrs Forsyth to have received some remuneration in this period.

### **Falsification of Remuneration Committee Minutes**

A1.36. On 5 June 2013, the Remuneration Committee met to discuss Mr Forsyth's salary and agreed an increase to £125,000 with immediate effect. A minute which had been typed by Mr Forsyth was then signed by the Chairman of the Remuneration Committee at the end of the meeting to record this decision. Subsequently, Mr Forsyth decided to split his salary so that Mrs Forsyth was to be paid £20,000 of the £125,000. He then created another minute of the same date purporting to record that the Remuneration Committee had agreed that his salary be increased to £105,000 and Mrs Forsyth's to £20,000. Mr Forsyth then arranged that this be signed later, in a private meeting, by the Chairman of the Board. This was done without approval or knowledge of the Remuneration Committee.

A1.37. On 28 May 2014, the Remuneration Committee met to discuss Mr Forsyth's salary and it was agreed that this was to be increased to £140,000 with immediate effect. A minute which had been typed by Mr Forsyth was then signed by the Chairman of the Remuneration Committee to record this decision. Following the meeting, Mr Forsyth decided to split his salary so that Mrs Forsyth was to be paid £30,000 of the £140,000. He then created another minute of the same date purporting to record that the Remuneration Committee had agreed that his salary be increased to £110,000 and Mrs Forsyth's to £30,000. Mr Forsyth then arranged that this be signed later, in a private meeting, by the Chairman of the Board. This was done without approval or knowledge of the Remuneration Committee.

A1.38. On 6 May 2015, the Remuneration Committee met to discuss Mr Forsyth's salary and it was agreed that this was to be increased to £180,000 with immediate effect. A minute which had been typed by Mr Forsyth was then signed by the Chairman of the Remuneration Committee to record this decision. Following the

meeting, Mr Forsyth decided to split his salary so that Mrs Forsyth was to be paid £40,000 of the £180,000. He then created another minute of the same date purporting to record that the Remuneration Committee had agreed that his salary be increased to £140,000 and Mrs Forsyth's to £40,000. Mr Forsyth then arranged that this be signed later, in a private meeting, by the Chairman of the Board. This was done without approval or knowledge of the Remuneration Committee.

A1.39. These false minutes were used by Mr Forsyth to instruct SBMIA's cashiers to make payments to Mrs Forsyth. Mr Forsyth was aware that the false minutes gave the impression that such payments had been authorised by the Remuneration Committee when in fact they had not. They were also created for any auditor to be assured that Mrs Forsyth's remuneration had been agreed by the Remuneration Committee.

#### **Misleading SBMIA's Board of Directors**

A1.40. In October 2015, a number of concerns were raised internally at SBMIA in respect of Mr Forsyth's conduct as CEO. These concerns included an allegation regarding the payment of Mr Forsyth's salary to Mrs Forsyth. In response, SBMIA commissioned an external auditor to examine, amongst other things, reporting to HMRC in respect of Mr and Mrs Forsyth's salaries. The scope of the auditors' investigation, which Mr Forsyth was involved in agreeing, did not include any examination of the splitting of his remuneration with Mrs Forsyth.

A1.41. Mr Forsyth then oversaw the production of the report and when a draft version was sent to him, asked the auditor to remove from the final report details of his and Mrs Forsyth's pay with respect to the tax years 2014/15 and 2015/16. These details were removed and Mr Forsyth then sent the report to Board members as evidence that the allegations against him were unfounded. As a result, the Board was unaware of the level of remuneration which he had arranged to be paid to Mrs Forsyth in 2014 and 2015.

A1.42. Although some individual members of the Board were aware (as demonstrated for example by an email sent by Mr Forsyth on 5 May 2015), the Board was not made aware of the amount of remuneration which was being paid to Mrs Forsyth until July 2016. On 13 July 2016, following the departure of Mr Forsyth from SBMIA, the Board met and discussed the position in respect of his salary being split with Mrs Forsyth. For the first time the Board was provided with the

quantum of what had been paid to Mrs Forsyth and as a result authorised an internal tax investigation.

### **Misleading the PRA**

A1.43. On 22 April 2016, in advance of a supervisory visit to SBMIA, the PRA required Mr Forsyth to provide it with "*Minutes from all Board, Risk & Audit and Remuneration Committee: 2013, 2014, 2015 and 2016 to date*". Mr Forsyth asked an employee to collate the minutes and replied on 25 April 2016 attaching what he described as "*Minutes 2013-2016*". Mr Forsyth did not provide the PRA with the original minutes of the Remuneration Committee meetings of June 2013, May 2014 and May 2015. Instead Mr Forsyth recklessly provided the false minutes which he had created after the meetings recording the Remuneration Committee agreeing to pay Mrs Forsyth a salary of £20,000, £30,000 and £40,000 respectively. These minutes were false and misleading as this was not what had been agreed by the Remuneration Committee. As Mr Forsyth had created the false minutes, he was aware that the sets of minutes collated by his colleague included or might include them. He was also aware that the original minutes were not filed in the correct place, and that his colleague therefore might not locate them. Therefore, by responding to the PRA without ensuring that the original minutes were provided, Mr Forsyth misled the PRA as to what had been agreed in the 2013, 2014 and 2015 Remuneration Committee meetings.

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## ANNEX B

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### **B1. FAILINGS**

- B1.1. The regulatory and statutory provisions relevant to this Notice are referred to in Annex F.
- B1.2. By reason of the facts and matters described above, during the Relevant Period, Mr Forsyth breached Statement of Principle 1 (Integrity) of the Statements of Principle and Individual Conduct Standard 1 (Integrity) of the PRA's Insurance Conduct Standards as he failed to act with integrity.
- (1) Mr Forsyth arranged for Mrs Forsyth to be paid from his salary primarily to reduce his income tax liability. He arranged for her to sign a contract of employment with SBMIA in 2003 without any formal approval from SBMIA. The work she did cannot be considered substantial, but the PRA accepts that Mrs Forsyth did some work as an employee. Up to 2010, her annual remuneration remained below £10,000, which was in line with what Board members later said they understood she was being paid. No lack of integrity is demonstrated on the part of Mr Forsyth at this stage.
  - (2) Mr Forsyth deliberately arranged for a proportion of his salary and, on four occasions, all or part of his bonus, to be paid to Mrs Forsyth, so that she received remuneration in excess of what was reasonable for the work she was undertaking. Mr Forsyth was aware that SBMIA's Remuneration Committee had not agreed the amount of Mrs Forsyth's salary or to these bonus payments being paid to her, and that Mrs Forsyth had not carried out any additional duties, or other work, which justified the level of the remuneration she received. As a result of these payments, during the 2015/2016 tax year, Mrs Forsyth was paid more than any employee of SBMIA apart from Mr Forsyth. The PRA concludes that these payments were arranged by Mr Forsyth in order to reduce his income tax liability.
  - (3) On two occasions, in March 2011 and February 2014, Mr Forsyth deliberately arranged for a bonus to be paid to Mrs Forsyth when he was aware that Mrs Forsyth had not carried out any work which justified the payment of a bonus to her.



- (4) From 2010, Mr Forsyth arranged for a total of £85,366 of bonus payments to be paid to Mrs Forsyth. This cannot possibly be justified by any work that Mrs Forsyth did for SBMIA. This was without the approval of the Remuneration Committee, and Mrs Forsyth did not carry out any additional work for SBMIA which could justify these bonus payments. From 2013, Mr Forsyth took advantage of his position as CEO to direct SBMIA's cashiers to pay increasing amounts of salary and bonus to Mrs Forsyth. The PRA concludes that these payments were simply the diverting of Mr Forsyth's income in order to reduce his income tax liability. This behaviour demonstrates a serious lack of integrity on the part of Mr Forsyth.
- (5) Mr Forsyth was aware that the Remuneration Committee agreed the amount of salary to be paid to him, and that he then arranged for a proportion of his salary to be paid to Mrs Forsyth without the Remuneration Committee's agreement. However, in 2013, 2014 and 2015 Mr Forsyth created false minutes of the Remuneration Committee which purported to show that the Remuneration Committee had agreed a proportion of Mr Forsyth's salary which was to be used to pay a salary to Mrs Forsyth. Mr Forsyth drafted these minutes deliberately to give the misleading impression to SBMIA's auditors that the Remuneration Committee had agreed these payments. Mr Forsyth's creation of these false minutes was undertaken for his own financial benefit, in order to minimise his liability to income tax.
- (6) In October 2015, when internal concerns were raised at SBMIA about certain matters, including an allegation concerning the payment of Mr Forsyth's remuneration to Mrs Forsyth, Mr Forsyth involved himself inappropriately in the agreement of the scope of the investigation of those concerns. He acted improperly to request that the external auditor did not include in its report to the Board any details of what he was being paid nor the amounts that he was directing the cashiers to pay to Mrs Forsyth. This had the effect that the Board was not made aware of the high level of remuneration being paid to Mrs Forsyth, so there was no legitimate scrutiny by the Board of the substance of the allegation regarding Mr Forsyth's payment to her. Mr Forsyth, especially as the CEO of SBMIA and an approved person, must have realised that, as the concerns raised related to him, it was inappropriate for him to involve himself in the auditor's investigation. This demonstrated a lack of integrity.

(7) In April 2016, Mr Forsyth was aware that the PRA had requested all of SBMIA's minutes from 2013 to 2016. He was also aware that in 2013, 2014 and 2015 the Remuneration Committee had not discussed, nor approved, the quantum of remuneration to be paid to Mrs Forsyth. He was aware that there were original minutes that recorded the agreement of the Remuneration Committee and false minutes that he had created. He nevertheless recklessly sent the false minutes that he had created to the PRA, rather than the original Remuneration Committee Minutes for 2013, 2014 and 2015. This was done in the knowledge that the original minutes would show that there had been no agreement by the Remuneration Committee to pay Mrs Forsyth the sums which were paid to her at Mr Forsyth's direction.

B1.3. Mr Forsyth does not accept that his actions were improper. The PRA cannot be assured that he would not behave in a similar manner in future. The principle of integrity is of the greatest importance in the work of a chief executive of an insurance company. In light of the serious nature of Mr Forsyth's misconduct the PRA considers that Mr Forsyth lacks fitness and propriety such that he should not hold any function in relation to any PRA-regulated activity carried on by a PRA-authorized person, or by an exempt person in relation to any PRA-regulated activity carried on by that person.

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## ANNEX C

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### **C1.SANCTION**

C.1. The PRA has decided to:

- (1) impose a financial penalty on Mr Forsyth for his failure to comply with Statement of Principle 1 and Individual Conduct Standard 1 of the PRA's Insurance Conduct Standards; and
- (2) make an order prohibiting Mr Forsyth from performing any function in relation to any regulated activity carried on by a PRA-authorized person, or by an exempt person in relation to any PRA-regulated activity carried on by that person, by reason of his failure to comply with Statement of Principle 1 and Individual Conduct Standard 1 of the PRA's Insurance Conduct Standards, his lack of fitness and propriety and the risk he poses to confidence in the financial system.

#### **Prohibition**

C.2. The PRA considers that Mr Forsyth is not fit and proper as he lacks integrity, and poses a serious risk to confidence in the financial system. Consequently, the PRA considers it appropriate to impose the Prohibition Order.

#### **Financial penalty**

C.3. The principal purpose of a financial penalty is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour.

C.4. In determining whether a financial penalty is appropriate, the PRA is required to consider all the relevant circumstances of a case. A financial penalty is an appropriate sanction in this case, given the nature of the breach and the need to send out a deterrent message.

C.5. The PRA's policy for imposing a financial penalty is set out in the PRA's Penalty Policy. In determining the financial penalty in the context of the FCA also imposing a financial penalty, the PRA has had full regard to proportionality.

### **Step 1: disgorgement**

C.6. Pursuant to paragraph 17 of the PRA Penalty Policy, at Step 1 the PRA seeks to deprive an individual of the economic benefits derived from the breach.

C.7. Mr Forsyth derived direct financial benefit from the breach. He deliberately arranged for a proportion of salary and bonus payments to be paid to Mrs Forsyth, which resulted in Mrs Forsyth receiving remuneration in excess of what was reasonable for the work she was undertaking. Without these arrangements, Mr Forsyth's tax liability would have been greater.

C.8. In line with the PRA's approach to enforcement, the amount of income tax Mr Forsyth saved from 19 February 2010 to 8 July 2016 was £18,034. The PRA seeks to deprive Mr Forsyth of half this amount, which totals £9,017. The remaining half, it has been decided by the FCA, will form part of a penalty to be imposed on Mr Forsyth by the FCA.

C.9. 3% interest has been applied to the sum above.

C.10. Step 1 is therefore £10,518.

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

C.11. In addition to any figure in respect of disgorgement, pursuant to paragraph 18 of the PRA Penalty Policy, at Step 2 the PRA determines a starting point figure for a punitive penalty that reflects the seriousness of the breach. That figure is ordinarily based on a percentage of the individual's relevant annual 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. Ordinarily, the PRA will calculate the individual's annual income during the tax year preceding the date when the breach ended.

C.12. In this instance the breach ended on 8 July 2016. Therefore the tax year preceding this date is from April 2015 to April 2016.

C.13. The PRA considers Mr Forsyth's relevant income for the period to be £218,876 (an amount which includes part of the sum diverted to Mrs Forsyth).

C.14. Pursuant to paragraph 20(d) of the PRA Penalty Policy, the PRA will apply an appropriate percentage rate to the individual's relevant income to produce a figure at Step 2 that properly reflects the nature, extent, scale, and gravity of the breach. In determining a percentage rate reflecting the seriousness of the breach, the factors to which the PRA may have regard include, as appropriate, the factors set out at paragraph 21 of the PRA Penalty Policy.

C.15. The PRA considers the percentage rate applied to Mr Forsyth's relevant income should be **30%**, for the following reasons:

- 1) Mr Forsyth failed to act with integrity;
- 2) Mr Forsyth abused his position of trust as the CEO of SBMIA by acting without the knowledge or approval of the Board or Remuneration Committee and in 2015 contrary to SBMIA's Remuneration Policy. He further abused his position by instructing SBMIA cashiers to pay a proportion of his remuneration to Mrs Forsyth; and
- 3) The breach was committed partly deliberately and partly recklessly over a number of years.

C.16. Step 2 is therefore £65,662.

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

C.17. Pursuant to Paragraph 24 of the PRA's Penalty Policy, at Step 3 the PRA 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.

C.18. The PRA does not consider that there are any mitigating or aggravating factors in this case.

C.19. Step 3 is therefore £65,662.

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

C.20. Pursuant to paragraph 27 of the PRA's Penalty Policy, if the PRA 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 PRA may increase the penalty.

- C.21. The PRA considers that the Step 3 figure represents a sufficient deterrent to Mr Forsyth and others, and so has not increased the penalty at Step 4.
- C.22. Step 4 is therefore £65,662.
- C.23. The total penalty (i.e. Step 4 plus disgorgement) is £76,180.

**Step 5: settlement discount**

- C.24. Pursuant to paragraph 29 of the PRA's Penalty Policy, if the PRA and the individual on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, paragraph 29 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the PRA and the individual reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1. There is no settlement discount in this case.

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## ANNEX D

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### E1. PROCEDURAL MATTERS

#### Decision maker

- D.1. The decision which gave rise to the obligation to give this Decision Notice was made by the Enforcement Decision Making Committee.
- D.2. This Notice is given under sections 57 and 67 and in accordance with section 388 of the Act. The following statutory rights are important.

#### Representations

- D.3. Annex G contains a brief summary of the key representations made by Mr Forsyth and how they have been dealt with. In making the decision which gave rise to the obligation to give this Notice, the PRA has taken account of all the representations made by Mr Forsyth, whether or not set out in Annex G.

#### The Tribunal

- D.4. Mr Forsyth has the right to refer the matter to which this Notice relates to the Tribunal. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, Mr Forsyth has 28 days from the date on which this Notice is given to him to refer the matter to the Tribunal. A reference to the Tribunal is made by way of a signed reference notice (Form FTC3) filed with a copy of this Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, Fifth Floor, Rolls Building, Fetter Lane, London EC4A 1NL (tel: 020 7612 9730; email: fs@hmcts.gsi.gov.uk).
- D.5. Further information on the Tribunal, including guidance and the relevant forms to complete, can be found on the HM Courts and Tribunal Service website:
- <http://www.justice.gov.uk/forms/hmcts/tax-and-chancery-upper-tribunal>
- D.6. A copy of Form FTC3 must also be sent to the PRA at the same time as filing a reference with the Tribunal. A copy should be sent to Jim Calveley Enforcement and Litigation Division, Prudential Regulation Authority, Bank of England, Threadneedle Street, London EC2R 8AH.

D.7. Once any such referral is determined by the Tribunal and subject to that determination, or if the matter has not been referred to the Tribunal, the PRA will issue a Final Notice about the implementation of that decision.

### **Access to evidence**

D.8. Section 394 of the Act applies to this Notice.

D.9. The person to whom this Notice is given has the right to access:

- (1) the material upon which the PRA has relied in deciding to give this Notice;  
and
- (2) the secondary material which, in the opinion of the PRA, might undermine that decision.

### **Third party rights**

D.10. A copy of this Notice is being given to the Chairman of the Board as a third party identified in the reasons above and to whom in the opinion of the PRA the matter is prejudicial. That party has similar rights of representation and access to material in relation to the matter which identifies him.

D.11. A copy of this Notice is also being given to Penelope Muriel Milburn Forsyth as a third party identified in the reasons above and to whom in the opinion of the PRA the matter is prejudicial. The party has similar rights of representation and access to material in relation to the matter which identifies her.

### **Confidentiality and publicity**

D.12. This Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). Section 391(1A) provides that a person to whom a decision notices is given or copied may not publish the notice or any details concerning it unless the regulator giving the notice has published the notice or those details.

D.13. The PRA must publish such information about the matter to which a Decision Notice or Final Notice relates as it considers appropriate. A Decision Notice or Final Notice may contain reference to the facts and matters contained in this Notice.

### **PRA contacts**

D.14. For more information concerning this matter generally, contact Jim Calveley (direct line: 020 7601 8534 / [jim.calveley@bankofengland.co.uk](mailto:jim.calveley@bankofengland.co.uk)) of the Enforcement and Litigation Division of the PRA.



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## ANNEX E

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### E1. DEFINITIONS

E1.1. The definitions below are used in this Decision Notice.

'the Act' means the Financial Services and Markets Act 2000

'the Board' means the board of directors of SBMIA

'CEO' means Chief Executive Officer

'Chairman of the Board' means the Chairman of SBMIA's board of directors during the Relevant Period

'FCA' means the Financial Conduct Authority

'FSA' means the Financial Services Authority. On 1 April 2013, a new "twin peaks" regulatory structure came into being, under which the FSA was replaced by the FCA and the PRA. The effective date of that change, 1 April 2013, is known as the date of Legal Cutover

'HMRC' means Her Majesty's Revenue and Customs

'LCO' means 1 April 2013, the date of Legal Cutover

'the Management Board' means Boatowners (Management) Limited, which was a subsidiary company of SBMIA responsible for managing SBMIA until 2005. From 2005 onwards, this function was carried out by an Executive Committee of SBMIA

'Mr Forsyth' means Stuart Malcolm Forsyth

'Mrs Forsyth' means Penelope Muriel Milburn Forsyth, wife of Mr Forsyth

'the PRA' means the Bank of England exercising its functions as the Prudential Regulation Authority. From 1 April 2013 to 1 March 2017, the Prudential Regulation Authority was a body corporate subsidiary of the Bank of England.

'the PRA's Penalty Policy' means 'The Prudential Regulation Authority's approach to enforcement: statutory statements of policy and procedure' published in April 2013 (as amended)

'Prohibition Order' means an order prohibiting Mr Forsyth, pursuant to section 56 of the Act, from performing any function in relation to any regulated activity carried on by a PRA-authorized person, or by an exempt person in relation to any PRA-regulated activity carried on by that person

'Remuneration Committee' means an SBMIA sub-committee which was established in 2001 to determine the appropriate level of remuneration to be paid to SBMIA's employees

'Relevant Period' means the period from 19 February 2010 to 8 July 2016;

'SBMIA' means The Scottish Boatowners Mutual Insurance Association

'the Tribunal' means the Upper Tribunal (Tax and Chancery Chamber)

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## ANNEX F

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### **F1. RELEVANT STATUTORY PROVISIONS**

- F1. The PRA's general objective, set out in section 2B of the Act, is to promote the safety and soundness of PRA-authorised persons.
- F2. Section 56 of the Act provides that the PRA may make an order prohibiting an individual from performing a specified function, any function falling within a specified description of any function, if it appears to the PRA that that individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by a PRA-authorised person or an exempt person. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities.
- F3. Section 66 of the Act provides that the PRA may take action against a person if it appears to the PRA that he is guilty of misconduct and the PRA 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, an employee of a relevant PRA-authorised person or a director of a PRA-authorised 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.

### **RELEVANT REGULATORY PROVISIONS**

#### Statements of Principle and Code of Practice for Approved Persons

- F4. The FSA and the PRA's Statements of Principle and Code of Practice for Approved Persons were issued under section 64 of the Act.
- F5. FSA Statement of Principle 1 (in force until 31 March 2013) stated that an approved person must act with integrity in carrying out his controlled functions.
- F6. PRA Statement of Principle 1 (in force from 1 April 2013 to 6 March 2016) stated that an approved person must act with integrity in carrying out his accountable functions.

F7. The Code of Practice for Approved Persons set out a description of conduct which, in the opinion of the PRA, does not comply with a Statement of Principle. It also sets out factors which, in the PRA's opinion, are to be taken into account in determining whether an approved person's conduct complies with a Statement of Principle.

Solvency II – Insurance Conduct Standards (in force from 7 March 2016)

F8. The Insurance Conduct Standards were issued under section 64 of the Act.

F9. Individual Conduct Standard 1 states that any individual approved by the PRA or the FCA in relation to a relevant senior management function must act with integrity.

**The PRA's policy for exercising its power to make a prohibition order and/or financial penalty**

F10. The PRA's policy in relation to prohibition orders is set out in the PRA's Penalty Policy.

F11. The PRA's Penalty Policy states that the PRA may, in addition to imposing a penalty, make a prohibition order under section 56 of the Act and that such action would reflect the PRA's assessment of the individual's fitness to perform a regulated activity or suitability for a particular role.

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## ANNEX G

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### **G1. REPRESENTATIONS AND CONCLUSIONS**

G2. Mr Forsyth's representations (in italics), and the PRA's conclusions in respect of them, are set out below.

#### The circumstances of Mrs Forsyth's employment

G3. *In order to understand the specific circumstances which led to Mrs Forsyth's employment, and the circumstances in which it was carried out, it is essential to appreciate the highly unusual nature, by London insurance market standards, of SBMIA's situation. First, Buckie is a small, geographically remote town, which had no suitable local hotels for visiting brokers and insurance professionals. Secondly, the small number of SBMIA staff, the lack of middle management and the nature of SBMIA's clients' work as fishermen, meant that Mr Forsyth was required to work "out-of-hours" and at anti-social times. There was therefore a genuine need for some form of hospitality to be provided and extra "out-of-hours" administrative support.*

G4. *Mrs Forsyth became employed at SBMIA through necessity, as it was she who provided these hospitality services and who was able to provide the necessary out-of-hours administrative support to enable Mr Forsyth to fulfil his professional duties.*

G5. The PRA does not dispute that SBMIA's situation meant that there were times when Mr Forsyth was required to work out-of-hours, and that Mrs Forsyth sometimes assisted him when he carried out such work. However, the PRA considers that the evidence, including Mr and Mrs Forsyth's interviews with the PRA, supports its view that Mrs Forsyth only did a limited amount of work to support Mr Forsyth in his role as CEO in accordance with what was contemplated in her contract of employment dated 12 February 2003.

#### The Remuneration Committee's understanding that it was setting a global figure

G6. *SBMIA agreed to Mrs Forsyth's employment on the basis that her employment should impose no extra cost on SBMIA than it would have incurred through Mr Forsyth's*

*employment alone. In subsequent years, this developed into a practice whereby the Remuneration Committee set a global figure for Mr and Mrs Forsyth's remuneration which avoided the Remuneration Committee having to analyse the precise tasks which Mrs Forsyth had undertaken, an exercise which would have been impracticable given the nature of the work which Mrs Forsyth undertook and the circumstances in which she did so. The principles behind this arrangement remained in place throughout the Relevant Period, with the Remuneration Committee effectively determining a global figure for the "CEO's office".*

*G7. The Remuneration Committee, despite being fully aware that it was awarding a global figure, never sought separately to audit or evaluate Mrs Forsyth's contribution, or to request that Mrs Forsyth's remuneration be separately determined and/or approved by the Remuneration Committee.*

*G8. As the Remuneration Committee understood that the salary it agreed for Mr Forsyth was a global figure which included the salary that would be paid to Mrs Forsyth, it necessarily follows that the Remuneration Committee was aware of, and approved, the procedure whereby the actual split of the salary between Mr and Mrs Forsyth was determined in a forum other than the Remuneration Committee.*

*G9. The bonus was always looked at in the round for Mr and Mrs Forsyth, and was always going to be split. The approach was therefore consistent with the Remuneration Committee's approach to determining a global salary figure. It was perfectly permissible for the bonus to be split between the two individuals who collectively constituted the CEO's office.*

*G10. The procedure actually adopted, which was for Mr Forsyth's proposal to be approved and signed by the Chairman of the Board, was pragmatic and sensible. Had the Remuneration Committee wished to determine and approve the split as a full committee it could have done so, but it perfectly properly elected not to do so.*

*G11. The PRA acknowledges that the Remuneration Committee does not appear to have sought to evaluate Mrs Forsyth's work or to approve her salary separately. The PRA Warning Notice did not include a proposition to the effect that the Remuneration Committee were agreeing a "global figure". Whether that is correct or not does not make a difference to the result.*

G12. The PRA does not agree that the Remuneration Committee was aware of, and approved, a procedure which gave Mr Forsyth discretion to arrange for his salary to be split, so that Mrs Forsyth received a salary which was not justified by the work she was undertaking. The evidence seen by the PRA suggests that only the Chairman of the Board knew how Mrs Forsyth's salary was determined and that no other member of the Remuneration Committee was aware of how much of Mr Forsyth's salary was apportioned to Mrs Forsyth until at the earliest May 2015, when Mr Forsyth mentioned the current split in an email to another member.

G13. The PRA has not seen any evidence that any member of the Remuneration Committee, other than the Chairman of the Board, knew that all or part of Mr Forsyth's bonus was paid to Mrs Forsyth. The payment of all of Mr Forsyth's bonus to Mrs Forsyth, which is what Mr Forsyth arranged between 2010 and 2013, is not consistent with the setting of a global bonus figure. In addition, unlike Mr Forsyth's employment contract, Mrs Forsyth's employment contract did not refer to the payment of a bonus. The PRA therefore does not agree that the Remuneration Committee was also aware that it was determining a global bonus figure for Mr and Mrs Forsyth.

G14. The PRA does not agree that the approach adopted by Mr Forsyth to determining Mrs Forsyth's remuneration was appropriate. Mr Forsyth was the CEO of SBMIA and was aware of the need for good governance and appropriately documented procedures for determining employees' remuneration, and must have been aware that this is particularly important where the employee in question is the CEO's wife.

#### The actual work carried out by Mrs Forsyth

##### *Bonus payments from 19 February 2010*

G15. *The payment of a bonus to Mrs Forsyth in February 2010 was justified because she was doing more work. There were reductions in staff at SBMIA at the time, and Mrs Forsyth was more involved helping Mr Forsyth in the evenings and at weekends. Mr Forsyth also had an increasing workload due to SBMIA having substantial new business in Australia and New Zealand, which he sought to expand in 2008 to 2010, and which generated a particularly high volume of work on the claims side following the Christchurch earthquake in New Zealand in 2011. In addition, Mr Forsyth began assuming responsibility in 2009 for the forthcoming implementation of Solvency II, which imposed enormous burdens upon SBMIA. The increase in Mr Forsyth's duties led to an increase in Mrs Forsyth's workload.*

G16. *The nature of Mrs Forsyth's work in 2009/2010 was administrative and secretarial, which she was qualified to do due to her previous experience working as the personal assistant to a chairman and directors of companies in London in the 1990s. She was essentially an out-of-hours secretary, working whenever required outside the normal working hours, such as answering telephone calls and dictating documents. She carried out these activities nearly every day. Accordingly, the relatively modest remuneration received by Mrs Forsyth between 2010 and 2013 was justified by the work she carried out.*

G17. The bonus payments received by Mrs Forsyth between 2010 and 2013, though stated to be "in compensation for additional duties carried out", involved the transfer of all of Mr Forsyth's contractual bonus, rather than being a payment which Mrs Forsyth was contractually entitled to.

G18. Also, the PRA has not seen any evidence that Mrs Forsyth carried out additional duties which could justify the bonus payments. Instead, the evidence suggests that, between 2009 and 2013, Mrs Forsyth continued to carry out a small number of administrative tasks for Mr Forsyth and provide the occasional hospitality service (which had in any event reduced from 2008 onwards). Whilst the PRA acknowledges that SBMIA might have had additional work resulting from the earthquake in Christchurch in 2011, it has not been provided with any contemporaneous evidence that this led to more work for Mrs Forsyth, and in fact the contemporaneous evidence shows that SBMIA conducted a diminishing amount of Australia and New Zealand related business from 2008 onwards. As Mrs Forsyth received the entirety of Mr Forsyth's bonus between 2010 and 2013, the PRA concludes that Mr Forsyth arranged these payments in order to reduce his income tax liability.

Salary increases and total remuneration from 2013 to 2015

G19. *The increases to Mrs Forsyth's salary, and to her overall remuneration, between 2013 and 2015 were justified by the increased workload imposed upon SBMIA generally, and Mrs Forsyth particularly, by the impending implementation of Solvency II. The SBMIA Board minutes between 2010 and 2015 consistently referred to the substantial burden on Mr Forsyth of this work. As Mrs Forsyth was providing out-of-hours support to Mr Forsyth, she endured a similar consequential increase to her own workload from 2013, working nearly every evening and weekend. Her work relating to Solvency II involved proof-reading, reading out loud to Mr Forsyth and typing up the various policies, and she also continued to do her previous work. Mr and Mrs*



*Forsyth had to do this work out-of-hours as there was a lack of alternative management capability in SBMIA, the other SBMIA employee who provided administrative support to Mr Forsyth only worked normal office hours, it was difficult for SBMIA to recruit competent professional support, and external advisers were expensive and provided advice which was generic rather than relevant to SBMIA's circumstances.*

G20. *Mrs Forsyth worked about 20 hours a week during this period. However, she was also on call at lunchtimes, in the evenings and at weekends, so in assessing the permissibility of her remuneration, her job should not simply be considered to be the aggregation of the hours she worked. Other jobs also involve a person being paid for a full day's work when they only actually work part of a day, for example, a childcare professional and a chauffeur, yet it is not suggested that this is improper.*

G21. *Although there is no contemporaneous, documentary evidence of the work Mrs Forsyth was carrying out, a Board member stated in interview with the Authority that Mr Forsyth told him in the summer of 2015 that Mrs Forsyth was helping him type up the various Solvency II policies.*

G22. The PRA accepts that preparing for the implementation of Solvency II was a burden on Mr Forsyth, and that Mrs Forsyth provided some out-of-hours clerical support to him in connection with this work, particularly in 2015. However, the PRA has concluded that Mrs Forsyth did a good deal less than Mr Forsyth submits. In particular, the PRA notes that the only contemporaneous written record by Mr Forsyth of the work that Mrs Forsyth was carrying out in this period did not even mention that she was assisting him with his Solvency II work. This was an email in May 2015 from Mr Forsyth to a member of the Remuneration Committee, which stated that his current salary was split with Mrs Forsyth, so that he received £110,000 and she received £30,000, and that this was "to compensate for the business dinners/guest that we have to stay as well as doing some airport pick ups etc."

G23. On Mr Forsyth's own account at interview, at its peak, which was in the summer of 2015 and therefore short in duration, Mrs Forsyth provided assistance to him in connection with his Solvency II work for only about 10 hours a week. The PRA notes that, by this point, all of the bonus payments and salary increases during the

Relevant Period had already been decided, so Mrs Forsyth benefited from these before this apparent increase in her workload.

G24. The PRA does not agree that it is appropriate to compare Mrs Forsyth's work to a childcare professional or a chauffeur. In accordance with her contract of employment, Mrs Forsyth carried out some occasional work from her family home, but the PRA does not accept that she was effectively performing a full-time job nor that it was appropriate for her to be remunerated accordingly.

Mr Forsyth's belief as to what Mrs Forsyth could permissibly receive

G25. *Mr Forsyth genuinely and reasonably believed that the remuneration paid to Mrs Forsyth by SBMIA during the Relevant Period was permissible in the light of the work which Mrs Forsyth carried out for SBMIA, in particular the increasingly onerous nature of that work in the light of the impending Solvency II implementation and the impracticability of the "out of hours" work carried out by Mrs Forsyth being undertaken by anyone other than a domestic partner.*

G26. *Mr Forsyth did not consider there to be anything wrong with the amount of remuneration which Mrs Forsyth received not being scrutinised by the Remuneration Committee because it agreed the global total. This was consistent with SBMIA's Remuneration Policy, which was approved by the Board on 6 May 2015. That policy did not provide that the Remuneration Committee would determine the salary of every SBMIA employee, but instead that the committee would consider the remuneration framework of SBMIA and make recommendations in respect of individual remuneration in the case of executives, senior staff and key function holders.*

G27. *Given the procedure that the Remuneration Committee elected to adopt, Mr Forsyth considered it was appropriate for him to propose a figure for Mrs Forsyth's remuneration to the Chairman of the Board for approval. Mr Forsyth was the only person who could vouch for the work Mrs Forsyth actually did, and how it benefited him and SBMIA, given that she carried out her work at their family home, and it seemed to him that it was within his remit as CEO to do this. The lack of contemporaneous records of the work done by Mrs Forsyth, and the lack of detailed explanations for the amount of her remuneration, do not impinge upon Mr Forsyth's integrity in considering that it was appropriate for him to propose, within the global figure established by the Remuneration Committee, how much remuneration it was appropriate for Mrs Forsyth to receive.*

G28. *In determining what it was permissible for Mrs Forsyth to receive by way of remuneration, Mr Forsyth believed and proceeded on the basis that he was entitled to value her work on the basis that her personal, out-of-hours services, necessarily carried out within their family home during evenings and at the weekend, could not be performed by anyone else and could not therefore be benchmarked against any other role.*

G29. *Moreover, given that the global figure had been agreed, and SBMIA would suffer no prejudice however the split was allocated, Mr Forsyth considered he had a reasonably broad discretion to determine Mrs Forsyth's permissible remuneration by reference to the benefit which he perceived Mrs Forsyth's services had provided to him as the CEO. This necessarily involved a relatively subjective judgement.*

G30. *Mr Forsyth did not consider he had an entirely unfettered discretion in this regard. In respect of Mrs Forsyth's remuneration in 2015, it was only just in excess of one fifth of the total amount paid to Mr and Mrs Forsyth, it remained comparable to other employees of SBMIA, including the Company Secretary who provided similar assistance to Mr Forsyth during office hours, and it represented the average salary of an Executive Assistant to a CEO based in London. It had been agreed at the outset of his employment that Mr Forsyth's remuneration was to be set by reference to comparable London-based salaries, and it is reasonable to infer that the global figure (and therefore Mrs Forsyth's remuneration) was also to be set on this basis.*

G31. The PRA does not agree with Mr Forsyth's submission regarding the amount of work carried out by Mrs Forsyth. As set out in paragraphs A1.16-18 of this Notice, the PRA considers that Mrs Forsyth only did a limited amount of work, which appears to have involved carrying out some administrative tasks for Mr Forsyth and providing occasional hospitality services, and also involved some out-of-hours clerical support between 2013 and 2015 in respect of Mr Forsyth's work in connection with Solvency II. In the light of its findings regarding the amount of work carried out by Mrs Forsyth, the PRA considers that Mr Forsyth could not genuinely or reasonably have believed that the level of remuneration paid to Mrs Forsyth during the Relevant Period was permissible. Further, the PRA considers that the procedures put in place by Mr Forsyth for approving Mrs Forsyth's remuneration, his creation of the false minutes and the actions he took to prevent the Board from becoming aware of her

level of remuneration all demonstrate that Mr Forsyth did not consider that Mrs Forsyth's remuneration was justified.

G32. SBMIA's Remuneration Policy, which Mr Forsyth reviewed before it was approved by the Board on 6 May 2015, stated that SBMIA's remuneration framework was underpinned by a set of guiding principles. These included that it should be applied consistently to all employees, with no 'special arrangements' inconsistent with the policy, that it should incorporate measures aimed at avoiding conflicts of interest, and that there should be a clear, transparent and effective governance structure around remuneration, incorporating independent oversight and review. The PRA considers that, by ensuring that his wife's remuneration was not considered and determined by the Remuneration Committee, and by arranging for her to receive a bonus in circumstances where, apart from one other employee who received a newer model of a company car on two occasions and himself, no other employee received one in the Relevant Period (other than the small contractual Christmas bonus), Mr Forsyth's actions were inconsistent with SBMIA's guiding principles for its remuneration framework.

G33. As the CEO of SBMIA, Mr Forsyth was aware of the need for good governance and appropriately documented procedures for determining employees' remuneration. Accordingly, Mr Forsyth must have realised that the procedure that was followed for deciding Mrs Forsyth's remuneration was inappropriate. In particular, he must have realised that his role in proposing his wife's salary and bonus, and in being the only person who was aware of the type and amount of work that she carried out, created a clear conflict of interest. He should also have realised that the lack of contemporaneous records of Mrs Forsyth's work made it even more important that he was not involved in setting the level of her remuneration, and that it should instead have been decided by the Remuneration Committee in accordance with its usual approach to deciding the remuneration of other SBMIA employees.

G34. The PRA does not accept Mr Forsyth's submission that Mrs Forsyth's remuneration was acceptable because it was comparable with other employees of SBMIA, including the Company Secretary, and because it represented the average salary of an Executive Assistant to a London CEO. During the 2015/2016 tax year, Mrs Forsyth's total remuneration was greater than any employee of SBMIA (apart from Mr Forsyth). In any case, even if Mrs Forsyth had been paid a similar total level of remuneration to the Company Secretary, such a level of remuneration would not have been justified given that the Company Secretary also had considerable,

additional responsibilities and worked full-time. Further, the PRA does not consider it reasonable to compare Mrs Forsyth's salary to that of an Executive Assistant to a London CEO as Mrs Forsyth was not performing an Executive Assistant role, which is generally far more demanding than the limited amount of administrative assistance that Mrs Forsyth provided to Mr Forsyth. Also, as Mrs Forsyth was being paid a salary of £40,000 in 2015, whilst working less than half as many hours as a full-time employee, Mr Forsyth's submission is effectively that it would have been reasonable to pay Mrs Forsyth the equivalent to an annual full-time salary of about £100,000. The PRA considers this to be clearly unreasonable and excessive for the nature of the work she was doing.

Knowledge of members of the Remuneration Committee of Mrs Forsyth's remuneration

*G35. Mr Forsyth did not seek to conceal the level of Mrs Forsyth's remuneration from members of the Remuneration Committee. Of the members of the Remuneration Committee during the Relevant Period, the Chairman of the Board approved Mrs Forsyth's remuneration repeatedly, the Chairman of the Remuneration Committee did so on occasion, another member was informed of the precise salary split by Mr Forsyth in May 2015, and the evidence of the other member was either that he was content for the precise amount to be paid to Mrs Forsyth to be left to Mr Forsyth or that the Remuneration Committee probably did agree the £40,000 salary figure in May 2015, but did not see the document which recorded this and was subsequently signed by the Chairman of the Board. At no point during the Relevant Period did any individual member of the Remuneration Committee object to the amount of Mrs Forsyth's remuneration.*

G36. The PRA acknowledges that the Chairman of the Board signed the documents that Mr Forsyth created regarding the payment of all or part of his bonus to Mrs Forsyth, and the false minutes setting out Mrs Forsyth's level of salary between 2013 and 2015. The PRA also acknowledges that the Chairman of the Remuneration Committee approved the payment of the March 2011 additional bonus to Mrs Forsyth, and that another member of the Remuneration Committee, who had joined the committee in 2014, was informed by Mr Forsyth in May 2015 in an email covering a number of points, that at that point Mr Forsyth's salary was split so that he received £110,000 and Mrs Forsyth received £30,000 (although the member told the PRA that they did not read that part of the email). The PRA also acknowledges that there is no evidence that any member of the Remuneration Committee objected to the amount of Mrs Forsyth's remuneration during the Relevant Period.

G37. However, the Remuneration Committee as a whole was not aware of, and did not agree, in each of the years of the Relevant Period the level of remuneration that Mrs Forsyth was receiving, nor the method by which her remuneration was being determined. Mr Forsyth could, and should, have ensured that Mrs Forsyth's remuneration was determined by the Remuneration Committee in the same way as for other SBMIA employees, yet he decided not to take this approach. In particular, in May 2015 Mr Forsyth arranged for £40,000 of his salary to be paid to Mrs Forsyth, in circumstances where he was aware that SBMIA's Remuneration Policy provided that SBMIA's remuneration framework should be applied consistently to all employees, with no 'special arrangements'. The fact that the Chairman of the Board approved the payments, and that another member was sent an email which mentioned Mrs Forsyth's current salary in May 2015, does not negate the fact that Mr Forsyth was aware that he was arranging for Mrs Forsyth to receive remuneration in excess of what was justified for the work she was undertaking without the Remuneration Committee's knowledge or approval. In the PRA's view, by doing so Mr Forsyth failed to act with integrity.

#### Advice from SBMIA's external auditors

G38. *Mr Forsyth's actions were consistent with advice received by SBMIA from its external auditors. According to a minute of a meeting dated 6 February 2014, the external auditors advised that "if [SBMIA] was to have a PAYE inspection then they may try to recover additional tax from [Mr Forsyth] on the basis that he does not take all his salary and gives some to [Mrs Forsyth]. [The external auditors] told Mr Forsyth that the remuneration committee should have something in writing to state the amount paid to [Mr Forsyth] and then an amount paid to [Mrs Forsyth] and that the bonus should state to [Mrs Forsyth] only." The external auditors did not suggest that revenue law required anything other than the proper documentation of the fact that the amounts were to be paid to Mrs Forsyth. It should not be held that Mr Forsyth lacked integrity, given that the relatively informal manner in which he proceeded, and the lack of retained tangible evidence as to the activities carried out by Mrs Forsyth, was consistent with the advice provided by SBMIA's external auditors.*

G39. The external auditors' advice was not intended as a review of the arrangements for Mrs Forsyth's employment, nor advice as to the legitimacy of those arrangements. Rather, it gave an outline of the correct procedure to adopt, pointing

out some concerns that it had noted. This is apparent from a letter that the external auditors sent to another regulatory body in 2017, which provided further information about the advice they had provided to SBMIA and Mr Forsyth in 2014. They stated that they were concerned that the bonus paid to Mrs Forsyth was linked to the bonus due to Mr Forsyth and that Mrs Forsyth's salary had not been agreed by the Remuneration Committee, and that they advised Mr Forsyth that in future the Remuneration Committee should agree her salary and bonus, that any bonus paid to Mrs Forsyth should not be linked to his earnings and that Mrs Forsyth's salary should be commensurate with the services carried out by her for SBMIA. They also stated that they were informed that Mrs Forsyth did some administrative work from home and provided some hospitality services, but did not obtain any evidence as to her employment duties.

G40. As the Remuneration Committee did not agree Mrs Forsyth's salary or bonus at any point during the Relevant Period, half of Mr Forsyth's bonus in 2015 was paid to Mrs Forsyth and as, in the PRA's view, Mrs Forsyth's salary was not commensurate with the work she carried out, the PRA does not consider that Mr Forsyth acted consistently with advice given by SBMIA's external auditors.

*The March 2011 and February 2014 bonus payments*

G41. *There is no basis not to treat at face value the contents of the document, signed by the Chairman of the Remuneration Committee in March 2011, which stated that the Remuneration Committee agreed to make an additional, discretionary bonus payment of £10,000 to Mrs Forsyth. As it was signed by the Chairman of the Remuneration Committee, it cannot be alleged that it by-passed him.*

G42. *There is ample evidence to support the contention that the work done by Mrs Forsyth was sufficient to make both the March 2011 additional bonus payment and the February 2014 bonus entirely permissible.*

G43. The PRA considers that Mrs Forsyth only did a limited amount of work in the years preceding the March 2011 additional bonus payment and the February 2014 bonus, and that this work did not justify the bonuses of £10,000 and £12,500 respectively that she received on those two occasions. The PRA considers that, although these bonus payments were not all or part of the bonus that the Remuneration Committee had approved to be paid to Mr Forsyth, Mr Forsyth deliberately arranged them when he was aware that they were not justified, and in doing so failed to act with integrity.

## Remuneration Committee Minutes

G44. *The allegation that the documents created in 2013, 2014 and 2015 evidencing the finally determined split of the salary between Mr and Mrs Forsyth were drafted by Mr Forsyth deliberately to give the misleading impression that the Remuneration Committee had agreed these payments is unfair. Whilst it is accepted that the heading "Minutes of the Remuneration Committee" was inapposite in that, in each case, the document is not a record of a discussion which took place at a Remuneration Committee meeting, the document does accurately record the conclusions of the decision-making procedure adopted by the Remuneration Committee.*

G45. *Moreover, the documents were not designed to mislead. The Chairmen of the Board and of the Remuneration Committee approved and signed documents on this basis, another member of the Remuneration Committee was aware of the split, and the other member was content to approve a global figure and leave the precise split to be determined by one of the Chairmen.*

G46. The PRA considers that the additional minutes created in 2013, 2014 and 2015 were clearly false and misleading, as they purported to record a decision of the Remuneration Committee regarding the split of Mr Forsyth's salary with Mrs Forsyth, when the Remuneration Committee had not agreed or even discussed the split. As Mr Forsyth prepared these minutes when he was aware that they were misleading, the PRA considers that he acted without integrity. The PRA considers that the fact that the Chairman of the Board signed the false minutes does not mitigate Mr Forsyth's misconduct.

## Misleading the PRA

G47. *Mr Forsyth did not act without integrity in sending the Remuneration Committee "minutes" in their final form to the PRA. They represented the final conclusions of the Remuneration Committee, as signed by the Chairman of the Board, setting out the ultimate result of the procedure approved by that committee. It was perfectly reasonable for Mr Forsyth, in response to the PRA's request for the minutes of the Remuneration Committee to send, in respect of each relevant year, (i) the document which contained the narrative and chronological record of the matters discussed at the meeting, and (ii) the separate document which set out the final results of the process adopted by the Remuneration Committee for determining Mr and Mrs Forsyth's salary.*



G48. The PRA has concluded that Mr Forsyth acted recklessly in sending the false minutes to the PRA and failing to provide all copies of minutes that had been prepared, with the result that the PRA had an incomplete picture of what had (and had not) been agreed by the Remuneration Committee in respect of Mr and Mrs Forsyth's remuneration. In responding to the PRA, Mr Forsyth was aware of the PRA's request and of the documents that were being sent, and therefore that there was a risk that the PRA would be misled as to what had been agreed in the Remuneration Committee meetings.

#### Misleading SBMIA's Board of Directors

G49. *The text which Mr Forsyth suggested should be omitted from the external auditor's report did not relate to, or affect any substantive opinion or determination of, the auditor. The auditor's terms of reference were to consider whether SBMIA had been accounting for PAYE correctly on Mr and Mrs Forsyth's salaries for the year ended 5 April 2015 and the period 6 April to November 2015. The auditor clearly concluded that SBMIA had accounted correctly in respect of these matters.*

G50. *Mr Forsyth asked for details of his and Mrs Forsyth's remuneration to be removed out of concern with the extent to which the report would be circulated. It was perfectly proper for Mr Forsyth to request the omission of confidential details that it was not necessary to include, to ensure that sensitive information did not enter the public domain. The external auditor was not asked to consider whether the amount paid to either Mr or Mrs Forsyth was permissible under the relevant tax regime or reasonable, and nothing in Mr Forsyth's suggested amendments related to these issues.*

G51. *Other Board members were aware of the allegation regarding the payment of Mr Forsyth's salary to Mrs Forsyth and could have commissioned a factual investigation into whether Mrs Forsyth carried out genuine work in the business, but chose not to do so. Mr Forsyth could not have commissioned such an investigation, as it would have been an investigation into his own veracity. Other Board members were also involved in deciding on the scope of the external auditor's report and did not raise any concerns with it.*

G52. As the CEO of SBMIA and an approved person, Mr Forsyth must have realised that it was not appropriate and was a clear conflict of interest for him to be involved

in deciding on the scope of a formal investigation of allegations concerning his conduct. However, not only did he participate in deciding on the scope of the investigation, but the instructions to the external auditor that he proposed to another Board member did not reflect the focus of the allegations raised, which concerned the splitting of his salary with Mrs Forsyth. Instead his proposal was that the external auditor examine SBMIA's reporting to HMRC in respect of his and Mrs Forsyth's salaries and did not refer to the splitting of his salary. Even though the other Board member could have objected to the proposed instructions or insisted that the salary splitting allegation be examined, that does not mitigate the fact that it was inappropriate for Mr Forsyth to participate in agreeing the scope of the investigation.

G53. Further, the PRA considers it was not appropriate for Mr Forsyth to ask the auditor to remove details of his and Mrs Forsyth's remuneration from its report, even though it might not have been necessary for the auditor to include that information in order to fulfil the requirements of the investigation, and notwithstanding any confidentiality concerns, in circumstances where he was aware that this would mean that the Board would not be aware of the high level of remuneration being paid to Mrs Forsyth and therefore would not be able to scrutinise properly the allegations regarding these payments.

#### Integrity

G54. *Mr Forsyth acted at all times with integrity. Integrity is principally a subjective concept, defined for the purposes of disciplinary proceedings in the case of Wingate v SRA [2018] 1 WLF 3969. In that judgment it was stated that integrity represents "a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members ... Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty."*

G55. *This test reflects the approach by the Tribunal and its predecessors, as expressed in Hoodless & Blackwell v Financial Services Authority [2003]: "In our view 'integrity' connotes moral soundness, rectitude and steady adherence to an ethical code. A person lacks integrity if unable to appreciate the distinction between what is honest and dishonest by ordinary standards. (This presupposes, of course, circumstances where ordinary standards are clear. Where there are genuinely grey areas, a finding of lack of integrity would not be appropriate.)"*

G56. *In considering the application of the test for integrity to the facts of this case, it should be borne in mind that whilst Mr Forsyth was an approved person who was obliged to act with integrity in carrying out his functions as CEO of SBMIA, he was not a professional lawyer, accountant or tax adviser who had, or held himself out as having, particular specialist expertise in revenue matters. In forming his understanding as to what SBMIA could properly pay to himself and Mrs Forsyth by way of remuneration, Mr Forsyth acted in good faith and in a manner he genuinely believed to be lawful and permissible. Such conduct does not demonstrate any lack of integrity.*

G57. The PRA has concluded that Mr Forsyth did not act with integrity, for the reasons set out in paragraphs 2.13-14 and B1.2 of this Notice. The PRA agrees that the Court of Appeal's judgment in *Wingate* sets out the relevant test for a lack of integrity for the purposes of disciplinary proceedings, and that it was noted in that judgment that the observations of the Tribunal's predecessor in *Hoodless & Blackwell* had met with general approval. The PRA considers that it was not concluded in *Wingate* that integrity is principally a subjective concept; rather, the judgment shows that it involves the application of objective ethical standards, with the objective assessment informed by the facts which the individual knew and their state of mind.

G58. The PRA does not accept that Mr Forsyth genuinely believed that his actions were permissible. In particular, the PRA considers that Mr Forsyth was aware that Mrs Forsyth only carried out a limited amount of administrative work and that the level of remuneration she received during the Relevant Period for that work was clearly not justified. In any case, whatever Mr Forsyth's subjective belief as to the permissibility of his actions, the PRA does not consider that his actions were proper, judged by the standards of his profession.

G59. Mr Forsyth was a CEO of a regulated insurance company, and accordingly was expected to behave to a high moral standard and to adhere to an ethical code. The PRA considers that by committing the acts set out in paragraphs 2.13-4 and B1.2 of this Notice, which included deliberately arranging for his wife to be paid remuneration in excess of what was reasonable for the work she was undertaking in order to reduce his income tax liability, deliberately drafting false minutes and recklessly responding to the PRA, Mr Forsyth clearly acted without integrity during the Relevant Period.

## The rules of the relevant tax regime

G60. *No attempt has been made by the Authority to identify the relevant tax rules that apply to the payments made to Mrs Forsyth, in particular any rules which would suggest that there is any wrongdoing from a tax law perspective in a company paying an employee remuneration "in excess of what was reasonable for the work she was undertaking". This is a relevant issue as, if Mrs Forsyth's remuneration was permissible in accordance with the relevant tax laws, and it was determined according to a procedure approved by SBMIA involving its authorisation by a senior member of the Remuneration Committee, there is no basis for a finding of lack of integrity.*

G61. *There are two High Court cases which are routinely referred to in this area. The case of Copeman v William Flood & Sons [1941] 1 KB 202, considered whether payments of remuneration to family members were "wholly and exclusively" laid out or expended for the purposes of the company's trade, which is a different test to seeking to evaluate what is reasonable. The case of Moschi v Kelly 91950 – 1952) TC 433 disallowed excessive payments to a spouse, but solely on the basis that they had not been paid, rather than by any reference to their alleged reasonableness. Neither of these cases provides an answer as to whether, and if so how, a company might be permitted to value services which are provided to a CEO where, due to the fact they are provided out-of-hours and in the context of the CEO's own home, they could not practically be provided by anyone other than a family member.*

G62. *The decision of the First-Tier Tribunal (Tax) in the case of Evans v Commissioners for HMRC [2010] UKFTT 140 (TC) also supports the view that SBMIA's and Mr Forsyth's approach to Mrs Forsyth's remuneration was permissible. In that case, the First-Tier Tribunal, applying the test in the Copeman case, held that it was required to consider proportionality, and did so on the basis of what the paying party would have been willing to pay to an unconnected third party in the relevant circumstances. Applying the First-Tier Tribunal's approach to the circumstances of this case, the remuneration paid to Mrs Forsyth was proportionate in the light of (i) the anti-social evening/weekend nature of the work that Mr Forsyth required to be performed; (ii) the impracticality of actually hiring someone to do that work; and (iii) the ad hoc and urgent nature and volume of the work. Also, there is no reason to suppose that SBMIA would not have been entirely content to pay Mrs Forsyth what it in fact did as it was part of a "global figure" for Mr and Mrs Forsyth which it had approved. Moreover, the decision in Evans demonstrates that the issues in Mr Forsyth's case*

*involve a "genuine grey area", such that a finding of a lack of integrity by Mr Forsyth would not be appropriate.*

G63. *In addition, there is no requirement under HMRC tax rules that, in order for a salary increase or bonus to be permissible, there needs to be an additional element of personal performance or work as compared to previous years.*

G64. The issue which the PRA has had to decide is not whether it was permissible from a tax law perspective for Mrs Forsyth to have received the amounts awarded, but rather whether Mr Forsyth acted with a lack of integrity in breach of Statement of Principle 1 (Integrity) of the Statements of Principle and Individual Conduct Standard 1 (Integrity) of the PRA's Insurance Conduct Standards. In considering whether Mr Forsyth did act with a lack of integrity, the PRA has had regard to the relevant facts and evidence, and to the test for integrity as set out in the case of *Wingate* (see paragraph 56 above). The PRA has concluded that the deliberate and reckless acts and omissions of Mr Forsyth, as set out in paragraphs 2.13-4 and B1.2 of this Notice, clearly demonstrate that he failed to act with integrity.

G65. The PRA also does not agree that the issues in Mr Forsyth's case involve a "genuine grey area". The PRA considers it is clear, when judged against the objective ethical standards of the financial services industry, that Mr Forsyth's actions, which involved paying increasing and unjustified remuneration to a spouse without proper scrutiny, financially benefitting from that arrangement, and taking steps to conceal the arrangement, lacked integrity.

G66. The PRA does, however, note that the First-Tier Tribunal's judgment in *Evans*, and also its judgment in the case of *McAdam v Revenue & Customs [2016] UKFTT 838 (TC)* (which post-dated the Relevant Period), includes consideration of whether the payments were excessive or disproportionate and, as Mr Forsyth mentions (see paragraph 61 above), the First-Tier Tribunal held that the relevant test is what the paying party would have been willing to pay to an unconnected third party for the relevant services, and that this involves an assessment of proportionality.

G67. The PRA notes that, when this matter was discussed by the Board in July 2016, a Board member, who was an experienced chartered accountant, noted that organisations often pay spouses a modest salary of around £5,000 to £10,000 for

doing work similar to that carried out by Mrs Forsyth. Mrs Forsyth had, for a number of years received salary in line with this.

### Limitation

G68. Pursuant to section 66 of the Act, action may not be taken after the expiry of the relevant period of years, beginning with the first day on which the Authority knew of the misconduct, unless a Warning Notice has been issued in that period, and the Authority is to be treated as knowing of misconduct for these purposes if it has information from which the misconduct can be reasonably inferred. For misconduct which took place before 25 July 2014, the relevant period is three years.

G69. The Tribunal's decision in the case of *Jeffrey v Financial Conduct Authority FS/2010/0039* sets out the relevant test for the purposes of considering limitation. This makes it clear that the limitation period starts to run when the Authority knows enough for it to be reasonable to investigate further.

G70. By 6 November 2015, the Authority had been made aware of allegations that "[Mr Forsyth] has arranged ... to pay part of his salary and bonus to his wife who does not work in the business to reduce his tax liability thereby committing tax fraud. This has been ongoing since 2003." These allegations, although false and denied by Mr and Mrs Forsyth, were clear, specific and unequivocal and a sufficient basis for the Authority to investigate further. Accordingly, from this date the Authority had information from which Mr Forsyth's alleged misconduct could be reasonably inferred.

G71. As the Warning Notice was issued on 24 April 2019, after the relevant three-year period had expired, the Authority is prohibited by statute from imposing any financial penalty in respect of misconduct that is found to have occurred prior to 25 July 2014.

G72. The PRA acknowledges that it received a letter (with attachments) containing allegations, and interviewed the author of the letter more than three years prior to the date of the Warning Notice, and that if it was held that, as a result of these documents or that interview, the PRA knew of Mr Forsyth's misconduct, then the PRA would be prohibited from imposing any financial penalty in respect of that part of Mr Forsyth's misconduct that occurred prior to 25 July 2014.

G73. The PRA also agrees that the relevant test for the purposes of considering limitation is set out in the case of *Jeffrey*. However, the PRA notes that the Tribunal

in paragraph 338 of its decision made the following comments: "... *A mere allegation or assertion unsupported by evidence would be unlikely to be regarded as sufficient to amount to knowledge of misconduct or as information from which it would be reasonable for the Authority to have inferred misconduct, although it might be expected to give rise to further enquiry. Knowledge of an allegation of misconduct is not the same as knowledge of the misconduct. As an investigation progresses more information may come to light as a result of which there comes a time when the Authority either knows, or it can reasonably be inferred from information which the Authority has, that there is substance to an allegation of misconduct in relation to a particular person. It is only at the latter stage that the time limitation begins to run in respect of that misconduct...*"

G74. The PRA has reviewed the letter, attachments and interview notes and considers that, insofar as Mr Forsyth's misconduct prior to 25 July 2014 is concerned, they contain mere unsubstantiated allegations of misconduct. Some of these allegations are consistent with the PRA's view of the misconduct, but many are not. The letter, attachments and interview do not give substance to the misconduct of Mr Forsyth between 19 February 2010 and 24 July 2014. Instead, the PRA considers that this information might be expected to give rise to further enquiry, which is what took place.

G75. By way of that further enquiry, the PRA received certain documents from Mr Forsyth on 25 April 2016, including the Remuneration Committee minutes for 2013-15 showing remuneration paid to Mrs Forsyth during 2013-15 and signed by Mr Barr. Mr Forsyth also sent a 2016-2019 business plan document highlighting that SBMIA had 6 employees and with Mrs Forsyth not on the list. On 27 April 2016, the PRA interviewed various individuals connected SBMIA. The PRA considers this to be the earliest time when limitation may have started to run.

### Sanctions

G76. *Mr Forsyth is a man of unblemished character, who has spent over 30 years working in the marine insurance industry, and is highly respected within the financial services sector. The prohibition order that the Authority is proposing to impose, together with that which the PRA is proposing to impose, is the most draconian possible and will have the effect that Mr Forsyth will no longer be able to continue working in his current position at another insurance company.*

G77. *For the reasons given, Mr Forsyth denies that he lacks integrity and submits that he is fit and proper and that no prohibition order is needed. Should the Authority disagree with Mr Forsyth's submissions as to the facts, it will still need to consider carefully whether a prohibition order, particularly a full prohibition order, is necessary for the protection of the public.*

G78. *Mr Forsyth submits that he has not committed any misconduct and so no financial penalty should be imposed. However, if the Authority disagrees with Mr Forsyth's submissions as to the facts, it will need to consider carefully whether a further reduction to the financial penalty is justified on the grounds of proportionality or a reduction in the alleged seriousness level of the misconduct.*

G79. For the reasons set out in paragraphs 2.13-14 and B1.2 of this Notice, the PRA has concluded that Mr Forsyth failed to act with integrity. As set out in paragraphs 2.20 and C.2 of this Notice, in light of the serious nature of Mr Forsyth's misconduct, the PRA considers that Mr Forsyth is not fit and proper and poses a serious risk to confidence in the financial system, and that it is therefore appropriate to impose the Prohibition Order. In reaching this conclusion, the PRA has carefully considered the effect that the Prohibition Order will have on Mr Forsyth, and has taken account of his many years working in the insurance industry, but considers that the Prohibition Order is necessary given the nature of Mr Forsyth's misconduct.

G80. The PRA's reasons for the proposed financial penalty at Step 2 of the penalty calculation in the Warning Notice included considerations of proportionality. The PRA does not consider that any further reduction for proportionality reasons is necessary and maintains its view that the financial penalty proposed in the Warning Notice properly reflects the nature, extent, scale and gravity of Mr Forsyth's misconduct, in particular because it was committed partly deliberately and partly recklessly.

#### Remit of PRA prudential regulation

G81. *It is not necessary for the PRA to take its own duplicative action in every case where a lack of integrity is alleged by the FCA. Such a course of conduct is disproportionate and oppressive, and achieves no useful purpose.*

G82. Each regulator may enforce its own requirements and standards, and to do so is neither disproportionate nor oppressive, particularly given the differing remits and objectives. Matters of integrity are important to the PRA as prudential regulator,



particularly where senior individuals are involved, because compliance with the PRA's regulatory requirements and standards contribute to the advancement of the PRA's statutory objectives. Conversely, if senior individuals conduct themselves with a lack of integrity, it undermines the trust in financial institutions and the financial system itself.

G83. The PRA and FCA have co-ordinated their approach to minimise any additional procedural impact on Mr Forsyth.