

**Process Review Panel in relation to the
Regulation of Mandatory Provident Fund Intermediaries**

2021 Annual Report

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Message from the Chairman

The Process Review Panel in relation to the Regulation of Mandatory Provident Fund Intermediaries (“PRP”) is an independent panel established in 2013, following the commencement of the statutory regime for the regulation of Mandatory Provident Fund (“MPF”) intermediaries in 2012. It is tasked to review and advise the Mandatory Provident Fund Schemes Authority (“MPFA”) on the adequacy and consistency of its internal procedures and operational guidelines in relation to the regulation of MPF intermediaries, and to ensure the operational consistency and smooth coordination among the MPFA and the three Frontline Regulators, namely, the Hong Kong Monetary Authority, the Insurance Authority and the Securities and Futures Commission.

I am pleased to present, as the Chairman of the PRP, the sixth Annual Report of the PRP. In the current review cycle, i.e. from 1 May 2020 to 30 April 2021, there were a total of 28 completed conduct cases relating to MPF intermediaries. Out of these cases, the PRP selected nine cases for detailed review. Leveraging on the expertise of our Members coming from a wide and diverse range of sectors, the PRP believes that it has made constructive comments and recommendations for the MPFA, details of which could be found in Chapter 3 of this Report.

I would like to extend my gratitude to all Members of the PRP for their time and devotion to the work of the PRP. I would also like to thank the MPFA for their cooperation in assisting the PRP’s annual review to improve the effectiveness and transparency of the MPFA’s internal operations. I am in particular glad to note that the MPFA has followed up on our recommendations in the past Annual Reports in a positive and prompt manner. I also thank the Financial Services and the Treasury Bureau for providing secretarial support to the PRP.

Seven years on since the establishment of the PRP, we are about to embark on a new journey by taking up a more comprehensive role in the MPF sphere. With the benefit of the recommendation made by the former Chairman of the PRP, Dr Eddy Fong, in the 2019 Annual Report, the scope of review of the PRP will be expanded starting in October 2021 to cover other areas of work of the MPFA. To reflect the enlarged scope, the PRP will be re-named as “Process Review Panel for the Mandatory Provident Fund Schemes Authority”. In the next review cycle, we will see the PRP playing a full-fledged role in advising the MPFA on its regulatory activities and internal procedures.

Looking ahead, the PRP will endeavour to provide advice to the MPFA in its pursuit of regulatory objectives and operational efficiency. With the concerted efforts of the PRP, the MPFA and the Government, I am optimistic that the robustness of the MPF regime and industry in Hong Kong will continue to be effectively maintained.

Mr Eugene FUNG, SC
Chairman
September 2021

Chapter 1: Background

Overview

- 1.1 The Process Review Panel in relation to the Regulation of Mandatory Provident Fund Intermediaries (“PRP”) is an independent panel established by the Chief Executive in November 2013.
- 1.2 The PRP is tasked to review and advise the Mandatory Provident Fund Schemes Authority (“MPFA”) on the adequacy and consistency of its internal procedures and operational guidelines governing the actions taken and operational decisions made by the MPFA and its staff in the performance of its regulatory functions relating to the regulation of Mandatory Provident Fund (“MPF”) intermediaries and associated matters.

Functions

- 1.3 The Terms of Reference of the PRP are as follows –
 - (a) to review and advise the MPFA on the adequacy and consistency of its internal procedures and operational guidelines governing the actions taken and operational decisions made by the MPFA and its staff in the performance of the regulatory functions in relation to the following areas –
 - (i) registration of MPF intermediaries and associated matters by the MPFA;
 - (ii) co-ordination and follow-up with the Frontline Regulators (“FRs”) ¹ in relation to inspection and investigation of registered MPF intermediaries;
 - (iii) taking of disciplinary actions by the MPFA; and

¹ The Hong Kong Monetary Authority (“HKMA”), the Insurance Authority (“IA”), and the Securities and Futures Commission (“SFC”) are the FRs responsible for the supervision and investigation of complaints against registered MPF intermediaries whose core business is in banking, insurance and securities respectively.

- (iv) receipt and handling of complaints against MPF intermediaries in relation to sales and marketing activities and the giving of advice, in relation to MPF registered schemes.
- (b) to receive and consider periodic reports from the MPFA on all completed or discontinued cases in the above-mentioned areas including reports on investigation cases which are not completed within one year and on any appeals;
- (c) to receive and consider periodic reports from the MPFA in respect of complaints concerning sales and marketing activities and the giving of regulated advice, in relation to registered MPF schemes, including periodic reports on complaints that have not been concluded within one year;
- (d) to call for and review the files of the MPFA relating to any case or complaint referred to in the periodic reports mentioned in paragraphs (b) and (c) above for the purpose of verifying that the actions taken and decisions made in relation to that case or complaint adhere to and are consistent with the relevant internal procedures and operational guidelines, and to advise the MPFA accordingly;
- (e) to advise the MPFA on such other relevant matters as the MPFA may refer to the PRP or on which the PRP may wish to advise; and
- (f) to submit annual reports and, if appropriate, special reports (including reports on problems encountered by the PRP) to the Financial Secretary which, subject to applicable statutory secrecy provisions and other confidentiality requirements, should be published.

1.4 The PRP does not review the merits of the MPFA's decisions and actions. Rather, it focuses on the procedural propriety in the regulatory regime.

Membership

- 1.5 Currently, the PRP comprises ten members, including the Chairman. Members come from a wide spectrum of professions including the MPF, banking, insurance and legal sectors. The Chairman of the MPFA and the representative of the Secretary for Justice are ex officio members of the PRP.
- 1.6 The current membership of the PRP is as follows –

Chairman

Mr Eugene FUNG Ting-sek, SC

Members

Mr Abraham CHAN Lok-shung, SC

Miss Grace CHAN Man-yee

Mrs Agnes KOON WOO Kam-oi, MH

Mr Allen LAU Kai-hung

Dr James LIN

Mr Jeff WONG Kwan-kit

Ms Grace YU Ho-wun

Ex officio Members

Mrs Ayesha Macpherson LAU, BBS, JP

(in her capacity as the Chairman of the MPFA)

Mr YUNG Lap-yan

(in his capacity as the representative of the Secretary for Justice)

Secretariat

Financial Services and the Treasury Bureau

The Statutory Regime

- 1.7 Under the statutory regulatory regime for MPF intermediaries which commenced operation in November 2012, the MPFA is the authority to administer the registration of MPF intermediaries, issue guidelines on compliance with statutory requirements applicable to registered MPF intermediaries, and impose disciplinary sanctions on them. On the other hand, the HKMA, the IA and the SFC assumed the statutory role as FRs, responsible for the supervision and investigation of complaints against registered MPF intermediaries whose main duties are in banking, insurance and securities respectively.
- 1.8 This institution-based regulatory approach has taken into account the market profile of existing MPF intermediaries who carry on MPF sales and marketing activities incidental to their main lines of business in banking, insurance and/or securities, being regulatees of the HKMA, the IA and/or the SFC, as the case may be.
- 1.9 Under the statutory regime, a person is required to be registered with the MPFA as an MPF intermediary before he/she can engage in MPF sales and marketing activities that may influence a potential/existing participant of an MPF scheme in making a decision that affects the latter's benefits in the MPF scheme. MPF intermediaries have to comply with a set of conduct requirements set out in the relevant provisions of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) ("MPFSO") and the Guidelines on Conduct Requirements for Registered Intermediaries ("Guidelines") when carrying on a regulated activity.
- 1.10 Generally speaking, an MPF intermediary is carrying on a regulated activity when he/she invites or induces, or attempts to invite or induce, another person to make a material decision, or gives regulated advice in respect of various matters concerning a particular registered MPF scheme or a particular constituent fund of a registered MPF scheme. Non-compliance with the required standards, once established, may result in disciplinary sanctions imposed by the MPFA.

Operational Manuals

1.11 The MPFA has the following three operational manuals with respect to the regulation of MPF intermediaries –

- (a) the “Process Review Panel Manual (Registration)”, which sets out, among other things, the procedures governing the handling of applications for registration of MPF intermediaries, suspension and revocation thereof, as well as assignment of respective FRs to MPF intermediaries;
- (b) the “Process Review Panel Manual (Complaint Handling and Investigation)”, which sets out the procedures to be followed by the MPFA and the FRs with respect to referral and investigation of complaints, as well as the progress monitoring mechanisms between the MPFA and the FRs; and
- (c) the “Process Review Panel Manual (Disciplinary Proceedings)”, which sets out the procedures for disciplinary proceedings and the making of disciplinary orders by the MPFA.

1.12 The MPFA would from time to time review and update the three manuals to streamline the internal processes for enhancing the efficiency in case handling and to reflect legislative amendments. The recent amendments to the three manuals were reported to and noted by the PRP.

Key Performance Indicators (“KPIs”)

1.13 Having regard to the PRP’s previous concerns about the MPFA’s long case-handling time, the MPFA devised two sets of KPIs on trial basis in September 2018 for better case monitoring. The first set of KPI monitors the preliminary case assessment period from the date of receipt of case to the date of referral to the FRs or case closure, as the case may be (“Process (a)”). The second set of KPI monitors the case assessment period from the date of receipt of investigation findings from the FRs to the date of issuance of a Notice of Proposed Disciplinary Action or case closure, as the case may be (“Process (b)”). There are two target time frames under each process, within which the MPFA is expected to complete certain percentages of cases out of the total.

- 1.14 With the accumulation of case-handling experience and taking into account the PRP’s recommendations in its 2019 and 2020 Annual Reports, these two sets of KPIs have been formalized for adoption in September 2019, with enhancement in April 2021. The KPI measurements are summarised as follows –

Implementation Time	Process (a)	Process (b)
September 2018 <i>(on trial basis)</i>	(i) 60% - 2 months (ii) 85% - 3 months	(i) 60% - 8 months (ii) 85% - 12 months
September 2019	(i) 60% - 2 months (ii) 80% - 3 months	(i) 60% - 7 months (ii) 80% - 10 months
April 2021	(i) 70% - 2 months (ii) 80% - 3 months	(i) 60% - 7 months (ii) 80% - 10 months

Co-ordination among the MPFA and FRs

- 1.15 To institutionalise the co-ordination among the MPFA and the FRs, the MPFA signed with the FRs in May 2013 a “Memorandum of Understanding concerning the Regulation of Regulated Persons with respect to Registered Schemes under the Mandatory Provident Fund Schemes Ordinance” (“MOU”), which laid down the broad framework of the interaction and co-operation among the MPFA and the FRs. The MOU applies to the statutory regulatory regime on sales, marketing activities and giving of advice in relation to registered schemes under Part 4A of the MPFSO.
- 1.16 The MPF Intermediaries Regulation Committee (“MIRC”), a forum formed by the MPFA since 2012 for the MPFA and the FRs to discuss issues of regulatory concerns, held two meetings between 1 May 2020 and 30 April 2021 (“current review cycle”). The MPFA and the FRs exchanged views on supervisory and enforcement issues relating to MPF intermediaries.
- 1.17 In addition to the MIRC, the MPFA maintained close dialogue with the FRs by hosting bilateral meetings and engaging in telephone communications with the FRs for updating of case progress and exploration of more effective ways for case handling. During the current review cycle, special communication protocols and communication channels with the FRs were established to facilitate co-ordination at the operational level.

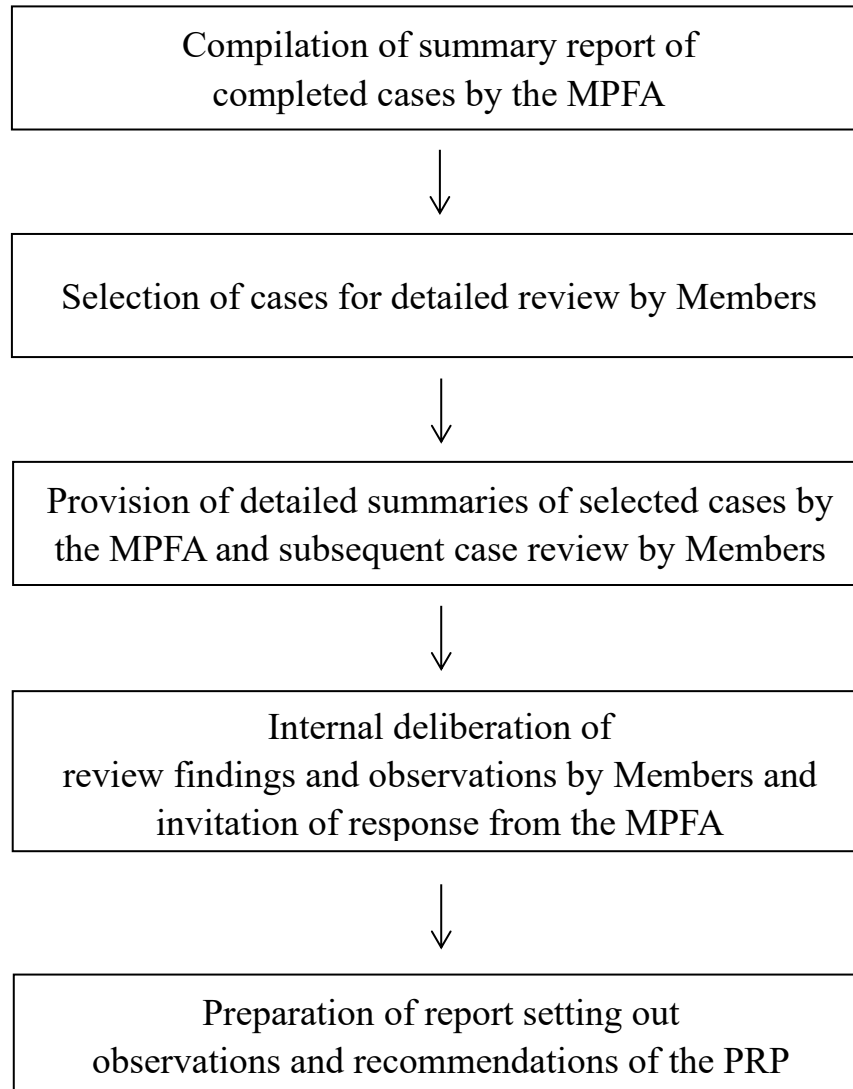
Chapter 2: Work of the PRP

Modus Operandi

- 2.1 Where the MPFA receives a complaint against an MPF intermediary, the MPFA would carry out a preliminary assessment before referring the matter to the relevant FR to consider investigation. Where a complaint is directly lodged with an FR, the FR would carry out a preliminary assessment and then proceed with an investigation direct if it thinks fit. The FR will also inform the MPFA concurrently of the receipt of the complaint. In any event, the outcome of all investigation by an FR will be passed to the MPFA for final assessment and necessary follow-up actions including disciplinary sanctions.
- 2.2 In exercising its core functions of reviewing and advising the MPFA on the adequacy and consistency of its internal procedures with regard to the regulation of MPF intermediaries, the PRP reviews the MPFA's operating procedures for registration, complaint handling, and disciplinary proceedings, as well as periodic reports of closed cases in relation to MPF intermediaries. Members discuss and endorse observations and recommendations with respect to the operating procedures and cases reviewed for the MPFA to respond and follow up. The PRP then issues an Annual Report setting out the observations and recommendations of members having regard to the response from the MPFA.
- 2.3 Members of the PRP are obliged to keep confidential the information furnished to them in the course of the PRP's work. To maintain the independence and impartiality of the PRP, all members of the PRP are required to make declaration of interests upon commencement of their terms of appointment and to do so before conducting each case review.

Case Review Workflow

2.4 Workflow of the PRP case review is as follows –



2.5 When concluding the annual case review, the PRP will also take note of the MPFA's follow-up actions to previous observations and recommendations made by the PRP.

Cases for Review in the Current Review Cycle

2.6 During the current review cycle (i.e. from 1 May 2020 to 30 April 2021), a total of 28 conduct cases relating to MPF intermediaries were closed. They can be classified into the following five categories with reference to the main allegations against the Principal Intermediaries (“PIs”) or Subsidiary Intermediaries (“SIs”) concerned –

Category	Nature of Case	Number of Cases	Case Number
I	Unauthorized transfer, forgery of signature/ documents and/or impersonation of client to collect MPF account information	15	1, 2, 4, 5, 6, 9, 10, 12, 14, 15, 17, 19, 22, 25, 26
II	Failure to provide necessary information clearly and accurately to client	4	7, 8, 16, 28
III	Failure to execute client’s instruction promptly and/or asking client to sign on incomplete form	6	11, 18, 21, 23, 24, 27
IV	Inadequate internal control of PI	2	3, 20
V	Dispute between PI and SI on MPF commission	1	13
Total:		28	Substantiated: 5 (cases 1, 5, 22, 23, 27) Unsubstantiated: 23 (cases 2-4, 6-21, 24-26, 28)

2.7 All of the 28 cases under the current review cycle involved MPF intermediaries whose FR was the IA. The FR concerned conducted initial assessment into 26 cases, of which five had been further investigated by the FR while 21 cases were closed by the FR after their assessment and decision of not initiating any investigation. As regards the remaining two cases, they were

closed by the MPFA in the preliminary stage either because the case was not within the regulatory regime of the MPFSO or because the case was withdrawn by the complainant soon after the complaint was lodged.

- 2.8 Out of the 28 closed cases, five cases were substantiated and 23 cases were unsubstantiated. Disciplinary actions were taken in two of the five substantiated cases, where the registrations of the SIs concerned as MPF intermediaries were suspended for 15 and 40 months respectively. For the other three substantiated cases with relatively minor breaches, compliance advice letters (“CAL”) were issued to the SIs concerned.
- 2.9 As regards the remaining 23 unsubstantiated cases, the MPFA issued 11 CALs and/or reminder letters (“RLs”) in nine of these cases to the relevant SIs and/or PIs to remind them to comply with the relevant conduct requirements under the MPFSO and the Guidelines, with a view to raising the overall standard of the industry, meeting the expectation of the public and promoting compliance culture. For the rest of the unsubstantiated cases, no further action was required of and taken by the MPFA.
- 2.10 The PRP selected nine cases out of the 28 closed cases for detailed examination. Case summaries of the nine cases selected were prepared for members’ perusal.
- 2.11 Details of the selected cases for review and observations of the PRP are set out in Chapter 3.

MPFA's Follow-up on the Recommendations in the 2020 Annual Report

2.12 In its 2020 Annual Report, the PRP made a number of recommendations to the MPFA for improving the handling of cases and expediting case completion. In response, the MPFA had taken the following actions –

PRP's Observations / Recommendations in 2020	MPFA's Follow-up Actions
<p>Consistency and Transparency of the Actions to be Taken (paragraphs 3.8 to 3.14 of the 2020 Annual Report)</p> <ul style="list-style-type: none"> • The PRP noted that different actions were taken by the MPFA in response to cases involving similar acts. • The PRP recommended the MPFA to – <ul style="list-style-type: none"> (a) set up a defined set of guidelines to determine the type of actions and level of penalties based on the severity and nature of the substantiated allegations. A schedule listing the range of penalties with reference to the breaches should be included in this set of guidelines. (b) list the factors it would consider in deciding the type of actions and the level of penalties on its website or circulate to the industry via other means; and (c) furnish the issued decision letters with the PRP to facilitate its review. 	<ul style="list-style-type: none"> • Reviewed existing internal guidance on imposing disciplinary order; • Issued and published on the MPFA's website in June 2021 a circular to the industry setting out the types of disciplinary order, level of penalties and the list of factors considered when the MPFA determined disciplinary order; • Continued to enrich contents of statutory notices for disciplinary actions issued to PIs/SIs, as well as press release and Statement of Disciplinary Action attached thereto for enhancing the understanding of the MPFA's decisions by the case target and the industry; and • Furnished the PRP with issued decision letters during PRP review exercise.

<p>Internal Processes (paragraphs 3.19 to 3.21 of the 2020 Annual Report)</p> <ul style="list-style-type: none"> • The PRP was of the view that the relatively hierarchical structure of the MPFA's Enforcement Division might hinder efficiency of case handling. • The PRP recommended that the MPFA consider different measures to streamline its internal processes and report its progress in the next PRP review. 	<ul style="list-style-type: none"> • Enhanced and streamlined internal procedures, updated operational manuals; and • Continued to explore different ways to streamline internal clearance processes while observing due process.
<p>KPIs (paragraphs 3.23 to 3.35 of the 2020 Annual Report)</p> <ul style="list-style-type: none"> • The PRP welcomed the implementation of the KPIs, but opined that there was room for improvement in case-handling time by the MPFA. • The PRP recommended the MPFA – <ul style="list-style-type: none"> (a) devote effort in the pursuit and improvement of KPIs and speed up consideration of the FR's findings; (b) develop an internal operating protocol and devise special communication protocols with the FRs for dealing with cases involving PIs; (c) implement measures to smoothen the transition in case handling due to change of case officers; (d) keep a formal record of why KPIs were not met in some cases; and (e) include information on 	<ul style="list-style-type: none"> • Reviewed and enhanced the KPIs (see paragraph 1.14), and established system and procedures to record cases that fall outside the target timeframes and the reasons behind; • Expedited case handling by enhancing database of precedent cases and streamlining internal processes, etc.; • Strengthened coordination with the FRs through experience sharing on supervisory and enforcement issues at regular meetings, establishment of special communication protocols with the FRs and exploring further collaborations with the FRs such as initiatives to exchange regulatory experience; • Maintained proper procedures and measures to ensure smooth handover of cases due to change of case officers; and

whether the two KPIs are achieved in each of the case to facilitate the review by the PRP.	<ul style="list-style-type: none"> • Provided the PRP with information on whether the KPIs are achieved in each case during PRP review exercise.
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- 2.13 The PRP welcomed the above follow-up actions taken by the MPFA, and looked forward to the MPFA's continuous efforts to ensure procedural propriety of the regulatory regime.

Chapter 3: Observations and Recommendations

Introduction

- 3.1 The nine cases reviewed by the PRP in detail under the current review cycle comprise five substantiated cases and four unsubstantiated cases. At least one case was chosen from each of the five main categories of allegations as mentioned in paragraph 2.6.

Case Number	Substantiated / Unsubstantiated
<i>Category I – unauthorised transfer, forgery of signature/documents and/or impersonation of client to collect MPF account information</i>	
1	Substantiated
2	Unsubstantiated
5	Substantiated
22	Substantiated
<i>Category II – failure to provide necessary information clearly and accurately to client</i>	
7	Unsubstantiated
<i>Category III – failure to execute client's instruction promptly and/or asking client to sign on incomplete form</i>	
23	Substantiated
27	Substantiated
<i>Category IV – inadequate internal control of PI</i>	
3	Unsubstantiated
<i>Category V – dispute between PI and SI on MPF commission</i>	
13	Unsubstantiated

- 3.2 A case review session was held in June 2021 for the PRP to scrutinize and examine these cases in detail. The review by the PRP was conducted on a case-by-case basis. Case summaries, the PRP's major case-specific observations and overall recommendations are set out in the ensuing paragraphs.

Case Summaries and PRP's Specific Observations on each Case

Category I – unauthorised transfer, forgery of signature/documents and/or impersonation of client to collect MPF account information

Case 1

3.3 Case 1 concerned an SI who was alleged to have –

- (a) conducted transfers without the complainant's authorization;
- (b) impersonated the complainant when calling MPF trustees to enquire about the complainant's MPF accounts information;
- (c) failed to ensure that any forms signed by the complainant were duly completed in all material respects before asking the complainant to sign on them and provide copies of signed forms to the complainant; and
- (d) failed to provide and explain information to the complainant about the scheme to be joined.

3.4 The MPFA found allegations (a), (c) and (d) substantiated, and imposed a disciplinary order of suspending the SI's registration as MPF intermediary for 15 months. The MPFA took 21 months to conclude the case after it received the FR's investigation findings.

The PRP's Observations

3.5 The PRP noted that the MPFA's handling time of Case 1 was exceptionally long. In particular, the MPFA took approximately eight months to seek legal advice from its internal legal department and an external Senior Counsel. Whilst the PRP recognised that the legal issues involved were novel and complex and that the case was handled at the beginning of the outbreak of the COVID-19 pandemic during which new work arrangements were introduced to the MPFA, the time taken for seeking legal advice was still disproportionately long.

- 3.6 The PRP noticed that the MPFA suffered from serious manpower shortage due to staff turnover during the case-handling period. The PRP noted that the MPFA had put in place measures to mitigate the impact of manpower shortage and ensure smooth transition and proper handling of cases in case of staff departure. These measures included re-assigning and prioritising cases to other officers for follow up, and adopting the pairing arrangement (e.g. pairing an Assistant Manager or a Senior Officer with a Manager to work together on cases).
- 3.7 When comparing the sanctions imposed in this case with that in Case 22 (see paragraph 3.15), it was unclear to the PRP as to the factors which prompted the MPFA to impose different levels of penalties (specifically the different periods of suspension) in these two cases involving misconduct of similar nature.

Case 2

- 3.8 Case 2 concerned an SI who was alleged to have leaked personal information of the complainant to the SI's personal assistant, who impersonated the complainant to call an MPF trustee to obtain the complainant's MPF account information. The complainant once lodged a complaint against the SI with the PI concerned, but was not satisfied with the PI's investigation results. The complainant subsequently lodged a complaint with the MPFA against the SI, alleging that the PI had failed to have proper controls in safeguarding the complainant's personal information and failed to properly handle the complainant's complaint in relation to the impersonation incident by the SI.
- 3.9 The FR, after assessing the information available, decided not to initiate an investigation in this case. Nonetheless, having considered all circumstances of the case and to enhance compliance awareness, the MPFA issued CALs to both the SI and PI concerned. The MPFA took one month for preliminary assessment on the complaint and another month to conclude the

case after it was notified by the FR that no investigation would be initiated.

The PRP's Observations

- 3.10 The PRP noted that whilst the complainant would be informed by the FR if no investigation was initiated in a case, the underlying reasons behind the FR's decision might not be made known to the complainant in detail in each case. The PRP envisaged that the complainant would have grievances when he/she was informed that no investigation would be carried out by the FR, and considered it reasonable for the complainant to be informed of the justifications of the FR's decision of not initiating an investigation.

Case 5

- 3.11 Case 5 concerned an SI who was alleged to have –
- (a) transferred the complainant's MPF accrued benefits without her authorization;
 - (b) failed to ensure that any form signed by the complainant was duly completed in all material respects before asking the complainant to sign on it;
 - (c) failed to provide copy of the signed form to the complainant as soon as practicable;
 - (d) failed to record the instruction date of the complainant's order; and
 - (e) failed to comply with the PI's internal policy / procedures.
- 3.12 The MPFA found allegations (b) to (e) substantiated. Having considered the seriousness and impact of the substantiated breaches, the MPFA issued a CAL to the SI. The MPFA concluded the case five months after receiving the FR's investigation findings.

The PRP's Observations

- 3.13 The PRP observed that the substantiated allegations in this case were common and repeated breaches by industry practitioners in different cases. Whilst the MPFA had made efforts in raising the industry's awareness and understanding of these common breaches by (i) issuing circulars and newsletters, (ii) covering relevant topics in industry training and (iii) promoting relevant information through social media, the PRP considered that the existing practices might not be sufficient.

Case 22

- 3.14 Case 22 concerned an SI who was alleged to have –
- (a) transferred the complainant's MPF accrued benefits without her authorization;
 - (b) impersonated the complainant to obtain her MPF account information from her existing MPF trustee;
 - (c) changed the complainant's residential address online without her authorization or knowledge; and
 - (d) failed to handle the complaint promptly and fairly.
- 3.15 The MPFA found allegations (a) and (b) substantiated, and imposed a disciplinary order of suspending the SI's registration as MPF intermediary for 40 months. In addition, having regard to the serious nature of the breaches by the SI, and considering that the SI's supervisor was alleged to have displayed a dishonest and unprofessional attitude in handling the SI's breaches, CALs were issued to the relevant PI and the SI's supervisor despite that they were not the targets of investigation in this case. The MPFA concluded the case 10 months after receiving the investigation findings from the FR.

The PRP's Observations

- 3.16 The PRP noted that the MPFA had only advised the PI concerned

to carry out a review on its internal control and training provided to its SIs. The PRP was of the view that the MPFA should consider to require the PIs to take follow-up actions and report back to the MPFA on the remedial measures taken.

- 3.17 The PRP found the conduct of the SI's supervisor alarming and was of the view that the MPFA should assume a more proactive role by exploring whether further follow-up actions could be undertaken.
- 3.18 Further to an observation made in respect of Case 1 (see paragraph 3.7), the PRP saw the need for clearer internal guidelines which specified the standard for imposing sanctions on different scales.

Category II – failure to provide necessary information clearly and accurately to client

Case 7

- 3.19 Case 7 concerned an SI who was alleged to have –
- (a) failed to provide the complainant with clear and accurate information about the timeframe involved in the fund redemption of two transfers of MPF accrued benefits; and
 - (b) failed to provide a copy of the signed member enrollment form to the complainant as soon as reasonably practicable.
- 3.20 The FR, after assessing the information available, decided not to initiate an investigation in this case. Nonetheless, having considered all circumstances of the case and to enhance compliance awareness, the MPFA issued a CAL to the SI. The MPFA took one month for preliminary assessment on the complaint and less than one month to conclude the case after it was notified by the FR that no investigation would be initiated.

Category III – failure to execute client’s instruction promptly and/or asking client to sign on incomplete form

Case 23

3.21 Case 23 concerned an SI who was alleged to have –

- (a) failed to carry out the complainant’s fund switching instruction promptly;
- (b) failed to ensure that any form signed by the complainant was duly completed in all material respects before asking the complainant to sign on it;
- (c) failed to provide copy of the signed form to the complainant as soon as practicable;
- (d) failed to conduct suitability assessment when extending an invitation or inducement to the complainant that involved the choice of a particular constituent fund;
- (e) failed to provide and explain information about fund choice to the complainant; and
- (f) failed to handle the complaint promptly and fairly.

3.22 The MPFA found allegation (d) substantiated. Having considered the seriousness and impact of the breach and various mitigating factors of the case, the MPFA issued a CAL to the SI. The MPFA took one month for preliminary assessment on the complaint, and concluded the case six months after receiving the FR’s investigation findings.

The PRP’s Observations

3.23 The PRP noticed that the MPFA had limited information about the complainant’s reasons for declining to attend case interviews with the FR. The PRP considered it important for the MPFA to understand the reasons behind, as it would be undesirable for the relevant procedures to be the causes for the complainant’s reluctance in pursuing a case.

- 3.24 The PRP noted that a new arrangement had been put in place since late 2020, whereby the FR concerned would pass the audio/video recording of interviews conducted in an investigation to the MPFA instead of providing a written statement as in the past. The PRP noted that this new practice would result in extra effort by the MPFA to extract relevant content from the audio/video recording provided by the FR concerned.
- 3.25 The PRP observed that a relatively high proportion of cases involved certain specific PIs and queried whether there were internal control issues of the PIs in question. The MPFA was asked to provide relevant information to facilitate the PRP's understanding in this regard starting from the next review cycle.

Case 27

- 3.26 Case 27 concerned an SI who was alleged to have –
- (a) failed to ensure that all forms signed by the complainant were duly completed in all material respects before asking the complainant to sign on them;
 - (b) failed to provide copies of the signed forms to the complainant as soon as reasonably practicable;
 - (c) failed to properly identify herself by providing the complainant with her business card bearing her name and her MPF registration number; and
 - (d) failed to comply with PI's internal policy and procedures which required the actual signing date to be put on the relevant MPF forms of the transfers.
- 3.27 The MPFA found allegation (d) substantiated. Having considered the nature and seriousness of the breach and various mitigating factors of the case, the MPFA issued a CAL to the SI. The MPFA took one month for preliminary assessment on the complaint, and concluded the case five months after receiving the

FR's investigation findings.

The PRP's Observations

- 3.28 The PRP noted that the large volume of audio recording obtained in the FR's investigation had slightly lengthened the handling by the MPFA.

Category IV – inadequate internal control of PI

Case 3

- 3.29 In Case 3, a PI was alleged to have failed to maintain proper control and procedures in the course of handling a complaint against its SI. In particular, the PI was alleged to have failed to ensure that steps were taken to investigate and handle the complaint in a timely and reasonable manner; and the complainant was advised of any further steps which might be available to her.
- 3.30 Whilst the enquiries made by the FR with the PI revealed certain internal control issues of the PI, no investigation was initiated by the FR in this case in light of the nature of those issues and the corresponding rectification actions taken by the PI. Nonetheless, having regard to the circumstances of the case, the MPFA issued an RL to the PI. The MPFA took one month for preliminary assessment on the complaint and two months to conclude the case after it was notified by the FR that no investigation would be initiated.

Category V – dispute between PI and SI on MPF commission

Case 13

- 3.31 The complainant of Case 13, who was an SI, alleged that the PI

had failed to pay commission to her after she completed five transfers of MPF accrued benefits. Upon enquiry with the PI, the FR identified no issue of non-compliance with any conduct requirements under the MPFSO. The MPFA took less than one month to close the case after it was informed by the FR that no investigation would be initiated. No further action was taken by the MPFA.

The PRP's General Comments and Recommendations

- 3.32 After reviewing the above nine cases selected for detailed examination, the PRP has come up with a number of general comments and recommendations with a view to further enhancing the procedures and processes with respect to the regulation of MPF intermediaries.

A. Case Handling Time

- 3.33 The PRP is pleased to observe that the MPFA has made noticeable progress in expediting its case handling. This is reflected by the reduction in the average case-handling time of all closed cases in the current review cycle (exclusive of the FR's handling time) to 2.9 months, representing a decrease of 5.6 months as compared with that in the 2020 review cycle (8.5 months). Notwithstanding this, as revealed in Case 1, the PRP noted that there is room for further improvement in shortening the case-handling time.

Recommendations

- 3.34 For complaint cases where legal advice from external lawyers is warranted, the MPFA is suggested to have better control on the lead time in seeking such advice. This may be achieved by devising specific timeline and duration for relevant processes and by ensuring that the imposed timetable is strictly followed.

3.35 As mentioned in paragraphs 1.13 and 1.14, the MPFA has put in place two sets of KPIs to monitor its performance under Processes (a) and (b). For Process (a), the latest target is to complete 70% of cases within two months and 80% of cases within three months, whereas for Process (b), the target is to complete 60% of the cases within seven months and 80% of the cases within ten months. For further strengthening of time control in case-handling, the MPFA is advised to conduct internal review on cases in which handling time by the MPFA exceeds either of the second-tier target timeframes of the two KPIs (i.e. three months for Process (a); 10 months for Process (b), and report the outcome and findings to the PRP starting from the next review cycle.

3.36 The MPFA's Response

The MPFA welcomes the PRP's recommendations. It will continue to improve controls on different aspects of case handling to further shorten the case handling time and report the outcome and findings to the PRP.

B. Training and Public Education

3.37 Whilst the PRP acknowledges the efforts made by the MPFA in promoting compliance culture among the industry and educating the public about the regulatory regime, Case 5 has exemplified the repeated non-compliance of conduct requirements by industry practitioners. The PRP considers that there is room for further improvement in this regard.

Recommendations

3.38 The PRP notes that currently, all SIs are subject to Continuing Professional Development ("CPD") requirements, where each SI has to attend at least 10 hours of CPD activities each year, including a minimum of two hours on core MPF courses and

eight hours on non-core courses. To ensure that proper practices are fully adopted and implemented by the MPF practitioners, the MPFA is advised to further require practitioners to receive continuous and refresher training on a regular basis, apart from having to fulfil the CPD requirements.

- 3.39 In respect of information dissemination and industry education, the PRP notes that the MPFA currently relies heavily on the PIs to promulgate industry circulars to the SIs. Meanwhile, targets of training provided by the MPFA focus on course trainers and PIs. To ensure that relevant information and messages could effectively reach the industry including the SIs, the MPFA is advised to educate the SIs directly on top of the existing train-the-trainer model, such as by way of direct delivery of personalised promotional messages to practitioners via email and social media.

The MPFA's Response

- 3.40 To enhance promotion of compliance culture in the industry, the MPFA will require the PIs to provide conduct training to reinforce the Conduct Guidelines and to educate their SIs based on observation of certain prevalent malpractices or misconduct. The MPFA will also collaborate with industry associations to deliver more training to the SIs in addition to the existing training and posting relevant information via social media.
- 3.41 Concerning direct promulgation of the MPFA's messages to the SIs, the MPFA has collaborated with industry associations to provide training directly to the SIs on top of the existing train-the-trainer model and will strengthen communications with the SIs through disseminating circulars or important messages directly to the SIs via emails or social media.

C. Scope of Investigation and Follow-up Actions on Cases Involving Serious Misconduct

- 3.42 The PRP notices that in the course of investigation in Case 22, the SI's supervisor who was not the target of investigation was found to be in potential breach of conduct requirements. Under the existing statutory regime where the focus of investigation in respect of MPF intermediaries is confined to regulated activities, the MPFA did not take other actions against the SI's supervisor apart from issuing a CAL.

Recommendations

- 3.43 In the interest of scheme members and to uphold the highest standard of the MPF industry, the MPFA should explore the feasibility of expanding the scope of investigation to cover all persons who are found to be in potential breach of conduct, regardless of whether they are original targets of an investigation.
- 3.44 Also, in cases involving serious misconduct, the MPFA should take follow-up actions as appropriate, regardless of whether regulated activities are involved. For example, in cases where no regulated activities are involved, the MPFA may proactively refer the cases to relevant FRs and law enforcement agencies for further handling to ensure that misconduct of all kinds are dealt with in an orderly manner.

The MPFA's Response

- 3.45 To determine whether an SI has breached any conduct requirement, a prerequisite is to establish that the SI has conducted regulated activity.
- 3.46 The MPFA will continue to take follow-up actions as appropriate in cases involving serious misconduct, regardless of whether regulated activities are involved and the persons in potential breach of conduct requirement are the original targets of an investigation or not, such as referring the matters to the relevant FRs for their consideration of possible action under their own regimes. The MPFA may in appropriate cases refer the matters to the relevant enforcement agencies for follow-up actions.

- 3.47 The MPFA notes the PRP's observations under paragraphs 3.16, 3.17 and 3.23 above and will continue to collaborate with the FRs to raise the overall standard of the industry, meeting the expectation of the public and promoting compliance culture.

D. Guidelines on the Range of Penalties to be Imposed

- 3.48 The PRP has advised in the past that the MPFA should develop clearer guidelines in determining types of actions and level of penalties to ensure consistency and transparency of disciplinary actions taken. Whilst the MPFA has strived to make improvement in this respect by enriching contents of disciplinary notices and issuing circulars to industry to explain the disciplinary actions taken by the MPFA, the basis of how the MPFA determines the level of penalty imposed can be explained clearer. This can be illustrated by the difference between the duration of suspension period imposed in Case 1 (15 months) and Case 22 (40 months), both of which involve similar misconduct.

Recommendations

- 3.49 To promote transparency and clarity of the determination of penalties, the MPFA is advised to promulgate guidelines setting out clearly the recommended range of penalty (e.g. the minimum and maximum duration of suspension period of SI's registration as MPF intermediary) vis-à-vis each type of misconduct.

The MPFA's Response

- 3.50 When determining the penalty, the MPFA will consider and weigh all the factors of the particular case, including without limitation, the nature and seriousness of the misconduct involved, any benefit gained by the target, loss caused to a scheme member, remedial steps taken, the target's previous disciplinary records and compliance history, degree of cooperation with the MPFA and the relevant FR during the FR's investigation, impact on the general public interest, and any other aggravating and mitigating

factors in the case.

- 3.51 The MPFA has published a circular in June 2021 to the industry setting out the various types of disciplinary orders, level of penalties and the list of considering factors when determining the appropriate level of penalties to be imposed.
- 3.52 With regard to individual disciplinary cases including Case 1 (15-month suspension) and Case 22 (40-month suspension), the MPFA also provides clarity to the market by publishing press releases with Statement of Disciplinary Action to explain the cases and the factors considered in determining the penalties. In gist, Case 22 is much more serious in nature which involves multiple misconduct of unauthorized transfer of MPF accrued benefits, forgery of signature and impersonation of the scheme member in obtaining the member's account information, whereas Case 1 involves unauthorized transfer only. As a result, a longer period of suspension was imposed in Case 22 as compared with Case 1.
- 3.53 The MPFA acknowledges the PRP's recommendations and will continue to promote transparency and clarity of its determination of penalties, while ensuring that the level of penalty imposed is fair and appropriate taking into account all the circumstances of the case.

E. Use of Regulatory Technology

- 3.54 The PRP is aware that a new arrangement has been put in place since 2020, where an FR (IA) would pass the audio/video recording of interviews conducted in an investigation to the MPFA instead of providing written statements as in the past. Such new arrangement provides a complete record of the interviewees' responses made. Nonetheless, additional time and effort would inevitably be required from the MPFA to extract relevant content from the audio/video recording, thereby

lengthening the case handling by the MPFA in some cases.

Recommendations

- 3.55 The MPFA is advised to consider making use of regulatory technology to convert lengthy audio recordings into written transcripts, thereby saving valuable manpower resources.

The MPFA's Response

- 3.56 The MPFA is exploring ways to convert lengthy audio recordings into written transcripts so as to expedite the case handling process.

Chapter 4: Way Forward

- 4.1 Looking forward, the PRP will continue its work in relation to MPF intermediaries to ensure adequacy of the internal procedures of the MPFA.
- 4.2 Pending expansion of the PRP's ambit to cover other areas of work of the MPFA, the PRP will endeavour to render advice and recommendations to the MPFA with a view to enhancing the efficiency of the regulatory regime of the MPF regime and maintaining adequacy of the MPFA's internal procedures and guidelines.
- 4.3 The PRP welcomes and attaches great importance to the views of the public and market participants on the work of the PRP. Comments relating to the PRP's work can be referred to the Secretariat of the PRP via the following channels² –

By post : Secretariat of the Process Review Panel in relation to
the Regulation of Mandatory Provident Fund
Intermediaries
Financial Services and the Treasury Bureau
24th Floor, Central Government Offices
2 Tim Mei Avenue
Tamar, Hong Kong

By email : prpmpf@fstb.gov.hk

² Inquiries or comments not relating to the process review work of the MPFA should be made to the MPFA direct –

By post : Level 8, Tower 1, Kowloon Commerce Centre, 51 Kwai Cheong Road, Kwai Chung, Hong Kong

By telephone : (852) 2918 0102

By fax : (852) 2259 8806

By email : mpfa@mpfa.org.hk

Chapter 5: Acknowledgement

- 5.1 The PRP would like to express its gratitude to the MPFA for its assistance in facilitating the review process, and the MPFA's co-operation in responding to the PRP's inquiries and recommendations.

**Process Review Panel in relation to
the Regulation of Mandatory Provident Fund Intermediaries
September 2021**