

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

2016 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 by the Chief Executive in November 2013, following the commencement of the statutory regime for the regulation of Mandatory Provident Fund (“MPF”) intermediaries in November 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 governing the actions taken and operational decisions made by the MPFA in its regulation of MPF intermediaries.

As the inaugural Chairman of the PRP, I am very pleased to lead the PRP in reviewing the internal procedures of the MPFA in relation to the regulation of MPF intermediaries. Since the actual supervision of MPF intermediaries is performed by the three Frontline Regulators (“FRs”), namely, the Insurance Authority, the Securities and Futures Commission and the Hong Kong Monetary Authority, the work of the PRP is important in ensuring operational consistency and smooth co-ordination among the three FRs and the MPFA.

There were not many closed complaint cases for review in the first two years since the commencement of the regulatory regime in late 2012. That explains why the PRP started the review of closed complaint cases in 2015. The MPFA presented 40 closed complaint cases for review by the PRP, nine of which were selected for detailed examination. Capitalising on the expertise of our Members from the legal, insurance, banking and finance sectors, the PRP made useful observations from the case review and came up with a number of constructive recommendations to the MPFA, which has subsequently responded favourably.

I would like to express my gratitude to Members of the PRP for their time and dedication in supporting the work of the PRP. I would also like to thank the MPFA for collaborating with the PRP closely with a view to enhancing the robustness and transparency of its internal operations, thereby helping to build and defend a trustworthy regulatory regime for MPF intermediaries.

Last but not least, I would like to take this opportunity to express my gratitude to the Secretary for Financial Services and the Treasury and his colleagues for their unfailing support rendered to the PRP.

Dr Eddy Fong Ching, GBS, JP
Chairman
July 2016

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 Insurance Authority, the Securities and Futures Commission, and the Hong Kong Monetary Authority are FRs responsible for the supervision and investigation of complaints against registered MPF intermediaries whose core business is in insurance, securities and banking 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 adhered 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 The PRP comprises nine members, including the Chairman, from the financial sector and legal profession. The Chairman of the MPFA and the representative of the Secretary for Justice are ex-officio members of the PRP.
- 1.6 The membership of the PRP from 1 November 2015 to 31 October 2017 is as follows –

Chairman

Dr Eddy FONG Ching, GBS, JP

Members

Mr CHAN Yim-kwong

Ms Agnes CHOI Heung-kwan, MH

Mr Eugene FUNG Ting-sek, SC

Mr HUI Ching-yu

Mr Alan WONG Kwok-lun

Ms Nicole YUEN Shuk-kam

Ex-officio Members

Dr David WONG Yau-kar, BBS, JP

(in the capacity as the Chairman of the MPFA)

Mr YUNG Lap-yan

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

Secretariat

Financial Services and the Treasury Bureau

Chapter 2 : Work of the PRP

Modus Operandi

- 2.1 Under the statutory regime for the regulation of MPF intermediaries which commenced in November 2012, the MPFA is the authority to register MPF intermediaries, issue compliance guidelines and impose disciplinary sanctions, while each of the FRs is solely responsible for the inspection and investigation of registered MPF intermediaries.
- 2.2 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 for the 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 directly if it thinks fit. In any event, all cases investigated by an FR will be passed to the MPFA for final assessment and consideration of whether a disciplinary order shall be imposed on the MPF intermediary concerned.
- 2.3 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 has invited the MPFA to provide its operating procedures for registration, complaint handling, and disciplinary proceedings and periodic reports of closed cases in relation to MPF intermediaries for the PRP's review.
- 2.4 Members discussed and endorsed observations and recommendations with respect to the operating procedures and cases reviewed for the MPFA to respond and follow up. The PRP would issue an Annual Report setting out the observations and recommendations of Members having regard to the response from the MPFA.
- 2.5 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.

Co-ordination among MPFA and FRs

- 2.6 The PRP noted that the MPFA had formed the MPF Intermediaries Regulation Co-ordinating Committee (“the Committee”) as a forum for the FRs to discuss issues of regulatory concerns. Since 2012, the Committee had held 15 meetings.
- 2.7 The PRP also noted that the MPFA had 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 (“MPFSO”) (“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 regime on sales, marketing activities and giving of advice in relation to registered schemes under Part 4A of the MPFSO.

Review of Operational Manuals

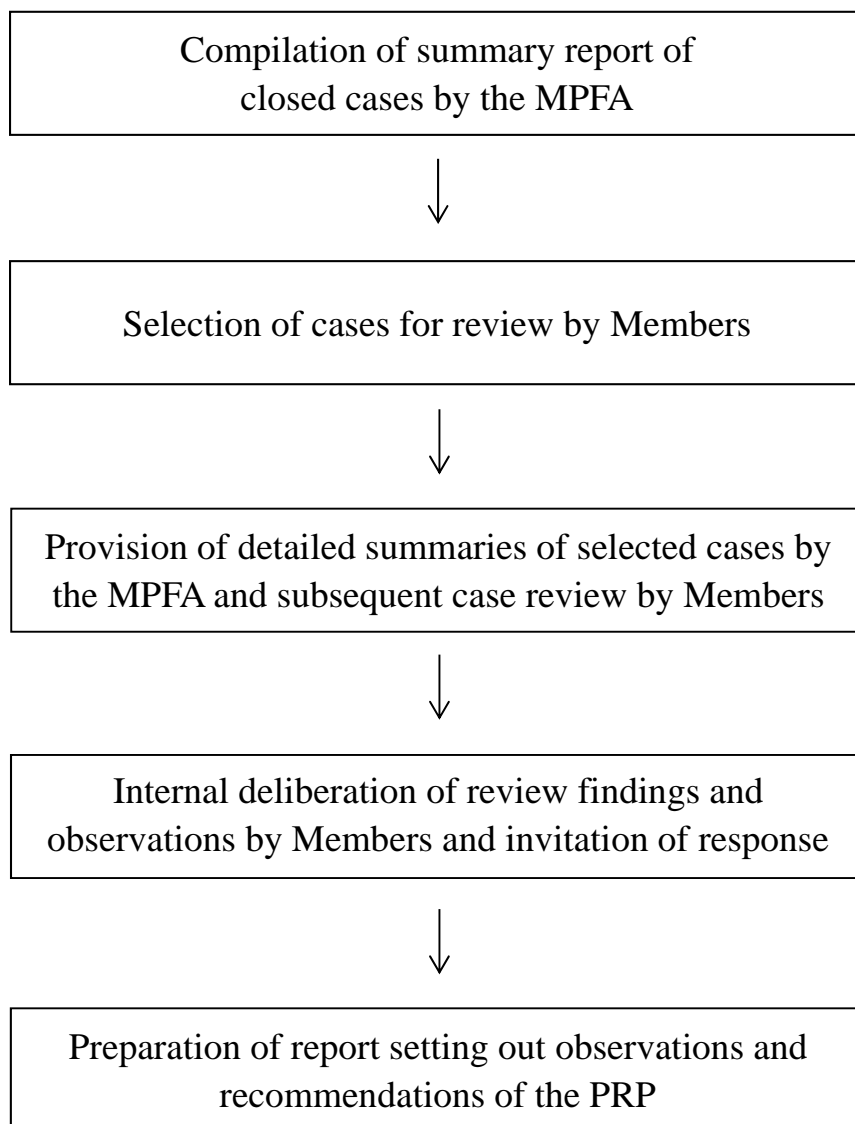
- 2.8 Following commencement of the statutory regime for the regulation of MPF intermediaries, the MPFA devised three operational manuals with respect to the regulation of MPF intermediaries, to be followed by the MPFA and the FRs pursuant to the relevant provisions under the MPFSO. The three manuals were –
- (a) the PRP Manual on Registration;
 - (b) the PRP Manual on Complaint Handling and Investigation; and
 - (c) the PRP Manual on Disciplinary Proceedings.
- 2.9 The PRP reviewed in 2014 the PRP Manual on Registration, which aimed to set 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. The PRP noted the Manual without recommending amendment.
- 2.10 The PRP Manual on Complaint Handling and Investigation set out the nature and extent of interaction between the MPFA and the FRs in the handling and referral of complaints. The Manual also

laid down the procedures to be followed by the MPFA and FRs with respect to investigation of complaints as well as the progress monitoring mechanisms between the MPFA and FRs. The PRP reviewed this Manual in 2014 with no amendment proposed.

- 2.11 The PRP Manual on Disciplinary Proceedings governed the procedures for disciplinary proceedings and the making of disciplinary orders by the MPFA. In 2015, the MPFA updated the Manual and briefed the PRP on the changes. The PRP found the updated Manual in order without amendment recommended.

Case Review Workflow

- 2.12 Workflow of the PRP case review is as follows –



Selection of Cases for Review

- 2.13 There were only a few closed complaint cases in the initial years since the commencement of the regulatory regime. Review of such cases started in late 2015 after the accumulation of a sufficient number of closed complaint cases.
- 2.14 The MPFA presented to the PRP for review a total of 40 complaint cases in relation to MPF intermediaries received and closed from 1 November 2012 to 31 October 2015. Nine out of the 40 cases were chosen by the PRP for detailed examination.
- 2.15 With the assistance of the MPFA, case summaries of the nine cases selected were prepared for Members' perusal. Three case review sessions, each attended by three members of the PRP to review three of the cases, were subsequently held in early 2016 at the MPFA's office with the presence of the Secretary of the PRP as well as MPFA case officers.
- 2.16 Observations of the PRP in respect of the selected cases and its recommendations to the MPFA are set out in Chapter 3.

Chapter 3 : Observations and Recommendations from the Case Review

- 3.1 The 40 cases presented to the PRP for review were mainly related to allegations of improper execution of clients' instructions, misrepresentation, handling of information, and administrative matters.
- 3.2 As for the outcome of these 40 cases, one case was found to be substantiated and enforcement action had been taken by the MPFA accordingly. 27 cases were found to be unsubstantiated for there was no carrying on of regulated activities or due to insufficient evidence. 11 cases were withdrawn voluntarily by the complainants, and the remaining case was closed because the complainant had failed to give consent for investigation.
- 3.3 Among the 40 closed complaint cases, the PRP reviewed in detail nine cases. These included the only substantiated case, along with eight other cases representative of the various categories of complaints received.
- 3.4 Members noted from the cases a number of instances where improvements could be made in order to enhance the adequacy and consistency of its complaint handling procedures with respect to the regulation of MPF intermediaries. The commonalities among the cases identified are summarised in the ensuing paragraphs.

Processing Time of Cases

- 3.5 In seven cases reviewed, the PRP noted that there was some delay in the completion of case assessments and closure of cases by the MPFA. A number of these cases were previously handled by the Insurance Authority ("IA") for investigation. (see paragraph 3.8)

Observations

- 3.6 The PRP noted that the time taken for completion of case assessments and closures of a number of cases by the MPFA was not commensurate with their level of complexity, and the volume of documents and number of witnesses involved, among other things. They included cases which were withdrawn voluntarily by the complainant at an early stage, those which involved a

relatively modest amount of evidence and number of witnesses, or cases that resulted from convictions of MPF intermediaries by the Court, which should have relieved the MPFA from detailed and time-consuming investigation.

- 3.7 Two cases received at the early stage of the regulatory regime took as long as 25 months to close. This was partly due to insufficient manpower of the MPFA for handling complaints relating to MPF intermediaries and the internal re-organisation within the MPFA which had caused a delay of approximately four months.
- 3.8 Some cases initiated by the MPFA were referred to the IA for investigation while some others received / initiated by the IA were referred to the MPFA for follow-up after the IA had completed investigation. The PRP noted that in certain cases the IA had taken some time to pass back the cases to the MPFA for further action under the mechanism of the regulatory regime. The PRP also noted the IA's explanation that it needed requisite amount of time in order to conduct thorough investigation.

Response from the MPFA

- 3.9 The MPFA remarked that with the statutory regime in relation to the regulation of MPF intermediaries commencing only in November 2012, many of the cases under review were some of the earliest cases handled, and thus more time was required for case assessment while the handling procedures were being fine-tuned. The MPFA agreed that there was room for expediting case assessments in future when it had garnered more experience in handling complaint cases of the same nature.
- 3.10 The longer case handling time in some cases was due to insufficient staff but no case had been put on hold due to manpower shortage. The average case handling time had shortened in recent months as the MPFA and FRs gained more experience with a growing case base.
- 3.11 The MPFA was of the view that the handling time of each case depended on a number of factors, such as the complexity of the case, the volume of documents and number of witnesses involved, and the time required in contacting witnesses and arranging interviews. There was practical difficulty for the MPFA to set a specified time frame for completion of a case for the relevant FR to follow. A Monthly Case Progress Report was maintained by

the IA and the MPFA which set out a full list of cases that had been / were being handled by the IA². In the Progress Report, the IA would inform the MPFA of the latest status and key progress of each case.

Recommendations

- 3.12 The PRP noted the MPFA's readiness and commitment to expedite the processing of cases. The PRP also agreed that the cases reviewed were among the earliest cases handled following commencement of the MPF intermediary regulatory regime, and that the MPFA and FRs might reasonably have to exercise more prudence in processing each case against the lack of precedent cases.
- 3.13 The PRP further agreed that handling time of a case depended on, among other things, the complexity of issues, volume of documents and number of witnesses involved, the need for seeking legal opinion, and the time needed for further clarification from the FRs concerned. This notwithstanding, the PRP expected that the MPFA should make its best endeavours to process cases as efficiently as possible.
- 3.14 The PRP also recommended the MPFA to standardise response and prepare templates, where appropriate, to streamline the management of cases of the same nature.
- 3.15 While appreciating that there could be practical difficulty for the MPFA to implement a performance pledge for case assessment given their varying and divergent nature, and to press the relevant FRs to complete their investigation within a certain time frame, the PRP was of the view that the MPFA should review rigorously its existing liaison mechanism with the FRs with regard to outstanding cases, and should monitor and track the progress of outstanding cases regularly to achieve greater efficiency in order to meet public expectations. In addition, the MPFA should, depending on the complexity of each case, consider demanding justifications from the FRs on cases outstanding for more than, say, six months and ask for early completion of their investigation.

² Including complaints referred by the MPFA, self-reported cases by principal intermediaries and self-initiated cases by the IA.

- 3.16 As regards the internal re-organisation exercise that had resulted in delay of case closures, the PRP reckoned that any personnel changes and redeployment of resources, if could not be avoided at all, should be carefully planned and carried out expeditiously without upsetting the normal operation of the case handling process. Noting that the internal re-organisation had been completed with no apparent need for another exercise in the foreseeable future, the PRP believed that there would be less chance for case processing time to be prolonged due to personnel changes in future. As an additional measure to ensure smooth and uninterrupted handling of cases, the PRP advised the MPFA to devise rules and guidelines to mandate the proper handing over of work whenever change of case officers was involved.
- 3.17 The PRP believed that with accumulation of experience by the MPFA and FRs, as well as better line-up of resources and refinement of operation of the regulatory regime, the average case handling time would be reduced in future.

Measures to Enhance Standards of Intermediaries

Observation

- 3.18 Four cases reviewed were unsubstantiated since no regulated activity³ had been identified, or there was insufficient evidence or there was a lack of key witness, and hence no disciplinary action was recommended against the relevant intermediaries in spite of obvious substandard practices found in the cases. For example, in one case, it was revealed that a number of SIs used their own personal telephone numbers as the contact number of their client scheme members on the “Request for Personal Account Information Authorisation Form”; in another case, it was alleged that an SI had forged a scheme member’s signature on an MPF account consolidation form and transferred the latter’s MPF accrued benefits to a trustee without consent; and in another case, sixteen SIs used their personal cheques for payment of their client scheme members’ MPF contributions.

³ Pursuant to Section 34F of the MPFSO, a person carries on a regulated activity when he or 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.

Response from the MPFA

3.19 The MPFA could not take disciplinary action if a case was unsubstantiated and not in breach of the MPFSO. The MPFA will however explore suitable ways to remind or warn the intermediaries concerned to refrain from committing the malpractices if any, subject to the severity of each case, by issuing reminder letters of compliance to the intermediaries and/or giving guidance to the industry by issuing circulars on specific regulatory issues. The industry at large would also be advised against the malpractices identified. The MPFA would continue its endeavour to explore different measures with a view to tackling the malpractices in the industry that might be emerging from time to time.

Recommendations

3.20 In view of the above, the PRP advised the MPFA to consider implementing administrative measures and imposing stricter conduct requirements to regulate MPF intermediaries more rigorously with a view to raising the overall standards of the industry. It was paramount that the MPFA should not give the industry the impression that only when there was a regulated activity involved should they conform to the conduct requirements.

3.21 In practice, the MPFA could consider, where appropriate, issuing warning or reminder letters (e.g. CAL) to the SIs concerned, as well as his/her principal intermediaries⁴ (“PIs”), advising against the SIs in perpetrating the substandard practices identified. The MPFA should also make the relevant PIs aware of such malpractices so that they could duly remind its SIs to avoid recurrence.

⁴ A principal intermediary is a person registered under Section 34T(4) of the MPFSO as an intermediary for carrying on regulated activities. PIs include (a) in relation to the Insurance Authority, a company that is authorised under Section 8 of the Insurance Companies Ordinance (Cap. 41) to carry on long term business within the meaning of that Ordinance or an authorised long term insurance broker; (b) in relation to the Hong Kong Monetary Authority, means an authorised financial institution that is registered under Section 119 of the Securities and Futures Ordinance (“SFO”) (Cap. 571) for Type 1 and Type 4 regulated activity, or both, within the meaning of that Ordinance; or (c) in relation to the Securities and Futures Commission, means a corporation that is licensed under Section 116 of the SFO to carry on Type 1 or Type 4 regulated activity, or both, within the meaning of that Ordinance.

- 3.22 The PRP also suggested the MPFA to enhance the scope and frequency of its training and education efforts to stakeholders so as to mitigate the recurrence of the malpractices identified.
- 3.23 Moreover, the PRP advised the MPFA to consider including and highlighting examples of malpractices identified in its Conduct Requirements and/or relevant manuals and circulars, and to publish “best practices” for the industry’s reference. The PRP believed that these measures would help foster a compliance culture within the industry.

Further Response from the MPFA

- 3.24 The MPFA noted the PRP’s recommendations, and indicated that it would continue to conduct regular reviews of its guidelines and circulars, making updates thereto where appropriate by including examples of best practices for the industry’s reference or malpractices identified in the cases, whether substantiated or otherwise. The MPFA had been organising train-the-trainer workshops for PIs and training activity providers on important changes of the MPF System or conduct issues. To maintain their professional competency in the MPF business and related areas, all SIs are required to undertake a minimum of 10 hours of Continuing Professional Development activities in each calendar year, with at least two hours devoted to core subject areas.

MPF Intermediaries’ Improper Handling of the Request for Personal Account Information Authorisation Form (“PA-AP Form”)

Observation

- 3.25 Three cases reviewed were related to the mishandling of the PA-AP Form by the SIs concerned. The PA-AP Form was an authorisation form by which a scheme member authorised a third party, usually an SI, to obtain his/her personal account information from the MPFA. The complaints often involved an SI filling in incorrect or false information, or the complainant signing on a blank form which was subsequently handled by an unintended SI, rendering ultimately the scheme member’s personal account information given to an unintended party. These cases revealed that the personal data of scheme members might be susceptible to leakage or misuse through the SIs under the procedures of processing the PA-AP Form.

Response from the MPFA

- 3.26 The MPFA had in 2015 implemented a new procedure disallowing a scheme member to authorise an SI to obtain his/her personal account information by using the PA-AP Form. A scheme member using the PA-AP Form could only authorise a third party that is not an SI.
- 3.27 Where a scheme member wished to obtain his/her personal account information through an SI, he/she had to authorise a PI by way of a new PA-AP(PI) Form, which was to be submitted to the MPFA by the PI. It would be the duty of the PI concerned to verify the validity of the authorisation stated on the forms collected from their SIs. The PI concerned was also responsible for submitting the completed forms in batches to the MPFA, collecting the personal account reports from the MPFA, and distributing to their respective SIs for their forwarding to the scheme members.
- 3.28 In response to requests made through both the PA-AP Form and the PA-AP(PI) Form, the MPFA would only provide the names and the contact information of the trustees under which the scheme members' personal accounts were held. The MPFA would not provide detailed information of the scheme members' individual personal accounts, such as account number, funds invested and account balance.

Recommendation

- 3.29 The PRP noted and supported the refined approach for scheme members to grant authorisation to third parties in obtaining personal account information. However, the MPFA should conduct regular review of its policy pertaining to protection of scheme members' personal data having regard to the relevant legislation.

Follow-up Actions after Case Closures

Observation

- 3.30 The complaint in one of the cases reviewed was related to an SI who had purportedly forged the complainant's signature on an MPF account consolidation form for transferring the latter's MPF

accrued benefits. However, since the complainant had withdrawn the complaint voluntarily, no further action was taken and the MPFA closed the case accordingly.

Recommendation

3.31 As far as this case was concerned, the PRP understood that the relevant FR was not able to pursue formal investigation after the voluntary withdrawal by the complainant because of a lack of evidence and witness. However, the PRP considered that in similar cases in the future where there was sufficient prima facie evidence that gross misconduct was involved, the MPFA should refer the case to the relevant FR(s) for investigation if appropriate, notwithstanding withdrawal of the relevant complaints by the complainant.

Response from the MPFA

3.32 The MPFA noted the PRP's recommendation and asserted that investigation and/or referral would follow if appropriate despite withdrawal of complaints.

Chapter 4 : Way Forward

- 4.1 In the year ahead, the PRP will continue its work on the review of completed cases to ensure adequacy of the internal procedures of the MPFA, and that the FRs consistently follow the internal procedures and operational guidelines.
- 4.2 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 channels⁵ –

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
Tim Mei Avenue
Tamar, Hong Kong

By email : enq@fstb.gov.hk

⁵ 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 PPR would like to express its gratitude to the MPFA for its assistance in facilitating the review work, and its co-operation in responding to the PRP's inquiries and recommendations.

**Process Review Panel in relation to
the Regulation of Mandatory Provident Fund Intermediaries
July 2016**