
FINAL NOTICE

To: **Mark Antony Abley**

Individual
Reference
Number: **MAA00005**

Date: **22 June 2023**

1. ACTION

1.1. For the reasons given in this Final Notice, the Authority hereby:

- (1) imposes on Mark Antony Abley ("Mr Abley") a financial penalty of £106,100 pursuant to section 66 of the Act; and
- (2) makes an order prohibiting Mr Abley from performing any function in relation to the regulated activity of advising on Pension Transfers and Pension Opt-Outs carried on by an authorised or exempt persons, or exempt professional firm pursuant to section 56 of the Act.

1.2. Mr Abley agreed to resolve this matter and qualified for a 30% (stage 1) discount under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £125,488 on Mr Abley.

1.3. However, the Authority will not enforce the financial penalty provided that Mr Abley pays £106,100 to the Financial Services Compensation Scheme (the "FSCS") to contribute towards any redress that may become due to customers of County Capital Wealth Management Limited (in liquidation) ("CCWM").

2. SUMMARY OF REASONS

Overview

- 2.1. Mr Abley was a financial adviser at CCWM who was qualified to provide defined benefit Pension Transfer advice and was responsible for ensuring that CCWM provided advice which met with the Authority's requirements. He acted without due skill, care and diligence in giving unsuitable Pension Transfer advice to customers to transfer away from schemes which offered important guarantees, resulting in customers' retirement funds being unnecessarily put at risk, against their best interests.

Mr Abley

- 2.2. Between 18 April 2015 and 6 February 2018 (the "Relevant Period"), Mr Abley was approved by the Authority to perform the CF1 (Director), CF10 (Compliance Oversight), CF11 (Money Laundering Reporting), and CF30 (Customer) controlled functions and was responsible for insurance mediation at CCWM. Mr Abley was also a qualified Pension Transfer Specialist ("PTS"). A PTS is an individual who has passed the required examinations, as specified in the Authority's Training and Competence Sourcebook, and is employed by a firm to give advice, or to provide a second-level check and sign-off on advice to customers in respect of Pension Transfers.

CCWM

- 2.3. CCWM was an Independent Financial Adviser firm based in Spennymoor, County Durham.
- 2.4. During the Relevant Period, CCWM was authorised by the Authority to undertake Pension Transfers and Pension Opt-Outs and to arrange deals in investments. It is now in liquidation.
- 2.5. During the Relevant Period, CCWM advised 575 of 595 customers to transfer out of their Defined Benefit Pension Schemes ("DBPS"), notwithstanding Authority guidance which created a presumption against advising a customer to transfer. Of the 575 customers CCWM advised to transfer, 146 were members of the British Steel Pension Scheme ("BSPS").
- 2.6. On 6 February 2018, following feedback from the Authority, and at its request, CCWM applied for the imposition of requirements by the Authority. Pursuant to

this, CCWM was required to cease all regulated activities relating to DBPS Pension Transfer business.

- 2.7. The Authority reviewed 18 of CCWM's completed Pension Transfer advice files from the Relevant Period ("the 18 Files"). All of these customers had been advised by Mr Abley, or he was the overseeing PTS on the file. For a significant proportion of these customers, their pension fund was their most valuable asset and many had limited additional resource or other pension provision. The Authority found that 56% of the 18 Files were not compliant with regulatory rules and guidance relating to the suitability of Pension Transfer advice.
- 2.8. CCWM entered liquidation on 8 May 2020.
- 2.9. As of 14 March 2023, the Financial Services Compensation Scheme ("FSCS") has upheld 53 Pension Transfer claims against CCWM and paid out over £2.1 million in compensation to customers of CCWM. The Firm's professional indemnity insurance provides cover up to £1.75 million which may reduce the burden on the FSCS. In 6 cases (11%), the FSCS awarded the claimant the maximum compensation available of £85,000. Had it not been for the compensation limit of £85,000, the total compensation payable to customers would have been approximately £2.36 million.

The Authority's Statements of Principle for Approved Persons

- 2.10. During the Relevant Period, Statement of Principle 2 stated that:

"An approved person must act with due skill, care and diligence in carrying out his accountable functions."

Mr Abley's failings in the performance of his CF30 (Customer) controlled function

- 2.11. The Authority considers that, during the Relevant Period, by reason of the facts and matters described in section 4 of this Notice, Mr Abley breached Statement of Principle 2, in that he failed to act with due skill, care and diligence when advising customers on Pension Transfers.
- 2.12. In particular, Mr Abley:
- (a) Gave unsuitable advice to customers to transfer out of their DBPS. This was because he failed to:

- i. obtain the necessary information, and/or to properly take into account customers' financial situations, when assessing whether it was suitable for them to transfer out of their DBPS. As a result, he failed to assess, or give due consideration to, whether customers would be reliant on the income from their DBPS or whether they could financially bear the risks involved in a Pension Transfer;
 - ii. provide sufficient justification to advise customers to give up their guaranteed benefits, including those with no source of retirement income other than their DBPS and the state pension and who had cautious attitudes to risk;
 - iii. provide sufficient evidence to demonstrate that prioritising specific objectives, for example, family benefits on death, flexibility and maximising tax-free cash, which drove the transfer was in the customer's best interests;
 - iv. demonstrate that customers had the necessary attitude to risk, as well as the experience and knowledge to understand the risks involved with the Pension Transfer recommended and failed to give due consideration to this where they did not; and
 - v. undertake adequate transfer value analysis ("TVAS") to compare the benefits likely to be paid under the DBPS with benefits afforded by the personal pension or other pension into which it was proposed that the customer should transfer. Errors, which included using joint life critical yields when the customer was divorced and using an incorrect guaranteed minimum pension increase in the calculation, meant that comparisons were not useful, and where correctly calculated, critical yields revealed that the growth needed by the investments was sometimes inconsistent with the attitude to risk of the customer; and
- (b) made Personal Recommendations to customers despite having failed to obtain from them information that was necessary for him properly to assess whether a Pension Transfer was suitable. Making a Personal Recommendation without the necessary information increases the risk of providing unsuitable advice.

Seriousness

- 2.13. The Authority considers Mr Abley's failings to be particularly serious because:
- (a) defined benefit pensions are a financial investment for which a customer's advice needs are high in respect of the decision to transfer out of the ceding scheme;
 - (b) the decision to transfer out of a DBPS can affect customers, and sometimes their dependants, for the rest of their lives;
 - (c) Mr Abley's unsuitable Pension Transfer advice caused a significant risk of loss to customers who had transferred out of their DBPS as a result of that advice; and
 - (d) many of the customers were members of the BPS and were in a vulnerable position due to the uncertainty surrounding the future of the scheme.

Sanction

- 2.14. The Authority hereby imposes a financial penalty on Mr Abley in the amount of £106,100 for his breach of Statement of Principle 2.
- 2.15. The Authority considers that Mr Abley had demonstrated a serious lack of competence and capability to advise on Pension Transfers and Pension Opt-Outs.
- 2.16. The Authority considers that, as a result of the facts and matters set out in this Notice, Mr Abley is not a fit and proper person to carry out the regulated activity of advising on Pension Transfers and Pension Opt-outs carried on by an authorised person, exempt person or exempt professional firm. The Authority hereby also makes a prohibition order in respect of Mr Abley, prohibiting him from performing any function in relation to the regulated activity of advising on Pension Transfers and Pension Opt-Outs carried on by an authorised person, exempt person and exempt professional firm.

3. DEFINITIONS

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

"the Act" means the Financial Services and Markets Act 2000;

"APER" means the Authority's Statements of Principle for Approved Persons and Code of Practice for Approved Persons, part of the Handbook;

"Approved Persons" means a person approved by the Authority to carry out certain controlled functions for an authorised firm.

"the Authority" means the Financial Conduct Authority;

"the British Steel Pension Scheme" or "BSPS" means the British Steel Defined Benefit Pension Scheme that was in place during the period 8 June 2015 to 13 December 2017;

"BSPS 2" means the Defined Benefit Pension Scheme which replaced the BSPS after 13 December 2017 and was created after the RAA came into effect;

"CCWM" or "the Firm" means County Capital Wealth Management Limited (in liquidation) which traded as The Pension Review Service and Fathom before appointing liquidators on 8 May 2020;

"CETV" means cash equivalent transfer value, which is the cash value of benefits which have been accrued to, or in respect of, a member of a pension scheme at a particular date;

"COBS" means the Conduct of Business Sourcebook, part of the Handbook;

"Controlled functions" are functions relating to the carrying on of regulated activities by an authorised firm, of a description specified in rules made by the Authority;

"Defined Benefit Pension Scheme" or "DBPS" means an occupational pension scheme as defined by Article 3(1) of the Financial Services and Markets Act (Regulated Activities) Order 2001, namely where the amount paid to the beneficiary is based on how many years the beneficiary has been employed and the salary the beneficiary earned during that employment (rather than the value of their investments);

"Defined Contribution" or "DC" means a common type of pension where contributions are held in investments until the holder reaches their chosen retirement age;

"DEPP" means the Authority's Decision Procedure and Penalties Manual, part of the Handbook;

"EG" means the Authority's Enforcement Guide, part of the Handbook;

"18 Files" means the 18 Pension Transfer customer files containing advice provided by CCWM during the Relevant Period that were reviewed by the Authority;

"the Handbook" means the Authority's Handbook of Rules and guidance;

"Insistent Client" means a client who has been given a personal recommendation by a firm in relation to the transfer of their safeguarded benefits, but who has decided to enter into a transaction different from that which was recommended and wishes the firm to facilitate this (COBS 9.5A.2 G defined this on 3 January 2018);

"KYC" means know your customer;

"PCLS" means a pension commencement lump sum, which is the tax-free payment that members can take when they start to access their pension benefits, up to 25% per scheme of the value of the benefits being accessed;

"Pension Opt-Out" has the meaning given in the Handbook and includes a transaction resulting from the decision of a retail client who is an individual to opt out of an occupational pension scheme to which his employer contributes and of which he is a member;

"PPF" means the Pension Protection Fund which is a statutory public corporation established pursuant to the Pension Act 2004 which protects people with a defined benefit pension when an employer becomes insolvent;

"Pension Transfer" has the meaning given in the Handbook and includes the transfer of deferred benefits from an occupational pension scheme (with safeguarded benefits, such as a DBPS) to a personal pension scheme;

"Pension Transfer Specialist" or "PTS" has the meaning given in the Handbook and includes an individual appointed by a firm to check the suitability of, amongst other things, a Pension Transfer, who has passed the required examinations as specified in the Training and Competence Sourcebook, part of the Handbook;

"Personal Recommendation" means a recommendation that is advice on transfer of pension benefits into a personal pension or SIPP, and is presented as suitable for the customer to whom it is made, or is based on a consideration of the customer's circumstances;

“the Principles” means the Authority’s Principles for Businesses, part of the Handbook, as applicable during the Relevant Period;

“Regulated Apportionment Arrangement” or “RAA” means the statutory mechanism that can be used in corporate restructuring situations where a sponsoring employer of a Defined Benefit Pension Scheme stops participating in the pension scheme (thereby freeing the sponsoring employer from its financial obligations to the pension scheme) in order to avoid insolvency, subject to certain conditions being met and the RAA being approved by The Pensions Regulator and the PPF;

“the Relevant Period” means the period 18 April 2015 to 6 February 2018;

“SMF” means a controlled function that has been designated by the Authority in SUP 10C (part of the Handbook) as a designated senior management function;

“Statements of Principle” mean the Authority’s Statements of Principle and Code of Practice for Approved Persons issued under section 64A(1)(a) of the Act that are set out in the Handbook;

“Suitability Report” means the report which a firm must provide to its customer under COBS 9.4 which, amongst other things, explains why the firm has concluded that a recommended transaction is suitable for the customer;

“SUP” means the Authority’s Supervision Manual, part of the Handbook;

“TVAS” means ‘transfer value analysis’ and is the comparison that a firm must carry out in accordance with COBS 19.1.2R (as in force during the Relevant Period) when a firm gives advice or a Personal Recommendation about, amongst other things, a Pension Transfer; and

“TVAS Report” means a document that reports to the customer in respect of the comparison firms are required to carry on in accordance with COBS 19.1.2R (as in force during the Relevant Period).

4. FACTS AND MATTERS

Background

- 4.1. Mr Abley has been working in the financial advice sector for over 20 years. He was approved as an investment adviser and PTS on 1 December 2001.

- 4.2. CCWM was an independent financial adviser firm based in Spennymoor, County Durham, authorised since 13 April 2007. CCWM had permission to carry on the regulated activities of, amongst other things, advising on Pension Transfers, advising on investments and arranging (bringing about) deals in investments.
- 4.3. Between 14 May 2008 and 30 June 2019, CCWM traded under the name of 'The Pension Review Service' and from 1 July 2019, under the name of 'Fathom'.
- 4.4. Mr Abley was the sole director of CCWM for the entirety of the Relevant Period and is one of two shareholders. He performed as an Approved Person the CF1 (Director), CF10 (Compliance Oversight), CF11 (Money Laundering Reporting) and CF30 (Customer) controlled functions and was responsible for insurance mediation at CCWM.
- 4.5. At the start of the Relevant Period, Mr Abley was the sole PTS at CCWM. A further two PTSs worked at CCWM during the Relevant Period. Mr Abley checked all of the advice given by CCWM before it was provided to customers.
- 4.6. On 6 February 2018, following the Authority's intervention, CCWM applied for voluntary requirements to be imposed on it. Pursuant to this, CCWM was required to immediately cease all regulated activities relating to Pension Transfer business for which the Firm had Part 4A permissions.
- 4.7. Since 9 December 2019, Mr Abley has held the SMF3 (Executive Director), SMF16 (Compliance Oversight) and SMF17 (Money Laundering Reporting Officer) senior management functions and has been responsible for insurance distribution since 1 October 2018 at CCWM.
- 4.8. CCWM entered liquidation on 8 May 2020.

Pension Transfers

- 4.9. Pensions are a traditional and tax-efficient way of saving money for retirement. The value of someone's pension can have a significant impact on their quality of life during retirement and, in some circumstances, may affect whether they can afford to retire at all. Pensions are, in most cases, a primary resource for ensuring financial stability in retirement. For some people, they are the only way of funding retirement. Customers who engage authorised firms to provide them with advice in relation to their pensions place significant trust in those providing the advice. Where a financial adviser fails to conduct the affairs of their advice business in a

manner that is compliant with the Authority's regulatory requirements, this exposes their customers to a significant risk of harm.

- 4.10. Pensions can be structured in a variety of ways. However, a DBPS is particularly valuable because an employer sponsor carries the financial burden associated with offering a secure, guaranteed income for life to members, which typically increases each year in line with inflation. This is in contrast to, for example, a defined contribution ("DC") pension scheme where employer and employee capital contributions are invested, but the investment and mortality risk are borne by the member. The Authority expects that for the majority of customers it is in their best interests to remain in their DBPS because of the guarantees and protections it offers.
- 4.11. Customers who engage advisers and authorised firms to provide them with advice in relation to their pensions therefore place significant trust in them. It is important that firms and their advisers exercise due skill, care and diligence when advising customers regarding their pensions, ensuring that the advice given to a customer is suitable for them, having regard to all of their relevant circumstances. This is even more important when customers have no option but to make a decision regarding their pension.
- 4.12. Transferring out of a DBPS involves giving up the guaranteed benefits in exchange for a cash equivalent transfer value ("CETV") which is typically invested in a DC pension. If a customer leaves a DBPS, they will have to buy an annuity to obtain a guaranteed level of income. Alternatively, they may rely on income from investments, but investments will have to be managed in such a way as to produce ongoing income; and even then, there is no guarantee as to the amount or duration of that income.
- 4.13. The introduction of pensions freedoms (introduced in April 2015) for DC pensions made transferring out of a DBPS an attractive option for some people. For example, a customer who will not be reliant on the DBPS income in retirement and who wishes to achieve a realistic objective attainable only once transfer has been effected may be an example of a suitable candidate. However, as referenced in COBS 19.1.6G, the Authority considers that given the nature of the guaranteed benefits provided under a DBPS, advisers' default assumption should be that transferring out and giving up those benefits is unlikely to be suitable for a customer unless they can clearly show, based on a customer's specific circumstances, that it is in their best interests.

- 4.14. Notwithstanding the presumption of unsuitability in advising a customer to transfer out of their DBPS, 575 of 595 customers (approximately 97%) were advised by CCWM to transfer. Further, 146 of the 595 customers were members of the BSPS.

British Steel Pension Scheme ("BSPS")

- 4.15. The BSPS was one of the largest DBPS in the UK, with approximately 125,000 members and £15 billion in assets as of 30 June 2017. In March 2017, the BSPS was closed to future accruals, which meant that no new members could join it and existing members could no longer build up their benefits. The BSPS also had an ongoing funding deficit.
- 4.16. In early 2016, various options were being explored in relation to the BSPS as a result of insolvency concerns relating to one of its sponsoring employers. These options included seeking legislative changes which would have allowed pension increases available under the BSPS to be reduced to the statutory minimum levels, and the sale of one of the sponsoring employers. However, it was concluded that the only way to avoid insolvency would be to enter into a Regulated Apportionment Arrangement ("RAA").
- 4.17. On 11 August 2017, the Pensions Regulator gave its clearance for the RAA. Under the RAA, the BSPS would receive £550 million and a 33% equity stake in one of the sponsoring employers and the BSPS would transfer into the PPF. In addition, a new DBPS ("BSPS 2") was proposed by the sponsoring employers in combination with the RAA proposal. The RAA received formal approval on 11 September 2017, which resulted in the BSPS being separated from the sponsoring employers.
- 4.18. The consequences of the RAA were that members of the BSPS were required to make a choice about two options offered by the BSPS, namely to either:
- (a) remain in the BSPS and therefore move into the PPF; or
 - (b) transfer their DBPS into BSPS 2.
- 4.19. Alternatively, BSPS members could elect to take a CETV and transfer their DBPS into an alternative pension arrangement (for example a personal pension scheme or another occupational pension scheme held by the member).
- 4.20. On 11 and 21 September 2017, the BSPS announced that it would separate from the sponsoring employers, including the principal sponsor, Tata Steel UK.

Information about the options available to members was available on the BSPS's website from 11 August 2017, and in October 2017 the BSPS distributed information packs to members about these options. Members were required to choose their preferred option by 22 December 2017. Those who wanted to transfer their DBPS from the BSPS to a personal pension were required to submit the required paperwork to execute the transfer by 16 February 2018.

4.21. The Rookes Review, an independent review of the support given to BSPS members during restructuring and 'Time to Choose', stated that BSPS members experienced, and were influenced by, a set of unique circumstances. This included the following:

- (a) distrust of their employer;
- (b) limited information on alternative options;
- (c) tight timescales to make a decision; and
- (d) limited support.

4.22. Some BSPS members were in vulnerable circumstances. For example, BSPS members tended to have no other assets and relied more on income from the DB scheme than members of other schemes.

CCWM's (trading as The Pension Review Service) Pension Transfer Advice Business and Mr Abley's role

4.23. During the Relevant Period, the majority of CCWM's business revenue was generated from providing DBPS transfer advice. Revenue was generated:

- (a) via third party introducers i.e. regulated firms that did not have permission to provide Pension Transfer advice themselves;
- (b) via marketing efforts;
- (c) for BSPS members, by CCWM operating clinics which they could attend; and
- (d) by potential customers who contacted CCWM directly for advice.

CCWM's Pension Transfer Advice Process

4.24. Customers who approached CCWM directly for advice attended an initial meeting at which a discussion about the customer's aims and objectives took place.

Customers completed a fact-find, client agreement, pension proforma, risk profiler questionnaire and letter of authority, and would also provide policy information on the pension(s) to be reviewed.

- 4.25. Once information from the pension providers had been received, a TVAS was performed. Once the results of the TVAS had been discussed between the customer and a PTS, a summary of advice letter outlining the analysis and basic cash flow calculations was produced in advance of a second meeting with the customer.
- 4.26. At the second meeting, which could take place face-to-face or on the telephone, the customer was provided with the summary of advice letter, TVAS Report, the new pension provider's illustration, application, key facts document and fund factsheets, and the ceding pension provider's discharge paperwork.
- 4.27. If the Pension Transfer was to proceed, the customer returned all relevant documentation to CCWM to process. CCWM then prepared a Suitability Report for the customer.
- 4.28. The process remained the same throughout the Relevant Period save for the fact that:
 - (a) from July 2017, CCWM stopped preparing summary of advice letters for customers and prepared a Suitability Report in advance of the second meeting (rather than after the second meeting); and
 - (b) in October 2017, CCWM introduced a data capture form in place of the fact-find which it sent by email to customers via a secure link for completion on-line. In advance of the second meeting, customers were also provided by email with a pack via a secure link which contained retirement options explained, client agreement, full Suitability Report, TVAS Report, cash flow forecasts and new provider illustration, application, key facts document, fund factsheets and the ceding pension provider's discharge paperwork.
- 4.29. Customers who were introduced to CCWM by a third party regulated firm did not attend a meeting with CCWM. Instead, the introducing firm arranged for customers to complete a fact-find, client agreement, pension proforma, risk profiler questionnaire and letter of authority. These documents were then sent to CCWM together with the customer's policy information on the pension(s), including the CETV, early retirement quotes and statements, to be reviewed.

Mr Abley's approach to Pension Transfer Advice

- 4.30. As a PTS, Mr Abley provided advice to CCWM's customers. In interview, Mr Abley stated that the "focus" when providing Pension Transfer advice was on "customer objectives and would the transfer meet them."
- 4.31. Mr Abley also stated in interview that the starting point was always that a Pension Transfer would not be suitable for a customer (which is the assumption set out in COBS 19.1.6G). However, during the Relevant Period CCWM advised 575 out of 595 customers to transfer out of their DBPS. The fact that such a high proportion of CCWM's customers were advised to transfer out of their DBPS, despite the starting point set out in COBS 19.1.6G, indicates that the starting point was not followed.

The Authority's Review of Pension Transfer Advice

Background

- 4.32. The Authority monitored the defined benefit Pension Transfer advice market and identified firms that had advised on a significant volume of BSPS transfers. CCWM was one such firm identified by the Authority. The Authority visited CCWM's offices, reviewed a sample of CCWM's customer files and discussed its business model, defined benefit Pension Transfer advice process, the controls in place, and oversight of the advice.
- 4.33. The Authority continued to engage with CCWM and reviewed customer files between 2016 and 2019.

Review of 18 Files

- 4.34. The Authority reviewed 18 of CCWM's complete Pension Transfer advice files from the Relevant Period in order to assess them against the applicable Rules found in COBS relating to information collection and suitability of Pension Transfer advice. Four of the 18 customers were former members of the BSPS. All of these customers had either been advised by Mr Abley or he was the overseeing PTS on the file.
- 4.35. Of the 18 Files reviewed, the Authority found that 17 customers (94%) had been advised to transfer. One customer had been advised to remain in their DBPS; however, they proceeded with the transfer on an insistent basis.

- 4.36. The review of the 18 Files demonstrated that, amongst other failings, Mr Abley gave or oversaw:
- (a) non-compliant unsuitable Pension Transfer advice in 39% of cases (giving suitable advice in 44% of cases) (see "*Unsuitable Pension Transfer advice*" below); and
 - (b) Personal Recommendations to customers despite having failed to obtain from them information that was necessary for him to properly assess whether a Pension Transfer was suitable in 50% of cases. In 17% of these cases the absence of necessary information was so significant that the Authority was unable to assess whether the advice was suitable (see "*Making Personal Recommendations without the necessary information*" below).
- 4.37. The average transfer value for the customers within the 18 Files who received unsuitable Pension Transfer advice was £287,943. The majority of customers within the 18 Files had transfer values similar to this figure, albeit these ranged from £51,218 to £826,875.

Unsuitable Pension Transfer advice

- 4.38. The overarching suitability requirement (COBS 9.2.1R) is for a firm to take reasonable steps to ensure that a Personal Recommendation (which includes, in this context, a recommendation to transfer or not to transfer a pension) is suitable for its customer.
- 4.39. The starting point for Pension Transfer advice is the guidance in COBS 19.1.6G that a firm should assume that a transfer, conversion or opt-out would not be suitable, and only then consider it to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the customer's best interests. In the worst scenarios, a loss of guaranteed benefits equates to severe customer harm, surrendering a primary resource for ensuring financial stability in retirement or, alternatively, commencing retirement.
- 4.40. The Authority's review of the 18 Files found that seven customers (39%) received unsuitable Pension Transfer advice in breach of COBS 9.2.1R. Of these 2 were former BSPS members. The Authority was unable to assess the suitability of transfer advice provided in a further three of the 18 Files due to a lack of information on the file.

- 4.41. The advice given to transfer was unsuitable for a variety of reasons (see below). Of the seven files found to contain unsuitable Pension Transfer advice in breach of COBS 9.2.1R, many files failed for multiple reasons.

Reliance on the Defined Benefit Scheme

- 4.42. The Authority assessed the customer as being reliant on their DBPS in six of the 18 Files which contained unsuitable Pension Transfer advice. These customers did not have significant assets which could be used to supplement any shortfalls in their income needs.
- 4.43. A customer is considered by the Authority to be reliant on income from the ceding scheme in retirement if it would be their primary income source with no capacity to bear the risk of losing it; for example, because without it they would be unable to meet non-discretionary expenditure.
- 4.44. The Authority considers that the file review for Customer A provides an example of unsuitable Pension Transfer advice due to a failure to adequately consider the customer's reliance on their DBPS income. Customer A required an income of £22,000 per annum in retirement. The DBPS under review was Customer A's most significant asset. The Authority considers this indicated a strong reliance on the income available from the DBPS. In spite of this clear reliance, Mr Abley advised Customer A to proceed with a Pension Transfer out of their DBPS.
- 4.45. Mr Abley's advice to customers who were reliant on income from their DBPS to complete a Pension Transfer exposed them to the risk of not being able to meet their income needs throughout retirement because their income would be dependent on the performance of the recommended investment into which their pensions had been transferred. The Authority considers that Mr Abley did not have a reasonable basis for believing that these customers could financially bear any investment risks related to the Pension Transfers recommended in their cases in breach of COBS 9.2.1 and COBS 9.2.2R(1)(b).

Failure to satisfy the primary objective of meeting income needs

- 4.46. Mr Abley failed to provide sufficient evidence to demonstrate that specific customer objectives, for example maximising death benefits (the money customers could give to their relatives upon their death), flexibility and maximising tax-free cash, which drove the Pension Transfer, were in the customer's best interests. This was seen in all seven of the cases assessed by the Authority as being unsuitable for transfer.

- 4.47. The Authority considers that the primary purpose of a pension is to meet the income needs of an individual in retirement. Where a customer expresses a strong wish to maximise their death benefits, or to increase the flexibility of alternative arrangements, there is an increased risk that this will undermine the primary purpose of their pension. A balance therefore needs to be achieved between these objectives, which is in the best interests of the customer given their circumstances.
- 4.48. In all seven of the 18 Files which contained unsuitable Pension Transfer advice, the customer expressed a wish to maximise their death benefits and/or a need for increased flexibility, with the result that they were advised to complete a Pension Transfer. But the information in those files did not adequately demonstrate that those wishes and needs had been properly tested, or that prioritising their achievement was in the customer's best interests.
- 4.49. The Authority considers that a firm which provides advice on a Pension Transfer has a responsibility to explore whether any concerns expressed by a customer are legitimate, and to ensure that the customer is properly informed about those concerns.
- 4.50. The Authority considers that the file review for Customer B provides an example of unsuitable Pension Transfer advice based on a failure to demonstrate that the prioritisation of specific customer objectives was in the client's best interests. Customer B was aged 51 and, based on the facts obtained by CCWM, lived with a parent. Customer B's circumstances were such that the client was unlikely to be in a position to retire before the age of 65. While Customer B had a modest DC pension scheme, their DBPS represented a significant proportion of their income in retirement aside from their state pension. According to the file, Customer B's primary objective was to transfer out of their DBPS to improve death benefits. Mr Abley recommended that Customer B transfer out of the DBPS but failed to document that he adequately considered or gave sufficient weight to the following:
- (a) Customer B had no other significant projected pension income besides the state pension;
 - (b) transferring out of the DBPS to maximise death benefits may have a negative impact on Customer B's ability to meet retirement income needs;

- (c) Customer B evidenced little understanding of investments and funds and therefore, would not necessarily be knowledgeable regarding DBPS; and
- (d) there was no evidence of client questions and responses to demonstrate that Customer B had a clear understanding of the value offered by the transfer (as set out in the TVAS) and the concept of the critical yield, and that they fully appreciated that the growth needed by the investments, to match the benefits offered by the DBPS, was challenging given their cautious risk profile.

4.51. The Authority considers that the advice was led by the customer's objectives other than the primary objective of income in retirement, such as a desire to secure death benefits, and did not evidence sufficient consideration of the impact that pursuing these objectives would have on a customer's income in retirement in breach in COBS 9.2.1R.

Lack of necessary attitude to transfer risk and knowledge and experience

4.52. Mr Abley was obliged to obtain information on the customer's preferences regarding risk taking and their risk profile (COBS 9.2.2R) to ensure that the customer was prepared to exchange the guaranteed benefits of the DBPS for non-guaranteed benefits which are subject to investment risk borne by the customer. Mr Abley was also required to obtain sufficient information to provide a reasonable basis for believing that the customer had the necessary experience and knowledge to understand the risks involved in the transfer (COBS 9.2.3R).

4.53. Mr Abley failed to demonstrate that the customer had sufficient knowledge to understand the risks of transfer in six of the 18 Files. Five customers had completed CCWM's own risk questionnaire, each stating that their knowledge of financial terms was very limited. In another case, the customer had completed a risk questionnaire devised by a third party which did not specifically ask questions about the customer's knowledge of financial terms. There was no evidence of Mr Abley addressing this gap by discussing with customers their understanding of DB pension arrangements and of the risks involved in transferring out of their DBPS. This exposed the customer to significant risk.

4.54. In each of these six cases, the customer did not demonstrate the necessary attitude to transfer risk for it to be considered that they were prepared to exchange the guaranteed benefits of the DBPS for non-guaranteed benefits which are subject to investment risk borne by the customer. These customer files lacked

evidence of discussions around the nature of the benefits being given up and customer responses/rationale as regards their views. The risk score on their risk questionnaires completed by the customers appeared to be used to assess their appetite for the investments that their DBPS was to be transferred into, rather than to assess whether they had an appetite to give up guaranteed benefits. The general lack of investment experience demonstrated by these customers indicates that Mr Abley could not have concluded from their investment history that they had the necessary experience and knowledge to understand the risks involved in the transfer.

- 4.55. In one file, the customer's attitude to risk rating was increased from a score of 2 to a score of 4 following a discussion between the customer and Mr Abley. The note on file stated: "[the client] *understands that he needs to take a more balanced approach to investment. Being too cautious is (potentially) as bad as being too aggressive with an investment strategy.*" However, the client had limited investment experience and there was limited evidence that they would have the appropriate attitude to transfer risk. This client was a member of the BPS and had worked for British Steel for almost their entire life. They did not have experience of making decisions concerning their pension as may be the case with a frequent job mover. There was a lack of evidence on file to demonstrate that the customer fully understood the nature of the benefits being given up.

TVAS not supportive of transfer

- 4.56. In order to provide Pension Transfer advice, Mr Abley was obliged to carry out a comparison between the benefits likely to be paid by the ceding DBPS with the benefits afforded by a personal pension. The TVAS document facilitates this comparison as required by COBS 19.1.2R(1). The main output from this document is a series of percentages, known as "critical yields". These illustrate the annual growth rate (net of charges) that the customer would need to obtain on an investment of the CETV in order to replicate the benefits provided by the DBPS. The firm must ensure that the comparison includes enough information for the customer to be able to make an informed decision, drawing the customer's attention to factors that both support and detract from the firm's advice (COBS 19.1.2R(2) and (3)).
- 4.57. Mr Abley failed to comply with this Rule in six cases. Mr Abley failed to present the comparison or take into account the customer's objectives so as to make the comparison useful for the customer. Errors included:

- (a) joint life critical yields and comparison of benefits being used in circumstances where the customer was single;
- (b) the pension in excess of one customer's guaranteed minimum pension was to increase by 3% p.a. on pre-April 2001 benefits, yet the TVAS used a rate of 2% p.a. as CPI (consumer price index). This error would have served to significantly understate the critical yield and meant that the customer was not in an informed position;
- (c) a pension commencement lump sum ("PCLS") was assumed to be taken by one customer where there was no evidence of this being stated as an objective by the customer. Taking a PCLS would result in a poorer value pension for the customer under the DBPS and assuming a PCLS therefore understated the critical yield; and
- (d) one customer was minded towards death benefits, however there was a failure to provide a monetary comparison of the death benefits from the DBPS compared with the personal pension at stages before and after retirement, a requirement of COBS 19.1.2R.

4.58. Critical yields in three cases were so high as to be unlikely to be achieved and in a further two cases, the critical yields exceeded what was likely to be achieved when taking into account the customer's attitude to risk grading.

4.59. There was also no evidence to suggest that Mr Abley had taken steps to ensure that the customer understood the TVAS comparison and advice in six cases.

Making Personal Recommendations without the necessary information

4.60. The overarching suitability requirement, in COBS 9.2.1R, in force at the time, was for a firm to take reasonable steps to ensure that a Personal Recommendation (which includes, in this context, a recommendation to transfer or not to transfer a pension) is suitable for its customer. To do so, a firm must obtain the necessary information regarding the customer's (a) knowledge and experience in the investment field relevant to the pension transfer; (b) financial situation; and (c) investment objectives (COBS 9.2.1R(2)(a)-(c)).

4.61. COBS 9.2.2R states that a firm must obtain from the customer such information as is necessary for the firm to understand the essential facts about him and have a reasonable basis for believing, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended, or

entered into in the course of managing: (a) meets his investment objectives; (b) is such that he is able financially to bear any related investment risks consistent with his investment objectives; and (c) is such that he has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.

- 4.62. Making a Personal Recommendation without the necessary information increases the risk of providing unsuitable advice and is in breach of the Authority's Rules. If a firm does not obtain the necessary information to assess suitability, it should not make a Personal Recommendation (COBS 9.2.6R).
- 4.63. In three of the 18 Files there was an absence of necessary information, such that Mr Abley was required not to make a Personal Recommendation on behalf of CCWM, as an assessment as to suitability could not properly be made. Mr Abley proceeded to make Personal Recommendations on behalf of CCWM in those cases despite the absence of necessary information, in breach of COBS 9.2.6R. In all three cases, there was a failure to obtain information about the customer's retirement needs and/or state pension or other income entitlement such that a proper and accurate assessment of reliance on the fund could not be undertaken. The customers were therefore at risk of receiving unsuitable advice.

Additional breaches found in the review of the 18 Files

- 4.64. In addition to the three cases where the absence of necessary information meant that an assessment could not properly be made, and therefore suitability could not be demonstrated by Mr Abley, there was a failure to collect necessary information in a further six files. However, despite the absence of this information, the Authority was able to assess transfer suitability by making reasonable assumptions or inferences as to the missing information. All six of these files were assessed by the Authority as containing unsuitable Pension Transfer advice.
- 4.65. The suitability requirement in COBS 9.2.1R extends to the investment advice into which the firm has recommended the customer should transfer their pension funds (COBS 9.2.1R(1) and COBS 9.2.2R(1)(b)). Mr Abley failed to comply with these Rules in four files with some of them failing because the investment recommended by Mr Abley was of a greater risk than the customer was willing or able to bear. This was of particular concern as the customers lacked the knowledge and experience to understand the risks involved with the investment.

- 4.66. The Authority's Rules about the provision of information to customers require that consumers are given all the necessary information to enable them to make an informed decision and are, ultimately, treated fairly.
- 4.67. Mr Abley was unable to demonstrate compliance with Rules on the provision of information to customers set out in COBS in 11 of the 18 Files. Suitability Reports were not compliant with Rules set out in COBS in nine cases. Suitability Reports prepared by Mr Abley did not contain warnings regarding the risks involved in transferring out of the DBPS. In five of the 18 Files, the Suitability Report was not written in a way that was clear, fair and not misleading. Some reports failed to explain the risks of transferring out of the ceding scheme, others stated that the key driver for transfer was death benefits when in fact the customer had made clear their key objective was accessing PCLS. Others did not include any information about the client's capacity for loss. Instead, the customers were told to contact the adviser to discuss capacity for loss at a later date. Similarly, in nine cases the files did not demonstrate that the customer understood the TVAS report, meaning that there was a risk that the customer followed the advice without understanding how the transfer compared with what they were giving up.

5. FAILINGS

- 5.1. The statutory and regulatory provisions relevant to this Notice are referred to in Annex A.
- 5.2. The Authority considers that, during the Relevant Period, by reason of the matters described in section 4 of this Notice, Mr Abley breached Statement of Principle 2, in that he failed to exercise due skill, care and diligence when advising customers on Pension Transfers.
- 5.3. Mr Abley's failings in respect of Statement of Principle 2 meant that the Pension Transfer advice he provided did not comply with regulatory requirements and standards, which created a significant risk that his advice that a customer should transfer out of their DBPS would not be suitable for them.
- 5.4. In particular, Mr Abley:
- (a) gave unsuitable advice to customers to transfer out of their DBPS. This was because he failed to:
 - i. obtain the necessary information, and/or to properly take into account customers' financial situations, when assessing whether it

was suitable for them to transfer out of their DBPS. As a result, he failed to assess, or give due consideration to, whether customers would be reliant on the income from their DBPS or whether they could financially bear the risks involved in a Pension Transfer;

- ii. provide sufficient justification to advise customers to give up their guaranteed benefits, including those with no source of retirement income other than their DBPS and the state pension and who had cautious attitudes to risk;
- iii. provide sufficient evidence to demonstrate that prioritising specific objectives, for example, family benefits on death, flexibility and maximising tax-free cash, which drove the transfer was in the customer's best interests;
- iv. demonstrate that customers had the necessary attitude to risk, as well as the experience and knowledge to understand the risks involved with the Pension Transfer recommended and failed to give due consideration to this where they did not;
- v. undertake adequate transfer value analysis to compare the benefits likely to be paid under the DBPS with benefits afforded by the personal pension or other pension into which it was proposed that the customer should transfer. Errors, which included using joint life critical yields when the customer was divorced and using an incorrect guaranteed minimum pension increase in the calculation, meant that comparisons were not useful, and where correctly calculated, critical yields revealed that the growth needed by the investments was sometimes inconsistent with the attitude to risk of the customer; and

- (b) made Personal Recommendations to customers despite having failed to obtain from them information that was necessary for him properly to assess whether a Pension Transfer was suitable. Making a Personal Recommendation without the necessary information increases the risk of providing unsuitable advice.

5.5. As a consequence of his actions and his breach of Statement of Principle 2, Mr Abley failed to meet the regulatory standards applicable to a Pension Transfer Specialist performing the CF30 (Customer) controlled function. The Authority

therefore considers that Mr Abley is not fit and proper to perform any function in relation to the regulated activity of advising on Pension Transfers and Pension Opt-Outs carried on by an authorised person, exempt person and exempt professional firm.

6. SANCTION

Financial penalty

- 6.1. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. In respect of conduct occurring on or after 6 March 2010, the Authority applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5B sets out the details of the five-step framework that applies in respect of financial penalties imposed on individuals in non-market abuse cases.

Step 1: disgorgement

- 6.1. Pursuant to DEPP 6.5B.1G, at Step 1 the Authority seeks to deprive an individual of the financial benefit derived directly from the breach where it is practicable to quantify this.
- 6.2. 56% of the representative sample of CCWM's files reviewed by the Authority were non-compliant with the Authority's COBS Rules on Pension Transfers in that in Mr Abley either failed to obtain the information necessary to be able to advise the customer, meaning that, according to COBS 9.2.6R, he should not have made a Personal Recommendation, or the advice provided to the customer was unsuitable, according to COBS 9.2.1R. The Authority considers that Mr Abley received a financial benefit of at least £61,188 as a result of his breach of Statement of Principle 2.
- 6.3. Step 1 is therefore £61,188 (exclusive of interest).

Step 2: the seriousness of the breach

- 6.4. Pursuant to DEPP 6.5B.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. That figure is based on a percentage of the individual's relevant income. The individual's relevant income is the gross amount of all benefits received by the individual from the employment in connection with which the breach occurred, and for the period of the breach.

6.5. The period of Mr Abley's breach of Statement of Principle 2 was from 18 April 2015 to 6 February 2018. The Authority considers Mr Abley's relevant income for this period to be £321,742.

6.6. In deciding on the percentage of the relevant income that forms the basis of the step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 40%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach; the more serious the breach, the higher the level. For penalties imposed on individuals in non-market abuse cases there are the following five levels:

Level 1 – 0%

Level 2 – 10%

Level 3 – 20%

Level 4 – 30%

Level 5 - 40%

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

Impact of the breach

6.8. Mr Abley's breach caused a significant risk of loss, as a whole, to consumers who transferred out of their DBPS as a result of his advice. Completed transfers had a total CETV of £157,070,048.77. During the Relevant Period, 575 of CCWM's customers transferred out of the DBPS. (DEPP 6.5B.2G(8)(b)). DB schemes offered important guarantees and transferring out of them resulted in customers' retirement funds being unnecessarily put at risk.

6.9. Mr Abley's breach caused a significant risk of loss to individual consumers who transferred out of their Defined Benefit Pension Scheme as a result of his advice. For many customers, their Defined Benefit Pension Scheme was a very valuable asset (average CETV of the file sample was £287,943) and was their main retirement provision (DEPP 6.5B.2G(8)(c)).

6.10. Mr Abley's breach significantly affected BSPS members, who made up 146 of the total customer population during the Relevant Period and many of whom were in

a vulnerable position due to the uncertainty surrounding the future of the BPS (DEPP 6.5B.2G(8)(d)).

Nature of the breach

- 6.11. The breach was a continuous one during the Relevant Period (DEPP 6.5B.2G(9)(b)). The breach only ended when the Authority intervened in February 2018.
- 6.12. Mr Abley is an experienced industry professional having worked in financial services for over 20 years, working as a Financial Adviser and Pension Transfer Specialist. He has held senior management functions and the CF30 role since joining CCWM in 2008 and the majority of his role during the Relevant Period concerned DB Pension Transfer advice (DEPP 6.5B.2G(9)(j), DEPP 6.5B.2G(9)(k) and DEPP 6.5B.2G(9)(l)).

Whether the breach was deliberate and/or reckless

- 6.13. The breach committed by Mr Abley was as a result of his lack of competence, rather than deliberate or reckless acts (DEPP 6.5B.2G(11)).

Level of Seriousness

- 6.14. DEPP 6.5B.2G(12) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the Authority considers it relevant that the breach caused a significant risk of loss to individual consumers (DEPP 6.5B.2G(12)(a)).
- 6.15. DEPP 6.5B.2G(13) lists factors likely to be considered 'level 1, 2 or 3 factors'. Of these, the Authority considers it relevant that the breach was committed negligently (DEPP 6.5B.2G(13)(d)).
- 6.16. Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 3 and so the Step 2 figure is 20% of £321,742.
- 6.17. Step 2 is therefore £64,348.

Step 3: mitigating and aggravating factors

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

6.19. The Authority has considered whether any of the mitigating or aggravating factors listed in DEPP 6.5B.3G, or any other such factors, apply in this case and has concluded that none applies to a material extent, such that the penalty ought to be increased or decreased.

Step 4: adjustment for deterrence

6.20. Pursuant to DEPP 6.5B.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the individual who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.

6.21. The Authority considers that the Step 3 figure represents a sufficient deterrent to Mr Abley and others, and so has not increased the penalty at Step 4.

6.22. Step 4 is therefore £64,348.

Step 5: settlement discount

6.23. Pursuant to DEPP 6.5B.5G, if the Authority and the individual on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the individual reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.

6.24. The Authority and Mr Abley reached agreement at Stage 1 and so a 30% discount applies to the Step 4 figure.

6.25. Step 5 is therefore £45,043.60 (£45,000 rounded down to the nearest £100).

Penalty

6.26. The Authority hereby imposes a total financial penalty of £106,100 (discount applied) on Mr Abley for breaching Statement of Principle 2.

Prohibition Order

6.27. The Authority has the power to prohibit individuals under section 56 of the Act. The Authority has had regard to the guidance in Chapter 9 of EG and Chapter 2 of FIT of the Handbook in considering whether to impose a prohibition order on

Mr Abley. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities.

- 6.28. The Authority considers that Mr Abley has demonstrated a lack of competence and capability to advise on Pension Transfers and Pension Opt-Outs.
- 6.29. The Authority considers that, as a result of the facts and matters set out in this Notice, Mr Abley is not a fit and proper person to carry out the regulated activity of advising on Pension Transfers and Pension Opt-Outs. The Authority hereby prohibits Mr Abley from performing any function in relation to the regulated activity of advising on Pension Transfers and Pension Opt-Outs carried on by an authorised person, exempt person or exempt professional firm.

7. PROCEDURAL MATTERS

- 7.1. This Notice is given to Mr Abley under and in accordance with section 390 of the Act.
- 7.2. The following statutory rights are important.

Decision maker

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

Manner and time for payment

- 7.4. The financial penalty must be paid in full by Mr Abley to the FSCS in the manner outlined as follows:
- 7.4.1. £36,100 by 6 July 2023, 14 days after the date of the Final Notice;
- 7.4.2. £35,000 by 1 June 2024; and
- 7.4.3. £35,000 by 1 June 2025.

If the financial penalty is not paid

- 7.5. If any or all of the instalments of the financial penalty are outstanding after the due date for payment, after 14 days' notice given by the Authority, should the instalment remain unpaid, the full amount of the financial penalty shall then become due and payable from Mr Abley to the Authority, and the Authority may recover the full amount of the penalty from Mr Abley.

Publicity

- 7.6. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the Authority must publish such information about the matter to which this notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to Mr Abley, prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

Authority contacts

- 7.7. For more information concerning this matter generally, contact Kingsley Moore at the Authority (direct line: 0207 066 0401/email: Kingsley.Moore2@fca.org.uk).

Nicholas Hills

Head of Department

Financial Conduct Authority, Enforcement and Market Oversight Division

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

The Financial Services and Markets Act 2000 ("the Act")

The Authority's operational objectives

1. The Authority's operational objectives are set out in section 1B(3) of the Act and include securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.

Section 56 of the Act

2. Section 56 of the Act provides that the Authority may make an order prohibiting an individual from performing a specified function, any function falling within a specified description or any function, if it appears to the Authority that the individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, a person who is an exempt person in relation to that activity or a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities.

Section 66 of the Act

3. Under section 66 of the Act, the Authority may take action against a person if it appears to the Authority that he is guilty of misconduct and the Authority is satisfied that it is appropriate in all the circumstances to take action against him, including the imposition of a penalty of such amount as it considers appropriate.
4. Under section 66A of the Act a person is guilty of misconduct if, inter alia, he at any time failed to comply with rules made by the Authority under section 64A of the Act and at that time was an approved person, or had been knowingly concerned in a contravention of a relevant requirement by an authorised person and at that time the person was an approved person in relation to the authorised person.

RELEVANT REGULATORY PROVISIONS

The Authority's Handbook of Rules and Guidance

5. In exercising its powers to impose a financial penalty, the Authority must have regard to the relevant regulatory provisions in the Authority's Handbook of rules and guidance (the "Handbook"). The main provisions that the Authority considers relevant are set out below.

Statements of Principle and Code of Practice for Approved Persons ("APER")

6. The part of the Authority's handbook known as APER sets out the Statements of Principle issued under section 64A of the Act as they relate to approved persons and descriptions of conduct which, in the opinion of the Authority, do not comply with a Statement of Principle.
7. APER further describes factors which, in the opinion of the Authority, are to be taken into account in determining whether or not an approved person's conduct complies with particular Statements of Principle.
8. During the Relevant Period, the APER Statement of Principle 2 stated:

"An approved person must act with due skill, care and diligence in carrying out his accountable functions." (Accountable functions include controlled functions.)

Statement of Principle 2

9. APER 4.2 describes conduct which in the opinion of the Authority does not comply with Statement of Principle 2.
10. APER 4.2.2G provides that in the opinion of the Authority, conduct of the type described in APER 4.2.3G, APER 4.2.5G, APER 4.2.6G, APER 4.2.8G, APER 4.2.10G, APER 4.2.11G, or APER 4.2.14G does not comply with Statement of Principle 2.
11. APER 4.2.3E and APER 4.2.3G provides that failing to inform a customer of material information in circumstances where he was aware, or ought to have been aware, of such information, and the fact that he should provide it falls within APER 4.2.2E and APER 4.2.2G. Behaviour of the type referred to in APER 4.2.3E and APER 4.2.3G is

set out in APER 4.2.4E and APER 4.2.4G and includes but is not limited to failing to explain the risks of an investment to a customer.

12. APER 4.2.5E and APER 4.2.5G provides that recommending an investment to a customer where he does not have reasonable grounds to believe that it is suitable for that customer falls within APER 4.2.2E and APER 4.2.2G.

Conduct of Business Sourcebook (“COBS”)

Acting honestly, fairly and professionally

The client’s best interest rule

13. COBS 2.1.1R:

- (1) A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).

Assessing suitability

Assessing suitability: the obligations

14. COBS 9.2.1R (as in force during the Relevant Period) stated:

- (1) A firm must take reasonable steps to ensure that a personal recommendation, or a decision to trade, is suitable for its client.
- (2) When making the personal recommendation or managing his investments, the firm must obtain the necessary information regarding the client's:
 - (a) knowledge and experience in the investment field relevant to the specific type of designated investment or service;
 - (b) financial situation; and
 - (c) investment objectives;

so as to enable the firm to make the recommendation, or take the decision, which is suitable for him.

15. COBS 9.2.2R:

- (1) A firm must obtain from the client such information as is necessary for the firm to understand the essential facts about him and have a reasonable basis for believing, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended, or entered into in the course of managing:
 - (a) meets his investment objectives;
 - (b) is such that he is able financially to bear any related investment risks consistent with his investment objectives; and
 - (c) is such that he has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.
- (2) The information regarding the investment objectives of a client must include, where relevant, information on the length of time for which he wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment.
- (3) The information regarding the financial situation of a client must include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments.

16. COBS 9.2.3R:

The information regarding a client's knowledge and experience in the investment field includes, to the extent appropriate to the nature of the client, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved, information on:

- (1) the types of service, transaction and designated investment with which the client is familiar;
- (2) the nature, volume, frequency of the client's transactions in designated investments and the period over which they have been carried out;
- (3) the level of education, profession or relevant former profession of the client.

Insufficient information

17. COBS 9.2.6R:

If a firm does not obtain the necessary information to assess suitability, it must not make a personal recommendation to the client or take a decision to trade for him.

Suitability reports

Providing a suitability report

18. Until 7 June 2015, COBS 9.4.1R stated:

A firm must provide a suitability report to a retail client if the firm makes a personal recommendation to the client and the client:

[...]

- (4) enters into a pension transfer or pension opt-out.

19. From 8 June 2015 to the end of the Relevant Period, COBS 9.4.1R stated:

A firm must provide a suitability report to a retail client if the firm makes a personal recommendation to the client and the client:

[...]

- (4) enters into a pension transfer, pension conversion or pension opt-out.

Contents

20. COBS 9.4.7R (as in force during the Relevant Period) stated:

The suitability report must, at least:

- (1) specify the client's demands and needs;
 - (2) explain why the firm has concluded that the recommended transaction is suitable for the client having regard to the information provided by the client; and
 - (3) explain any possible disadvantages of the transaction for the client.
21. COBS 9.4.8G states that a firm should give the client such details as are appropriate according to the complexity of the transaction.

Pension transfers, conversions, and opt-outs

Preparing and providing a transfer analysis

22. Until 7 June 2015, COBS 19.1.2R stated that:

"A firm must:

- (1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme with the benefits afforded by a personal pension scheme or stakeholder pension scheme, before it advises a retail client to transfer out of a defined benefits pension scheme;
- (2) ensure that that comparison includes enough information for the client to be able to make an informed decision;
- (3) give the client a copy of the comparison, drawing the client's attention to the factors that do and do not support the firm's advice, no later than when the key features document is provided; and

- (4) take reasonable steps to ensure that the client understands the firm's comparison and its advice."

23. From 8 June 2015, to the end of the Relevant Period, COBS 19.1.2R stated:

A firm must:

- (1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme or other pension scheme with safeguarded benefits with the benefits afforded by a personal pension scheme, stakeholder pension scheme or other pension scheme with flexible benefits, before it advises a retail client to transfer out of a defined benefits pension scheme or other pension scheme with safeguarded benefits;
- (2) ensure that that comparison includes enough information for the retail client to be able to make an informed decision;
- (3) give the retail client a copy of the comparison, drawing the retail client's attention to the factors that do and do not support the firm's advice, in good time, and in any case no later than when the key features document is provided; and
- (4) take reasonable steps to ensure that the retail client understands the firm's comparison and its advice.

24. Until 7 June 2015, COBS 19.1.3G stated:

In particular, the comparison should:

- (1) take into account all of the retail client's relevant circumstances;
- (2) have regard to the benefits and options available under the ceding scheme and the effect of replacing them with the benefits and options under the proposed scheme;
- (3) explain the assumptions on which it is based and the rates of return that would have to be achieved to replicate the benefits being given up; and

- (4) be illustrated on rates of return which take into account the likely expected returns of the assets in which the retail client's funds will be invested.

25. From 8 June 2015, until the end of the Relevant Period, COBS 19.1.3G stated:

In particular, the comparison should:

- (1) take into account all of the retail client's relevant circumstances;
- (2) have regard to the benefits and options available under the ceding scheme and the effect of replacing them with the benefits and options under the proposed scheme;
- (3) explain the assumptions on which it is based and the rates of return that would have to be achieved to replicate the benefits being given up;
- (4) be illustrated on rates of return which take into account the likely expected returns of the assets in which the retail client's funds will be invested; and
- (5) where an immediate crystallisation of benefits is sought by the retail client prior to the ceding scheme's normal retirement age, compare the benefits available from crystallisation at normal retirement age under that arrangement.

Suitability

26. Until 7 June 2015, COBS 19.1.7G stated:

When a firm advises a retail client on a pension transfer or pension opt-out, it should consider the client's attitude to risk in relation to the rate of investment growth that would have to be achieved to replicate the benefits being given up.

27. From 8 June 2015 to 31 March 2018, COBS 19.1.7G stated:

When a firm advises a retail client on a pension transfer, pension conversion or pension opt-out, it should consider the client's attitude to risk including, where relevant, in relation to the rate of investment growth that would have to be achieved to replicate the benefits being given up.

28. Until 7 June 2015, COBS 19.1.7AG stated:

When giving a personal recommendation about a pension transfer, a firm should clearly inform the retail client about the loss of the fixed benefits and the consequent transfer of risk from the defined benefits pension scheme to the retail client, including:

- (1) the extent to which benefits may fall short of replicating those in the defined benefits pension scheme;
- (2) the uncertainty of the level of benefit that can be obtained from the purchase of a future annuity and the prior investment risk to which the retail client is exposed until an annuity is purchased with the proceeds of the proposed personal pension scheme or stakeholder pension scheme; and
- (3) the potential lack of availability of annuity types (for instance, annuity increases linked to different indices) to replicate the benefits being given up in the defined benefits pension scheme.

29. From 8 June 2015, until the end of the Relevant Period, COBS 19.1.7AG:

When giving a personal recommendation about a pension transfer or pension conversion, a firm should clearly inform the retail client about the loss of the safeguarded benefits and the consequent transfer of risk from the defined benefits pension scheme or other scheme with safeguarded benefits to the retail client, including:

- (1) the extent to which benefits may fall short of replicating those in the defined benefits pension scheme or other scheme with safeguarded benefits;
- (2) the uncertainty of the level of benefit that can be obtained from the purchase of a future annuity and the prior investment risk to which the retail client is exposed until an annuity is purchased with the proceeds of the proposed personal pension scheme or stakeholder pension scheme; and
- (3) the potential lack of availability of annuity types (for instance, annuity increases linked to different indices) to replicate the benefits being given up in the defined benefits pension scheme.

30. COBS 19.1.8G (as in force during the Relevant Period) stated:

When a firm prepares a suitability report it should include:

- (1) a summary of the advantages and disadvantages of its personal recommendation;
- (2) an analysis of the financial implications (if the recommendation is to opt-out); and
- (3) a summary of any other material information.

Fit and Proper test for Employees and Senior Personnel ("FIT")

31. Guidance on the question whether an individual is a fit and proper person is given in the part of the Handbook called the Fit and Proper Test for Employees and Senior Personnel (FIT). FIT 1.3.1G states that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person to perform a particular controlled function. The most important considerations will be the person's:

- (1) honesty, integrity and reputation;
- (2) competence and capability; and
- (3) financial soundness.

32. FIT 1.3.2G states that in assessing fitness and propriety, the Authority will also take account of the activities of the firm for which the controlled function is or is to be performed, the permission held by that firm and the markets within which it operates.

Enforcement Guide ("EG")

33. The Authority's policy for exercising its power to make a prohibition order is set out in Chapter 9 of EG.

34. EG 9.1.1 states that the Authority's power under section 56 of the Act to prohibit individuals who are not fit and proper from carrying out functions in relation to regulated activities helps the Authority to work towards achieving its statutory objectives. The Authority may exercise this power to make a prohibition order where it considers that, to achieve any of those objectives, it is appropriate either to prevent an individual from performing any function in relation to regulated activities, or to restrict the functions which he may perform.
35. EG 9.1.2 states that the Authority's effective use of the power under section 63 of the Act to withdraw approval from an approved person will also help ensure high standards of regulatory conduct by preventing an approved person from continuing to perform the controlled function to which the approval relates if he is not a fit and proper person to perform that function. Where it considers this is appropriate, the Authority may prohibit an approved person, in addition to withdrawing their approval.
36. EG 9.2.2 states that the Authority has the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant. Depending on the circumstances of each case, the Authority may seek to prohibit an individual from performing any class of function in relation to any class of regulated activity, or it may limit the prohibition order to specific functions in relation to specific regulated activities. The Authority may also make an order prohibiting an individual from being employed by a particular firm, type of firm or any firm.
37. EG 9.2.3 states that the scope of the prohibition order will depend on the range of functions which the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of risk which he poses to consumers or the market generally.
38. EG 9.3.1 states that when the Authority has concerns about the fitness and propriety of an approved person, it may consider whether it should prohibit that person from performing functions in relation to regulated activities, withdraw its approval, or both. In deciding whether to withdraw its approval and/or make a prohibition order, the Authority will consider in each case whether its statutory objectives can be achieved adequately by imposing disciplinary sanctions, for example, public censures or financial penalties, or by issuing a private warning.

39. EG 9.3.2 states that when the Authority decides whether to make a prohibition order against an approved person and/or withdraw their approval, the Authority will consider all the relevant circumstances of the case. These may include, but are not limited to the following:
- (1) At EG 9.3.2(2) the Authority considers whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety of approved persons are set out in FIT 2.1 (Honesty, integrity and reputation); FIT 2.2 (Competence and capability) and FIT 2.3 (Financial soundness).
 - (2) At EG 9.3.2(3) the Authority considers whether, and to what extent, the approved person has:
 - (a) failed to comply with the Statements of Principle or COCON issued by the Authority with respect to the conduct of approved persons; or
 - (b) been knowingly concerned in a contravention by the relevant firm of a requirement imposed on the firm by or under the Act (including the Principles and other rules), the AIFMD UK regulation or any qualifying EU provision specified, or of a description specified, for the purpose of section 66(2) by the Treasury by order.
 - (3) At EG 9.3.2(7) the Authority considers the particular controlled function the approved person is (or was) performing, the nature and activities of the firm concerned and the market in which he operates.
 - (4) At EG 9.3.2(8) the Authority considers the severity of the risk which the individual poses to consumers and to confidence in the financial system.
40. At EG 9.3.5(4) the Authority gives a serious lack of competence as an example of the type of behaviour which has previously resulted in the Authority deciding to issue a prohibition order.
41. EG sets out the Authority's approach to taking disciplinary action. The Authority's approach to financial penalties is set out in Chapter 7 of EG, which can be accessed here:

<https://www.handbook.fca.org.uk/handbook/EG/7/?view=chapter>

Decision Procedures and Penalties Manual (“DEPP”)

42. Chapter 6 of DEPP, which forms part of the Authority’s Handbook, sets out the Authority’s policy for imposing a financial penalty. The Authority applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5B sets out the details of the five-step framework that applies to financial penalties imposed on individuals in non-market abuse cases, which can be accessed here:

<https://www.handbook.fca.org.uk/handbook/DEPP/6/5B.html>