

**Aiden Henderson has referred this Decision Notice to the Upper Tribunal where the parties will present their respective cases. Any findings in this Decision Notice are therefore provisional and reflect the Authority's belief as to what occurred and how it considers the behaviour of Aiden Henderson should be characterised. The Tribunal will determine what (if any) is the appropriate action for the FCA to take, and will remit the matter to the FCA with such directions as the Tribunal considers appropriate to give effect to its determination. The Tribunal's decision will be made public on its website. No allegation of wrongdoing is made against Hennessy Jones Limited, Mark Stephen or City Administration Limited in this Decision Notice.**



12 Endeavour Square  
London  
E20 1JN

Tel: +44 (0)20 7066 1000  
Fax: +44 (0)20 7066 1099  
[www.fca.org.uk](http://www.fca.org.uk)

---

## DECISION NOTICE

---

To: **Aiden Henderson**

Individual  
Reference  
Number: **AJH01573**

and

To: **Henderson Carter Associates Limited (in liquidation)**  
(as an interested party pursuant to section 63(3) of the Act)

Firm  
Reference  
Number: **512016**

Address: **13 The Cross  
Neston  
Merseyside  
CH64 9UB**

Date: **6 December 2018**

### **1. ACTION**

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

- (1) impose on Aiden Henderson a financial penalty of £179,179, pursuant to section 66 of the Act;

- (2) withdraw the approval given to Mr Henderson to perform the controlled functions of CF1 (Director), CF10 (Compliance), CF11 (Money Laundering Reporting) and CF30 (Customer), pursuant to section 63 of the Act; and
- (3) make an order, pursuant to section 56 of the Act, prohibiting Mr Henderson from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm.

## **2. SUMMARY OF REASONS**

- 2.1. The Authority has determined that during the period between 30 October 2013 and 8 July 2015 (the "Relevant Period") Mr Henderson breached Statement of Principle 1 (Integrity) of the Authority's Statements of Principle for Approved Persons by acting dishonestly and recklessly when performing his controlled functions in relation to Henderson Carter Associates Limited's ("HCA") pension business.
- 2.2. 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. 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 firm fails to act with integrity and puts its interests above those of its customers, it exposes its customers to a significant risk of harm.
- 2.3. Further, where elements of a pension advice process are outsourced to a third party service provider, the authorised firm remains responsible for the advice given and all decisions and actions in relation to regulated activities provided in its name. It is therefore essential that, in such circumstances, the authorised firm maintains control of the advice process and provides effective oversight of the activities carried out by the service provider on its behalf.
- 2.4. Mr Henderson is an approved person at HCA, a small firm authorised by the Authority with permission to conduct regulated activities, including advising on investments (excluding Pension Transfers) and arranging (bringing about) deals in investments. During the Relevant Period, Mr Henderson was the sole person at HCA approved to perform the controlled functions of CF1 (Director), CF10 (Compliance Oversight) and CF11 (Money Laundering Reporting), and he was also one of three persons at HCA approved to perform the CF30 (Customer) controlled function.

- 2.5. Mr Henderson was responsible for HCA adopting the Execution-only Process, which it used from 30 October 2013 until around August 2014, and which involved HCA receiving customer introductions from a third party (HJL) to facilitate customers moving their pensions to SIPPs investing in high risk, illiquid assets not regulated by the Authority (the Loan Notes) in which HJL had a material financial interest, which was not disclosed to customers.
- 2.6. Mr Henderson was aware of HJL's involvement in the Execution-only Process and of HJL's financial interest in the Loan Notes, but acted recklessly by closing his mind to the conflict of interest this created and taking no steps to manage it or to ensure that HJL's financial interest in the Loan Notes was disclosed to customers.
- 2.7. From around January 2014 HCA started to use the Pension Review and Advice Process, which was based on a pension switching advice model, the development of which was initiated and influenced by HJL. The Pension Review and Advice Process:
- (1) involved HJL sourcing leads from lead generation companies and introducing customers to HCA;
  - (2) involved HJL and other third party service providers (together the "Service Providers") being provided with HCA's logo and letterhead and the electronic signature of Mr Henderson (a qualified financial advisor) so that the Service Providers could perform functions (the Outsourced Functions) on HCA's behalf, including:
    - (a) contacting customers that had been introduced to HCA by HJL;
    - (b) conducting fact-finds with these customers;
    - (c) inputting the results of those fact-finds into the Software (an automated client management system designed to produce Suitability Reports);
    - (d) sending the Suitability Reports to the customers; and
    - (e) calling the customers to ask whether they wished to proceed in accordance with HCA's advice;

- (3) was structured to result in customers who met certain pre-set criteria approved by Mr Henderson being advised to switch their pensions to SIPPs investing in the Loan Notes (in which HJL had a material financial interest, which was not disclosed to customers); and
  - (4) involved little meaningful oversight by HCA of HJL's activities as an introducer and of the Service Providers' performance of the Outsourced Functions.
- 2.8. Mr Henderson was aware of what the Pension Review and Advice Process involved and how it was structured. Nevertheless, he caused HCA to hold itself out to customers as providing bespoke, independent investment advice based on a comprehensive and fair analysis of the whole market. Mr Henderson knew this was misleading to customers as it did not reflect the reality of the service that HCA would provide using the Pension Review and Advice Process. In causing HCA to hold itself out in this way, Mr Henderson acted dishonestly. The Authority considers this to be particularly serious because customers were not made aware of the true nature of the service being provided, including the fact that HJL's involvement in the process and financial interest in the Loan Notes created a conflict of interest. Customers were therefore denied the opportunity to make an informed decision on whether to use the Firm's services and on whether to invest in the products recommended to them by the Firm.
- 2.9. Mr Henderson's actions in relation to HCA's adoption and use of the Pension Review and Advice Process, summarised in paragraphs 2.10 to 2.18 below, were reckless. The Pension Review and Advice Process put HCA's customers at serious risk of receiving unsuitable advice and therefore at serious risk of investing in products that were not suitable for them, but Mr Henderson closed his mind to these risks and unreasonably exposed HCA's customers to them by deciding that HCA should adopt and use the Pension Review and Advice Process.
- 2.10. Mr Henderson failed to carry out adequate due diligence on the Loan Notes to ensure that he had a proper understanding of them, including their risks and benefits, before agreeing that they should be recommended to customers. He relied solely on documents provided to him by HJL, despite knowing that HJL had a material financial interest in the Loan Notes, and did not take any actions to address the risk that the information provided by HJL could be misleading or incomplete.

- 2.11. In any event, it should have been obvious to Mr Henderson from the limited information that he considered that the Loan Notes were high risk investments that were unlikely to be suitable for HCA's customers, except in very limited circumstances. However, Mr Henderson failed to give due consideration to the risk that the Loan Notes were unsuitable.
- 2.12. Mr Henderson failed to take any steps to establish that the lead generators used by HJL generated their customer introductions in an appropriate manner and did not use cold calling. The Authority has evidence suggesting that one of the firms used by HJL generated introductions through cold calling.
- 2.13. Mr Henderson knew of HJL's involvement in the Pension Review and Advice Process and that the process was structured to result in customers switching their pensions to SIPP's investing in assets (the Loan Notes) in which HJL had a material financial interest. Further, Mr Henderson knew that HJL and the issuer of the Loan Notes shared a common director, Mark Stephen. However, Mr Henderson took no steps to manage these conflicts of interest or to ensure that Mr Stephen's common directorship and how HJL was remunerated were disclosed to customers.
- 2.14. Mr Henderson was an experienced and qualified financial adviser. It therefore should have been obvious to him that he needed to give due consideration to the documents to be used in the Pension Review and Advice Process, and to how the process would operate in practice, before deciding that HCA should adopt the process. However, he failed to do so and therefore failed to identify significant obvious deficiencies in the Pension Review and Advice Process, including that: the fact-find contained leading questions intended to steer customers towards the features of the products that would be recommended; the Suitability Reports did not include sufficient information to provide customers with a compliant personal recommendation; and information provided to customers about the Loan Notes did not adequately inform them of their costs, benefits and risks.
- 2.15. In any event, it should have been obvious to Mr Henderson from the information available to him that the Pension Review and Advice Process did not comply with the Authority's rules. Mr Henderson was aware that HCA would have no meaningful involvement in the advice to be given and that the documents to be used in the process would mislead customers about the service that would be provided. However, Mr Henderson failed to give any meaningful consideration to whether or not the Pension Review and Advice Process was compliant.

- 2.16. Mr Henderson failed to take reasonable steps to ensure that HCA maintained control of the Pension Review and Advice Process and allowed important parts of the process, such as the conduct of fact-finds, to be performed in a way that failed to obtain and/or take into account relevant information about HCA's customers. Further, he failed to take reasonable steps to ensure that HCA reviewed in a meaningful way advice given through the Pension Review and Advice Process, for which it was responsible, whether before recommendations were sent to customers or at all.
- 2.17. Mr Henderson failed to take reasonable steps to ensure that HCA put in place appropriate systems and controls and compliance arrangements to oversee and monitor the Pension Review and Advice Process.
- 2.18. Mr Henderson agreed that HCA would work with HJL and CAL (another of the Service Providers, which was closely connected to HJL) without giving any proper consideration to whether they were suitable to perform services on HCA's behalf. Mr Henderson carried out no meaningful due diligence on HJL and did not conduct any due diligence on CAL.
- 2.19. Mr Henderson's reckless actions in relation to HCA's adoption and use of the Pension Review and Advice Process, in particular the fact that he allowed the Service Providers to perform the Outsourced Functions on HCA's behalf without adequate supervision, failed to review in a meaningful way advice given through the Pension Review and Advice Process, and failed to ensure HCA put in place and operated appropriate systems and controls in relation to the process, exposed HCA to the risk of breaching section 20 of the Act by carrying on a regulated activity without the relevant permission, as in fact happened. The Pension Review and Advice Process failed to distinguish properly between Pension Transfers (which include the transfer of deferred benefits from an occupational pension scheme into a SIPP) and Pension Switches (which involve the movement of funds from one personal pension scheme to another where no safeguarded benefits are involved). As a result, despite HCA not having the necessary permission to provide advice on Pension Transfers, in at least 45 cases advice about Pension Transfers was given to customers by HCA in breach of section 20 of the Act.
- 2.20. In addition to the clear deficiencies in the Pension Review and Advice Process, the Authority has identified that unsuitable advice was provided to HCA's customers in all 20 HCA customer files it has reviewed. Further, each of the 20 customer files

failed to comply with applicable Handbook rules. As the same advice process was used for all customers who were advised to invest in the Loan Notes, the Authority considers it is likely that the advice provided to most, if not all, of HCA's 717 advised customers was unsuitable.

- 2.21. In total, 879 HCA customers switched or transferred their pensions through the Execution-only Process or the Pension Review and Advice Process during the Relevant Period. This resulted in over £35 million being switched or transferred from customers' pensions to SIPPs investing in high risk, illiquid assets that were unlikely to be suitable for them, thereby exposing them to a significant risk of loss.
- 2.22. Mr Henderson decided that HCA should adopt the Pension Review and Advice Process for financial gain from the fees it generated and in order to increase the number of customers that HCA could advise about other products, such as life assurance or other investments, and thereby generate further fees. Mr Henderson decided that HCA should adopt the Execution-only Process on the understanding that HCA could contact the customers about other products and services in the future. In deciding that HCA should adopt these processes, Mr Henderson put his and HCA's own interests before those of HCA's customers.
- 2.23. Mr Henderson also deliberately provided, on behalf of HCA, false and misleading information to the Authority about the compliance checks that he had undertaken. Mr Henderson did so to try to prevent the Authority from identifying misconduct by him and by HCA, and thereby acted dishonestly.
- 2.24. The Authority considers Mr Henderson's failings to be serious because:
  - (1) they related to a large number of customers (including some who were vulnerable due to their age, their inability to replace capital, their medical conditions or other personal circumstances);
  - (2) it should have been obvious to Mr Henderson that the involvement in both the Execution-only Process and the Pension Review and Advice Process of HJL, which had a material financial interest in the Loan Notes into which customers' funds were being invested, created a clear conflict of interest, yet he took no steps to manage the conflict or to ensure that HJL's financial interest was disclosed to customers;

- (3) as an experienced and qualified financial adviser, it should have been obvious to Mr Henderson that the Loan Notes were unlikely to be suitable for retail customers, except in very limited circumstances; and
- (4) on 3 September 2014, the Authority wrote to Mr Henderson and drew his attention to alerts released by the Authority relating to firms advising on Pension Switches or Pension Transfers into unregulated products through SIPPs, the risks of non-mainstream products being unsuitable and the need to protect customers. Despite this Mr Henderson did not take steps to protect the Firm's customers.

2.25. HCA's provision of pension advice was subject to examination by the Authority in June 2015. The Authority had serious concerns about the suitability of HCA's pension advice and, on 8 July 2015, at the request of the Authority, HCA applied to have requirements imposed on it. The requirements imposed by the Authority included a restriction on the type of investments that HCA could offer customers.

2.26. On 15 February 2017 HCA entered liquidation. The FSCS declared HCA in default on 22 March 2017 and is investigating claims made by HCA's customers. As at 17 May 2018, the FSCS had paid over £1 million to 137 of HCA's customers in compensation for loss suffered upon transferring or switching their pensions to SIPPs investing in the Loan Notes.

2.27. The Authority considers that Mr Henderson's dishonest and reckless conduct during the Relevant Period demonstrates that he lacks integrity and is not a fit and proper person. Accordingly, the Authority has decided that it is appropriate to withdraw his approval to perform controlled functions and to impose a prohibition order on him, as described at paragraphs 1.1(2) and (3) of this Notice. Further, the Authority has decided to impose a financial penalty on Mr Henderson in the amount of £179,179 for his breach of Statement of Principle 1.

### **3. DEFINITIONS**

3.1. The definitions below are used in this Notice.

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

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

"CAL" means City Administration Limited, the third party service provider that performed the Outsourced Functions on behalf of HCA between October 2014 and July 2015

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

"Company A" means the third party service provider that performed the Outsourced Functions on behalf of HCA between January 2014 and May 2014

"DEPP" means the Authority's Decision Procedure and Penalties Manual

"EG" means the Authority's Enforcement Guide

"Execution-only Process" means the execution-only pension switching process that HCA used between 30 October 2013 and around August 2014, which involved HCA receiving customer introductions from HJL to facilitate customers moving their pensions to SIPPs investing in the Loan Notes

"File Review Sheets" means the three documents purporting to be records of file reviews conducted by Mr Henderson which were provided to the Authority on 16 February 2015

"FOS" means the Financial Ombudsman Service

"FSCS" means the Financial Services Compensation Scheme

the "Handbook" means the Authority's Handbook of rules and guidance

"HCA" or the "Firm" means Henderson Carter Associates Limited

"HJL" means Hennessy Jones Limited, now known as Reditum Capital Limited. HCA signed a contract with HJL on 30 October 2013 for HJL to become an IAR of HCA, and HJL was registered with the Authority as such between 18 December 2013 and 20 March 2015. HJL introduced customers to HCA between October 2013 and March 2015. HJL also performed the Outsourced Functions on behalf of HCA between May 2014 and October 2014

"IAR" means Introducer Appointed Representative

“Loan Notes” means the assets, which consisted of 10-year loans to funds incorporated in Mauritius and managed by a Mauritian company, into which HCA’s customers’ pensions were invested

“Mr Henderson” means Aiden Henderson

“Outsourced Functions” means the functions outsourced by HCA to the Service Providers under the Pension Review and Advice Process, including the functions described at paragraph 2.7(2) of this Notice (but not including the functions carried out by HJL in its role as an introducer)

“Pension Review and Advice Process” means the process described in paragraph 2.7 of this Notice that HCA used between around January 2014 and 8 July 2015

“Pension Summary Report” means the report given to HCA’s customers indicating whether and by how much the customer could potentially benefit from a Pension Switch

“Pension Switch” means the movement of funds from one personal pension scheme to another where no safeguarded benefits are involved

“Pension Transfer” has the meaning given in the Handbook and includes the movement of funds from an occupational pension scheme to a personal pension scheme (in this case a SIPP)

“Person A” means the individual who had an influential role at HJL, referred to in paragraph 4.36 of this Notice

“Relevant Period” means 30 October 2013 to 8 July 2015 inclusive

“Service Providers” means collectively HJL, CAL and Company A

“SIPP” means self-invested personal pension

“SIPP Provider” means the firm providing the SIPP account

“Software” means the automated client management system that was used by the Service Providers during the Pension Review and Advice Process to manage customer information and generate Suitability Reports for customers

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

“SYSC” means the Senior Management Arrangements, Systems and Controls Sourcebook, part of the Handbook

“the Tribunal” means the Upper Tribunal (Tax and Chancery Chamber)

“the Warning Notice” means the warning notice given to Mr Henderson dated 7 February 2018

#### **4. FACTS AND MATTERS**

##### **Background**

- 4.1. HCA is a small firm based in Neston, Merseyside. It was authorised by the Authority on 15 February 2010 with permission to conduct regulated activities, including advising on investments (excluding Pension Transfers) and arranging (bringing about) deals in investments.
- 4.2. During the Relevant Period, Mr Henderson was the only person at HCA approved to perform the controlled functions of CF1 (Director), CF10 (Compliance Oversight) and CF11 (Money Laundering Reporting), was one of three persons approved to perform the CF30 (Customer) controlled function, and was the sole individual responsible for running the aspects of HCA’s business addressed in this Notice. Mr Henderson was an experienced and qualified financial adviser and the only adviser at HCA involved in the switching or transferring of customers' pensions to SIPPs investing in the Loan Notes.
- 4.3. Between 30 October 2013 and around August 2014, the Firm used the Execution-only Process, which involved it receiving customer introductions from HJL to facilitate customers moving their pensions to a SIPP investing in high risk illiquid assets not regulated by the Authority (the Loan Notes) in which HJL had a material financial interest, a fact which Mr Henderson knew was not disclosed to customers.
- 4.4. From around January 2014 until 8 July 2015, the Firm used the Pension Review and Advice Process, which involved:

- (1) HJL sourcing leads from lead generation companies and introducing customers to the Firm;
- (2) the Service Providers performing the Outsourced Functions on behalf of HCA, as follows:
  - (a) between January 2014 and May 2014, the Outsourced Functions were performed by Company A;
  - (b) between May 2014 and October 2014, the Outsourced Functions were performed by HJL; and
  - (c) between October 2014 and July 2015, the Outsourced Functions were performed by CAL, a third party service provider closely connected to HJL; and
- (3) little meaningful oversight by HCA of HJL's activities as an introducer and of the Service Providers' performance of the Outsourced Functions.

4.5. The Pension Review and Advice Process was structured to result in customers who met certain pre-set criteria approved by Mr Henderson being advised to switch their pensions to SIPPs investing in the Loan Notes. As with the Execution-only Process, Mr Henderson was aware that HJL's financial interest in the Loan Notes was not disclosed to customers.

### **Loan Notes**

4.6. Both the Execution-only Process and the Pension Review and Advice Process resulted in customers' pensions being switched or transferred to SIPPs with a portfolio of underlying assets which consisted of 10-year loans to funds incorporated in Mauritius and managed by a Mauritian company (the Loan Notes).

4.7. Customers' SIPPs were invested in three portfolios which were misleadingly described as being 'cautious', 'moderate' and 'adventurous', and which were made up of differing proportions of Loan Notes and, in some cases, a small percentage of cash. The portfolios were meant to align to a customer's attitude to risk, but in practice there was little difference between the risks and returns of the 'cautious' portfolio when compared to the 'adventurous' portfolio. As such, the terms used to

describe the three portfolios failed to reflect the reality that a customer would be exposed to high levels of risk whichever portfolio their SIPP was invested in.

- 4.8. Customers were told that the portfolios offered fixed returns and a capital guarantee. In fact, the Loan Notes within the portfolios are high risk, illiquid and unlikely to be suitable for retail investors except in very limited circumstances due to:
- (1) the investment strategies of the company issuing the Loan Notes, which include investing in distressed residential and commercial property and other speculative investments, including unlisted equities; and
  - (2) the limited regulatory oversight of the issuing company, which is not subject to the Authority's rules governing, for instance, investment and borrowing powers, disclosure of fees and charges, management of conflicts of interest, a prudent spread of risk and other investor safeguards.
- 4.9. A "capital guarantee" was meant to be provided by way of insurance, but this insurance was not (and, as far as the Authority is aware, is still not) in place for all of the funds. None of the insurance policies have been provided to the Authority and it has therefore not been possible to confirm the extent of cover provided by the policies which have been put in place or even whether the insurance is valid. Where insurance is in place it may be of limited value to customers in that it is not directly for the benefit of the customers investing in the Loan Notes. Further, the insurance company is based in Saint Kitts and Nevis and is subject to significantly less stringent regulatory requirements than insurance companies within, for example, the UK. Customers were not told about any of the above important risk factors.
- 4.10. Although customers may request the repayment of their funds, this is subject to a minimum 12 months' notice period and the board of directors of each fund has the discretion to refuse to repay the funds in certain circumstances. Further, the Loan Notes are not regulated by the Authority and are not covered by FOS or FSCS protection, and in the event of insolvency customers will be unsecured creditors, a fact that customers were not told about either before or after they agreed to switch or transfer their pensions.

### **Failures in the Firm's due diligence on the Loan Notes**

- 4.11. A firm is required to take reasonable steps to ensure that the investments that are recommended to its customers are suitable for those customers (COBS 9.2.1R). In order to determine whether an investment is suitable for a customer, a firm needs to undertake due diligence on the investment to understand how it works. This is the process a firm carries out to assess, among other things, the nature of the investment and its risks and benefits.
- 4.12. Although Mr Henderson was aware of the need to undertake adequate due diligence, he failed to carry out any meaningful due diligence in relation to the Loan Notes before deciding that HCA should adopt the Pension Review and Advice Process. Mr Henderson relied solely on documents provided to him by HJL and conducted no independent due diligence on the Loan Notes. Despite the fact that HJL had a material financial interest in the Loan Notes, which was obvious from the information provided to him, Mr Henderson did not take any actions to address the risk that the information provided by HJL could be misleading or incomplete.
- 4.13. Even on the limited information considered by Mr Henderson it should have been obvious to him, as an experienced and qualified financial adviser, that the Loan Notes were high risk investments which were unlikely to be suitable for HCA's customers except in very limited circumstances (for example, in some circumstances they may be suitable for high net worth investors or sophisticated investors looking for some exposure to less traditional investments). However, Mr Henderson failed to give due consideration to the risk that the Loan Notes were unsuitable.

### **Failures in the Firm's due diligence on the lead generation process**

- 4.14. HJL was an IAR of HCA between no later than 18 December 2013 and 20 March 2015 and as such HCA had responsibility for HJL's conduct as its introducer. HJL introduced customers to HCA from the date of HJL's IAR contract with HCA, dated 30 October 2013. At no point, either before appointing HJL to be HCA's IAR or afterwards, did Mr Henderson take any steps to establish that the lead generators used by HJL generated their customer introductions in an appropriate manner and, in particular, to ensure that they did not use unlawful cold calling. In fact, the Authority has evidence suggesting that one of the firms used by HJL used cold calling to generate customer introductions in breach of relevant legislation.

### **Execution-only Process**

- 4.15. On 30 October 2013 HCA adopted the Execution-only Process, which moved customers' pensions from existing pension arrangements to SIPPs investing in the Loan Notes. Between October 2013 and approximately August 2014, 162 customers of HCA moved their pensions in this way. This amounted to approximately £7 million of customer funds.
- 4.16. Under the Execution-only Process, HJL provided pre-packaged customer files which Mr Henderson, on behalf of HCA, then put his name to as the approved person. Mr Henderson did not charge customers a fee for the execution-only pension switching service on the understanding that HCA would be able to contact the customers about other products and services in the future.

### **The Pension Review and Advice Process**

- 4.17. HCA decided to move away from the Execution-only Process and instead use the Pension Review and Advice Process in around January 2014 (although it continued to deal with existing customers in the Execution-only Process until around August 2014). HCA made the change in order to generate fees by providing advice to customers and also because it was aware of publications by the Authority which raised concerns about execution-only Pension Switches to SIPPs. The Pension Review and Advice Process was based on a pension switching advice model, the development of which was initiated and influenced by HJL. HJL had been seeking an efficient process, to be adopted by an authorised financial adviser, for advising customers who met certain criteria to switch their pensions to SIPPs investing in the Loan Notes. HCA was responsible for the advice given to customers through the Pension Review and Advice Process. However, HJL continued to source leads from lead generation companies and introduce customers to HCA, and significant parts of the process (the Outsourced Functions) were outsourced to the Service Providers.
- 4.18. Under the Pension Review and Advice Process, leads were sourced by HJL from a number of lead generation companies. Customers were invited to request a free pension review. If a customer made such a request, they would be contacted by a Service Provider, which would obtain information about the customer's existing pension arrangements. The Service Provider would input the information into the Software, which would generate a Pension Summary Report. The Pension Summary

Report would give the customer an indication of whether they might save costs if they changed their pension arrangements. The Service Provider would attend a face-to-face meeting with the customer to present the Pension Summary Report and promote HCA's advice service.

- 4.19. If the customer signed a service proposition confirming that they wished to receive advice from HCA, the Service Provider would collect relevant documents from the customer and conduct a scripted fact-finding exercise. The Service Provider would input the results of the fact-find into the Software, which would determine, based on pre-set criteria approved by Mr Henderson, whether the customer should be advised to invest in the Loan Notes and produce a Suitability Report containing a personal recommendation. The Service Provider would send the Suitability Report to the customer and call the customer to ask them whether they wished to proceed in accordance with the advice they had received. Customers were not always told that they were being contacted by a third party, so some customers may have been under the impression that they were dealing with staff from HCA itself.
- 4.20. HCA allowed the Service Providers to perform the Outsourced Functions with little or no oversight. Although the Suitability Reports were issued on behalf of HCA and in Mr Henderson's name as the qualified financial adviser, Mr Henderson had no involvement in the assessment of suitability for individual customers or in the production of the Suitability Reports. Mr Henderson's electronic signature and the Firm's letterhead and logo were simply added to documents provided by the Service Providers to customers, including the Suitability Report. As such, Mr Henderson did not have control over the advice given in his name.
- 4.21. Between January 2014 and July 2015, HCA advised 717 customers to switch or transfer their pensions to a SIPP investing in the Loan Notes through the Pension Review and Advice Process. This amounted to approximately £27 million of customer funds.
- 4.22. HCA received an advice fee of 3% of a customer's pension assets when a Pension Switch or Pension Transfer to the SIPP was completed. For any customer who opted to have ongoing servicing, HCA would also receive an annual fee of 0.5% of the customer's pension assets paid by the SIPP Provider from the customer's pension assets. Between May 2014 and June 2015, HCA received £947,443 in advice or ongoing servicing fees. HCA paid over £224,000 of its fees to HJL and

over £427,000 to CAL for their roles in the Pension Review and Advice Process. Mr Henderson's relevant income for this period was £70,658.

### **Conflicts of interest**

- 4.23. A firm must take reasonable steps to identify whether a conflict of interest exists between itself and its appointed representatives (and certain other people connected with the firm) on the one hand and clients of the firm on the other (SYSC 10.1.3R). When considering if a conflict of interest exists firms should take into account whether, among other things, the firm or its appointed representative has an interest in the outcome of a service provided to a client or a transaction carried out on behalf of the client which is distinct from the client's interest in that outcome (SYSC 10.1.4R(2) and SYSC 10.1.4AG). This is to ensure that the firm is aware of any undue influence which could impede it from acting in the interests of its customers. Where a conflict of interest is identified a firm must manage the conflict appropriately (SYSC 10.1.7R). Where a firm cannot ensure that the interests of a client will not be damaged as a result of a conflict, the firm must disclose the nature or sources of the conflict and the steps taken to mitigate it (SYSC 10.1.8R).
- 4.24. HJL's involvement in both the Execution-only Process and the Pension Review and Advice Process created an obvious conflict of interest because both processes were structured to result in customers switching their pensions to SIPPs investing in the Loan Notes, in which HJL had a material financial interest.
- 4.25. Mr Henderson knew that HJL's motive for introducing customers to HCA was that it wanted customers to invest in the Loan Notes and knew that HJL received 5% of the sums invested in the Loan Notes. Further, Mr Henderson knew that HJL and the issuer of the Loan Notes shared a common director, Mark Stephen. However, Mr Henderson took no steps to manage these conflicts of interest and HCA's customers were not made aware of the common directorship or of how HJL was remunerated.

### **Failures relating to HCA's adoption and use of the Pension Review and Advice Process**

- 4.26. Mr Henderson was involved in preparing, reviewing and approving templates of various documents used in the Pension Review and Advice Process, including fact-find scripts and template Suitability Reports, and approved the pre-set criteria

which would be the basis for the Software's determination of whether a customer should be advised to invest in the Loan Notes.

- 4.27. Mr Henderson decided that HCA should adopt the Pension Review and Advice Process despite knowing that customers would be given misleading information about the service they would receive. For example, the template documents that Mr Henderson prepared, reviewed and approved included the service proposition which customers had to sign to confirm that they wished to receive advice from HCA and that they agreed with the terms of the service offered. The service proposition stated, "*...we offer an Independent advice service. We will recommend investments based on a comprehensive and fair analysis of the market. We will place no restrictions on the Investment Markets we will consider before providing investment recommendations, unless you instruct us otherwise. We will however only make a recommendation when we know it is suitable for you...We operate independently and therefore provide investment services from the whole market*".
- 4.28. Mr Henderson knew these statements were untrue. He knew that advice would be given through an automated process without any meaningful assessment of individual customers' needs and that the only products that were intended to be recommended to customers through the Pension Review and Advice Process were the Loan Notes. Further, Mr Henderson was aware, from May 2014, that the Outsourced Functions would be performed on HCA's behalf by HJL, which had a material financial interest in the Loan Notes, and from October 2014, that they would be performed by CAL, which was closely connected to HJL.
- 4.29. There were other significant obvious deficiencies in the Pension Review and Advice Process which Mr Henderson, as an experienced and qualified financial adviser, should have identified had he given due consideration to the documents to be used in the Pension Review and Advice Process, and to how the process would operate in practice, including:
- (1) The fact-find script contained leading questions which were intended to steer the customer towards the features of the Loan Notes that would be recommended.

For example, customers were read a statement which included the following: *'Pension money can be held in a range of different investments offering different features. Some will experience highs and lows while*

*others may perform in a much less volatile manner.'* They were then asked if they would prefer their pension fund to *'Grow at a fixed and known rate each year?'* or to *'Go up and down in value depending on the underlying investments' performance?'*

Customers were also asked *'If it could be guaranteed that the value of your pension fund at the end of an agreed term could not fall below the amount invested – would you want to incorporate this feature?'* and given the option of answering *'yes'* or *'no'*.

These questions were likely to lead customers to say they would prefer fixed returns and a capital guarantee. Where customers stated either or both of these preferences, they were advised to invest in the Loan Notes. The customers' stated preferences for fixed returns and/or a capital guarantee were used to justify recommending the Loan Notes, which customers were told offered fixed returns and a capital guarantee. Customers were not asked any other questions about their investment objectives.

- (2) The fact-find also only allowed for certain specified information to be gathered from the customer, which was insufficient to establish the suitability of recommendations. The fact-find was conducted by staff of the relevant Service Provider, working from a script, who were not permitted to depart from the script and probe for further information. Even when a customer did disclose additional relevant information, it was not taken into account as a result of the way in which the Suitability Reports were prepared. Further, a suitably qualified financial adviser should oversee the fact-find process. However, Mr Henderson did not supervise the conduct of fact-finds, and did not have any meaningful involvement in the individual assessment of customers' circumstances.
- (3) Customers were not given a compliant personal recommendation as the Suitability Report did not explain why the Loan Notes were suitable for a customer's demands and needs. The Suitability Report also did not include an analysis of the advantages and disadvantages of the recommended products compared to the customer's existing pension.

- (4) The information provided to customers about the Loan Notes did not fully inform customers of their costs, benefits and risks. In particular:
- (a) important information about the risks of the Loan Notes was either not disclosed to the customer or, where it was disclosed, was contradictory or unclear;
  - (b) the three portfolios that customers invested in were described as 'cautious', 'moderate, and 'adventurous'. However, these terms failed to reflect the reality that customers would be exposed to high levels of risk whichever portfolio their SIPP was invested in;
  - (c) customers were told that the Loan Notes provided a fixed return and a capital guarantee. However, it was never explained or disclosed to the customers that there was a risk that they would not get all their capital investment back. If the issuer of the Loan Notes performed poorly, it might not be able to make interest payments to customers and/or repay capital. Further, any request for early repayment of capital was at the discretion of the issuer. It was particularly important that customers were made aware of these risks given the issuer had no track record and the underlying assets were illiquid and high risk; and
  - (d) whilst the advice provided would be covered by the FOS and the FSCS, customers were not told that if the Loan Notes failed, they would be unable to make a complaint or claim to the FOS and/or the FSCS, as the issuer and the Loan Notes were not regulated by the Authority.
- (5) The conflicts of interest continued for the duration of the Relevant Period, throughout which HJL maintained a material financial interest in the Loan Notes and Mr Stephen remained a common director of HJL and of the issuer of the Loan Notes. However, Mr Henderson took no steps to manage these conflicts of interest, and customers were not made aware of how HJL was remunerated or of Mr Stephen's common directorships.

4.30. The Authority considers that the Pension Review and Advice Process was wholly and, to an experienced and qualified financial adviser, obviously inadequate and exposed customers to a significant risk of loss from investments that were unlikely

to be suitable for them. It should have been obvious to Mr Henderson from the information available to him, that the Pension Review and Advice Process was not compliant with the Authority's rules. However, as a result of his inadequate consideration of the documents to be used in the Pension Review and Advice Process, and of how the process would operate in practice (as well as his inadequate due diligence on the Loan Notes and, as detailed below, two of the Service Providers), Mr Henderson allowed HCA to adopt and use a non-compliant process without giving any meaningful consideration to the interests of customers.

### **Mr Henderson's limited role in the Pension Review and Advice Process**

4.31. Mr Henderson (as well as being the only person at HCA approved to perform the CF1 (Director) controlled function) was the only person at HCA approved to perform the CF30 (Customer) controlled function who was involved in switching or transferring customers' pensions to SIPPs investing in the Loan Notes. As such, Mr Henderson was responsible for the advice given to all of HCA's customers through the Pension Review and Advice Process and should have exercised control of and supervision over the process. However, he, and therefore HCA, had negligible involvement in it. For example:

- (1) He had no involvement in contacting the customer's existing pension provider.
- (2) He had no involvement in conducting the fact-find with the customer and he reviewed only some of the fact-finds before advice was provided to the customer.
- (3) He had no involvement in preparing the Suitability Report for the customer. He did not review any of the Suitability Reports for suitability before they were provided to customers, and on those occasions when he did check a report, he only checked whether there had been numerical or spelling errors. He did not give any meaningful consideration to whether the personal recommendation was suitable for the customer.
- (4) He had no involvement in any further work done for a customer once the Suitability Report had been sent to them, including follow up calls or meetings with the customer and completing the paperwork to process the Pension Switch or Pension Transfer if the customer chose to invest in the

Loan Notes. As a result, he did not know which customers completed Pension Switches or Pension Transfers.

- (5) He had no contact with the customer during the Pension Review and Advice Process unless specifically requested.

4.32. Mr Henderson was also the person approved to perform the CF10 (Compliance Oversight) controlled function at HCA, and as such he was responsible for monitoring the compliance of the advice provided to customers. HCA's compliance procedure, which was produced by HCA's external compliance consultant, required it to check 30% of high risk pension cases after the Suitability Report was provided to the customer. The advice relating to the Loan Notes would have fallen within HCA's classification of high risk advice. Despite this, Mr Henderson, and therefore HCA, did not check the suitability of the advice provided to any customers after the Suitability Report had been issued.

#### **Failures in Mr Henderson's due diligence on HJL and CAL**

4.33. Principle 3 of the FCA's Principles for Businesses provides that a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems. Further detailed guidance is set out in SYSC. In particular, firms such as HCA, which are not common platform firms (as defined in the Handbook):

- (1) should take reasonable steps to identify risks relating to the firm's activities, processes and systems (SYSC 7.1.2R and SYSC 7.1.2AG);
- (2) when relying on a third party for the performance of operational functions which are critical for the performance of regulated activities, should ensure they take reasonable steps to avoid additional operational risk (SYSC 8.1.1R and SYSC 8.1.1AG);
- (3) should exercise due skill, care and diligence when entering into, managing or terminating any arrangement for the outsourcing to a service provider of critical or important operational functions or of any relevant services and activities (SYSC 8.1.7R and SYSC 8.1.11AG); and

- (4) should take the necessary steps to ensure that any service providers have the ability, capacity and any authorisation required by law to perform the outsourced functions, services or activities reliably and professionally (SYSC 8.1.8R(1) and SYSC 8.1.11AG).
- 4.34. Mr Henderson agreed to HJL acting as introducer and to HJL and CAL performing the Outsourced Functions on HCA's behalf without giving any proper consideration to whether they were suitable to perform those activities.
- 4.35. Mr Henderson carried out no meaningful due diligence on HJL. Mr Henderson also told the Authority that he believed that the fact that Company A, which was registered with the Authority as an appointed representative of an authorised firm, had a business relationship with HJL constituted independent due diligence on HJL.
- 4.36. Despite the limited due diligence carried out, Mr Henderson became aware at an early stage of implementing HCA's business relationship with HJL that Person A, an individual who had an influential role at HJL, had been convicted for blackmail and offences under the Insolvency Act 1986 and remained an undischarged bankrupt due to having hidden assets from his creditors. Mr Henderson did not consider whether it was appropriate for HCA to outsource important operational functions to HJL in those circumstances.
- 4.37. When CAL took over the responsibilities of HJL in performing the Outsourced Functions, Mr Henderson carried out no due diligence on CAL and was even unaware of who all the directors of CAL were.

#### **The Authority's review of 20 customer files**

- 4.38. Given that all of HCA's customers under the Pension Review and Advice Process were told they were receiving a personal recommendation based on a comprehensive and fair analysis of the whole market when in fact they were not, and given HJL's material financial interest in the Loan Notes which was undisclosed to customers, the process clearly put HCA's customers at serious risk of receiving unsuitable advice and therefore at serious risk of investing in products that were not suitable for them.
- 4.39. Nevertheless, the Authority has reviewed the advice given to 20 of HCA's customers during the period from 6 January 2014 to 24 April 2015 using recordings of calls

and meetings, where they were available, and copies of the customer files maintained by the Service Providers.

4.40. The advice given to the customer was clearly unsuitable in all 20 files. As the same process was used for all advice relating to the Loan Notes, the Authority considers it is likely that the advice provided to most, if not all, of HCA's 717 advised customers was unsuitable.

4.41. In all 20 files the Authority considers that the gathering of information from the customer, the product recommendation, the Suitability Report and the disclosure of information about the product breached the Authority's requirements, including because:

- (1) insufficient information was gathered from customers in order to ensure a suitable recommendation was given to them. For example, the fact-finding script was limited and key information was not requested from customers, including about their investment objectives (other than with respect to fixed returns and a capital guarantee) and their knowledge, experience, understanding and ability to accept the risks of speculative investments (COBS 2.1.1R, 9.2.1R and 9.2.6R);
- (2) the Loan Notes were not suitable due to the illiquid and high risk nature of the investments made by the company issuing the Loan Notes and the limited regulatory oversight of the issuing company (COBS 2.1.1R, 9.2.1R and 9.3.1G);
- (3) the Suitability Reports failed to give customers a compliant personal recommendation as they did not explain why the SIPP and the Loan Notes were suitable for a customer's demands and needs and also did not adequately explain the possible disadvantages of the recommendation to customers (COBS 2.1.1R and 9.2.1R); and
- (4) fact sheets provided to customers about the Loan Notes did not adequately explain the risks and possible disadvantages of investing in the Loan Notes and did not disclose to customers that HJL would receive an initial fee of up to 5% of the funds raised from the Loan Notes (COBS 2.1.1R and 9.2.1R).

4.42. In addition, the Authority identified:

- (1) one case where investment advice had been given about a Pension Transfer outside of HCA's permission;
- (2) one case where the recommendation was not suitable as the customer lost existing benefits (life assurance) (COBS 2.1.1R and 9.2.1R(1));
- (3) five cases where the recommendation was unsuitable for the customer's personal circumstances, financial circumstances and/or investment objectives (COBS 2.1.1R and 9.2.1.R(1)). For example, a customer stated that he wished to have variable rather than fixed returns but the recommendation was justified on the basis that his capital should be guaranteed. After the recommendation was issued, the customer made the Service Provider aware that he had developed a serious medical condition but the suitability of the recommendation was not reconsidered;
- (4) six cases where the recommendation was unsuitable as the SIPP was more expensive than one, or more, of the customer's existing pensions and there was no justification for the additional cost (COBS 2.1.1R and 9.2.1R(1)). For example, a customer was recommended to switch to a SIPP and invest in the Loan Notes even though this would be £5,400 more expensive at the medium return level than remaining in their existing pension, and the customer lost £15,000 on the transfer value of the pension compared to the fund value;
- (5) 14 cases, where audio recordings of the advice process were available for review by the Authority, where oral statements were made to the customer during the advice process that were factually inaccurate, unclear, unfair or misleading (COBS 4.2.1R). Those statements included that:
  - (a) after the fact-find an independent financial adviser would spend two days reviewing the customer's circumstances to make a recommendation, when in fact the advice process was automated with typically no involvement from a qualified financial adviser;
  - (b) an adviser would search the market for a recommendation tailored to the customer's circumstances, when in fact the Loan Notes were the only products that were available for recommendation to the customer;

- (c) the customer's capital would be guaranteed and the returns were fixed, without explaining that income and/or capital might be lost if the Mauritian funds (and the assets they purchased) did not perform adequately, and that any request for early repayment of capital was at the issuer's discretion; and
  - (d) the advice was covered by FSCS, without making it clear that any losses incurred by the failure of the Loan Notes would not be covered by the FSCS; and
- (6) 18 cases where the information suggests customers waived their right to cancel within 30 days (COBS 4.2.1R). There is no evidence that customers were informed of the implications of waiving their rights and they may not have been given sufficient time to reflect on the suitability of the investment.

#### **Acting outside the Firm's permission**

- 4.43. HCA was not authorised to advise on Pension Transfers. However, in allowing the Service Providers to perform the Outsourced Functions on HCA's behalf without adequate supervision, failing to review in a meaningful way advice given through the Pension Review and Advice Process, and failing to ensure HCA put in place and operated appropriate systems and controls in relation to the Pension Review and Advice Process, Mr Henderson exposed the Firm to the risk of breaching section 20 of the Act by carrying on a regulated activity without the relevant permission.
- 4.44. This in fact happened. On 16 February 2015, Mr Henderson informed the Authority that 19 Pension Transfers had been conducted outside of HCA's permission. The Authority has obtained additional information which shows that in fact HCA advised at least 45 customers to transfer their pensions from an occupational pension scheme to a SIPP. Not all of these customers transferred their pensions, but at least 26 customers transferred total funds of approximately £549,000.

#### **Misleading the Authority**

- 4.45. Mr Henderson, on behalf of HCA, deliberately provided false and misleading information to the Authority.

- 4.46. On 27 January 2015 the Authority selected three customers from HCA's new business register and asked Mr Henderson to provide it with copies of the three files. On 16 February 2015 Mr Henderson provided the three files. Each customer file contained a file review sheet that purported to show a file review had been completed by Mr Henderson. The File Review Sheets stated that Mr Henderson had reviewed each of the files, in March, April and August 2014 respectively. When providing the files to the Authority on 16 February 2015, Mr Henderson also told the Authority that he reviewed around 30% of high risk customer files, which would include Pension Switches, to confirm they were compliant.
- 4.47. In fact, Mr Henderson had conducted no reviews of the advice provided to customers through the Pension Review and Advice Process. Instead he specifically created the File Review Sheets for provision to the Authority to give a false impression that compliance checks were being conducted.

## **5. FAILINGS**

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

### **Statement of Principle 1**

- 5.2. Statement of Principle 1 required Mr Henderson to act with integrity in carrying out his controlled functions. A person may lack integrity where he acts dishonestly or recklessly.
- 5.3. During the Relevant Period, Mr Henderson breached this requirement in that:
- (1) He acted recklessly by closing his mind to the conflict of interest inherent in the Execution-only Process. Mr Henderson was aware of HJL's involvement in this process and of HJL's financial interest in the Loan Notes, but took no steps to manage the conflict or to ensure that HJL's financial interest in the Loan Notes was disclosed to customers.
  - (2) He acted dishonestly by causing HCA to hold out the Pension Review and Advice Process to customers as HCA providing bespoke, independent investment advice based on a comprehensive and fair analysis of the whole market. This was dishonest because Mr Henderson knew that this was

misleading to customers as it did not reflect the reality of the service that HCA would provide using the Pension Review and Advice Process.

- (3) His actions in relation to HCA's adoption and use of the Pension Review and Advice Process to provide advice to HCA's customers were reckless. The Pension Review and Advice Process put HCA's customers at serious risk of receiving unsuitable advice and therefore at serious risk of investing in products that were not suitable for them (which in fact happened), but Mr Henderson closed his mind to these risks and unreasonably exposed HCA's customers to them by allowing HCA to adopt and use the Pension Review and Advice Process. In particular:
  - (a) Mr Henderson failed to carry out adequate due diligence on the Loan Notes before agreeing that they should be recommended to customers. He relied solely on documents provided to him by HJL, despite knowing that HJL had a material financial interest in the Loan Notes, and did not take any actions to address the risk that the information provided by HJL could be misleading or incomplete. In any event, it should have been obvious from the limited information that he considered that the Loan Notes were high risk, illiquid investments that were unlikely to be suitable for HCA's customers, except in very limited circumstances. However, Mr Henderson failed to give due consideration to the risk that the Loan Notes were unsuitable.
  - (b) Mr Henderson failed to take any steps to establish that the lead generators used by HJL generated their customer introductions in an appropriate manner and did not use cold calling.
  - (c) Mr Henderson knew of HJL's involvement in the Pension Review and Advice Process and that the process was structured to result in customers switching their pensions to SIPPs investing in assets in which HJL had a material financial interest. Further, Mr Henderson knew that HJL and the issuer of the Loan Notes shared a common director, Mr Stephen. However, Mr Henderson took no steps to manage these conflicts of interest or to ensure that Mr Stephen's

common directorship and how HJL was remunerated were disclosed to customers.

- (d) Mr Henderson failed to give due consideration to the documents to be used in the Pension Review and Advice Process, and to how the process would operate in practice, and therefore failed to identify significant obvious deficiencies in the process. In any event, it should have been obvious to Mr Henderson from the information available to him that the Pension Review and Advice Process did not comply with the Authority's rules. However, Mr Henderson failed to give any meaningful consideration to whether or not it was compliant.
  - (e) Mr Henderson failed to take reasonable steps to ensure that HCA maintained control of the Pension Review and Advice Process and allowed important parts of the process (for example, the conduct of fact-finds) to be performed in a way that failed to obtain and/or take into account relevant information about HCA's customers. Further, Mr Henderson failed to take reasonable steps to ensure that HCA reviewed in a meaningful way advice given through the Pension Review and Advice Process, whether before recommendations were sent to customers or at all.
  - (f) Mr Henderson failed to take reasonable steps to ensure that HCA put in place and operated appropriate systems and controls and compliance arrangements to oversee and monitor the Pension Review and Advice Process.
  - (g) Mr Henderson agreed that the Firm would work with HJL and CAL without giving any proper consideration to whether they were suitable to perform services on behalf of the Firm. Mr Henderson failed to carry out adequate due diligence on HJL and CAL before agreeing that HCA would work with them.
- (4) He deliberately provided, on behalf of HCA, false and misleading information to the Authority about the compliance checks that he was undertaking. The Authority considers Mr Henderson did this intentionally

to try to prevent the Authority from identifying misconduct by him and the Firm, and that Mr Henderson thereby acted dishonestly.

### **Lack of fitness and propriety**

- 5.4. The Authority has concluded based on the matters set out above that Mr Henderson lacks integrity and is not fit and proper.

## **6. SANCTION**

### **Financial penalty**

- 6.1. The Authority considers it appropriate to impose a financial penalty on Mr Henderson under section 66 of the Act in respect of his breach of Statement of Principle 1.
- 6.2. 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**

- 6.3. Pursuant to DEPP 6.5B.1G, at Step 1 the Authority seeks to deprive an individual of the financial benefit derived directly from the breach where it is practicable to quantify this.
- 6.4. Mr Henderson derived direct financial benefit from the advice fees and ongoing servicing fees generated from customers who switched their pensions to SIPPs investing in the Loan Notes. The amount that Mr Henderson paid himself from the fees received by HCA during the Relevant Period totalled £70,658. In addition, Mr Henderson paid himself £7,192 after the Relevant Period, from the ongoing servicing fees paid to HCA that are directly attributable to Mr Henderson's misconduct during the Relevant Period.
- 6.5. The Authority has charged interest on Mr Henderson's benefit at 8% per year from receipt to the date of this Notice, amounting to £23,529.
- 6.6. Step 1 is therefore £101,379 (i.e. the total of £70,658 + £7,192 + £23,529).

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

- 6.7. Pursuant to DEPP 6.5B.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. That figure is based on a percentage of the individual's relevant income. The individual's relevant income is the gross amount of all benefits received by the individual from the employment in connection with which the breach occurred, and for the period of the breach.
- 6.8. The period of Mr Henderson's breach of Statement of Principle 1 was from 30 October 2013 to 8 July 2015. The Authority considers Mr Henderson's relevant income for this period to be £70,658. As noted above, Mr Henderson additionally received £7,192 after the Relevant Period from ongoing servicing fees that are directly attributable to Mr Henderson's misconduct during the Relevant Period. Therefore, the Authority considers Mr Henderson's total relevant income is £77,850.
- 6.9. In deciding on the percentage of the relevant income that forms the basis of the Step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 40%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach; the more serious the breach, the higher the level. For penalties imposed on individuals in non-market abuse cases there are the following five levels:
- Level 1 – 0%
- Level 2 – 10%
- Level 3 – 20%
- Level 4 – 30%
- Level 5 – 40%
- 6.10. In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly.

### Impact of the breach

- 6.11. Mr Henderson caused HCA to adopt and use the Pension Review and Advice Process motivated by the prospect of making significant financial gain for doing very little.

He caused HCA to adopt the Execution-only Process on the understanding that it could contact the execution-only customers about other products and services in the future and thereby generate revenue for himself and the Firm (DEPP 6.5B.2G(8)(a)).

6.12. Mr Henderson's breach of Statement of Principle 1 caused a significant risk of loss to a large number of consumers who switched or transferred their pensions to SIPPs investing in the Loan Notes (DEPP 6.5B.2G(8)(c)).

6.13. A large number of customers were given advice by HCA through the Pension Review and Advice Process, including some who were vulnerable due to their age, their inability to replace capital, their medical conditions or other personal circumstances (DEPP 6.5B.2G(8)(d)).

#### Nature of the breach

6.14. Mr Henderson breached Statement of Principle 1 over an extended period of time (DEPP 6.5B.2G(9)(b)).

6.15. Mr Henderson failed to act with integrity because he acted dishonestly and/or recklessly throughout the Relevant Period (6.5B.2G(9)(e)).

6.16. Mr Henderson, as the individual approved to perform the CF1 (Director) and CF10 (Compliance Oversight) controlled functions, held a senior position at the Firm (DEPP 6.5B.2G(9)(k)).

#### Reckless misconduct

6.17. Mr Henderson acted recklessly in respect of the Execution-only Process and the Pension Review and Advice Process, as described in paragraphs 5.3(1) and (3) of this Notice (DEPP 6.5B.2G(11)(a)).

#### Deliberate misconduct

6.18. Mr Henderson knew that the Firm misled customers by holding itself out to customers as providing bespoke, independent investment advice based on a comprehensive and fair analysis of the whole market when, as he knew, this did not reflect the reality of the service that HCA would provide using the Pension Review and Advice Process (DEPP 6.5B.2G(10)(c)).

6.19. Mr Henderson deliberately provided false and misleading information to the Authority about the compliance checks he was undertaking (DEPP 6.5B.2G(10)(d)).

Level of seriousness

6.20. DEPP 6.5B.2G(12) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the Authority considers the following factors to be relevant:

- (1) Mr Henderson's breach of Statement of Principle 1 caused a significant risk of loss to a large number of customers (DEPP 6.5B.2(12)(a));
- (2) Mr Henderson failed to act with integrity (DEPP 6.5B.2(12)(d)); and
- (3) Mr Henderson's breach of Statement of Principle 1 was committed deliberately and recklessly (DEPP 6.5B.2(12)(g)).

6.21. DEPP 6.5B.2G(13) lists factors likely to be considered 'level 1, 2 and 3 factors'. The Authority considers that none of these factors apply.

6.22. Taking all of these factors into account, the Authority considers the seriousness of Mr Henderson's breach to be level 5 and so the Step 2 figure is 40% of £77,850.

6.23. Step 2 is therefore £31,140.

**Step 3: mitigating and aggravating factors**

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

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

- (1) Mr Henderson was previously involved in acting for customers who invested their pensions in carbon credits (another high risk unregulated investment). The Authority had concerns with this business and in March 2014, on the application by Mr Henderson on behalf of the Firm, the Authority imposed a restriction on the type of investments that HCA could offer customers. Mr Henderson was therefore aware of the Authority's concerns with customers investing their pensions in high risk unregulated investments (DEPP 6.5B.3G2(i));

- (2) on 18 January 2013, 28 April 2014 and 26 August 2014 the Authority issued alerts to firms advising on pension transfers with a view to investing pension monies into unregulated products through SIPPs (DEPP 6.5B.3G(2)(k)); and
- (3) in September 2014 the Authority specifically sent copies of the alerts referred to above to Mr Henderson and highlighted the Authority's concerns. Mr Henderson failed to bring the Pension Review and Advice Process to the attention of the Authority or to implement changes to the process (DEPP 6.5B.3G(2)(a)).

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

6.27. Having taken into account these aggravating factors, the Authority considers that the Step 2 figure should be increased by 25%.

6.28. Step 3 is therefore £38,925.

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

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

6.30. The Authority considers that the Step 3 figure of £38,925 does not represent a sufficient deterrent, and so has increased the penalty at Step 4 by a multiple of 2.

6.31. Step 4 is therefore £77,850.

#### **Step 5: settlement discount**

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

6.33. No settlement discount applies.

6.34. The Step 5 figure is therefore £77,800 (rounded down to the nearest £100).

## **Penalty**

- 6.35. The Authority therefore has decided to impose a total financial penalty of £179,179 (including the Step 1 disgorgement figure of £101,379) on Mr Henderson for breaching Statement of Principle 1.

## **Prohibition Order and Withdrawal of Approval**

- 6.36. The Authority has had regard to the guidance in Chapter 9 of EG in considering whether to withdraw Mr Henderson's approval to perform controlled functions and whether to impose a prohibition order on him. The Authority has the power to prohibit individuals under section 56 of the Act.
- 6.37. The Authority considers that Mr Henderson is not a fit and proper person to perform any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm. The Authority considers that it is therefore appropriate and proportionate in all the circumstances to withdraw the approval given to Mr Henderson to perform the CF1 (Director), CF10 (Compliance Oversight), CF11 (Money Laundering Reporting) and CF30 (Customer) controlled functions at HCA, and to impose a prohibition order on him under section 56 of the Act in those terms. This follows from the Authority's findings that Mr Henderson breached Statement of Principle 1 during the Relevant Period and lacks integrity.

## **7. REPRESENTATIONS**

- 7.1. Annex B contains a brief summary of the key representations made by Mr Henderson, and by HJL, Mark Stephen and Person A as persons given third party rights in respect of the Warning Notice under section 393 of the Act, and how they have been dealt with. In making the decision which gave rise to the obligation to give this Notice, the Authority has taken into account all of the representations received in respect of the Warning Notice, whether or not set out in Annex B.

## **8. PROCEDURAL MATTERS**

- 8.1. This Notice is given under sections 57, 63 and 67 of the Act and in accordance with section 388 of the Act.

### **Decision maker**

- 8.2. The decision which gave rise to the obligation to give this Notice was made by the Regulatory Decisions Committee.

### **The Tribunal**

- 8.3. Mr Henderson has the right to refer the matter to which this Notice relates to the Tribunal. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, Mr Henderson has 28 days from the date on which this Notice is given to him to refer the matter to the Tribunal. A reference to the Tribunal is made by way of a signed reference notice (Form FTC3) filed with a copy of this Notice. The Tribunal's contact details are: Upper Tribunal, Tax and Chancery Chamber, Fifth Floor, Rolls Building, Fetter Lane, London EC4A 1NL (tel: 020 7612 9730; email: fs@hmcts.gsi.gov.uk).
- 8.4. Further information on the Tribunal, including guidance and the relevant forms to complete, can be found on the HM Courts and Tribunal Service website:
- <http://www.justice.gov.uk/forms/hmcts/tax-and-chancery-upper-tribunal>
- 8.5. A copy of Form FTC3 must also be sent to the Authority at the same time as filing a reference with the Tribunal. A copy should be sent to Helen Tibbetts at the Financial Conduct Authority, 12 Endeavour Square, London E20 1JN.
- 8.6. Once any such referral is determined by the Tribunal and subject to that determination, or if the matter has not been referred to the Tribunal, the Authority will issue a final notice about the implementation of that decision.

### **Access to evidence**

- 8.7. Section 394 of the Act applies to this Notice.
- 8.8. The person to whom this Notice is given has the right to access:
- (1) the material upon which the Authority has relied in deciding to give this Notice; and
  - (2) the secondary material which, in the opinion of the Authority, might undermine that decision.

### **Third party rights and interested party rights**

- 8.9. A copy of this Notice is being given to HJL, CAL and Mark Stephen as third parties identified in the reasons above and to whom in the opinion of the Authority the matter is prejudicial. Each of those parties has similar rights to those mentioned in paragraphs 8.3 and 8.8 above, in relation to the matters which identify him/it.
- 8.10. This Notice is also being given to HCA as an interested party in the withdrawal of Mr Henderson's approval pursuant to section 63(4) of the Act. HCA has the right to:
- (1) access evidence pursuant to section 394 of the Act, as described above; and
  - (2) refer to the Tribunal any decision to withdraw Mr Henderson's approval, pursuant to section 63(5) of the Act.

### **Confidentiality and publicity**

- 8.11. This Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). In accordance with section 391(1)(b) of the Act, a person to whom this Notice is given or copied may not publish the Notice or any details concerning it unless the Authority has published the Notice or those details.
- 8.12. However, the Authority must publish such information about the matter to which a decision notice or final notice relates as it considers appropriate. The persons to whom this Notice is given should therefore be aware that facts and matters contained in this Notice may be made public.

### **Authority contacts**

- 8.13. For more information concerning this matter generally, contact Helen Tibbetts (direct line: 020 7066 0656) at the Authority.

**Tim Parkes**  
**Chair, Regulatory Decisions Committee**

## **ANNEX A**

### **1. RELEVANT STATUTORY PROVISIONS**

- 1.1. The Authority's objectives are set out in Part 1A of the Act, and include the operational objective of securing an appropriate degree of protection for consumers (section 1C).
- 1.2. Section 56(1) of the Act provides that the Authority may make a prohibition order if it appears to it that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by (a) an authorised person, (b) a person who is an exempt person in relation to that activity, or (c) a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity.
- 1.3. Section 56(2) of the Act provides that a 'prohibition order' is an order prohibiting the individual from performing a specified function, any function falling within a specified description or any function. Section 56(3)(a) provides that a prohibition order may relate to a specified regulated activity, any regulated activity falling within a specified description or all regulated activities.
- 1.4. Section 63 of the Act provides that the Authority may withdraw an approval given under section 59 if it considers that the person in respect of whom it was given is not a fit and proper person to perform the function to which the approval relates.
- 1.5. Section 66 of the Act provides that the Authority may take action against a person if it appears to the Authority that he is guilty of misconduct and the Authority is satisfied that it is appropriate in all the circumstances to take action against him. A person is guilty of misconduct if, whilst an approved person, he has failed to comply with a statement of principle issued under section 64 or section 64A of the Act.

### **2. RELEVANT REGULATORY PROVISIONS**

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

- 2.1. The Authority's Statements of Principle and Code of Practice for Approved Persons have been issued under section 64 of the Act.
- 2.2. During the Relevant Period, Statement of Principle 1 stated:

*'An approved person must act with integrity in carrying out his accountable functions.'*

- 2.3. 'Accountable functions' include controlled functions and any other functions performed by an approved person in relation to the carrying on of a regulated activity by the authorised person to which the approval relates.
- 2.4. The Code of Practice for Approved Persons sets out descriptions of conduct which, in the opinion of the Authority, does not comply with a Statement of Principle. It also sets out factors which, in the Authority's opinion, are to be taken into account in determining whether an approved person's conduct complies with a Statement of Principle.

### **Principles for Businesses**

- 2.5. PRIN 1.1.2G states that the Authority's Principles for Businesses are a general statement of the fundamental obligations of firms under the regulatory system.
- 2.6. During the Relevant Period, Principle 3 of the FCA's Principles for Businesses stated:

*'A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.'*

### **Enforcement Guide**

- 2.7. EG sets out the Authority's approach to exercising its main enforcement powers under the Act.
- 2.8. Chapter 7 of EG sets out the Authority's approach to exercising its power to impose financial penalties and other disciplinary sanctions.

### **Decision Procedure and Penalties Manual**

- 2.9. The Authority's policy for imposing penalties is set out in Chapter 6 of DEPP.

### **Conduct of Business Sourcebook**

- 2.10. The Authority's rules and guidance for Conduct of Business are set out in COBS. The rules and guidance in COBS relevant to this Notice are 2.1.1R, 4.2.1R, 9.2.1R, 9.2.6R, 9.3.1G and the guidance in 9.4.

### **Senior Management Arrangements, Systems and Controls Sourcebook**

- 2.11. The Authority's rules and guidance for senior management arrangements, systems and controls are set out in SYSC. The rules and guidance in SYSC relevant to this notice are 7.1.2R, 7.1.2AG, 8.1.1R, 8.1.1AG, 8.1.7R, 8.1.8R(1), 8.1.11AG, 10.1.3R, 10.1.4R(2), 10.1.4AG, 10.1.7R and 10.1.8R.

## **ANNEX B**

### **REPRESENTATIONS**

#### **Representations received from Mr Henderson**

1. Mr Henderson's representations (in italics), and the Authority's conclusions in respect of them, are set out below:

#### The Execution-only Process

2. *At first the customers received by HCA for execution-only sales came from Company A. Mr Henderson received no fee in respect of these transactions. Instead he hoped that, by assisting a customer in this way, he could generate other business.*
3. The Authority's concern with the Execution-only Process relates to HJL's involvement in it, which created an obvious conflict of interest. Mr Henderson was aware that HJL introduced customers to HCA in order that HCA could facilitate the movement of customers' pensions to SIPPs investing in the Loan Notes and that HJL had a material financial interest in the Loan Notes. However, Mr Henderson recklessly closed his mind to this conflict of interest and took no steps to manage it or to disclose HJL's financial interest to customers. The fact that Mr Henderson did not receive a fee for the execution-only referrals does not affect the seriousness of his misconduct, given that he still expected to receive a benefit from these transactions.

#### The Loan Notes

4. *Mr Henderson understood that the Loan Notes had been designed specifically for those customers who had pensions totalling between £15,000 and £100,000 who wanted fixed returns and security for their capital within the wrap of a low-cost SIPP. Mr Henderson genuinely believed that the Loan Notes were appropriate for such customers.*
5. *Mr Henderson disputes the contention that the Loan Notes were unsuitable. Although there was some risk in the Loan Notes' purchase of residential and commercial property that was sold at an undervalue, he does not accept there was a high risk. Instead, looked at on the whole, he considers they were medium risk.*

*The purchase of unlisted equities did not represent a significant proportion of the investments.*

6. *The categorisation of the portfolios may simply reflect the fact that, on the whole, the Loan Notes were invested in property, rather than equities, and so there was no major difference between the portfolios.*
7. *As far as Mr Henderson is aware, all the funds had capital guarantees in place by way of insurance. The fact that the customers were not the insured parties is a distinction without a difference.*
8. *Mr Henderson received legal advice from a reputable law firm suggesting that it should be possible to conceive of the Loan Notes as standard assets.*
9. *Mr Henderson was reassured by the involvement in the Pension Review and Advice Process of a reputable law firm and the SIPP Provider. He understood that the law firm had advised on the process and had raised no objection. He undertook due diligence and does not understand the basis for the assertion that he did not.*
10. Mr Henderson's understanding that the Loan Notes offered capital security and fixed returns was an inadequate basis on which to conclude that they were suitable products. The Loan Notes were only likely to be suitable for retail investors in very limited circumstances. Without obtaining further information about customers' personal and financial circumstances, Mr Henderson was not in a position to know whether the Loan Notes were suitable or not. However, the Authority has not identified any evidence, including from its review of 20 customer files, that Mr Henderson took steps to ensure that such information was obtained before advice was provided to a customer through the Pension Review and Advice Process.
11. Mr Henderson also failed to conduct adequate due diligence on the Loan Notes themselves, and so was not in a position to understand the extent to which they could provide the fixed returns and capital guarantees that he relied upon for his advice. Without such understanding, Mr Henderson should not have recommended the Loan Notes to customers, whether they had expressed a wish for fixed returns and capital guarantees or not.
12. Mr Henderson's failure to conduct adequate due diligence on the Loan Notes meant he was not in a position to fully understand the nature of any risks, costs or benefits associated with them, and therefore could not have an informed view as

to the appropriateness or otherwise of the Loan Notes for HCA's customers. By allowing HCA to recommend the Loan Notes in these circumstances, Mr Henderson exposed customers to the risk that they would invest in an unsuitable product. The Authority does not accept that the Loan Notes were medium or low risk. In the Authority's view, distressed property and unlisted equities should generally be regarded as high risk, and the additional risk factors identified with the Loan Notes (for example, the fact that the Loan Notes are not regulated by the Authority) further support the fact that they were high risk. Even on the basis of the limited information available to him, Mr Henderson should have appreciated that the Loan Notes were high risk, illiquid investments that were unlikely to be suitable for HCA's customers, except in very limited circumstances. Further, if Mr Henderson considered at the time that the Loan Notes were medium risk, then it was clearly not appropriate for them to be promoted as suitable to customers with a low risk appetite.

13. The reference to three distinct portfolios (cautious, moderate and adventurous) gave HCA's customers the impression that there existed different portfolios which carried differing levels of risk, and that their circumstances had been considered such that they had been advised to switch to a portfolio which best suited their attitude to risk. The lack of actual substantive differences between the portfolios meant that some customers would have been misled about the nature of the portfolio their funds were invested in, and that their funds were invested in a portfolio which did not reflect their attitude to risk. Had Mr Henderson conducted appropriate due diligence he would have identified the lack of real distinction between the portfolios and could then have taken steps to ensure the position was made clear to HCA's customers.
14. It is unclear on what basis Mr Henderson held the belief that all funds had capital guarantees given his relatively limited due diligence on the Loan Notes and the fact that he does not appear to have requested or received a copy of the insurance policy. The fact that Mr Henderson was willing to continue to recommend that customers be invested into the Loan Notes on the basis that they guaranteed capital, without checking whether the insurance policies were in place or the level of protection that they offered, demonstrates Mr Henderson's reckless approach when advising customers.
15. The legal advice referred to by Mr Henderson does not address the Authority's concerns that the Loan Notes are high risk, and that this was not disclosed to

customers or taken into consideration when the Loan Notes were recommended to customers.

16. The fact that the law firm and the SIPP Provider were involved was not of itself a sufficient basis for concluding the Loan Notes were a suitable product and was not a substitute for Mr Henderson having carried out his own due diligence. The advice given by the law firm does not relate to the compliance of the Pension Review and Advice Process or HCA's role within it. As the approved financial adviser responsible for the advice given to HCA's customers, it was ultimately Mr Henderson's responsibility to carry out appropriate due diligence on the products he was recommending to satisfy himself they were suitable for his customers, yet he failed to do so.

#### The lead generation process

17. *Mr Henderson was aware that HJL used a large number of lead generation companies, whose job was to ascertain whether a customer wanted a pension review. A number of criteria were used at this stage, including age, number of years to retirement, potential cost savings and whether the customer was a member of a defined benefits scheme, to ascertain whether the customer would benefit from such a review. Mr Henderson would not have been able to check the details of every call made by the lead generation companies. He was aware of the type of customer that he believed the Loan Notes would be suitable for and he was aware of the scripts that were generally used.*
18. *Neither HCA nor HJL were involved in cold calling customers. As far as Mr Henderson was aware, HJL purchased leads, which comprised those people who had already expressed an interest in a pension review.*
19. The Authority does not expect Mr Henderson to have checked the details of every call made by the lead generation companies. However, Mr Henderson should have carried out appropriate due diligence on HJL as its IAR and on the lead generation companies that HJL used to establish that customer introductions were generated in an appropriate manner and, in particular, to ensure that the lead generation companies did not cold call. The Authority has seen no evidence that Mr Henderson carried out any due diligence on the lead generation companies used by HJL, approved the scripts used by the lead generation companies or took steps to ensure appropriate scripts were used in practice.

20. The fact that HCA and HJL did not cold call customers does not address the Authority's concern with Mr Henderson's due diligence. Given his failure to carry out appropriate due diligence on how HJL sourced its leads, it is unclear on what basis Mr Henderson believed that customers were only contacted if they had first expressed an interest in receiving a pension review. There is no evidence that Mr Henderson carried out any due diligence on the methods used by the lead generation companies to identify potential customers.

#### Conflict of interest

21. *HJL's financial interest in the Loan Notes was clearly stated, in more than one place, in the information memorandum. The information memorandum was a clear document that clearly set out what customers needed to look at. It was automatically sent to HCA's customers and so HJL's financial interest was therefore disclosed to them. Customers were also given all other appropriate information in the relevant documentation, including the cost to them and the fact that property should be considered illiquid. Customers were therefore given sufficient information to make an informed decision. As many customers decided not to make the switch, it can be inferred that a number of them would have made this decision because they had read about the risks in the information memorandum.*

22. There is no evidence that the information memorandum was provided to any of HCA's customers either by email or in hard copy. This is supported by the fact that there is no evidence of any attempt having been made to liaise with any of HCA's customers to check if they had received or understood the document. In any event, even if a customer had received the information memorandum, there was a risk that they would not have seen that HJL was remunerated by the SIPP Provider for the business referred to it, as the information memorandum is a lengthy, technical document. Further, the information memorandum does not mention HCA by name and does not describe HJL's involvement in the Pension Review and Advice Process, so customers would not necessarily have understood HJL's role and were unlikely to appreciate the nature of HJL's conflict of interest. There also could be various reasons why a customer did not make the switch, for example because they could not be contacted or were no longer interested, so even if the information memorandum had been sent to customers, there would be no basis for inferring that a number of customers did not make the switch because they had read about the risks in the information memorandum.

## The Pension Review and Advice Process

23. *The Software provided a series of filters that at various stages diverted customers away from the Loan Notes based on information they provided, such as the size of their pension pot, the number of years to retirement and whether they were in a defined benefits scheme. Not all those who were contacted were funnelled into receiving advice to switch their pensions to SIPPs investing in the Loan Notes. Due to the filtering system, Mr Henderson believed such advice was suitable for those customers who were not filtered out.*
24. *The process used by HCA was a form of robo-advice, which worked to the parameters that had been set. It is not the case that the process was conducted by third parties using the HCA letterhead without adequate oversight.*
25. *The references, in the documentation provided to customers, to HCA searching the market for suitable pensions were accurate. It was Mr Henderson's job as an independent financial adviser to search the market and look for products. Once a customer had fulfilled the various criteria, the SIPP and the Loan Notes were the appropriate choice for that customer.*
26. *The notice period for the withdrawal of funds was clearly disclosed to customers in the warnings section of the Suitability Report. It is a standard condition for this type of investment.*
27. *There is no evidence of actual loss being caused to HCA's customers as a result of switching their pensions to SIPPs investing in the Loan Notes through the Pension Review and Advice Process.*
28. *The Authority has seen little evidence of any filters being applied when the Software was used. The only evidence identified by the Authority is a one page print out, apparently downloaded from the Software, provided by Mr Henderson, which breaks down the total number of cases received by HCA into various categories. However, these categories suggest that the main reasons for cases not proceeding were due to actions taken by the customer (for example, they had switched financial adviser, were no longer interested or could not be contacted), rather than because they were excluded as a result of any filters mentioned by Mr Henderson being in operation (for example, the number of years to retirement).*

29. Further, the filters described by Mr Henderson would have been insufficient to address the variety of concerns identified by the Authority in its review of the 20 sample customer files, and in any event, the implementation of filters would not have diminished Mr Henderson's responsibility to review all the Suitability Reports issued to customers to ensure the advice provided was suitable. It was therefore not appropriate for Mr Henderson to rely on filters in the Software as a reason not to carry out a review of the advice provided, even if relatively sophisticated filters had been in place (which was not the case here).
30. Even where certain aspects of an advisory system are automated, it is still necessary for the authorised financial adviser to maintain strong oversight and appropriate controls to ensure that the advice provided is appropriate and suitable, and that the parameters set are being properly applied in practice and are sufficient to ensure that customers are receiving appropriate and personalised advice. If the intention was for customers to receive robo-advice, this should have been clearly disclosed to customers. However, this was not mentioned in HCA's service proposition and HCA's customers were given the impression that they would receive a personal service from HCA staff.
31. The Authority has not identified any evidence of HCA having searched the market for alternative products, either before or after deciding that HCA should adopt the Pension Review and Advice Process. Instead, Mr Henderson relied upon the information provided to him by HJL about the Loan Notes and he was content to agree for HCA to recommend them without carrying out any meaningful due diligence on the Loan Notes or alternative products on the market. Further, it would not have been sufficient for Mr Henderson to rely on his own experience and knowledge as it is clear from the representation made in HCA's service proposition that the review of the whole of market was intended to take place after details of the customer's personal circumstances had been obtained, as it stated, "*We will place no restrictions on the Investment Market we will consider before providing investment recommendations...*". As this did not happen in practice, the representation in HCA's service proposition that it would offer customers a whole of market review was misleading.
32. The Authority does not agree that the notice period for the withdrawal of funds was disclosed appropriately to customers. It was not in the Suitability Report or any of the other documents routinely provided to customers. The notice period was disclosed in the information memorandum which was only provided to

customers if they specifically asked for it and was a technical document which unsophisticated customers may have found difficult to understand. It was therefore inappropriate to rely solely on this document as a means to disclose such key information.

33. Whether or not HCA's customers suffered actual loss does not detract from Mr Henderson's failure to consider their interests. As an approved financial adviser, he should have had regard to his customers' best interests before allowing HCA to adopt the Pension Review and Advice Process. In any event, there is evidence of HCA's customers having suffered loss as a result of investing in the Loan Notes. As at 17 May 2018, the FSCS had paid over £1 million to 137 of HCA's customers in compensation for loss suffered upon transferring or switching their pensions to SIPPs investing in the Loan Notes.

#### The role of the Service Providers

34. *HJL and CAL were merely inputting data into the Software and providing back office services to HCA. Additional due diligence on them was therefore unnecessary.*
35. *Mr Henderson does not accept that, by adopting the Pension Review and Advice Process, the Service Providers were allowed inappropriately to influence the advice given to customers.*
36. HJL and CAL did far more than input data into the Software and provide back office facilities. HJL sourced leads from lead generation companies and introduced them to customers, and both HJL and CAL performed the Outsourced Functions on behalf of HCA, which included being responsible for all core contact with customers. HJL and CAL were therefore extensively involved in the Pension Review and Advice Process.
37. The Service Providers had a substantial amount of control over how the Pension Review and Advice Process was operated. Mr Henderson was aware that the Service Providers were carrying out the Outsourced Functions on HCA's behalf, that they had been provided with HCA's logo and letterhead and his electronic signature to enable them to issue documents, including Suitability Reports, without necessitating his involvement, that HJL had a material financial interest in the Loan Notes, and that HCA had no meaningful involvement at any point in the Pension

Review and Advice Process. He therefore should have appreciated the risk that the Service Providers could influence the advice given to HCA's customers.

#### Pension Transfers

38. *Mr Henderson accepts he erroneously advised on Pension Transfers when he did not have the necessary permission, but submits that he self-reported this to the Authority.*
39. *Mr Henderson notes that a third party independent financial adviser who, with the Authority's agreement, reviewed the customer files involving Pension Transfers considered that, where Pension Transfers took place, this was likely to have been because of failures in data inputting, and that the potential for harm in pension terms was low.*
40. The Authority acknowledges that Mr Henderson self-reported the fact that he erroneously advised on Pension Transfers in 19 cases for which he did not have permission, but considers this issue is indicative of the wider problems with the Pension Review and Advice Process. The Pension Review and Advice Process did not distinguish properly between Pension Transfers and Pension Switches (except potentially where the customer had a defined benefit or final salary pension scheme), and Mr Henderson's reckless actions in respect of HCA's adoption and use of the process, including his failure to put in place meaningful oversight or controls in relation to the process, exposed HCA to the risk that it would act outside its permission.
41. Further, as Mr Henderson had no involvement in any further work done for customers once the Suitability Reports had been sent to them, he could not know who had completed Pension Transfers or Pension Switches. In fact, HCA advised at least 45 customers to transfer their pensions from an occupational pension scheme to a SIPP, of whom at least 26 went through with the transfer.
42. The third party independent financial adviser did not carry out a review of the suitability of the recommendations in the customer files he reviewed. He concluded the reports were non-compliant because an appropriate process had not been conducted. It is clear from his interview with the Authority that he was not suggesting the Pension Review and Advice Process was compliant.

### Misleading the Authority

43. *Mr Henderson denies that he attempted to mislead the Authority by providing false and misleading information about the compliance checks he had undertaken. Each customer file contained a hard copy template checklist that the person who performed the check filled-in. These documents would have been retained by CAL. Mr Henderson typed up the original handwritten entries in respect of the files he provided to the Authority before sending them because he thought this would make the information more legible and comprehensible. The information he sent reflected the original contents.*
44. The Authority has seen no evidence to support Mr Henderson's account. Although HCA provided the Authority with a copy of the template checklist, there is no evidence from the customer files seen by the Authority that it was ever used in practice, or of equivalent handwritten notes being produced. Further, his statement that he typed up the checklist is inconsistent with the fact that the purpose of the checklist was to assess the suitability of the advice provided in the Suitability Report, and Mr Henderson stated in interview that he did not check the reports for the suitability of the advice. The Authority also notes that none of the three files for which the checklists were produced were cases in which CAL performed the Outsourced Functions, so it is unclear why CAL would have kept the handwritten notes for these files. Accordingly, the Authority does not consider Mr Henderson's explanation to be credible.

### Breach of Statement of Principle 1

45. *Mr Henderson denies that he acted dishonestly or recklessly and that he breached Statement of Principle 1. For the Authority to conclude that he acted dishonestly, cogent and compelling evidence is needed. As he genuinely believed advice was bespoke for customers who wanted fixed returns and a capital guarantee, he cannot have acted dishonestly.*
46. The Authority has concluded that Mr Henderson acted dishonestly by causing HCA to hold out the Pension Review and Advice Process to customers as HCA providing bespoke, independent investment advice based on a comprehensive and fair analysis of the whole market. The Authority has seen no contemporary evidence supporting Mr Henderson's claim that he believed the advice was bespoke and, having regard to the fact that Mr Henderson was an experienced and qualified

financial adviser, the Authority does not accept that he genuinely believed this was the case. Instead, the Authority considers that Mr Henderson knew that how HCA held out the Pension Review and Advice Process to customers was misleading as it did not reflect the reality of the service that HCA would provide using the Pension Review and Advice Process. Further, the Authority considers that Mr Henderson acted dishonestly when he deliberately misled the Authority.

47. The Authority has concluded that Mr Henderson acted recklessly in respect of the Execution-only Process and the Pension Review and Advice Process for the reasons described at paragraphs 5.3(1) and (3) of this Notice.

#### Penalty

48. *Any financial penalty is unrealistic as Mr Henderson has lost his business and his home and is seriously in debt.*

49. The Authority considers that the financial penalty that the Authority has decided to impose on Mr Henderson is proportionate and reflects the seriousness of the breaches by Mr Henderson. Mr Henderson has not provided verifiable evidence regarding his assets and income for the Authority to be able to assess whether or not payment of the penalty would cause him serious financial hardship. Accordingly, in accordance with DEPP 6.5D.1G(2), the Authority has not considered whether it is appropriate to reduce the financial penalty for serious financial hardship reasons.

#### **Representations received from HJL, Mr Stephen and Person A (the “third parties”)**

50. The third parties’ representations (in italics), and the Authority’s conclusions in respect of them, are set out below:

#### The development of the Software and the pension switching advice model

51. *HJL did not develop the Software or the pension switching advice model. They were instead designed by two individuals at Company A.*

52. The Authority accepts that HJL did not create the Software, and that it was instead created by two individuals at Company A. However, the Software was developed at the request of HJL. HJL initially sought an efficient way to provide customers with a pension comparison, to see whether the customer’s existing pension

charges were reasonable. A system was developed by Company A in around 2011/2012 in line with this request. This system was an early version of the Software.

53. In 2013, HJL asked Company A whether an advice model could be “bolted on”. HJL staff assisted Company A to understand the products that would be recommended through the Software so that Company A could develop the triggers for the advice. HJL also led the creation of the templates of the documents which were used in the Pension Review and Advice Process and which enabled a complete, fully advised pension switch. The Authority therefore considers that HJL initiated and influenced the development of both the Software and the pension switching advice model.

HJL did not process leads obtained through unlawful cold calling

54. *HJL was at no time involved in cold calling activities itself. All clients introduced to the Firm were obtained by lead generation businesses through a generic financial promotion process, which did not involve the lead generator in identifying any specific investment or a specific provider of investment services. To the extent the activities of the lead generators involved unsolicited real-time financial promotions, those promotions were exempt from the financial promotion restriction in section 21(1) of the Act by virtue of Article 17 of the Financial Service and Markets Act 2000 (Financial Promotion) Order 2005.*

55. The Authority has not found that HJL cold called customers. Instead, the Authority has found that Mr Henderson failed to take any steps to establish that the lead generators used by HJL generated their customer introductions in an appropriate manner and did not use cold calling. As such, he did not know whether leads were generated by cold calling. In fact, the Authority was contacted by three customers complaining that they had been cold called by one of the lead generation companies used by HJL.

Mr Stephen properly managed any conflict of interest

56. *Mr Stephen took careful steps to manage any potential conflicts of interest, including taking legal advice on issues surrounding potential conflicts. From his and HJL’s position, relevant potential conflicts were properly managed.*

57. This Notice relates to the conduct of Mr Henderson and the steps he took to manage, disclose and mitigate the potential conflicts of interest posed by Mr Stephen's common directorships. The Authority has made no finding as to whether Mr Stephen adequately managed any actual or potential conflicts that he had. However, it is necessary to describe Mr Stephen's common directorships in the Notice in order to explain Mr Henderson's misconduct.

HJL was not inherently unsuitable for the purposes for which it was retained by HCA

58. *HJL's qualification to operate the Software was its having staffing and organisational capacity to do so, when its predecessor in the role (Company A) did not. Moreover, the Authority has failed to explain on what basis it implicitly contends that HJL was unsuitable.*

59. When outsourcing functions to a third party, authorised firms which are not common platform firms (such as HCA) must comply with Principle 3 of the FCA's Principles for Businesses, and should also have regard to applicable rules and guidance in SYSC. The relevant rules and guidance are set out in paragraph 4.33 of this Notice. In light of these rules and guidance, Mr Henderson should have taken reasonable steps, such as conducting adequate due diligence, to ensure that HJL was suitable to perform the functions that were outsourced to it.

60. Mr Henderson did not take reasonable steps, or conduct adequate due diligence, even though it was intended that HJL would correspond with customers on behalf of the Firm, and would perform functions that were both necessary and important for the giving of advice (such as the conduct of fact-finds). The Authority considers that such due diligence should go beyond merely ensuring that HJL had the staffing and organisational capacity to carry out the Outsourced Functions or its lead generation activities. In addition, as part of Mr Henderson's due diligence he could have considered, for example, the suitability of HJL's management and the quality of its staff.

Reference to Person A's criminal record and bankruptcy

61. *Person A was at all material times a consultant to HJL, and he played a limited role as regards the Pension Review and Advice Process. There is no need to refer to Person A's criminal record and bankruptcy since these matters were not relevant to any risk assessment that the Firm needed, on the facts of this case, to have carried out. It is also denied, to the extent that it is alleged, that it would not have*

*been appropriate for the Firm to enter into a business relationship with HJL because of these matters.*

62. In the Authority's view, the evidence supports its conclusion that Person A played a significant part in the Pension Review and Advice Process and had an influential role at HJL. For example, his job title in HJL's organisation chart was "Senior Investment Manager", he was one of three representatives from HJL at meetings with the SIPP Provider (along with Mr Stephen and another HJL director) and he was described by an individual at Company A as being an important part of HJL. The Authority considers that it is appropriate to refer to Person A's background, which demonstrates a serious failure to act with integrity. When considering whether to outsource important functions to a third party, especially where the third party will be responsible for most of the customer contact, the extent to which customers could be exposed to persons who have demonstrated a lack of integrity should be a fundamental consideration. Mr Henderson's failure to consider this illustrates his failure to give proper consideration to whether HJL and CAL were suitable to perform services on behalf of the Firm.

Other entities were involved with the use of the Software during the Relevant Period but have not been addressed in the Warning Notice to the same extent as HJL

63. *HJL discharged its limited processing functions for the period May to October 2014. At other times in the Relevant Period these functions were discharged by Company A and CAL, and particularly in relation to the former, the Warning Notice is practically silent. However, HJL is named frequently throughout the Notice.*

64. Each of the relevant entities that were involved in the Pension Review and Advice Process are mentioned to the extent necessary to describe the facts and matters relied on in reaching the decision to take the action set out in paragraph 1.1 of the Notice. The fact that HJL is mentioned more often than other third parties is a reflection of its greater role in the Pension Review and Advice Process, in particular, its role in the development of the model on which the process is based, its lead generation activities, its role in relation to the products recommended through the process, and its financial interest in those products.

Reference to "Company A" requires explanation

65. *The rationale for anonymising Company A is not clear. As a matter of fairness, the identity of Company A should be provided to the third parties.*

66. The Authority has not named Company A as it considers there is no need to do so in order to explain its role in the matters described in the Notice, and its anonymisation means it is not identifiable. The Authority considers the anonymisation of Company A does not cause prejudice to any of the third parties as the definition in the Warning Notice gives sufficient explanation of the entity and its relevance to the findings. In any event, the third parties can easily find out the identity of Company A from the investigation report, a copy of which has been provided to them.

#### Anonymisation of HJL and Mr Stephen

67. *If other companies can be anonymised (for example, Company A) without undermining the purpose of the Notice, there is an unreasonable difference in treatment between those parties that are named (in particular, HJL and Mr Stephen), and those who are not. If the Authority insists on anonymisation for Company A then there is no reason why HJL should not be treated in a similar way. The Notice would achieve what it is intended to achieve even if HJL and Mr Stephen are not identified by name. Further, HJL's commercial interests will be significantly harmed if it is named in the Notice.*

68. The Authority does not agree that there is an unreasonable difference in treatment between HJL and Company A. This is for two reasons: first, because of HJL's central role in the Pension Review and Advice Process, compared to that of Company A. In particular, HJL initiated and influenced the development of the pension switching advice model, brought the model to the attention of the Firm, performed the Outsourced Functions and had a material financial interest in the Loan Notes. In these circumstances, the Authority considers it appropriate to mention HJL by name so that its findings, and the factual background (including the key parties involved), can be easily ascertained by the recipient of the Notice, as well as by any other reader of the Notice. Secondly, the Authority considers it possible that HJL could be identified from the description of the matters contained in the Notice even if anonymised as the Authority's Financial Services Register names HJL as an IAR of HCA between 18 December 2013 and 20 March 2015, and the Authority considers it is necessary to include detail in the Notice about HJL, including that it was an IAR and the time period that it was registered as an IAR, in order to explain the relationship between HJL and HCA. As such, the Authority considers it unlikely that HJL will be materially prejudiced as a result of being referred to by its name in the Notice.

69. The Authority has decided to name Mr Stephen for similar reasons. Companies House records show he was one of only two directors of HJL during the Relevant Period. Further, as a director, he was responsible for the day-to-day operation of HJL during the Relevant Period.