

**Robert Ward 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 Robert Ward 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, James King or City Administration Limited in this Decision Notice.**



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## DECISION NOTICE

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To: **Robert Ward**

Individual  
Reference  
Number:

**RXW00035**

and

To: **Bank House Investment Management Limited**  
(as an interested party pursuant to section 63(3) of the Act)

Firm  
Reference  
Number:

**451839**

Address: **Kings House  
125 Promenade  
Cheltenham  
Gloucestershire  
GL50 1NW**

Date: **6 December 2018**

### **1. ACTION**

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

- (1) impose on Robert Ward a financial penalty of £88,100, pursuant to section 66 of the Act;
- (2) withdraw the approval given to Mr Ward to perform the controlled functions of CF1 (Director) and CF3 (Chief Executive), pursuant to section 63 of the Act; and

- (3) make an order, pursuant to section 56 of the Act, prohibiting Mr Ward 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, between 9 September 2014 and 12 December 2016, Mr Ward demonstrated a lack of integrity by acting dishonestly and recklessly in relation to Bank House Investment Management's ("BHIM") pension advice business. Further, between 16 October and 12 December 2016 (the "Relevant Period"), after gaining approval from the Authority to perform controlled functions, Mr Ward breached Statement of Principle 1 (Integrity) of the Authority's Statements of Principle for Approved Persons.
- 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. On 16 October 2014, Mr Ward was approved by the Authority to perform the CF1 (Director) and CF3 (Chief Executive) controlled functions at BHIM, 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. However, Mr Ward took over active management and day-to-day responsibility for BHIM during the summer of 2014 and, in any event, by 9 September 2014.

2.5. Between 9 September 2014 and 27 July 2015, Mr Ward (together with Mr Freer, a director, compliance officer and financial adviser at BHIM) was responsible for BHIM adopting and using the Pension Review and Advice Process. This process was based on a pension switching advice model, the development of which was initiated and influenced by a third party, HJL. The pension switching advice model was introduced to Mr Ward by a representative from HJL in a meeting on 9 September 2014. The Pension Review and Advice Process:

- (1) involved HJL sourcing leads from lead generation companies and introducing customers to BHIM;
- (2) involved HJL and CAL (a third party service provider which was closely connected to HJL) being provided with BHIM's logo and Mr Freer's electronic signature so that they could perform functions (the Outsourced Functions) on BHIM's behalf. HJL was responsible for performing the Outsourced Functions prior to 13 October 2014, and from that date they were performed by CAL. The Outsourced Functions included:
  - (a) contacting customers that had been introduced to BHIM 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 containing personal recommendations);
  - (d) sending the Suitability Reports to the customers; and
  - (e) calling the customers to ask whether they wished to proceed in accordance with BHIM's advice;
- (3) was structured to result in customers who met certain pre-set criteria approved by Mr Freer being advised to switch their pensions to SIPPs investing in high risk, illiquid assets not regulated by the Authority (the Bonds). HJL had a material financial interest in a number of the Bonds, which was not disclosed to customers; and
- (4) involved little meaningful oversight by BHIM of HJL's activities as an introducer or of HJL and CAL's performance of the Outsourced Functions.

- 2.6. BHIM was aware of what the Pension Review and Advice Process involved and how it was structured. Nevertheless, it held itself out to customers as providing bespoke, independent investment advice based on a comprehensive and fair analysis of the whole market. This did not reflect the reality of the service that BHIM would provide using the Pension Review and Advice Process and was misleading to customers. As a result, 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 a number of the Bonds 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.
- 2.7. Mr Ward's actions in relation to BHIM's adoption and use of the Pension Review and Advice Process, summarised in paragraphs 2.8 to 2.15 below, were reckless. The Pension Review and Advice Process put BHIM'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 Ward closed his mind to these risks and unreasonably exposed BHIM's customers to them by allowing BHIM to adopt and use the Pension Review and Advice Process.
- 2.8. Mr Ward failed to take reasonable steps to ensure that BHIM carried out adequate due diligence on the Bonds to ensure that it had a proper understanding of them, including their risks and benefits, before agreeing that they should be recommended to BHIM's customers. Mr Ward delegated the Firm's due diligence on the Bonds to Mr Freer but did nothing to satisfy himself that the due diligence had been carried out to a reasonable standard other than asking Mr Freer if he was happy with his own due diligence.
- 2.9. Had Mr Ward taken reasonable steps to satisfy himself as to the adequacy of BHIM's due diligence and the suitability of the Bonds, it would have been obvious to him that Mr Freer's due diligence was inadequate and, from the (albeit limited) information that Mr Freer considered, that the Bonds were high risk investments that were unlikely to be suitable for BHIM's customers, except in very limited circumstances. Mr Freer relied solely on documents provided to BHIM by HJL, despite knowing that HJL had a material financial interest in a number of the Bonds, and did not take any actions to address the risk that the information provided by HJL could be misleading or incomplete.

- 2.10. Mr Ward knew of HJL's involvement in the Pension Review and Advice Process, that the process was structured to result in customers switching their pensions to SIPP's investing in the Bonds, and that HJL had a material financial interest in a number of the Bonds. Further, Mr Ward must have known that two of the directors of HJL (Mark Stephen and James King) were directors of each of the companies issuing the Bonds. There was therefore an obvious risk that HJL might seek to influence inappropriately the advice provided to customers. However, Mr Ward failed to take reasonable steps to ensure that the common directorships and how HJL was remunerated were disclosed to customers.
- 2.11. As an individual with significant experience in financial services, it should have been obvious to Mr Ward that BHIM 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 BHIM should adopt the process. Mr Ward told the Authority that he relied on Mr Freer to ensure that the Pension Review and Advice Process was compliant. However, Mr Ward failed to take reasonable steps to ensure that Mr Freer's review of the process, and the documents to be used in the process, was adequate. Had Mr Ward taken such steps, it would have been clear to him that Mr Freer's review was in fact wholly inadequate. Mr Freer 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 Bonds did not adequately inform them of their costs, benefits and risks.
- 2.12. In any event, it should have been obvious to Mr Ward that there was a significant risk that the Pension Review and Advice Process did not comply with the Authority's rules. Mr Ward was aware that BHIM would have no meaningful involvement in the advice to be given and that the Pension Review and Advice Process, as it was based on the pension switching advice model presented to him by the representative from HJL on 9 September 2014, would be structured to lead to recommendations to customers to invest in the Bonds, in a number of which HJL had a material financial interest. However, Mr Ward failed to give any meaningful consideration to whether or not the Pension Review and Advice Process was compliant.

- 2.13. Mr Ward failed to take reasonable steps to ensure that BHIM 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 BHIM's customers. Further, he failed to take reasonable steps to ensure that BHIM 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.
- 2.14. Mr Ward failed to take reasonable steps to ensure that BHIM put in place appropriate systems and controls and compliance arrangements to oversee and monitor the Pension Review and Advice Process. As a result, BHIM did not have adequate management information on HJL's and CAL's activities, and there were no independent compliance reviews of the advice given through the Pension Review and Advice Process.
- 2.15. Mr Ward agreed (together with Mr Freer) that BHIM 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 Ward did not carry out any due diligence on HJL himself, and failed to take reasonable steps to ensure that BHIM carried out due diligence on HJL. The Firm's due diligence on CAL consisted simply of checking the company's details on Companies House and Mr Ward and Mr Freer visiting its office to satisfy themselves that the company existed and was operating.
- 2.16. During the Relevant Period, once he had been approved by the Authority to perform the CF1 (Director) and CF3 (Chief Executive) controlled functions, Mr Ward acted recklessly in that he continued to close his mind to the serious risk that BHIM's customers would receive unsuitable advice, and therefore to the serious risk that they would invest in products that were not suitable for them, and unreasonably exposed BHIM's customers to those risks by continuing to allow, until the Authority intervened in July 2015:
- (1) the Firm to use the Pension Review and Advice Process;
  - (2) the Bonds to be recommended to BHIM's customers, despite clear warnings from SIPP providers in April 2015 that the Bonds might be unsuitable for BHIM's customers; and
  - (3) the Firm to work with HJL and CAL.

In doing so, Mr Ward exposed BHIM's customers to a significant risk of harm.

- 2.17. Mr Ward's reckless actions in relation to BHIM's adoption and use of the Pension Review and Advice Process, in particular the fact that he allowed HJL and CAL to perform the Outsourced Functions on BHIM's behalf without adequate supervision, and failed to ensure BHIM put in place and operated appropriate systems and controls in relation to the Pension Review and Advice Process, exposed BHIM 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 BHIM not having the necessary permission to provide advice on Pension Transfers, in at least five cases advice about Pension Transfers was given to customers by BHIM in breach of section 20 of the Act.
- 2.18. In addition to the clear deficiencies in the Pension Review and Advice Process, the Authority has identified that unsuitable advice was provided to BHIM's customers in all 20 BHIM 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 Bonds, the Authority considers it is likely that the advice provided to most, if not all, of BHIM's customers through the Pension Review and Advice Process was unsuitable.
- 2.19. During the Relevant Period, 265 customers switched or transferred pension funds totalling approximately £8.5 million 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.
- 2.20. Mr Ward allowed BHIM to adopt the Pension Review and Advice Process in order to generate fees for the Firm and to increase the number of customers that the Firm could advise about other investments, and thereby generate further fees. In doing so, Mr Ward put his and the Firm's interests before those of the Firm's customers.
- 2.21. Mr Ward also acted dishonestly or recklessly in several other ways during the Relevant Period, as described in paragraphs 2.22 to 2.25 below.

- 2.22. Mr Ward recklessly allowed BHIM to breach a term of a requirement which, on its application, had been imposed on it on 17 September 2015 (the Voluntary Requirement). The Voluntary Requirement included a term requiring BHIM not to carry on any activities in relation to Pension Switches and/or Pension Transfers to any SIPP until independent verification was provided to the Authority confirming that a robust and compliant advisory process was in place for pension switching advice. However, in breach of this term, between 5 October 2015 and 10 November 2016, BHIM advised 77 customers to switch pension funds totalling £2.9 million to SIPPs. Mr Ward was aware of the terms of the Voluntary Requirement and the relevant transactions. He was also aware of the risk that BHIM might breach the terms of the Voluntary Requirement but, by closing his mind to that risk, recklessly failed to take reasonable steps to ensure that these transactions were permitted.
- 2.23. Mr Ward provided the Authority with false and misleading information about BHIM's business arrangements with HJL and CAL. Mr Ward did so dishonestly in order to try to prevent the Authority from identifying misconduct by himself, Mr Freer and the Firm.
- 2.24. Mr Ward also dishonestly told the Authority that the Firm did not have minutes of board meetings when, in fact, the Firm kept formal minutes of meetings which he (and others) approved.
- 2.25. Mr Ward failed to be open and cooperative with the Authority, and provided it with incomplete and inaccurate information. Mr Ward closed his mind to the risk that the information he was providing to the Authority might be incomplete or inaccurate, and recklessly failed to take reasonable steps to ensure that BHIM provided complete and accurate responses to requests by the Authority for information and documents relating to BHIM's business. As a result, Mr Ward:
- (1) failed to ensure that BHIM provided the Authority with certain of his emails which were obviously relevant to the Authority's investigation;
  - (2) provided the Authority (on behalf of BHIM) with a copy of the Firm's new business register which was materially incomplete; and
  - (3) failed to ensure that BHIM provided the Authority with the full name of a company that the Firm worked with and a copy of the Firm's agreement with that company.

2.26. The Authority considers Mr Ward'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 Ward that the involvement in the Pension Review and Advice Process of HJL, which had a material financial interest in a number of the Bonds into which customers' funds were being invested, created a clear conflict of interest, yet he took no steps to ensure that HJL's financial interest was disclosed to customers;
- (3) given his experience in financial services, it should have been obvious to Mr Ward that the Bonds were unlikely to be suitable for retail customers, except in very limited circumstances; and
- (4) on 4 July 2014, the Authority wrote to the Firm and drew its 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 Ward did not take steps to protect the Firm's customers.

2.27. BHIM's provision of pension advice was subject to examination by the Authority in July 2015. The Authority had serious concerns about the suitability of BHIM's pension advice and, at the request of the Authority, BHIM applied to have requirements imposed on it. Accordingly, the Voluntary Requirement was imposed on BHIM by the Authority on 17 September 2015.

2.28. Following BHIM's contravention of a term of the Voluntary Requirement, the Authority exercised its own-initiative powers to impose further requirements on the Firm including that, with effect from 12 December 2016, it was not permitted to carry on any regulated activity.

2.29. The FSCS declared BHIM in default on 27 April 2017 and is investigating claims made by BHIM's customers. As at 25 June 2018, the FSCS had determined that compensation in excess of £500,000 should be paid to BHIM's customers.

2.30. The Authority considers that Mr Ward's reckless and dishonest conduct between 9 September 2014 and 12 December 2016 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 in paragraph 1.1(2) and (3) of this Notice. Further, the Authority has decided to impose a financial penalty on Mr Ward in the amount of £88,100 for his breach of Statement of Principle 1 during the Relevant Period.

### **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

"BHIM" or the "Firm" means Bank House Investment Management Limited

the "Bonds" means bonds, each of 10 years, issued by four unquoted UK companies incorporated between July and November 2014 and into which BHIM's customers' pensions were invested

"CAL" means City Administration Limited, the third party service provider that performed the Outsourced Functions on behalf of BHIM between 13 October 2014 and 27 July 2015

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

"Company X" means the third party to which BHIM sold customer data that it had obtained as a result of its relationship with HJL, and that also introduced customers to BHIM from around September 2015

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

"EG" means the Authority's Enforcement Guide

"FOS" means the Financial Ombudsman Service

"FSCS" means the Financial Services Compensation Scheme

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

"HJL" means Hennessy Jones Limited, now known as Reditum Capital Limited. HJL introduced customers to BHIM under the Pension Review and Advice Process and also performed certain of the Outsourced Functions on behalf of BHIM prior to 13 October 2014

"IFA" means independent financial adviser

"Mr Freer" means Tristan Freer

"Mr Ward" means Robert Ward

"Outsourced Functions" means the functions outsourced by BHIM, initially to HJL, and from 13 October 2014, to CAL, under the Pension Review and Advice Process, including the functions described in paragraph 2.5(2) of this Notice (but not including the functions carried out by HJL in its role as introducer)

"Pension Review and Advice Process" means the process described in paragraph 2.5 of this Notice that BHIM adopted on 11 September 2014 and used until 27 July 2015

"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)

"Relevant Period" means 16 October 2014 to 12 December 2016 inclusive

"SIPP" means self-invested personal pension

"SIPP Providers" means the firms providing the SIPP accounts to BHIM's customers under the Pension Review and Advice Process

“Software” means the automated client management system that was used by CAL 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 a 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 “Voluntary Requirement” means the requirement imposed on BHIM on 17 September 2015

the “Warning Notice” means the warning notice given to Mr Ward dated 5 March 2018

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

##### **Background**

- 4.1. Mr Ward has over 30 years of experience of working in the financial services sector, including many years working as a financial adviser. Mr Ward has worked for BHIM since the Firm was authorised by the Authority in 2006, became the chief executive of BHIM in the summer of 2014, and has been approved by the Authority to perform the CF1 (Director) and CF3 (Chief Executive) controlled functions at BHIM since 16 October 2014. Mr Ward held these controlled functions throughout the Relevant Period. As the chief executive and a director of BHIM, Mr Ward had active management and day-to-day responsibility for the business of the Firm together with Mr Freer, who was an experienced and qualified financial adviser and was approved to perform the CF1 (Director), CF10 (Compliance Oversight), CF11 (Money Laundering Reporting) and CF30 (Customer) controlled functions.
- 4.2. BHIM is a small firm based in Cheltenham, Gloucestershire which, since 29 June 2006, has been authorised by the Authority with permission to conduct regulated activities, including advising on investments (excluding Pension Transfers) and arranging (bringing about) deals in investments.

- 4.3. Mr Ward was responsible (together with Mr Freer) for the Firm using, from around 11 September 2014 until 27 July 2015, the Pension Review and Advice Process, which involved:
- (1) HJL sourcing leads from lead generation companies and introducing customers to the Firm;
  - (2) certain of the Outsourced Functions being performed on behalf of BHIM by HJL prior to 13 October 2014;
  - (3) the Outsourced Functions being performed on behalf of BHIM by CAL, a third party service provider closely connected to HJL, from 13 October 2014; and
  - (4) little meaningful oversight by BHIM of HJL's activities as an introducer or of HJL and CAL's performance of the Outsourced Functions.
- 4.4. The Pension Review and Advice Process was structured to result in customers who met certain pre-set criteria approved by Mr Freer being advised to switch their pensions to SIPPs investing in high risk, illiquid assets not regulated by the Authority (the Bonds). Mr Ward was aware that HJL had a material financial interest in a number of the Bonds, and that HJL's financial interest was not disclosed to customers.

*The business proposition*

- 4.5. On 9 September 2014, Mr Ward was introduced to a representative from HJL. Mr Ward described the meeting in an email that he sent to Mr Freer later the same day. According to the email, Mr Ward understood that:
- (1) HJL had *'large numbers of people wanting to invest in [its] normal bond type of funds'*;
  - (2) HJL was not authorised by the Authority and did not wish to become so because it would have a conflict of interest;
  - (3) HJL had a pension switching advice model which involved *'a suite of compliant documents'* and the outsourcing of functions in the pension advice process to HJL's staff *'who see the clients and complete the paperwork'*, and

which was intended to result in customers being advised to switch their pensions to SIPPs investing in HJL's *'bond type of funds'*; and

- (4) HJL was seeking an authorised IFA to put its name to the advice given to customers through this process.
- 4.6. Mr Ward understood that HJL would *'actually do everything including the reports and suitability paperwork in [BHIM's] name'* in return for compliance sign-off and the signature of a qualified financial adviser to append to the documents used in the process. BHIM would also be required to do regular compliance visits to HJL to check the customer files.
- 4.7. Mr Ward understood from the initial meeting that the pension switching advice model had the potential to generate *'significant earnings'* because it was low paying but high volume work. He was told to expect 100 cases per month moving quickly to 100 cases per week.
- 4.8. At the initial meeting, the representative from HJL provided Mr Ward with fact sheets for a number of the Bonds and specimen documents which it proposed to use in the Pension Review and Advice Process. Mr Ward understood that other IFAs had already adopted the same pension switching advice model. Mr Ward gave Mr Freer the fact sheets and specimen documents to review.

*Decision to work with HJL and adopt the Pension Review and Advice Process*

- 4.9. Within 24 hours of receiving Mr Ward's email referred to above, Mr Freer confirmed to Mr Ward that he was willing for the Firm to adopt the Pension Review and Advice Process and approved the specimen documents to be used in the process by HJL, on behalf of BHIM. Mr Ward confirmed Mr Freer's consent in an email to HJL.
- 4.10. Later on 10 September 2014, on Mr Ward's instructions, BHIM provided HJL with a copy of its company logo and Mr Ward provided HJL with team biographies to enable the specimen documents to be finalised.
- 4.11. On 11 September 2014, two days after the initial meeting with the HJL representative, Mr Ward provided HJL with an electronic copy of Mr Freer's signature for HJL to use as the qualified signatory in the reports and paperwork to be produced by HJL on behalf of the Firm.

- 4.12. At 11:40 on 12 September 2014, HJL provided Mr Ward and Mr Freer with a number of the finalised documents to be used in the Pension Review and Advice Process. Mr Freer approved the documents within four hours. He told HJL that he was *'happy with all of the documentation'* although he thought some of the wording in the brochure for the Firm *'could be better [...] but this is not a compliance issue'*. In fact, the Firm's brochure held out the Firm as providing customers with independent advice from qualified financial advisers and stated that *"Independent advice means taking advice from an expert who is not tied to offering the products of one particular pension provider and does not receive payments in the form of commission for recommending that you move your pension. This means they can act entirely in your best interests to advise a pension portfolio that best matches your needs."* These statements were highly misleading as they did not reflect the reality of the service that the Firm would provide using the Pension Review and Advice Process. Mr Freer told the HJL representative that no amendments were necessary to any of the documentation he had reviewed because he understood that other IFAs were already using the same documents and *'if it aint broke don't fix it!'*.
- 4.13. Also on 12 September 2014, the HJL representative sent Mr Ward (and Mr Freer) an email attaching a service agreement to sign. The services which were intended to be performed by HJL on behalf of the Firm included:
- (1) sourcing leads from lead generation companies;
  - (2) gathering information from the customers' current pension providers;
  - (3) visiting and/or contacting customers to conduct the fact-find in the name of the Firm; and
  - (4) producing reports in the name of the Firm, including Suitability Reports.
- 4.14. The Firm did not sign this agreement, but HJL began contacting customers on behalf of the Firm at the latest from 25 September 2014 and, throughout the period that BHIM used the Pension Review and Advice Process, HJL was responsible for sourcing leads and acting as an introducer for the Firm in connection with the process.

### *Work with CAL*

- 4.15. On 13 October 2014, the Firm entered into an agreement with CAL, for CAL to provide substantively the same services as those detailed in the unsigned agreement with HJL, with the exception of sourcing leads and introducing customers to the Firm (which HJL continued to do). Mr Ward signed this agreement on behalf of the Firm.
- 4.16. CAL was closely connected to HJL. The two firms initially shared the same address. HJL's representative at the 9 September 2014 meeting with Mr Ward moved to CAL but continued to email the Firm from an HJL email address until 13 November 2014 at the earliest. Mr Ward was copied into an email sent by HJL to one of the SIPP Providers in January 2015 in which HJL referred to CAL as '*our outsourcing company*'.
- 4.17. CAL performed the Outsourced Functions on behalf of the Firm until 27 July 2015, when the Firm ceased using the Pension Review and Advice Process and terminated its business relationship with CAL as a result of intervention by the Authority. BHIM also took over the employment of a number of staff previously employed by CAL. By this time, BHIM had begun working with another firm, Company X, which had close links to HJL.

### **The Bonds**

- 4.18. The Pension Review and Advice Process resulted in customers' pensions being switched or transferred to SIPPs with a portfolio of underlying assets which took the form of bonds, each of 10 years, issued by four unquoted UK companies incorporated between July and November 2014 by HJL.
- 4.19. 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 the Bonds 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.

4.20. Customers were told that the portfolios offered fixed returns and capital protection. In fact the Bonds 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 issuing companies, 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 companies, which are 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.

4.21. The information memorandums for the Bonds state that capital protection is meant to be provided by way of floating charges on the assets of the issuing companies and by way of a cash amount, to be held in a separate segregated account and invested in cash instruments. For the Bonds issued by three of the four issuing companies, the cash amount is limited to a maximum of 20% of the aggregate principal amount of the Bonds plus accrued interest (no limit is specified for the Bonds issued by the fourth issuing company).

4.22. The Bonds are listed on an overseas exchange and the value of the Bonds is dependent on whether there is a market for them. As such, customers may realise less than their original investments if they sell them prior to the redemption date. Repayment of the principal sum and interest is also dependent upon the four issuing companies generating sufficient income and returns. Further, the Bonds are not regulated by the Authority and are not covered by FOS or FSCS protection.

#### **Failures in the Firm's due diligence on the Bonds**

4.23. 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.

- 4.24. Mr Ward knew that the only products available for recommendation to BHIM's customers through the Pension Review and Advice Process were the Bonds. As a director and the chief executive of the Firm, he had a responsibility to take reasonable steps to ensure that the Firm undertook adequate due diligence on the Bonds to ensure that they were suitable for the Firm's customers. However, Mr Ward failed to take reasonable steps to ensure that the Firm carried out adequate due diligence on them.
- 4.25. Mr Ward told the Authority that he relied on Mr Freer to carry out due diligence on the Bonds and assess their suitability for customers. However, Mr Ward did nothing to satisfy himself that Mr Freer had carried out adequate due diligence on the Bonds, beyond asking him if he was satisfied with his own due diligence. Mr Freer's due diligence was in fact wholly inadequate. For example, Mr Freer relied solely on documents provided to BHIM by HJL, despite the fact that HJL had a material financial interest in the Bonds (issued by three of the four issuing companies), and did not take any actions to address the risk that the information provided by HJL could be misleading or incomplete. Mr Freer also did not adequately assess whether the composition of the portfolios of Bonds (which had been designed by HJL) were suitable for customers with particular risk profiles (for example, whether the 'cautious' portfolio was suitable for customers with a cautious attitude to risk).
- 4.26. Had Mr Ward taken reasonable steps to satisfy himself that Mr Freer had conducted adequate due diligence, such as asking Mr Freer what information he considered as part of his due diligence and discussing Mr Freer's findings with him, it would have been obvious to him, given his extensive career in financial services, that Mr Freer's due diligence was in fact wholly inadequate and, from the (albeit limited) information available to Mr Freer, that the Bonds were high risk investments which were unlikely to be suitable for retail 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).
- 4.27. Under the Pension Review and Advice Process, advice was given to customers to use one of two SIPP Providers that had been suggested to BHIM by HJL. BHIM's main reason for using one of these SIPP Providers was that they were willing to accept the Bonds for retail customers. In April 2015, the Firm approached other SIPP providers, but those SIPP providers were not prepared to accept the Bonds in

SIPPs for retail customers. For example, one SIPP provider told BHIM that the Bonds were “*not for retail use*”. When asked by the Authority, Mr Ward said that the providers he approached ‘*kept coming up with no, no, no, no, no*’. This should have been a red flag to Mr Ward about the high risk nature of the Bonds. However, he continued to allow the Bonds to be recommended to customers until the Authority intervened in July 2015.

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

- 4.28. As Mr Ward was aware, the Pension Review and Advice Process was based on a pension switching advice model that had previously been adopted by other IFAs. HJL had initiated and influenced the development of this model, as it had been seeking an efficient process, to be adopted by an authorised IFA, for advising customers who met certain criteria to switch their pensions to SIPPs investing in underlying assets in which HJL had a material financial interest. When BHIM adopted the Pension Review and Advice Process in September 2014, the underlying assets in which customers’ SIPPs were to be invested were the Bonds (issued by three of the four issuing companies).
- 4.29. BHIM was responsible for the advice given to customers through the Pension Review and Advice Process. However, a number of important functions were outsourced to third parties. At the outset, it was intended that these functions would be outsourced to HJL, and initially certain of the functions (in particular those in the early stages of the process, such as obtaining information about the customer’s existing pension arrangements) were performed by HJL. However, from 13 October 2014, these functions, with the exception of lead generation, were performed by CAL. The decision that the Outsourced Functions should be performed by CAL rather than HJL appears to have been agreed between them without the involvement of, or any consultation with, BHIM.
- 4.30. The description of the Pension Review and Advice Process in the following paragraphs describes the process that was in place from 13 October 2014.
- 4.31. 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 CAL, which would obtain information about the customer’s existing pension arrangements. CAL would then 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 be better off if they changed their pension arrangements. CAL would call or attend a face-to-face meeting with the customer to present the Pension Summary Report and promote BHIM's advice service.

- 4.32. If the customer signed a service proposition confirming that they wished to receive advice from BHIM, CAL would collect relevant documents from the customer and conduct a scripted fact-finding exercise. CAL would input the results of the fact-find into the Software, which would determine, based on pre-set criteria approved by BHIM, whether the customer should be advised to invest in the Bonds and produce a Suitability Report containing a personal recommendation. CAL 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 they were being contacted by a third party, so some customers may have been given the impression that they were dealing with staff from BHIM itself.
- 4.33. Mr Ward allowed CAL (and initially HJL) to perform the Outsourced Functions with little or no oversight. Although the Suitability Reports were issued on behalf of BHIM and in Mr Freer's name as the qualified financial adviser, Mr Ward knew that Mr Freer had no involvement in the assessment of suitability for individual customers or in the production of the Suitability Reports. Mr Freer's electronic signature and the Firm's logo were simply added to documents provided by CAL to customers, including the Suitability Reports. As such, BHIM did not have control over the advice given in its name.
- 4.34. Between 3 November 2014 and 15 July 2015, BHIM advised 265 customers to switch or transfer their pensions to a SIPP investing in the Bonds through the Pension Review and Advice Process. This amounted to customer funds totalling approximately £8.5 million.
- 4.35. BHIM 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 BHIM 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 2 January 2015 and 16 June 2016, BHIM received

£350,425 in advice or ongoing servicing fees. BHIM paid over £163,240 to CAL for its role in the Pension Review and Advice Process.

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

- 4.36. Mr Ward was a senior individual at BHIM with considerable experience in the financial services sector. It should have been obvious to him that, before adopting the Pension Review and Advice Process, BHIM needed to give due consideration to the documents to be used in the process, and to how the process would operate in practice. However, Mr Ward failed to ensure that BHIM did so, either before adopting the process or at all.
- 4.37. Mr Ward told the Authority that he relied on Mr Freer to satisfy himself that the Pension Review and Advice Process complied with regulatory requirements. However, other than asking Mr Freer if he was happy with his own review of the process and to let Mr Ward know if he had any concerns, Mr Ward did nothing to ensure that Mr Freer's review of the process, and the documents to be used in the process, was adequate. Mr Freer's review was in fact wholly inadequate. Mr Freer spent very little time scrutinising the documents to be used in the Pension Review and Advice Process, and agreed that BHIM should adopt the process only two days after Mr Ward's initial meeting with the HJL representative.
- 4.38. Mr Ward knew that the only products available for recommendation to customers through the Pension Review and Advice Process were the Bonds and that the Pension Review and Advice Process had been structured to lead to recommendations to customers to invest in the Bonds. Given this knowledge, Mr Ward, as the chief executive of BHIM, should have taken reasonable steps to satisfy himself that the information to be provided to customers under the Pension Review and Advice Process reflected the limited service that customers would receive. Such steps could have included, for example, asking Mr Freer how the Pension Review and Advice Process would be explained to customers and reading the documents to be provided to customers through the process.
- 4.39. Had Mr Ward taken reasonable steps, he would have identified that customers were provided with documents in BHIM's name that contained misleading statements about the service they would receive and that, as a result, the Pension Review and Advice Process would not comply with regulatory requirements. For example,

customers were given a service proposition which they had to sign to confirm they wished to receive advice from BHIM 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.*"

- 4.40. These statements were misleading as advice would be given through an automated process without any meaningful assessment of individual customers' needs, the only products that would be recommended to customers through the Pension Review and Advice Process were the Bonds and the Outsourced Functions were intended to be performed on BHIM's behalf initially by HJL (which had a material financial interest in the Bonds) and then, from 13 October 2014, by CAL, which was closely connected to HJL.
- 4.41. As HJL had a material financial interest in a number of the Bonds, its involvement in the Pension Review and Advice Process created an obvious conflict of interest. Mr Ward was aware of HJL's financial interest in a number of the Bonds, that HJL had initiated and been involved in the development of the pension switching advice model on which the Pension Review and Advice Process was based, and of the close relationship between HJL and CAL. In addition, Mr Ward must have known that two of the directors of HJL (Mark Stephen and James King) were directors of each of the companies issuing the Bonds. However, Mr Ward did not check with Mr Freer whether customers were made aware of these common directorships or of how HJL was remunerated. When questioned by the Authority, Mr Ward accepted that HJL's conflict of interest could have influenced the advice process and created a risk of customers receiving unsuitable recommendations to invest in the Bonds. Mr Ward also accepted that HJL's financial interest should have been disclosed to customers and was not.
- 4.42. If Mr Ward had taken reasonable steps to ensure that Mr Freer had conducted an adequate review of the Pension Review and Advice Process, and to ensure that he had properly scrutinised the documents to be used in the process, Mr Ward would have identified that Mr Freer's review was wholly inadequate and the process

obviously non-compliant. In particular, Mr Freer 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 Bonds did not adequately inform them of their costs, benefits and risks.

- 4.43. In any event, it should have been obvious to Mr Ward, given his experience, that there was a significant risk that the Pension Review and Advice Process was not compliant with the Authority's rules. Mr Ward was aware that BHIM would have no meaningful involvement in the advice to be given and that the process was structured to result in customers being recommended to switch their pensions to SIPPs investing in the Bonds, in a number of which HJL had a material financial interest. However, Mr Ward allowed BHIM to adopt and use the Pension Review and Advice Process without giving any meaningful consideration to whether or not the process was compliant or to the interests of customers.

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

- 4.44. As Mr Ward was aware, BHIM had negligible involvement in the Pension Review and Advice Process. For example:
- (1) BHIM had no involvement in conducting the fact-find with the customer and had no oversight of that process.
  - (2) BHIM had no involvement in preparing the Suitability Report for the customer. Mr Freer told the Authority that he reviewed each Suitability Report before it was sent to the customer, but this claim is not supported by the evidence provided to the Authority. To the extent he did review Suitability Reports, on the account Mr Freer gave to the Authority, Mr Freer's review was limited to checking that the details recorded in the fact-find had been correctly included in the report. He did not give any meaningful consideration to whether the personal recommendation was suitable for the customer. There was also no mechanism for Mr Freer to confirm to CAL that he had reviewed and approved a Suitability Report before it was sent to the customer.

- (3) BHIM had no involvement in any further work done for customers 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 Bonds. As a result he did not know which customers completed Pension Switches or Pension Transfers.
  - (4) Mr Freer had no contact with customers during the Pension Review and Advice Process unless specifically requested.
- 4.45. Having agreed to the Firm adopting the Pension Review and Advice Process in September 2014, Mr Ward permitted the Firm to continue to use the process until the Authority's intervention in July 2015. During this time Mr Ward had ample opportunity to identify and address the obvious deficiencies in the process, but failed to do so.
- 4.46. Mr Ward failed to ensure that the Firm put in place appropriate systems and controls to address the obvious risks associated with the Pension Review and Advice Process. For example, he failed to take reasonable steps to ensure that:
- (1) the Firm adequately monitored HJL's lead generation activities. In fact, as Mr Ward knew, the Firm did not monitor HJL at all and therefore Mr Ward did not know whether leads were obtained by unlawful cold calling;
  - (2) the Firm had access to information about activities conducted by HJL and CAL on behalf of BHIM. For example, Mr Ward failed to ensure that the agreement that he signed on behalf of the Firm with CAL required CAL to provide it with management information. While using the Pension Review and Advice Process, the Firm had no access to management information about the work undertaken on its behalf and, as a result, it had no idea of the number of leads generated, the number of customers at each stage of the process or the number of customers who did not switch or transfer to the Bonds and their reasons for exiting the process.
  - (3) the Firm adequately monitored CAL. Mr Ward was aware that the only method the Firm used to monitor CAL's performance of the Outsourced Functions was through the compliance file checks that Mr Freer conducted, which were perfunctory and did not include listening to calls conducted with

customers. When the Authority showed Mr Ward customer files which included calls made by CAL to customers, he described some of them as *'horrifying'*.

4.47. Mr Ward should have realised that the Firm's compliance arrangements for this business were wholly inadequate.

- (1) Mr Ward knew that Mr Freer was responsible for both the advice provided to customers through the Pension Review and Advice Process and compliance checks on the same files. There was a clear risk of errors going undetected and of customers receiving unsuitable advice as a result. Mr Ward did not consider this risk and did not take steps to mitigate it, for instance by engaging the services of an independent compliance firm. Instead the Firm relied on the internal compliance checks conducted by CAL, despite having no oversight of its work.
- (2) The Pension Review and Advice Process had been operating for over four months before Mr Freer conducted his first compliance check. Mr Ward was aware of this. By then, 112 customers had already switched or transferred their pension to SIPPs with the underlying investment in the Bonds.

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

4.48. Principle 3 of the Authority'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 BHIM, 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 risks (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 (SYSC8.1.7R 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).

- 4.49. Mr Ward agreed to HJL acting as introducer and to HJL and CAL performing the Outsourced Functions on BHIM's behalf without giving any proper consideration to whether they were suitable to perform those activities.
- 4.50. Mr Ward agreed to BHIM working with HJL two days after his initial meeting with a representative of the company, despite knowing that BHIM had carried out no due diligence on HJL other than in connection with its role in relation to the companies issuing the Bonds.
- 4.51. As Mr Ward was aware, BHIM's due diligence on CAL comprised checking CAL's details on the Companies House website and Mr Ward and Mr Freer attending meetings at CAL's offices. However, these meetings were to satisfy Mr Ward and Mr Freer that CAL actually existed and was operating, rather than to assess whether it was fit to perform the Outsourced Functions.
- 4.52. Mr Ward permitted the Firm to work with HJL and CAL until July 2015. Throughout this period, Mr Ward continued to fail to give any proper consideration to whether HJL or CAL were suitable to perform the Outsourced Functions on behalf of the Firm.

### **Motivation**

- 4.53. In deciding that BHIM should adopt and continue to use the Pension Review and Advice Process, Mr Ward focused on the potential for the Firm to earn fees and the opportunity to generate customer referrals for the Firm. He put the Firm's interests before those of its customers and, in doing so, put customers at a significant risk of harm.
- 4.54. Mr Ward told Mr Freer at the outset that '*We actually do nothing but get paid plus trail*' and that he expected the Pension Review and Advice Process to generate fees of £10,000 or more a week.

- 4.55. Mr Ward was also motivated by the expectation that customers who did not wish to invest in the Bonds would be referred by HJL and/or CAL to the Firm for '*bespoke*' advice.

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

- 4.56. Given that all of BHIM's customers 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 a number of the Bonds which was undisclosed to customers, the process clearly put BHIM's customers at serious risk of receiving unsuitable advice and therefore at serious risk of investing in products that were not suitable for them.
- 4.57. Nevertheless, the Authority has reviewed the advice given to 20 of BHIM's customers during the period from 2 December 2014 to 5 June 2015 using recordings of calls and meetings, where they were available, and copies of the customer files maintained by CAL.
- 4.58. The advice given to the customer was unsuitable in all 20 files. As the same process was used for all advice relating to the Bonds, the Authority considers it likely that the advice provided to most, if not all, of BHIM's 265 customers was unsuitable.
- 4.59. 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 Bonds were not suitable due to the illiquid and high risk nature of the investments made by the companies issuing the Bonds, and the limited regulatory oversight of those companies (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 Bonds 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 Bonds did not adequately explain the risks and possible disadvantages of investing in the Bonds and did not disclose to customers that HJL would receive an initial fee of up to 5% of the funds raised from a number of the Bonds (COBS 2.1.1R and 9.2.1R).

4.60. In addition, the Authority identified:

- (1) two cases where investment advice had been given about a Pension Transfer outside of BHIM's permission;
- (2) one case where the recommendation was not suitable as the customer lost existing benefits (a guaranteed interest rate) (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 9.2.1R(1)). For example, one customer confirmed he was disabled and 'retired' on medical grounds and his only source of income was disability welfare benefits. Despite this, he was recommended to transfer all of his existing pension to the SIPP and to invest in the 'moderate' portfolio of Bonds;
- (4) four 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 Bonds even though this would be £2,000 more expensive at the medium return level than remaining in their existing pension scheme;
- (5) 17 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 IFA 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 adviser;
  - (b) an adviser would search the market for a recommendation tailored to the customer's circumstances, when in fact the Bonds 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 investments made by the issuing companies did not perform adequately; and
  - (d) the advice was covered by the FSCS, without making it clear that any losses incurred through the failure of the Bonds 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 and breaches of the Voluntary Requirement**

#### *Advising on Pension Transfers*

- 4.61. The Firm was not authorised to advise on Pension Transfers. However, in allowing HJL and CAL to perform the Outsourced Functions on BHIM's behalf, failing to ensure that BHIM reviewed in a meaningful way advice given through the Pension Review and Advice Process, and failing to ensure BHIM put in place and operated appropriate systems and controls in relation to the Pension Review and Advice Process, Mr Ward exposed the Firm to the risk of breaching section 20 of the Act by carrying on a regulated activity without the relevant permission. This in fact

happened when, between 24 November 2014 and 27 July 2015, the Firm gave advice in relation to five Pension Transfers, and at least four customers transferred as a result.

*Breaches of the Voluntary Requirement*

4.62. On 17 September 2015, at the request of the Authority, the Firm applied for the imposition of requirements on it. Accordingly, the Voluntary Requirement was imposed on the Firm. As a result, BHIM was required:

- (1) to terminate any and all business relationships with HJL and CAL and another third party such that they could not perform any activities on behalf of the Firm;
- (2) not to carry on any activities in relation to Pension Switches and/or Pension Transfers to any SIPP, including completing any business then being processed which had not been completed, until independent verification was provided to the Authority confirming that a robust and compliant advisory process was in place for pension switching advice. The person appointed to provide independent advice had to be a person appointed with prior agreement from the Authority; and
- (3) to implement a process of ongoing independent checks on all new pension SIPP switching advice until such time as the Authority was satisfied the new advisory process referred to above was embedded into the Firm's processes.

4.63. Mr Ward signed the Voluntary Requirement on behalf of BHIM and was aware of the terms of the Voluntary Requirement.

4.64. Between July and December 2015, Mr Ward corresponded with the Authority regarding the terms of the Voluntary Requirement and what activities the Firm would be/was permitted to conduct with regard to certain customers. Between March and 7 September 2016, Mr Ward sought permission from the Authority to allow the Firm to provide advice to certain customers to switch their pensions to a SIPP. Each time, on at least six separate occasions, the Authority reiterated that the Firm could not provide such advice until it had satisfied the terms of the Voluntary Requirement.

4.65. Despite this, between 5 October 2015 and 10 November 2016, Mr Freer and other

advisers at the Firm advised (with Mr Ward's knowledge) a total of 77 customers to switch their pension to a SIPP, including 72 customers who had been introduced to the Firm by Company X.

- 4.66. Mr Ward told the Authority that he relied on assurances from Mr Freer that the account in which the 72 customers introduced by Company X were advised to invest was a personal pension (as distinct from a SIPP). He also told the Authority that he believed that switches to SIPPs investing in discretionary management funds were not covered by the Voluntary Requirement. However, it was clear from the terms of the Voluntary Requirement that BHIM was not permitted to carry on activities in relation to any Pension Switch to any SIPP. There was therefore an obvious risk that the transactions could contravene the terms of the Voluntary Requirement. This risk should have been particularly obvious to Mr Ward as he signed the application for the Voluntary Requirement and corresponded with the Authority in relation to the Voluntary Requirement both before and after it was imposed. Mr Ward did not take any steps to verify the assurances given by Mr Freer or otherwise ensure that the transactions were permitted.
- 4.67. In total approximately £2.9 million of customer funds was switched to SIPPs despite the Voluntary Requirement. When the Authority became aware of this, the Authority used its own-initiative powers to impose further requirements on the Firm such that, with effect from 12 December 2016, it was not permitted to carry on any regulated activity.

### **Misleading the Authority**

*Information provided about the Pension Review and Advice Process and HJL and CAL*

- 4.68. Mr Ward repeatedly provided the Authority with information about the Firm's business which was false, incomplete or misleading. Mr Ward claimed that he had not intended to mislead the Authority. However, he provided information which he must have known at the time was not true. The Authority considers that Mr Ward did so to try to prevent the Authority from identifying misconduct by himself, Mr Freer and the Firm in relation to the Pension Review and Advice Process and the Firm's business arrangements with HJL and CAL.

4.69. Mr Ward provided various false and misleading accounts to the Authority about the Firm's business and its business arrangements with HJL and CAL. In particular:

- (1) Mr Ward repeatedly told the Authority he had no idea that HJL had any involvement in the Pension Review and Advice Process despite:
  - (a) meeting with a representative from HJL on 9 September 2014;
  - (b) corresponding with HJL by email repeatedly in relation to the Pension Review and Advice Process;
  - (c) receiving documents at the meeting on 9 September 2014 and by email on 12 September 2014, which clearly showed HJL's intended involvement in the Pension Review and Advice Process. These included an agreement for HJL to generate leads and perform the Outsourced Functions on behalf of the Firm; and
  - (d) signing an agreement with Company X in around August 2015 which explicitly referred to HJL's involvement in the Pension Review and Advice Process in the recitals section.
  
- (2) Mr Ward also told the Authority that the Firm started working with CAL in December 2014, that he quickly identified concerns with CAL and the Pension Review and Advice Process, and that the Firm took steps to terminate its agreement with CAL in February or March 2015 as a result. This was not true; as mentioned in paragraphs 4.15 and 4.17 above, the Firm started working with CAL in October 2014 and continued to work with it until 27 July 2015. Mr Ward must have known this because he continued to communicate with CAL during this time and was responsible for terminating the Firm's relationship with CAL on 27 July 2015. Further, when providing an explanation to the Authority, Mr Ward was aware of contemporaneous documents which demonstrated that his accounts were not true. On 15 July 2015 Mr Ward obtained a copy of the Firm's contract with CAL, which is dated 13 October 2014. He did not provide the contract to the Authority, despite being aware that the Authority had requested a copy of it. Instead, at a meeting held with the Authority at his request on 14 August 2016, he again told the Authority that the Firm started working with CAL in December 2014.

- 4.70. The Authority considers that Mr Ward deliberately sought to mislead the Authority on these points. Mr Ward emailed Mr Freer on 4 August 2015, following receipt of a letter from the Authority explaining its concerns about the Pension Review and Advice Process and the Firm's relationships with HJL and CAL. Mr Ward wrote that the Authority had, among other things, '*restricted the whole thing to the work we were doing with [CAL]*' and '*said that we were being put into a process led by [HJL]*'. In his email Mr Ward suggested that he and Mr Freer could counter those concerns by telling the Authority that the Firm had identified concerns with the Pension Review and Advice Process '*in the preceding feb and stopped the work process*' and that it had '*no connection legally or actually*' with HJL. These statements are not supported by the contemporaneous documentary evidence with which the Authority has been provided and which would have been available to Mr Ward at the time.
- 4.71. Mr Ward also told the Authority the Firm did not have minutes of board meetings when, in fact, the Firm kept formal minutes of meetings from 14 July 2014 at the latest. The minutes were approved by the board (which included Mr Ward) at the beginning of the following board meeting. Mr Ward must have known this. The minutes contained important information about BHIM's arrangements with CAL. For example, when copies of the minutes were finally provided to the Authority they included minutes of a meeting in February 2015 which stated that '*work with [CAL] has come to fruition and is to be continued*'. None of the minutes provided to the Authority contained any evidence that the Firm terminated its agreement with CAL prior to July 2015.
- 4.72. Mr Ward failed to check the Firm's response when purporting to comply with a requirement imposed on the Firm by the Authority to provide certain of Mr Ward's emails. The Firm provided the Authority with some of Mr Ward's emails but omitted to provide a large number of highly relevant emails, including an email dated 9 September 2014 sent by Mr Ward to Mr Freer which detailed Mr Ward's meeting with HJL and an email from HJL to Mr Ward and Mr Freer attaching the unsigned agreement between HJL and the Firm (referred to in paragraphs 4.5 and 4.13 above). The Firm subsequently provided these emails to the Authority in response to a further requirement imposed by the Authority. If Mr Ward had taken reasonable steps to check the Firm's initial response he would have identified that it was obviously incomplete and omitted relevant material.

*Information provided about Pension Switches to SIPPs and Company X*

- 4.73. Mr Ward provided the Authority with incomplete and misleading information about the Pension Switches that the Firm had conducted in contravention of the terms of the Voluntary Requirement. On 21 September 2016 Mr Ward provided the Authority with a copy of the Firm's new business register which was materially incomplete. The Firm's new business register recorded a total of 30 transactions involving pensions after the date of the Voluntary Requirement. It did not indicate that any of those transactions involved customers switching to a SIPP account. However, the Authority obtained information which showed that, in the period covered by the new business register, the Firm had in fact advised customers on 76 transactions involving Pension Switches to a SIPP account with a single SIPP provider. The new business register provided to the Authority recorded only 29% of those transactions. Mr Ward failed to check the new business register before providing it to the Authority. If he had checked it, it would have been obvious to him that it was incomplete and omitted relevant material.
- 4.74. Mr Ward also failed to be open and cooperative with the Authority, and provided the Authority with incomplete and misleading information, about the Firm's relationship with Company X. The Authority became aware in December 2015 that the Firm had a business arrangement with Company X. The Authority asked Mr Ward to provide details about Company X and its relationship with the Firm. When Mr Ward provided his response in January 2016 he did not provide the full company name but rather indicated that he knew Company X by a trading title. However, Company X's name was easily available to Mr Ward, both from emails he received from Company X and from an agreement he signed with Company X in August 2015. This meant the Authority did not identify full details about Company X until around August 2016. The Authority then established that Company X had close links to HJL.
- 4.75. When questioned by the Authority in February 2016, Mr Ward said that the Firm had trialled a business arrangement with Company X in November 2015 but that it had received no leads from Company X since January 2016. In fact:
- (1) Company X started conducting appointments with customers on behalf of the Firm from around the beginning of September 2015.

(2) As at 11 December 2015, Company X had submitted 225 leads to the Firm and the Firm had accepted 180 of those leads. The leads included 142 customers referred for pension advice. The Authority has seen nine Suitability Reports and draft Suitability Reports for customers who were referred to the Firm for pension advice by Company X. In each case the customer was advised by the Firm to invest in a SIPP account.

4.76. In August 2015, the Firm entered into an agreement with Company X to sell to it customer data which the Firm had obtained as a result of its relationships with HJL. Mr Ward signed the agreement on behalf of the Firm. The Firm received a payment of approximately £163,000 for this sale.

4.77. Mr Ward did not disclose this to the Authority when asked about the Firm's relationship with Company X. Mr Ward also did not provide a copy of the agreement relating to the sale when asked to provide any agreements with Company X. This agreement, which Mr Ward signed on behalf of the Firm, referred to HJL's role in the Pension Review and Advice Process in providing leads. Mr Ward said he did not think he needed to provide the Authority with this agreement because it did not relate to services being provided to the Firm by Company X. Given the Authority's interest in the Firm's dealings with Company X, Mr Ward should have taken reasonable steps to ensure that he properly understood the Authority's request. Had he done so, it should have been obvious to him that the agreement with Company X fell within the Authority's request, as the Authority had asked for a copy of "*any contractual agreement between BHIM and [Company X]*".

## **5. FAILINGS**

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

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

5.2. Between 9 September 2014 and 15 October 2014 (prior to obtaining approval from the Authority to perform controlled functions), Mr Ward's actions in relation to BHIM's adoption and use of the Pension Review and Advice Process to provide advice to BHIM's customers were reckless. The Pension Review and Advice Process put BHIM'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 Ward closed his mind to these risks and unreasonably exposed BHIM's customers to them by allowing BHIM to adopt and use the Pension Review and Advice Process. In particular:

- (1) Mr Ward failed to take reasonable steps to ensure that BHIM undertook adequate due diligence on the Bonds. Mr Ward claims to have relied on Mr Freer to ensure that the Bonds were suitable for customers, but did nothing to satisfy himself that the due diligence carried out by Mr Freer was adequate (other than asking Mr Freer if he was happy with his own due diligence). Had Mr Ward taken reasonable steps to satisfy himself as to the adequacy of BHIM's due diligence on the Bonds, it would have been obvious to him that Mr Freer's due diligence was inadequate and that the Bonds were high risk investments that were unlikely to be suitable for BHIM's customers, except in very limited circumstances.
- (2) Mr Ward 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 a number of which HJL had a material financial interest. He also must have known that two of HJL's directors were directors of each of the companies issuing the Bonds. However, Mr Ward failed to take reasonable steps to ensure that the common directorships and how HJL was remunerated were disclosed to customers.
- (3) Mr Ward failed to take reasonable steps to ensure that the Firm gave due consideration to the documents to be used in the Pension Review and Advice Process, and to how the process would operate in practice. In particular, Mr Ward failed to take reasonable steps to ensure that Mr Freer's review of the documents was adequate. Had Mr Ward taken such steps, it would have been clear to him that Mr Freer's review was wholly inadequate. In any event, it should have been obvious to Mr Ward that there was a significant risk that the Pension Review and Advice Process did not comply with the Authority's rules. However, Mr Ward failed to give any meaningful consideration to whether or not it was compliant.
- (4) Mr Ward failed to take reasonable steps to ensure that BHIM 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 BHIM's customers. Further, he failed to take reasonable steps to ensure that BHIM reviewed in a meaningful way the advice given through the Pension Review and Advice Process, whether before recommendations were sent to customers or at all.

- (5) Mr Ward failed to take reasonable steps to ensure that BHIM put in place appropriate systems and controls and compliance arrangements to oversee and monitor the Pension Review and Advice Process.
- (6) Mr Ward (together with Mr Freer) agreed that BHIM 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 Ward failed to take reasonable steps to ensure that BHIM carried out adequate due diligence on HJL and CAL before agreeing that BHIM would work with them.

5.3. The Authority has concluded, based on the matters set out at paragraphs 5.2 above and 5.5 below, that Mr Ward lacks integrity and is not fit and proper.

#### **Statement of Principle 1**

5.4. Statement of Principle 1 required Mr Ward to act with integrity in carrying out his controlled functions. A person may lack integrity where he acts dishonestly or recklessly.

5.5. During the Relevant Period, Mr Ward breached this requirement in that:

- (1) Mr Ward was approved by the Authority to perform the CF1 (Director) and CF3 (Chief Executive) controlled functions on 16 October 2014. Once approved, Mr Ward acted recklessly in that, while continuing to close his mind to the risks identified in paragraph 5.2 above, and failing to take reasonable steps as described in paragraph 5.2 above, he continued to allow:
  - (a) the Firm to use the Pension Review and Advice Process;
  - (b) the Bonds to be recommended to BHIM's customers; and

(c) the Firm to work with HJL and CAL.

In doing so, Mr Ward exposed BHIM's customers to a significant risk of harm.

- (2) Mr Ward recklessly allowed the Firm to breach a term of the Voluntary Requirement by permitting it to advise (with his knowledge) a total of 77 customers to switch their pension to a SIPP after the Voluntary Requirement had been imposed. Mr Ward was aware of the risk that BHIM might breach the terms of the Voluntary Requirement but, by closing his mind to that risk, recklessly failed to take reasonable steps to ensure that these transactions were permitted.
- (3) Mr Ward told the Authority that:
  - (a) HJL had no involvement in the Pension Review and Advice Process, when Mr Ward knew that it did, in particular by introducing customers to the Firm; and
  - (b) the Firm started working with CAL in December 2014 and sought to terminate its agreement with CAL in February 2015, when Mr Ward knew that the Firm in fact started working with CAL in October 2014 and did not seek to terminate its agreement until July 2015.

The Authority considers that Mr Ward made these false and misleading statements deliberately in order to try to prevent the Authority from identifying misconduct by himself, Mr Freer and the Firm, and thereby acted dishonestly.

- (4) Mr Ward acted dishonestly by deliberately telling the Authority that the Firm did not have minutes of board meetings when, in fact, the Firm kept formal minutes of meetings which he (and others) approved.
- (5) Mr Ward failed to be open and cooperative, and provided the Authority with incomplete and inaccurate information, in response to requests made by the Authority to BHIM. Mr Ward closed his mind to the risk that the information BHIM was providing to the Authority might be incomplete or inaccurate, and recklessly failed to take reasonable steps to ensure that the information provided to the Authority was complete and accurate. As a result, Mr Ward:

- (a) failed to ensure that BHIM complied with a requirement imposed by the Authority to provide it with certain of his emails;
- (b) provided the Authority (on behalf of BHIM) with a copy of the Firm's new business register on 21 September 2016 which was materially incomplete; and
- (c) failed to ensure that BHIM complied with the Authority's request to provide it with the full name of Company X and a copy of the Firm's agreement with Company X.

5.6. The Authority has concluded, based on the matters set out in paragraph 5.5 above, that Mr Ward breached Statement of Principle 1 between 16 October 2014 (when he was approved to perform the CF1 (Director) and CF3 (Chief Executive) controlled functions) and 12 December 2016.

## **6. SANCTION**

### **Financial penalty**

- 6.1. The Authority considers it is appropriate to impose a financial penalty on Mr Ward 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. It is not practicable to quantify any financial benefit that Mr Ward derived directly from the breach.
- 6.5. Step 1 is therefore £0.

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

- 6.6. 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.
- 6.7. The period of Mr Ward's breach of Statement of Principle 1 was from 16 October 2014 to 12 December 2016. The Authority considers Mr Ward's relevant income for this period to be £88,119. This figure comprises salary payments which Mr Ward received from the Firm.
- 6.8. 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%
- 6.9. 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

- 6.10. Mr Ward agreed that the Firm should adopt and use the Pension Review and Advice Process motivated by the prospect of making significant financial gain for doing very little (DEPP 6.5B.2G(8)(a)).
- 6.11. Mr Ward's breach of Statement of Principle 1 caused a significant risk of loss to a large number of customers who switched or transferred their pensions to SIPPs

investing in the Bonds (DEPP 6.5B.2G(8)(c)).

- 6.12. A large number of customers were given advice by the Firm 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 6.5A.2G(8)(d)).

#### Nature of the breach

- 6.13. Mr Ward breached Statement of Principle 1 over an extended period of time (DEPP 6.5B.2G(9)(b)).
- 6.14. Mr Ward failed to act with integrity because he acted dishonestly and/or recklessly throughout the Relevant Period (6.5B.2G(9)(e)).
- 6.15. Mr Ward, as the individual approved to perform the CF1 (Director) and CF3 (Chief Executive) controlled functions, held a senior position at the Firm (DEPP 6.5B.2G(9)(k)).

#### Reckless misconduct

- 6.16. Mr Ward acted recklessly in respect of the Pension Review and Advice Process, as described in paragraph 5.5(1) of this Notice (DEPP 6.5B.2G(11)(a)).
- 6.17. Mr Ward failed to be open and cooperative and recklessly provided the Authority with incomplete and misleading information about the Firm's business arrangements, as described in paragraph 5.5(5) of this Notice (DEPP 6.5B.2G(11)(a)).
- 6.18. Mr Ward recklessly allowed the Firm to contravene a term of the Voluntary Requirement when it advised customers to switch their pensions to a SIPP (DEPP 6.5B.2G(11)(a)).

#### Deliberate misconduct

- 6.19. Mr Ward deliberately provided false and misleading information to the Authority about the Firm's business arrangements with HJL and CAL in order to conceal his and the Firm's misconduct. Mr Ward also deliberately told the Authority that the

Firm did not have minutes of board meetings when, in fact, the Firm kept formal minutes of meetings which he (and others) approved (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 Ward'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 Ward failed to act with integrity (DEPP 6.5B.2(12)(d)); and
- (3) Mr Ward'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 the breach to be level 5 and so the Step 2 figure is 40% of £88,119.

6.23. Step 2 is therefore £35,247.

**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 Ward was aware that the Firm previously acted for customers who invested their pensions in carbon credits (another high risk unregulated investment), that the Authority had concerns with this business, and that, on 16 June 2014, on the application by the Firm, the Authority imposed a restriction on the type of investments that BHIM could offer customers. Mr Ward was therefore aware of the Authority's concerns with customers investing their pensions in high risk unregulated investments (DEPP

6.5B.3G(2)(f));

- (2) on 18 January 2013 and 28 April 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 June 2014 the Authority specifically sent copies of the alerts referred to above to the Firm and highlighted the Authority's concerns. Despite this correspondence with the Authority, about three months later Mr Ward agreed for the Firm to adopt the Pension Review and Advice Process and allowed it to use this process until the Authority's intervention in July 2015 (DEPP 6.5B.3G(2)(f)).

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 £44,058.

#### **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 £44,058 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 £88,116.

#### **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 £88,100 (rounded down to the nearest £100).

### **Penalty**

6.35. The Authority therefore has decided to impose a total financial penalty of £88,100 on Mr Ward 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 Ward'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 Ward 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 Ward to perform the CF1 (Director) and CF3 (Chief Executive) controlled functions at BHIM 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 Ward acted recklessly between 9 September 2014 and 12 December 2016, 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 Ward, and by HJL as a person 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 made by Mr Ward and HJL, 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 Ward 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 Ward 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 each of HJL, CAL, Mark Stephen and James King 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 BHIM as an interested party in the withdrawal of Robert Ward's approval, pursuant to section 63(4) of the Act. BHIM has the right to:
- (1) access evidence pursuant to section 394 of the Act, as described above; and
  - (2) refer to the Tribunal the decision to withdraw Mr Ward'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 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 or copied should therefore be aware that the 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.

#### ***Enforcement Guide***

- 2.5. EG sets out the Authority's approach to exercising its main enforcement powers under the Act.
- 2.6. 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***

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

#### ***Conduct of Business Sourcebook***

- 2.8. 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 rules in 9.4.

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

- 2.9. 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), and 8.1.11AG.

## **ANNEX B**

### **REPRESENTATIONS**

#### **Representations received from Mr Ward**

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

#### The Authority's investigation was inadequate

2. *The Authority's investigation into Mr Ward was inadequate and biased. The Authority has not interviewed or obtained statements from any individual at CAL. Further, the Authority decided the case before it was put to Mr Ward.*
3. The Authority is satisfied that a thorough investigation was carried out. The Authority's investigation was into the conduct of BHIM, Mr Freer and Mr Ward. It has therefore focussed predominately on the accounts and documents provided by those parties. In addition, the Authority obtained material from other parties where it reasonably considered that the material would be relevant to the purpose of its investigation.
4. The Authority has determined this matter in accordance with its usual procedures set out in DEPP. In particular, the decision to give the Notice was taken by members of the Regulatory Decisions Committee (the "RDC"), a committee of the Authority which is independent of the case team in the Authority's Enforcement and Market Oversight Division that carried out the investigation, and none of these RDC members was directly involved in establishing the evidence on which the decision was based. Prior to the RDC reaching the decision that gave rise to the obligation to give this Notice, Mr Ward was given the opportunity to make both written and oral representations to the RDC, which he did. The Authority is therefore satisfied that the decision to give this Notice was not made until after Mr Ward commented on the Authority's proposed action.

#### BHIM's relationship with HJL

5. *BHIM did not enter into any form of contract with HJL, and only came into contact with HJL at a later stage for the provision of Bond funds. The HJL representative who Mr Ward met on 9 September 2014 said that he worked for CAL. HJL was never provided with Mr Freer's electronic signature.*

6. Mr Ward's representation is not consistent with the documentary evidence. The documentary evidence obtained by the Authority (including Mr Ward's email to Mr Freer on 9 September 2014, summarising his meeting with the HJL representative) shows that:
- a. On 9 September 2014, Mr Ward met with the HJL representative, who presented Mr Ward with a business proposition that involved BHIM engaging HJL to generate leads and conduct the Outsourced Functions on the Firm's behalf;
  - b. Mr Ward was presented with the fact sheets for three of the Bonds at the meeting on 9 September 2014. On 10 September 2014, Mr Ward emailed the HJL representative saying: "*I have had all of your doc's scanned and sent to our Compliance director for sign off or query*". Shortly prior to this, Mr Freer had been provided with copies of various documents relating to the Pension Review and Advice Process, including the fact sheets for three of the companies issuing the Bonds;
  - c. In the days following this initial meeting, BHIM agreed to work with HJL, approved various specimen documents for this purpose, and provided HJL with Mr Freer's electronic signature and the Firm's logo. This was done via emails to the HJL representative at an HJL email account;
  - d. HJL provided lead generation services to BHIM until 27 July 2015. During the Relevant Period, Mr Ward received an email from James King, an HJL director, saying a "*list of all the marketing companies we are working with from a lead generation front – I am aware that you have had a few calls from clients to check whether or not companies who had contacted you are legitimately working on your behalf*"; and
  - e. HJL performed certain of the Outsourced Functions prior to 13 October 2014. The HJL representative sent to BHIM (from an HJL email account) a service agreement for HJL to carry out lead generation and the Outsourced Functions. The Authority considers that, while this agreement was not signed, it reflects the arrangements that were in place prior to BHIM entering into an agreement with CAL on 13 October 2014. The agreement with CAL was broadly the same as the unsigned agreement with HJL.

However, lead generation was not included in the agreement with CAL, as this service continued to be provided by HJL.

BHIM conducted adequate due diligence on the Bonds, and they were not high risk

7. *Mr Ward lacked the relevant expertise to assess the Bonds. He relied on Mr Freer to conduct the due diligence, and was satisfied that Mr Freer went beyond all levels required. It was appropriate to rely on Mr Freer as he was a fellow director with greater knowledge.*
8. *It was normal to ask a product provider or issuing company for their due diligence pack. In this case, Mr Ward insisted on seeing the due diligence file, and discussed the suitability of the Bonds with Mr Freer.*
9. *In any event, the Bonds were not high risk. The due diligence files contained a legal opinion stating that the Bonds were standard assets. Therefore, they were suitable for retail customers. In relation to the portfolios, combining different Bonds in the portfolios did alter the risk profile.*
10. As a director and chief executive of BHIM, Mr Ward had a responsibility to ensure that BHIM performed adequate due diligence on the Bonds to ensure that they were suitable for its customers. Mr Ward did not need to carry out the due diligence himself. However, having delegated the due diligence to Mr Freer, Mr Ward should have taken reasonable steps to ensure that Mr Freer's due diligence was adequate. Mr Ward failed to take such steps.
11. In interview with the Authority, Mr Ward was asked what he did to satisfy himself that Mr Freer had conducted the due diligence on the Bonds to a reasonable standard. Mr Ward responded: *"Well, in the same way that I do with all these things, I asked the question "are you satisfied?" I can't go beyond that".* The Authority considers that this approach does not satisfy Mr Ward's duty as a director and chief executive, and that, as set out in paragraph 4.26 of the Notice, Mr Ward should have, for example, asked Mr Freer what information he considered as part of his due diligence and discussed Mr Freer's findings with him.
12. The Authority has seen no contemporaneous evidence that Mr Ward insisted on seeing the due diligence files. Had he done so, it should have been obvious to him that Mr Freer's due diligence was inadequate and that the Bonds were high risk. Mr Freer

relied solely on information provided by HJL, despite the fact that it had a material financial interest in the Bonds. Further, in interview with the Authority, Mr Freer said: *"I did not do enough to satisfy myself of the make up of these Bonds as my assessment was made using my own experience and I was not 100% aware of all of the underlying investments"*.

13. The legal opinion in BHIM's due diligence files was addressed to the companies issuing the Bonds and considered, among other things, the question of whether the Bonds were 'standard assets' (i.e. assets listed in the table at IPRU-INV 5.9.1R in the Handbook, and that are capable of being accurately and fairly valued on an ongoing basis and readily realised within 30 days, whenever required). The legal opinion did not consider or address the risk profile of the Bonds, or their suitability for BHIM's customers. As such, it does not follow that, because the legal opinion indicated that the Bonds might be standard assets (although the opinion acknowledged that *"we cannot guarantee a willing buyer"*), the Bonds were suitable for BHIM's customers.
14. For the reasons set out in the Notice, the Authority considers that the Bonds were high risk. Combining the Bonds in various portfolios might alter the risk of a customers' investment. However, given that all the Bonds were high risk, and the portfolios contained only the Bonds and, in some cases, a small percentage of cash, the Authority considers that the portfolios containing the Bonds were all high risk, and that it was misleading to describe the portfolios as "cautious", "moderate" and "adventurous".

#### The Pension Review and Advice Process

15. *HJL did not design the Pension Review and Advice Process, and it was not structured so that customers would be recommended the Bonds.*
16. *The purpose of the Pension Review and Advice Process was to exclude people for whom the Bonds were not suitable, rather than include them. This is reflected in the fact that 13.5% of customers that entered the Pension Review and Advice Process invested in the Bonds, whereas 86.5% of customers were referred to BHIM for further advice. The majority of leads generated resulted in an internal BHIM referral to a level 4 qualified IFA.*
17. As set out in the Notice, HJL initiated and influenced the development of the pension switching advice model on which the Pension Review and Advice Process was based.

Further, this model was presented to Mr Ward by an HJL representative who, according to Mr Ward, claimed that HJL had "*large numbers of people wanting to invest in his normal bond type of funds*". The Authority therefore considers that the model was presented to Mr Ward with a view to BHIM adopting it and advising customers to invest in the Bonds.

18. While the Software may have excluded people for whom BHIM considered the Bonds would not be suitable, under the Pension Review and Advice Process, all other customers were advised to invest in the Bonds. In fact, the Bonds were the only products available for recommendation through the Pension Review and Advice Process. Further, the fact-find contained questions designed to steer customers towards the features of the Bonds: customers were asked only two questions regarding their investment objectives, one of which related to fixed returns and the other to capital guarantees. The Authority is therefore satisfied that the Pension Review and Advice Process was structured to recommend the Bonds to BHIM's customers.
19. It is not clear on which figures Mr Ward relies in respect of his assertion that 86.5% of customers were referred to BHIM for further advice. CAL's statistics, as at 15 July 2015, show that:
  - a. 175 cases had completed and 540 were not proceeding;
  - b. of those cases not proceeding, only 22 customers had been advised against investing in the Bonds (4.1% of the cases not proceeding; 3.1% of closed cases). 54.3% were not proceeding because the customer was no longer interested and a further 16.3% were not proceeding because CAL was no longer able to contact them. The remainder were not proceeding for a variety of reasons, including that the customer's fund was too small or contained guarantees;
  - c. 1,427 cases were still in progress and at different stages of the Pension Review and Advice Process; and
  - d. of those that were in progress, only 77 (5%) had been categorised as having been referred or requiring referral to an IFA.

## BHIM's adoption and use of the Pension Review and Advice Process

20. *BHIM entered a service agreement with CAL for lead generation and administration services only. Such an arrangement did not require the level of review suggested by the Authority. In any event, Mr Freer reviewed and signed-off the generic reports, and Mr Ward looked at the lead delivery process and the computerised exclusion process to ensure that it was not a 'one size fits all' approach.*
21. *Mr Ward was not aware of HJL until after BHIM entered into an agreement with CAL. Further, HJL was not involved in the advice process, so there was no conflict in recommending the Bonds to customers.*
22. BHIM's agreement with CAL provided that, among other things, CAL 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). In those circumstances, the Authority considers that BHIM should have carried out, for example, an assessment of the suitability of CAL's management and the quality of its staff.
23. In relation to the steps that Mr Ward claims were taken, the Authority considers that:
  - a. while Mr Freer agreed to the use of template documents, his review of those documents was inadequate, and he approved their use only four hours after receiving them;
  - b. Mr Ward has not explained what steps he took in relation to the "lead delivery process", and he has given various accounts to the Authority to suggest that his review of that process was inadequate. In particular:
    - i. during the course of the Authority's visit to BHIM's office on 15 and 16 July 2015, Mr Ward said that BHIM had never got to the bottom of the lead generation process;
    - ii. in an interview with the Authority on 17 February 2016, Mr Ward said that he did not take any steps to check with CAL how they sourced leads because he did not expect that CAL would disclose this information. Mr Ward said that the only step taken by BHIM was to say to CAL that BHIM would not accept leads that had been cold called; and

- iii. in an interview with the Authority on 21 October 2016, Mr Ward said that he asked CAL about the source of its leads but that CAL refused to answer his questions; and
  - c. Mr Ward's assertion that he considered the "computerised exclusion process" is not supported by any contemporaneous evidence, and contrasts with previous accounts he has given to the Authority in which he claimed that he relied on Mr Freer to satisfy himself that the Pension Review and Advice Process complied with regulatory requirements.
24. Accordingly, the Authority is not persuaded that Mr Ward took adequate steps to satisfy himself that BHIM conducted an adequate review of the Pension Review and Advice Process, either before he decided that BHIM should adopt the process, or at all.
25. In the light of the facts described in paragraph 6 of this Annex, Mr Ward was aware of HJL's involvement in the Pension Review and Advice Process, and that it had initiated and influenced the development of the process. He was also aware of HJL's material financial interest in a number of the Bonds that were recommended through the process. The Authority therefore considers that HJL's role in the Pension Review and Advice Process created an obvious conflict of interest that Mr Ward should have been aware of.

#### BHIM's role in the Pension Review and Advice Process

26. *BHIM had full control of the advice and compliance processes. BHIM only allowed advice to be given by Mr Freer, who was involved in the Pension Review and Advice Process. He could see the fact-find online as part of his review at the point of advice. The Software produced the Suitability Reports, which Mr Freer could see online and consider alongside the fact-find. He was then able to confirm if he was happy with the suitability of advice before telling the computer system that he was prepared for the report to be sent. He could, and did, interrupt a number of reports for clarification and, in some cases, refusal.*
27. *BHIM adequately monitored CAL. In addition to Mr Freer's file reviews, the Firm had access to management information and Mr Ward made two visits to CAL's offices and sat in on their compliance team's file checking. Mr Ward's role in relation to the file checking mitigated the risk created by Mr Freer's dual responsibility for both the advice*

*given through the Pension Review and Advice Process and the compliance checks on that advice. Mr Ward accepts that he later described a call with a client as 'horrifying'; this was in relation to the method of speaking to the client, rather than the content.*

28. *It is misleading to say that the advice process had been in place for four months before Mr Freer's first compliance visit. Mr Freer's visit took place as soon as there were files for him to review. These file reviews were in addition to the daily work of online file checking.*
29. Mr Ward's description of Mr Freer's role is not consistent with Mr Freer's account of his role. Mr Freer accepts that he was not involved in the fact-finding process. Even if Mr Freer had been involved, the nature of the fact-finding process, which included leading questions, was such that customers were steered towards the features of the Bonds.
30. In relation to the review of Suitability Reports, the Authority has been provided with no evidence to suggest that there was any mechanism built into the Software to enable Mr Freer to confirm to CAL that he had reviewed and approved a Suitability Report. Indeed, the Authority has no evidence that there was a mechanism in the Software or otherwise that would prevent a Suitability Report being sent to a client without it first having been reviewed by Mr Freer. Mr Freer has been unable to provide the Authority with a clear explanation as to the access he had to the Software and how he confirmed to CAL that a Suitability Report had been reviewed and approved.
31. Mr Ward's representation that he sat in on file reviews was first made to the Authority in connection with the Warning Notice. It is not something that Mr Ward raised during the Authority's investigation. Mr Ward has not explained his role in relation to CAL's file checking process, and the Authority has seen no contemporaneous evidence that Mr Ward (or Mr Freer) had any substantive involvement in determining the scope of the checks to be performed, in the actual process of checking files or in assessing the robustness of those checks. Further, even on his own account, Mr Ward only sat in on CAL's file checking on two occasions, despite the fact that the Pension Review and Advice Process was used between October 2014 and July 2015.
32. The earliest Suitability Report identified by the Authority is dated 29 October 2014 and one of the SIPP Providers had received funds from 112 customers by the date of Mr Freer's first file check on 11 February 2015. It is therefore incorrect for Mr Ward to state that the first compliance visit took place as soon as there were files for him to review.

### Failures in BHIM's due diligence on HJL and CAL

33. *HJL did not perform the Outsourced Functions on behalf of BHIM and it was never intended that it do so. HJL was only involved as a provider of the Bonds. As such, there was no need to carry out due diligence on HJL before entering into the services agreement with CAL.*
34. *In relation to CAL, BHIM's due diligence was appropriate given the proposed services that CAL would be providing, namely, lead generation and administrative functions. Mr Ward relied on Mr Freer to conduct due diligence on CAL. Both Mr Ward and Mr Freer visited CAL's offices to satisfy themselves that CAL was capable of performing the services on behalf of BHIM. The due diligence on CAL did not reveal any link between CAL and HJL.*
35. As set out in the Notice and paragraph 6 of this Annex, the Authority considers that HJL generated leads under the Pension Review and Advice Process. When BHIM agreed to adopt that process, the intention was that HJL would perform the Outsourced Functions, and in practice, HJL did perform certain of those functions until 13 October 2014. BHIM, therefore, should have undertaken due diligence on HJL to determine whether it was suitable to perform both the functions that it was intended to perform, and the functions that it did in fact perform. BHIM conducted no such due diligence, and Mr Ward took no steps to ensure that it did.
36. BHIM's due diligence on CAL was inadequate. In interview with the Authority on 17 February 2016, Mr Ward said that the visit to CAL's office was to make sure that the company existed. There is no evidence, other than the assertions in his representations, that Mr Ward took any steps to assess the suitability of CAL to perform the Outsourced Functions. As set out in paragraph 22 of this Annex, in the light of the functions that CAL performed under the Pension Review and Advice Process, BHIM's due diligence could have included, for example, an assessment of the suitability of CAL's management and the quality of its staff.
37. In any event, Mr Ward must have been aware of links between CAL and HJL. The HJL representative who Mr Ward met on 9 September 2014 later became a senior individual at CAL. Mr Ward has claimed that he met a representative from CAL rather than HJL at that meeting. However, in interview with the Authority on 20 October 2016, he acknowledged that *"we would be foolish to say that we didn't know that there was an association between [the HJL representative] and Hennessy Jones,*

*because we did. But we never knowingly, or intended to have any association with Hennessy Jones as a company, our only intention was to use City Admin". Further, during the Relevant Period, Mr Ward was copied into an email from Mr King to one of the SIPP Providers that refers to CAL as "our outsourcing company".*

The Authority's review of 20 customer files

38. *The Authority's file review was inadequate for the following reasons:*

- a. *there is no evidence that customers that went through the Pension Review and Advice Process were vulnerable due to age, ability to replace capital, medical conditions or personal circumstances;*
- b. *the financial interest of HJL in the Bonds was the management fee which all fund providers are paid;*
- c. *customers requested fixed returns and the fact-find gathered sufficient information to cover this point;*
- d. *the fact sheets for the Bonds contained an explanation of the risks and disadvantages of the Bonds, and stated that HJL would receive a fee of 5%; and*
- e. *in relation to the two Pension Transfers, BHIM gave advice at a time when the customers' employers had ceased making contributions to their occupational pension schemes.*

39. The Authority responds to Mr Ward's representations on its file review in turn below:

- a. One customer was vulnerable as he was retired on medical grounds and relied on disability benefit as his only source of income. He therefore had a limited ability to replace capital. Another customer said that he had no savings and was unable to contribute to his pension, and so too had a limited ability to replace capital. The Authority also identified a further three customers who were on a very low income, and another customer who was only five years from retirement.

- b. The Authority accepts that HJL's financial interest was the fee it was due to be paid. However, the Authority's concern is that this fee was not disclosed to BHIM's customers.
- c. The fact-find used in the Pension Review and Advice Process contained one leading question about fixed returns and only one other question relating to the customer's investment objectives. Further, the fact-find process gathered insufficient information to enable suitable advice to be given to customers, and a preference for fixed returns is an inadequate basis on which to have recommended customers to invest in the Bonds.
- d. Neither the fact sheets shown to Mr Ward in his initial meeting with the HJL representative, nor the fact sheets sent to customers, contained explanations of the risks or disadvantages of the Bonds, or disclosed HJL's interest in the Bonds.
- e. It appears that Mr Ward considers that a transaction will not constitute a Pension Transfer where the funds are transferred from an occupational scheme to which the customer (or the employer) has ceased making contributions. This is not correct. The definition of a Pension Transfer in the Handbook does not specify that an employer must be making contributions to a scheme in order for a transfer of funds from that scheme to amount to a Pension Transfer.

#### Breaches of the Voluntary Requirement

- 40. *The Voluntary Requirement was varied during a meeting with the Authority. The variation permitted the Firm to advise customers to switch their pensions to discretionary managed platforms. The 77 pension switches transacted after that meeting did not breach the terms of the Voluntary Requirement as they were within the scope of the variation agreed with the Authority.*
- 41. There is no evidence that the Authority agreed that the 77 transactions identified by the Authority could proceed or would fall outside the terms of the Voluntary Requirement. The SIPP provider for each of those transactions has confirmed to the Authority that the customer transferred their pension to a SIPP. The correspondence between the Authority and Mr Ward and BHIM's legal representative consistently emphasised that BHIM was not permitted to conduct new pension switching business

to SIPPs. Therefore, it should have been clear to Mr Ward that a pension switch to a discretionary managed platform would breach the terms of the Voluntary Requirement if the customer's investments were placed in a SIPP, as was the case in the 77 transactions identified by the Authority.

#### Misleading the Authority

42. *Mr Ward did not provide the Authority with information that was false, incomplete or misleading, and did not provide information that he knew to be untrue. In particular:*

- a. *Mr Ward maintains that HJL did not have any involvement in the Pension Review and Advice Process;*
- b. *In relation to the dates when CAL carried out the Outsourced Functions, Mr Ward's answers were given under duress in a compelled interview, without the ability to check facts;*
- c. *Board meetings were a soft process of informal discussions that were mostly not minuted;*
- d. *Mr Ward is not IT literate and so did not realise that he had not provided all of the emails that the Authority had required BHIM to produce. It only became apparent later that a large number of emails had been archived and not properly restored;*
- e. *The new business register was prepared by administrative staff and even if Mr Ward had checked it before it was provided to the Authority, he would not have noticed the issue;*
- f. *Mr Ward made the Authority aware of BHIM's relationship with Company X. At the time the Authority asked him for information about Company X, the business venture with that company was just an idea.*

43. The Authority responds to Mr Ward's representations that he did not mislead the Authority in turn below.

- a. As set out in the Notice, and in paragraph 6 of this Annex, the Authority considers that HJL was involved in the Pension Review and Advice Process, and that Mr Ward was aware of its involvement.

- b. Mr Ward told the Authority that the firm's relationship with CAL started in December 2014 on a number of occasions, not just in interview. In any event, Mr Ward had two months' notice of the interview with the Authority and was not pressed in interview to provide a timeframe for BHIM's relationship with CAL. He nonetheless chose to provide definite and misleading answers.
- c. BHIM ultimately provided the Authority with minutes of its board meetings, so Mr Ward's statement to the Authority that BHIM did not produce minutes of board meetings was clearly incorrect. Mr Ward must have known this as he was on the board which, at the start of a board meeting, approved the minutes from the previous meeting.
- d. The scope of the requirement to provide emails to the Authority was broad. Mr Ward confirmed in interview that the emails were collated on his instructions, but that he did not check what was provided. The Authority considers that he acted recklessly by not doing so. Had he done so, it would have been obvious that the response to the Authority was incomplete. Not only did the response contain a small number of emails (given the scope of the requirement), but it omitted obviously relevant communications.
- e. The discrepancies in the information provided to the Authority and the new business that the Firm had carried out was significant. The new business register recorded less than one third of transactions with a SIPP provider and omitted approximately £60,000 of remuneration received from that SIPP provider. The Authority considers that, as the chief executive of BHIM, Mr Ward would have been able to identify that the new business register provided to the Authority was incomplete.
- f. The Authority accepts that Mr Ward made it aware of BHIM's relationship with Company X. However, the Authority's finding is that, when asked to provide further information, Mr Ward provided incomplete and misleading information. Mr Ward's representation does not, therefore, address the Authority's finding.

## Penalty

44. *There is no need to refer to the carbon credits matter as there was no criticism of BHIM arising from its carbon credits business.*
45. *The reliance on the Authority's pension alerts is inappropriate as those alerts relate to non-standard assets, whereas the Bonds were standard assets.*
46. The Authority considers that there were material similarities between features of BHIM's carbon credits business and features of BHIM's Bonds business. In particular, the Authority had concerns with the Firm's carbon credit sales process and, during the course of its discussions with the Firm, the Authority made the Firm aware of its concerns regarding firms advising customers to invest in unregulated products through SIPPs. Notwithstanding this, Mr Ward, with Mr Freer, agreed to BHIM adopting the Pension Review and Advice Process a matter of months following the Authority's intervention.
47. In relation to the pension alerts, the Authority considers that the contents of the alerts were highly relevant to the Firm's subsequent pension advice business. For example, the alerts related to assessing the suitability of pension advice, regardless of whether the underlying investments are regulated.
48. The Authority therefore considers that it is appropriate to regard the carbon credits matter and the Authority's pension alerts as aggravating factors in the calculation of Mr Ward's penalty.

## **Representations received from HJL**

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

There is no reason to mention HJL, Mr King or Mr Stephen

50. *HJL did not provide any administrative or equivalent services to BHIM. Such services were provided exclusively by CAL. There is therefore no reason to mention HJL, Mr King or Mr Stephen in the Notice.*
51. The Authority considers that when BHIM adopted the Pension Review and Advice Process, it was intended that, initially at least, HJL would perform the Outsourced Functions. Accordingly, a draft services agreement between HJL and BHIM was sent

to Mr Ward on 12 September 2014. It appears that HJL and CAL later agreed that CAL would perform the Outsourced Functions, and on 13 October 2014, CAL entered into an agreement with BHIM to do so. There is documentary evidence prior to 13 October 2014 showing that certain of the Outsourced Functions were being performed at that time. For example, letters were sent seeking authority from customers to contact their existing pension provider. Given that the agreement with CAL was not in place until 13 October 2014, it appears that HJL were carrying out these functions before that agreement was in place. As such, the Authority considers that it is appropriate to refer to HJL performing certain of the Outsourced Functions prior to 13 October 2014.

52. The Authority also considers it appropriate to refer to HJL as it generated leads for BHIM under the Pension Review and Advice Process and it had a material financial interest in the products recommended through that process.
53. For the reasons in paragraphs 60 and 65 below, the Authority considers it appropriate to mention Mr Stephen and Mr King, and their common directorships.

The development of the Software and the pension switching advice model

54. *HJL did not develop the Software or the pension switching advice model. They were instead designed by two individuals at another company independent of HJL ("Company A").*
55. 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.
56. 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

57. *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.*
58. The Authority has not found that HJL cold called customers. Instead, the Authority has found that Mr Ward and BHIM 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 unlawful cold calling. As such, Mr Ward (and BHIM) did not know whether leads were generated by unlawful 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

59. *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.*
60. This Notice relates to the conduct of Mr Ward and the steps he took to mitigate the risks 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 Ward's misconduct.

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

61. *HJL's qualification to operate the Software was its having staffing and organisational capacity to do so. Moreover, the Authority has failed to explain on what basis it implicitly contends that HJL was unsuitable.*
62. When outsourcing functions to a third party, authorised firms must comply with Principle 3 of the Authority's Principles for Businesses. They should also have regard

to applicable rules and guidance in SYSC. In relation to BHIM, the relevant guidance is set out in paragraph 4.48 of the Notice. In the light of Principle 3 and this guidance, Mr Ward should have taken reasonable steps, such as ensuring that BHIM conducted adequate due diligence, to ensure that HJL was suitable to perform the functions that were outsourced to it.

63. Mr Ward did not take reasonable steps, or ensure BHIM conducted 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).

#### Reference to Mr King's common directorship

64. *Mr King was director of HJL for part of the Relevant Period and was also a director of the entities that issued the Bonds. However, the corporate governance of those entities was structured in such a way that he was able to recuse himself from directors' decisions in case of conflict. The nature of the investments of the companies issuing the Bonds was such that there were few, if any, circumstances in which Mr King needed to recuse himself.*

65. For the reasons set out in paragraph 60 in relation to Mr Stephen, it is necessary to describe Mr King's common directorships in the Notice in order to explain Mr Ward's misconduct and the Authority has made no finding as to whether Mr King adequately managed any actual or potential conflicts that he had.

#### Anonymisation of HJL, Mr Stephen and Mr King

66. *If other companies can be anonymised (for example, Company X) without undermining the purpose of the Notice, there is an unreasonable difference in treatment between those parties that are named (in particular HJL, Mr Stephen and Mr James), and those who are not. If the Authority insists on anonymisation for Company X 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 the Third Parties are not identified by name. HJL's commercial interests will be significantly harmed if it is named in the Notice.*

67. The Authority does not agree that there is an unreasonable difference in treatment between HJL and Company X. This is for two reasons: First, because of HJL's central

role in the Pension Review and Advice Process, compared to that of Company X. In particular, HJL initiated and influenced the development of the pension switching advice model, brought the model to the attention of the Firm, performed certain of the Outsourced Functions and had a material financial interest in a number of the Bonds. 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 Voluntary Requirement is published on the Authority's Financial Services Register and names HJL as one of three companies that BHIM must cease business relationships with. 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.

68. The Authority has decided to name Mr Stephen and Mr King for similar reasons. As Companies House records show they were the only two directors of HJL during the period that BHIM was using the Pension Review and Advice Process, the Authority considers they could be identified even if anonymised. Further, as directors, they were responsible for the day-to-day operation of HJL during the Relevant Period.