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FINAL NOTICE

To: Patrick Gray

Date of Birth: 1 October 1961

IRN: PGG01034

Dated: 1 March 2016

1 ACTION

1.1 For the reasons given in this notice, the Authority hereby makes an order, pursuant to section 56 of the Financial Services and Markets Act 2000 (the "Act"), to prohibit Patrick Gray ("Mr Gray") from performing any function in relation to any regulated activities carried on by any authorised person, exempt person or exempt professional firm. This order takes effect from 1 March 2016.

2 SUMMARY OF REASONS

2.1 During the period between 4 September 2008 and 22 April 2010 (the "relevant period"), Mr Gray was an adviser on behalf of PCD Wealth and Pensions Management ("PCD"). PCD was not a legal entity, but merely a name under which an individual named Mark Kelly traded in the UK.

2.2 During the relevant period, Mr Gray demonstrated a lack of honesty and integrity such that he fails to meet the minimum regulatory standards of the Authority in that he:

(a) provided investment advice to at least five customers in the knowledge that

he had no qualifications or training to give investment advice, and in one case gave unsuitable advice to a customer to invest in UCIS, being reckless as to the risk that the advice was unsuitable;

- (b) recklessly provided customers with misleading information in relation to costs and associated charges, and arranged for customers to sign incomplete forms despite being aware of the risk that fees payable to PCD from the customers' funds could later be added without their knowledge or consent, thereby allowing PCD to conceal information about fees and charges from them;
- (c) until 16 October 2009, recklessly provided customers with pension reports containing assurances that customers would receive advice and recommendations as to the investment of their pension funds, when he was aware of the risk that this advice might not be provided and that customers' funds might instead be invested without their knowledge or consent; and
- (d) from 16 October 2009 onwards, knowingly and dishonestly gave a false and misleading impression by providing customers with pension reports containing false and misleading assurances that customers would receive advice and recommendations as to the investment of their pension funds prior to investments being made (which did not happen, save in one case), when he was aware that customers' funds were being invested without their knowledge or consent.

2.3 In addition, subsequent to the relevant period Mr Gray intentionally and dishonestly misled the Authority in a compelled interview by falsely stating (i) that he did not advise customers and (ii) that the SIPP application forms he presented to customers to sign contained information about fees payable to PCD from the customers' funds when customers signed them. This further demonstrates Mr Gray's lack of honesty and integrity.

2.4 The consequences of Mr Gray's failings were particularly serious for the following reasons:

- (a) PCD potentially put many customers' pensions at risk by arranging for over 350 customers in the UK to be advised and investing over £23,943,000 of those customers' money (an average investment of over £68,000 per customer) in potentially unsuitable investments between August 2008 and July 2010;
- (b) two Unregulated Collective Investment Schemes ("UCIS") in which PCD invested customers' funds have suspended redemptions from the relevant funds. As a result, customers cannot access the portion of their pension funds invested in these UCIS until the suspension is lifted, so in certain cases they cannot use these funds to support themselves in retirement. The proportion of customers' pension funds invested in these two UCIS was considerable, typically over 45% in the cases the Authority has reviewed. The Authority reviewed one case in which PCD initially invested the customer's entire pension fund in UCIS (then sold half the holding six months later and reinvested it in a structured product, again without informing the customer or obtaining their consent);
- (c) as set out in further detail below customers were not given a choice in relation to whether certain fees would be deducted from their pension

funds. The impact of these fees on the customers' pension funds has been considerable. For example, in the ten month period between December 2009 and October 2010, one customer who started with pension funds of £101,125 paid fees of £4,217.30 to PCD and incurred fees of £2,788.77 to other parties, resulting in a reduction of capital of £7,006.07 (6.9% of the original fund) during this period alone; and

(d) some of the customers who provided witness statements to the Authority have also referred to the wider impact to their physical and emotional health caused by the situation in which they find themselves, with respect to their pension provision, in part as a result of the dishonesty and recklessness of Mr Gray.

2.5 The Authority therefore proposes to make an order, pursuant to section 56 of the Act, prohibiting Mr Gray from performing any function in relation to any regulated activities carried on by any authorised person, exempt person or exempt professional firm. This order takes effect from 1 March 2016.

2.6 The Authority considers that this action is necessary and proportionate and that it supports the Authority's operational objective of securing an appropriate degree of protection for consumers.

2.7 The Authority has reviewed the cases of eight of Mr Kelly/PCD's customers and obtained witness statements from these customers. Save where not expressly stated, or if the context requires otherwise, references below to the cases reviewed by the Authority, or to witness statements, are to those eight customers.

3 DEFINITIONS

"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

"Customer A" means the customer to whom Mr Gray recommended UCIS on 19 January 2010 and 5 February 2010

"Customer B" means the customer who notified Mr Gray that investments had been made without his knowledge or consent on 16 October 2009

"EG" means the Authority's Enforcement Guide

"IFA" means Independent Financial Adviser

"IMD" means the Insurance Mediation Directive

"PCD" means PCD Wealth and Pension Management

"Pension Switching" and "Pension Transfer" mean respectively switching from a one pension scheme to another and transferring from an occupational pension scheme to a personal pension scheme

"Portfolio Bond" means the unit-linked whole of life insurance policy which sat as

an investment product within customers' SIPPs

"Portfolio Bond Provider" means the firm which provided the Portfolio Bonds into which PCD chose to invest customers' funds

"relevant period" means September 2008 to 22 April 2010

"SIPP" means self-invested personal pension scheme

"SIPP Provider" means the firm which provided the SIPPs which PCD recommended to its customers

"UCIS" means unregulated collective investment scheme

"UCIS A" means the unregulated collective investment scheme which Mr Gray recommended to Customer A on 19 January 2010 and 5 February 2010

"UCIS B" means the unregulated collective investment scheme which Mr Gray recommended to Customer A on 5 February 2010

4 FACTS AND MATTERS RELIED ON

Background

- 4.1 During the relevant period, Mr Gray acted as an adviser on behalf of PCD. PCD was not a legal entity, but merely a name under which an individual named Mark Kelly traded in the UK.

Overview of PCD's sales and investment process

- 4.2 During the relevant period, PCD arranged for advice to be given to over 350 customers in the UK on pension switches and pension transfers and invested over £23,943,000 of those customers' funds (an average investment of over £68,000 per customer).
- 4.3 Mr Gray provided such advice in a number of these cases, and Mr Gray and PCD/Mr Kelly's sales and investment process typically worked as follows:
- a) Mr Gray contacted a prospective customer on an unsolicited basis and arranged a meeting with the customer with a view to discussing their pension arrangements;
 - b) At the meeting, Mr Gray discussed with the customer the benefits of switching/transferring their pension into a SIPP;
 - c) Mr Gray also collected customer identification documents (including copies of passports) from the customer and submitted them to PCD;
 - d) Mr Gray provided the customer with a document entitled *Pension Report*. In the pension reports reviewed by the Authority, the recommendation was invariably to switch/transfer their existing pension(s) into a SIPP;
 - e) Mr Gray completed certain sections of a SIPP application form with the customer and had the customer sign the partially completed form. Some sections, notably the section specifying the amount of fees payable to PCD

from the customer's funds, were left blank by Mr Gray but were signed by the customer. Partially completed forms were then sent to PCD;

- f) Mr Gray told the customer when he presented the pension report to them that a further meeting would take place at a future date at which recommendations would be made about investing the funds within the SIPP. The further meeting to discuss investments did not however take place or, if it did, it did not lead to the customer agreeing to invest the funds within the SIPP;
- g) The remaining sections of the SIPP application form (including the section specifying fees payable to PCD from the customer's funds) were completed by or on behalf of Mr Kelly without further reference to the customer;
- h) Mr Kelly submitted the SIPP application form and customer identification documentation to the SIPP provider. Sections of an application form (either as a separate form or as part of the SIPP application form) were completed by Mr Kelly (or on Mr Kelly's behalf) to allow a bank account to be opened to hold the customer's funds which had been transferred into their SIPP. As part of the bank account application, it was arranged for correspondence relating to the customer's SIPP bank account to be sent to PCD rather than directly to the customer;
- i) Mr Kelly completed and signed parts of an application form for a Portfolio Bond in the customer's name. The Portfolio Bond application form did not require the customer's signature and Mr Kelly did not inform the customer that the application was being made;
- j) As part of the application, Mr Kelly completed a form identifying himself as the customer's investment adviser. This form enabled Mr Kelly to give investment instructions on the customer's behalf without the customer's knowledge or consent, and enabled PCD to earn an annual fee. The customer did not have sight of this form;
- k) Mr Kelly then completed and submitted dealing instructions to invest the monies held in the customer's Portfolio Bond in underlying investments, including UCIS. The dealing instructions did not require the customer's signature and Mr Kelly did not inform the customer that the investments were being made; and
- l) Customers found out at a later date that their money had been used to buy the Portfolio Bond and underlying investment products including UCIS without their knowledge or consent and that fees had been deducted from their funds.

4.4 Further details of Mr Gray's role in PCD's sales and investment process are set out below.

Pension switching/transfer advice

4.5 The Authority obtained witness statements from eight customers. Mr Gray advised five of these customers. All five customers told the Authority that Mr Gray recommended to them a pension switch/transfer from the customer's existing scheme to a SIPP with the SIPP Provider. Mr Gray made this recommendation orally and it also appeared in writing in pension reports, which he provided to

customers.

- 4.6 Mr Gray told the Authority in interview that all the advice he had provided to customers regarding pension switches/transfers had come from a third party and that he had worked as a "*para planner*" under the supervision of Mr Kelly.
- 4.7 However, Mr Gray admitted that he failed to tell customers that he had not personally prepared the pension reports or made the recommendations. Mr Gray said he believed customers were aware that advice did not come from him, but did not explain how customers supposedly knew this. The Authority's understanding is that the customers were under the impression that Mr Gray had advised them.
- 4.8 Mr Gray admitted in interview that he had no qualifications or training in financial services. He said that he familiarised himself with literature he was given relating to the SIPP Provider and that he looked at information on SIPPs online, but did not receive or undertake anything else by way of training.
- 4.9 The Authority has concluded that, whether or not Mr Gray wrote the pension reports he presented to customers himself, he presented them as his recommendations, and also gave oral advice to customers to purchase a SIPP.
- 4.10 The Authority considers that, in light of his admission that he had no qualifications or training to offer investment advice, it was reckless for Mr Gray to make recommendations to customers to undertake pension switches/transfers when he was in no position to know whether his recommendations were in customers' interests or not.

Completion of SIPP application forms

- 4.11 Four of the five customers who provided witness statements to the Authority and had dealings with Mr Gray applied for a particular SIPP product using the same SIPP application form. These customers reported that Mr Gray asked them to sign some sections of the SIPP application forms, notably the sections identifying the adviser and specifying the amount of fees payable to PCD from the customers' funds, before they had been completed.
- 4.12 The remaining sections of the SIPP application form were completed without further reference to the customer, by or on behalf of Mr Kelly.
- 4.13 The relevant page of the SIPP application form also contained the question: "*Is the adviser to receive remuneration by deduction from the fund?*" and a box for the adviser to answer "*yes*" or "*no*". In all of the cases involving Mr Gray reviewed by the Authority, the "*yes*" box was ticked. A figure of 4% of the fund was filled in as the initial payment to PCD, plus a figure of 0.5% of the fund as renewal commission.
- 4.14 The Authority considers that the motive for inserting the level of fees payable to PCD from the customer's funds after the customer had signed the form was to conceal PCD's fees from the customer.
- 4.15 Mr Gray told the Authority in interview that the SIPP application forms which came to him from Mr Kelly were "pre-populated" before he saw the customers, implying that customers (and Mr Gray) would have been able to see the 4% fee payable to PCD from the customers' funds. However, in a conversation between

Mr Gray and Customer A which Customer A secretly recorded, Mr Gray told Customer A that the fees section of the application form was completed after the customer had signed it.

- 4.16 On the basis of Mr Gray's admission to the customer and the evidence from the four customers advised by Mr Gray (who provided witness statements to the Authority and used the relevant forms) against the suggestion that the forms were pre-populated with fees information, the Authority considers that the section of the forms relating to fees was in fact completed subsequently. The Authority further considers that Mr Gray's statement in interview that the fees section had been pre-populated was intended to mislead the Authority about Mr Gray's involvement in concealing from customers fees payable to PCD from the customers' funds.

Unsuitable recommendations of UCIS

- 4.17 Mr Gray twice sent written recommendations to Customer A to invest in UCIS.
- 4.18 Mr Gray visited Customer A twice in November 2009, completed a fact find and produced a pension report recommending the switch/transfer of Customer A's pension to a SIPP.
- 4.19 Mr Gray made the first recommendation in relation to UCIS A, a fund which invests in forestry plantations, on 19 January 2010. Customer A responded that he did not wish to rely on a speciality investment of this sort, particularly one which was not authorised by the Authority.
- 4.20 In addition, the pension report provided to Customer A by Mr Gray stated:

"We discussed in brief the different types of Investments available and the varying degrees of risk involved in these. I understand you may be willing to look at investing over the short term..."

- 4.21 A brochure for UCIS A states:

"Due to the nature of this investment, all [share classes in the fund] are intended as long-term investment options".

- 4.22 The Authority considers that UCIS A was unsuitable for Customer A because Customer A told Mr Gray he did not wish to invest in it on the grounds that it was too specialist and not authorised by the Authority, and further that the term of the product made it unlikely to be suitable.
- 4.23 Mr Gray sent a further email to Customer A on 5 February 2010 in which he recommended four products, including UCIS A and UCIS B, a fund described on its own website as high risk. Mr Gray suggested splitting Customer A's pension between the four products.
- 4.24 Mr Gray said in his email:

"I must stress that this part of your pension planning may seem a little daunting. However, it is all part of our service to you. I am exceptionally proud of my track record in this area, and as a result urge you to allow me to do my job, and lead in this area."

4.25 The Authority considers that Mr Gray's recommendation of UCIS A to Customer A was unsuitable for the reasons set out in paragraph 4.22 above.

4.26 In relation to UCIS B, the pension report which Mr Gray had presented to Customer A stated:

"From our discussion I would suggest that we select a portfolio comprising of balanced funds.

It is imperative that any fund recommended falls within your attitude to investment risk."

4.27 UCIS B is described on its own website as high risk and was not, therefore, in keeping with Mr Gray's suggestion of "balanced funds" in the pension report and did not fall within Customer A's attitude to risk. For that reason, the Authority considers that Mr Gray's recommendation of UCIS B to Customer A was also unsuitable.

4.28 Mr Gray stated in interview that he had never even heard of UCIS, despite stating in his email that he was "exceptionally proud of [his] track record in this area."

4.29 Accordingly, the Authority considers that Mr Gray's recommendations to Customer A to invest in UCIS A and UCIS B were unsuitable, and that Mr Gray was reckless as to the risk that his recommendations were unsuitable. In addition, the Authority considers that Mr Gray's recommendations of investments other than UCIS A and B were made recklessly as he had no qualifications or training in investments and was not in a position to judge whether they were suitable for customers or not.

Investment of Funds without Customers' Knowledge

4.30 Customers told the Authority that they had discovered after the event that the funds in their SIPP had been used to purchase a Portfolio Bond, and then invested in other products including UCIS, without their knowledge or consent.

4.31 The Authority has concluded that Mr Kelly was primarily responsible for making these investments without customers' knowledge or consent. However, Mr Gray was culpable in the following respects.

4.32 The pension reports which Mr Gray presented to customers contained standard paragraphs which stated that, having ascertained the customer's attitude to risk, PCD would present a suggested portfolio of funds to the customer, which would be designed to reflect the customer's risk profile. The pension report provided the assurance to customers that, prior to investing their funds in a portfolio of investments, their funds would be held in a tax free, high interest, instant access account. However, the account that the customers' funds were placed into was neither high interest nor instant access.

4.33 In four out of five cases, Mr Gray did not go on to present a portfolio of suggested funds, or make any investment recommendations at all to the customer.

4.34 On 16 October 2009, Mr Gray informed Customer B that his investments were "performing well". Customer B made Mr Gray aware that these investments had been made without his knowledge or consent. The Authority has therefore concluded that from 16 October 2009 onwards, Mr Gray was aware that

customers' funds were being invested by PCD without their knowledge or consent.

- 4.35 The Authority considers that prior to 16 October 2009, Mr Gray's actions in presenting pension reports to customers stating that they would receive recommendations from PCD about their investment portfolio, with the implication that customers would approve any investments before they were made, were reckless because Mr Gray was aware of a risk at the time he presented the pension reports that the customers may not receive advice or approve any investments before they were made.
- 4.36 The Authority considers that from 16 October 2009 onwards, Mr Gray was fully aware of, and therefore complicit in, the investment of customers' funds without the knowledge or consent of customers. Mr Gray presented pension reports containing the statements detailed above to two customers after this date, and continued to receive funds from PCD for a further six months after this date. Mr Gray's provision of misleading information to customers in pension reports was deliberate and dishonest. Further his willingness to continue to receive funds from PCD demonstrates a lack of honesty and integrity on his part.
- 4.37 By way of example of his complicity in this process, in the case of Customer A, described above in paragraphs 4.17 to 4.29, Mr Gray made recommendations which were not only unsuitable, but were not made until after Customer A's funds had already been invested in other investments. This is a case in which the Authority has clear evidence that Mr Gray did recommend a portfolio to a customer, but Mr Kelly had already sent instructions to the Portfolio Bond Provider to invest Customer A's funds on 28 January 2010 in a different portfolio to the one which Mr Gray recommended eight days later, on 5 February 2010. Although it is unclear whether Mr Gray knew about the specific investment of these funds prior to making the recommendation to Customer A, Mr Gray gave this advice despite being aware by this time that customers' funds were in general being invested by PCD without customers' knowledge or consent. It was dishonest of Mr Gray to give such advice in the face of this knowledge.

Failure to provide clear, fair and not misleading information regarding fees

- 4.38 PCD received fees and commission in respect of customers' SIPPs, portfolio bonds and underlying investments. Customers also had to pay fees to third parties for administering their investments. Several of these fees, including PCD's 4% fee for advising on the SIPP and fees payable to third parties, were deducted directly from customers' pension funds. PCD also received commission from third parties who provided the products in which PCD invested customers' funds.
- 4.39 Mr Gray gave customers Terms of Business and Key Facts documents stating that no direct charges would be made unless by prior agreement in writing before the customer purchased the product. Mr Gray also presented pension reports to customers that stated that any sums received by PCD had been paid by the product providers.
- 4.40 In two cases considered by the Authority, Mr Gray told the customers that there would be no fees at all. In another three cases, he told the customers only about the fees they would have to pay to the SIPP Provider for administering the SIPP.
- 4.41 As a result, customers did not understand that any fees and commissions would be deducted directly from their capital at the time their funds were invested.

Customers told the Authority that they would not have consented to pay the fees and commissions if they had been aware of them.

- 4.42 The Authority has seen no evidence contemporaneous with Mr Gray's advice to customers to suggest that Mr Gray knew customers would pay a 4% fee to PCD in relation to the SIPP. However, as detailed above in paragraphs 4.11 to 4.16, Mr Gray asked customers to sign the SIPP application form with the fees information left blank while providing assurances to them that PCD would not receive any fees from the customers' funds. Mr Gray was aware that there was a risk that, by having customers sign the form with the fees information section left blank, the fees information could be added to the SIPP application forms by PCD after the customers had signed them. This risk then crystallised and his assurances to customers that PCD would not receive any fees from the customers' funds proved to be incorrect.
- 4.43 The Authority has concluded that Mr Gray recklessly participated in a sales process designed to prevent fee information from being disclosed to customers whilst being aware of the risk that fees could later be added without their knowledge or consent, thereby allowing PCD to conceal information about fees and charges from them.
- 4.44 The total commission paid to PCD for business undertaken during the relevant period was approximately £3.1 million. Of this amount, Mr Gray personally received a total of £231,998.40 in the 20-month period between 4 September 2008 and 22 April 2010.

Misleading the Authority

- 4.45 In a compelled interview with the Authority, Mr Gray initially declined to answer any of the Authority's questions, on the advice of his solicitor.
- 4.46 Mr Gray subsequently returned for another interview, when he stated to the Authority that he had not given any advice to customers but that his role had been as a "*para planner*" carrying out fact finds. Mr Gray also claimed that the SIPP application forms which came to him from Mr Kelly were pre-populated before he saw the customers, implying that customers (and Mr Gray) would have been able to see the 4% fee payable to PCD from the customers' funds.
- 4.47 The Authority has concluded on the basis of the facts and matters detailed above in paragraphs 4.5 to 4.10 that Mr Gray did in fact give advice to customers. The Authority considers that Mr Gray's assertion in interview that he gave no advice to customers was false, and that his assertion that customers thought the advice in the pension reports was not being provided by him is highly implausible. The Authority considers that Mr Gray made both statements in order to mislead the Authority about his responsibility for giving pension switching/transfer advice to customers. The Authority also considers that Mr Gray's statement to a customer that he was "*exceptionally proud of his track record*" as an adviser further demonstrates the falsity of his statement to the Authority in interview that he was a "*para planner*".
- 4.48 The Authority has concluded on the basis of the facts and matters detailed above in paragraphs 4.11 to 4.16 that the section of the SIPP application forms relating to fees was in fact completed after customers had signed it. The Authority considers that Mr Gray knew that his assertion in interview that this section was pre-populated was untrue and that he made the statement in order to mislead

the Authority about his involvement in concealing from customers' fees payable to PCD.

Impact on customers

- 4.49 Mr Gray's misconduct has had a very serious impact on customers.
- 4.50 Two UCIS in which PCD invested customers' funds have publicly suspended redemptions from the relevant funds. As a result, customers cannot access the portion of their pension funds invested in these UCIS which in the cases reviewed by the Authority was over 45%. It is not clear when they will be able to do so. Many of the customers are retired and unable to earn back the sums they cannot access.
- 4.51 As set out above customers were not given a choice in relation to whether certain fees would be deducted from their pension funds. The impact of these fees on the customers' pension funds has been considerable. For example, in the ten month period between December 2009 and October 2010, one customer, who was advised by Mr Gray, started with pension funds of £101,125 paid fees of £4,217.30 to PCD and incurred fees of £2,788.77 to other parties, resulting in a reduction of capital of £7,006.07 (6.9% of the original fund) during this period alone.
- 4.52 Some of the customers who provided witness statements to the Authority have also referred to the wider impact on their physical and emotional health caused by the financial situation in which they find themselves, with respect to their pension provision, in part as a result of the dishonesty and recklessness of Mr Gray.

Warning Notice

- 4.53 Through the Warning Notice dated 10 December 2015 (the "Warning Notice"), the Authority gave notice that it proposed to take the action described above and Mr Gray was given the opportunity to make representations to the Authority about that proposed action.
- 4.54 No representations having been received by the Authority from Mr Gray within the time allowed by the Warning Notice, the default procedures in DEPP 2.3.2G of the Authority's Decision Procedure and Penalties manual permitted the allegations/matters described in the Warning Notice to be regarded as undisputed and, accordingly, permit the Authority to give a Decision Notice to Mr Gray.

Decision Notice

- 4.55 Through the Decision Notice dated 12 January 2016 (the "Decision Notice"), the Authority gave Mr Gray notice that it had decided to take the action described above.
- 4.56 Mr Gray had 28 days from the date the Decision Notice was given to refer the matter to the Upper Tribunal. No referral was made to the Upper Tribunal.

5 FAILINGS

- 5.1 The regulatory provisions relevant to this Final Notice are referred to in the Annex to this Notice.

5.2 By reason of the facts and matters set out in paragraphs 4.1 to 4.52 above, the Authority considers that during the relevant period, Mr Gray demonstrated a lack of honesty and integrity such that he fails to meet the minimum regulatory standards of the Authority in that he:

- a) provided investment advice to at least five customers in the knowledge that he had no qualifications or training to give investment advice. In one case he gave unsuitable advice to a customer to invest in UCIS, being reckless as to the risk that the advice was unsuitable;
- b) recklessly provided customers with misleading information in relation to costs and associated charges, and arranged for customers to sign incomplete forms despite being aware of the risk that fees payable to PCD from the customers' funds could later be added without their knowledge or consent, thereby allowing PCD to conceal information about fees and charges from them;
- c) until 16 October 2009, recklessly provided customers with pension reports containing assurances that customers would receive advice and recommendations as to the investment of their pension funds, when he was aware of the risk that this advice might not be provided and that customers' funds might instead be invested without their knowledge or consent; and
- d) from 16 October 2009 onwards, knowingly and dishonestly gave a false and misleading impression and provided customers with pension reports containing false and misleading assurances that customers would receive advice and recommendations as to the investment of their pension funds prior to investments being made (which did not happen, save in one case), when he was aware that customers' funds were being invested without their knowledge or consent.

5.3 In addition, subsequent to the relevant period, Mr Gray intentionally and dishonestly misled the Authority in a compelled interview by falsely stating (i) that he did not advise customers and (ii) that the SIPP application forms he presented to customers to sign contained information about fees payable to PCD from the customers' funds. This further demonstrates Mr Gray's lack of honesty and integrity.

5.4 Mr Gray's conduct fell far short of the minimum regulatory standards of honesty and integrity expected by the Authority. As a result, the Authority considers that Mr Gray is not fit and proper to perform any function in relation to any regulated activities carried on by any authorised person, exempt person or exempt professional firm.

6 SANCTION

6.1 The Authority considers that it is appropriate and proportionate in all the circumstances (including the nature and seriousness of Mr Gray's failings and the serious risk which he poses to consumers) to prohibit Mr Gray from performing any function in relation to any regulated activities carried on by any authorised person, exempt person or exempt professional firm, because he is not a fit and proper person due to a lack of honesty and integrity. This order takes effect from 1 March 2016.

6.2 The Authority has had regard to the guidance set out in Chapter 9 of EG in

deciding that Mr Gray should be prohibited in the terms set out above. The relevant provisions of EG are set out in the Annex to this Notice.

7 PROCEDURAL MATTERS

Decision maker

- 7.1 The decision which gave rise to the obligation to give this Final Notice was made by the Regulatory Decisions Committee.
- 7.2 This Final Notice is given under, and in accordance with, section 390 of the Act.

Publicity

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

Authority contacts

- 7.5 For more information concerning this matter generally, Mr Gray should contact Matthew Hendin (direct line: 020 7066 0236) of the Enforcement and Market Oversight Division of the Authority.

Rebecca Irving
Project Sponsor
Financial Conduct Authority, Enforcement and Market Oversight Division

ANNEX

RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. RELEVANT STATUTORY PROVISIONS

The FCA's General Duties

- 1.1. The Authority's operational objectives, set out in section 1B(3) of the Act, include the consumer protection objective.

Prohibition Orders

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

2. RELEVANT REGULATORY PROVISIONS

The Fit and Proper Test for Approved Persons

- 2.1 The part of the Authority's Handbook entitled "The Fit and Proper Test for Approved Persons" ("FIT") sets out the criteria that the Authority will consider when assessing the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the fitness and propriety of a person who is not approved.
- 2.2 FIT 1.3.1G states that the Authority will have regard to a number of factors when assessing a person's fitness and propriety. The most important considerations will be the person's honesty, integrity and reputation, competence and capability, and his financial soundness.
- 2.3 FIT 2.1.3G and 2.2.1G state that in determining a person's honesty, integrity, reputation, competence and capability the Authority will have regard to all relevant matters.

The Authority's policy for exercising its power to make a prohibition order

- 2.4 The Authority's policy in relation to prohibition orders is set out in Chapter 9 of EG.
- 2.5 EG 9.1 states that the Authority may exercise this power where it considers that, to achieve any of its regulatory objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities or to restrict the functions which he may perform.
- 2.6 EG 9.4 sets out the general scope of the Authority's powers in respect of prohibition orders, which include the power to make a range of prohibition orders

depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant. EG 9.5 provides that the scope of a prohibition order will depend on the range of functions that the individual performs in relation to regulated activities, the reasons why he is not fit and proper, and the severity of risk which he poses to consumers or the market generally.

- 2.7 EG 9.17 to 9.18 provides guidance on the Authority's exercise of its power to make a prohibition order against an individual who is not an approved person. The Authority will consider the severity of the risk posed by the individual and may prohibit the individual where it considers this is appropriate to achieve one or more of its regulatory objectives. When considering whether to exercise its power to make a prohibition order against such an individual, the Authority will consider all the relevant circumstances of the case, which may include but are not limited to the factors set out in EG 9.9.
- 2.8 EG 9.9 provides that when deciding whether to make a prohibition order the Authority will consider all the relevant circumstances of the case, which may include (but are not limited to):
- (1) whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety are set out in FIT 2.1 (Honesty, integrity and reputation), FIT 2.2 (Competence and capability) and FIT 2.3 (Financial soundness);
 - (2) the relevance and materiality of any matters indicating a lack of fitness and propriety;
 - (3) the length of time since the occurrence of any matters indicating lack of fitness and propriety; and
 - (4) the severity of the risk which the individual poses to consumers and to confidence in the financial system.
- 2.9 EG 9.12 provides examples of types of behaviour which have previously resulted in the Authority deciding to issue a prohibition order or withdraw the approval of an approved person. The examples include providing false or misleading information to the Authority and severe acts of dishonesty, for example, which may have resulted in financial crime.