Darren Reynolds has referred this Decision Notice to the Upper Tribunal to determine (a) in relation to the FCA's decision to impose a disciplinary sanction, what (if any) is the appropriate action for the FCA to take, and remit the matter to the FCA with such directions as the Tribunal considers appropriate; and (b) in relation to the prohibition order, whether to dismiss the reference or remit it to the FCA with a direction to reconsider the scope of the prohibition and reach a decision in accordance with the findings of the Tribunal.

Therefore, the findings outlined in this Decision Notice reflect the FCA's belief as to what occurred and how it considers the behaviour of Darren Reynolds should be characterised. The proposed action outlined in the Decision Notice will have no effect pending the determination of the case by the Tribunal. The Tribunal's decision will be made public on its website.

FINANCIAL CONDUCT AUTHORITY

12 Endeavour Square
London
E20 1JN

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

DECISION NOTICE

To: **Mr Darren Antony Reynolds**

Reference Number: **DAR00040**

Date: **2 May 2023**

1. ACTION

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

(1) impose on Darren Reynolds a financial penalty of £2,212,316 pursuant to section 66 of the Act; and

(2) make an order prohibiting Mr Reynolds from performing any function in relation to any regulated activities carried on by any authorised or exempt persons or exempt professional firm pursuant to section 56 of the Act.

2. SUMMARY OF REASONS

2.1. The Authority considers that between 12 March 2015 and 5 February 2018 (the Relevant Period), Mr Reynolds breached Statement of Principle 1 (Integrity) of the Authority's Statements of Principle for Approved Persons. He did this by acting dishonestly and recklessly when performing his controlled functions in relation to the pension business of Active Wealth (UK) Limited (Active Wealth) and by acting dishonestly in his interactions with the Authority. In addition, the Authority considers that Mr Reynolds acted without honesty and integrity in the course of the Authority's investigation of these matters, during the Relevant Period and afterwards (between 6 February 2018 and 27 February 2019). For all of the above reasons, the Authority has concluded that Mr Reynolds lacks fitness and propriety.

2.2. Mr Reynolds was an approved person at Active Wealth, a small financial advice firm which went into liquidation on 5 February 2018, and which has since been dissolved. Active Wealth was authorised by the Authority with permission to conduct regulated activities, including advising on investments, pension transfers and arranging (bringing about) deals in investments.

2.3. Mr Reynolds was the sole person responsible for the management and oversight of Active Wealth's conduct. He was the only person at Active Wealth approved to perform the controlled functions of CF1 (Director), CF10 (Compliance Oversight) and CF11 (Money Laundering Reporting) and he was one of two persons approved to perform the CF30 (Customer) function. He was also the sole shareholder of the company.

2.4. Pensions are a traditional and tax-efficient way of saving money for retirement. The benefits someone obtains from their 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 advisers and authorised firms to provide them with advice in relation to their pensions place significant trust

in those providing the advice. Where an adviser fails to act with integrity, it exposes their customers to a significant risk of harm.

2.5. The Authority's rules prohibited Active Wealth and its advisers, including Mr Reynolds, from receiving commissions, remuneration or benefits of any kind apart from charging for advice provided. Mr Reynolds dishonestly contravened this rule by arranging for himself and other advisers at Active Wealth, to receive prohibited commission payments derived from investments made by Active Wealth's customers. These payments were funneled via companies connected to Mr Reynolds and were intentionally designed to disguise their true origins.

2.6. The Authority's prohibition on commission payments (COBS 6.1A.4R) was introduced to prevent advisers having a conflict of interest when recommending that customers invest their pensions in particular pension products. Such commissions create an incentive to recommend the product that would produce the highest payment for the adviser rather than the best outcome for the customer. The purpose of prohibiting these payments is to protect customers' pensions from being placed into investments that are unsuitable.

2.7. Mr Reynolds dishonestly established, maintained and concealed a conflict of interest that was at the heart of Active Wealth's business model so that he, and the other advisers, could receive prohibited commission payments. He exploited this conflict of interest to the detriment of Active Wealth's customers, including customers who had no option but to make a decision about their pension because the British Steel Pension Scheme was closing. He received prohibited commission payments in the total amount of £1,014,976.

2.8. Mr Reynolds dishonestly:

(1) advised Active Wealth's customers to invest in an investment portfolio created by Greyfriars Asset Management LLP (P6) consisting of mini-bonds knowing that it was not suitable for them;

(2) falsified the P6 Application Forms in order to create the false impression that P6 was suitable for Active Wealth's customers when it was not;

(3) advised and persuaded customers to transfer out of the British Steel Pension Scheme when he knew it was not in their best interests;

(4) wrote suitability reports to create the false impression that he had provided suitable advice; and

(5) failed to disclose adequately or at all the existence of exit fees from customers and misled some of those customers about the existence of the exit fees.

2.9. As a result of Mr Reynolds' misconduct, the FSCS had, as at 5 August 2022, paid compensation of over £17.6 million to over 470 of Active Wealth's customers. Many customers – at least 231 - suffered losses that exceeded the FSCS compensation cap of £50,000.

2.10. Further, Mr Reynolds knowingly allowed two people to provide pensions advice to Active Wealth's customers without being approved persons at Active Wealth, recklessly disregarding the risk to those customers' interests, and misled the Authority about it.

2.11. Mr Reynolds dishonestly misled the Authority and the Insolvency Service during the Relevant Period and thereafter (including during the course of their respective investigations). After the Relevant Period he also recklessly allowed the destruction of evidence relevant to the Authority's investigation.

2.12. The Authority has concluded, on the basis of the facts and matters described in this Notice (including the facts and matters occurring after the Relevant Period), that Mr Reynolds lacks honesty and integrity and, therefore, is not a fit and proper person to perform functions in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm. The Authority also considers that Mr Reynolds poses a risk to consumers and to the integrity of the financial system. The nature and seriousness of Mr Reynolds' breach of Statement of Principle 1 warrants the imposition of a financial penalty and his lack of fitness and propriety merits the imposition of an order prohibiting him from performing any function in relation to any regulated activities carried on by any authorised or exempt person or exempt professional firm.

2.13. For the reasons given above, the Authority has decided to:

(1) impose on Mr Reynolds a financial penalty of £2,212,316 pursuant to section 66 of the Act; and

(2) make an order prohibiting Mr Reynolds from performing any function in relation to any regulated activities carried on by any authorised or exempt person, or exempt professional firm, pursuant to section 56 of the Act.

3. DEFINITIONS

3.1. The definitions below are used in this Notice:

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

"Active PMC" means Active PMC Limited, a company of which Mr Reynolds was the sole director and shareholder;

"Active Wealth" means Active Wealth (UK) Limited (FRN 631415), the firm established and controlled by Mr Reynolds;

"the Active Wealth P6 Agreement" means the Portfolio Six Discretionary Portfolio Management Agreement between Active Wealth and Greyfriars dated 23 May 2015;

"Adviser A" means one of the two persons at Active Wealth that provided pensions advice without being an approved person at Active Wealth;

"Adviser B" means one of the two persons at Active Wealth that provided pensions advice without being an approved person at Active Wealth;

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

"the British Steel Pension Scheme" means the British Steel Defined Benefit Pension Scheme that was in place during the Relevant Period;

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

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

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

"Defined Contribution Scheme" means a pension scheme that pays out a non-guaranteed and unspecified amount depending on the "defined contributions" made and the performance of investments;

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

"DFM" means a discretionary fund manager, i.e. an authorised firm that provides investment management services for investment funds;

"exit fee" means a charge applied where a customer sought to take their funds from an investment prior to the end of the investment term;

"the first close family member" means the director of the First Company who was a close family member of Mr Reynolds;

"the First Company" means the first company used by Mr Reynolds to funnel prohibited commission payments;

"the First Transfer" means Mr Reynolds' transfer of ownership in a property to the first close family member on 14 June 2017;

"the FSCS" means the Financial Services Compensation Scheme;

"Greyfriars" means Greyfriars Asset Management LLP (FRN 229285), a DFM through which some of Active Wealth's customers were advised to invest in P6;

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

"IFA" means an independent financial adviser;

"illiquid investment" means an investment the value of which cannot be easily realised through the availability of a secondary market;

"the Insolvency Service" means the government agency whose responsibilities include conducting investigations into insolvent companies for financial wrongdoing;

"introducer" means any authorised or unauthorised entity or individual that referred customers to Active Wealth;

"introduction agreement" means an agreement entered into to facilitate the payment of commission from the issuers to the Second Company;

"the Loan Agreement" refers to the agreement purporting to represent a loan between the Second Company and Darren Reynolds;

"marketing agreements" means agreements entered into to facilitate the payment of commission from the issuers to the First or Second Companies;

"mini-bond" means an illiquid investment that is a debt instrument issued by an issuer, typically for a fixed interest rate repayable over a period of time;

"The Pensions Regulator" is the UK regulator for occupational pensions;

"PPF" means the Pension Protection Fund, which pays benefits to Defined Benefit Scheme members when the sponsoring employer becomes insolvent;

"Portfolio Six" or "P6" means an investment portfolio created by Greyfriars consisting of mini-bonds;

"P6 Application Form" means Greyfriars' application form for investments in P6;

"RAA" means the regulated apportionment arrangement under which the British Steel Pension Scheme separated from its sponsoring employers;

"RDC" means the Regulatory Decisions Committee of the Authority (see further under Procedural Matters below);

"Relevant Period" means 12 March 2015 to 5 February 2018;

"the Retail Distribution Review" means the review of how investments are distributed to retail consumers in the UK commenced by the Authority in 2006;

"the second close family member" means the director of the First Company who was also a close family member of Mr Reynolds;

"the Second Company" means the second company used by Mr Reynolds to funnel prohibited commission payments;

"the Second Transfer" means the first close family member's transfer of ownership in a property to a trust on 30 January 2018;

"SIPP" means a self-invested personal pension, a trust-based wrapper for an individual's pension investment;

"SSAS" means a small self-administered scheme, a type of employer-sponsored defined contribution workplace pension that can give the employer additional investment flexibility;

"suitability report" means the document or letter prepared by Active Wealth purporting to set out its advice to a customer;

"SUP" means the Supervision Manual, part of the Handbook;

"the third close family member" means the director of the Second Company who was also a close family member of Mr Reynolds;

"the Tribunal" means the Upper Tribunal (Tax and Chancery Chamber);

"UCITS" means an Undertaking for Collective Investment in Transferable Securities, a type of investment fund subject to European Union regulations;

"the UCITS sub-funds" means the two sub-funds of the UCITS products promoted by Active Wealth; and

"the Warning Notice" means the warning notice given to Mr Reynolds dated 10 August 2022.

4. FACTS AND MATTERS

Background

Active Wealth

4.1. Active Wealth was a small firm based in Willenhall, West Midlands. It was authorised on 1 December 2014 with permission to conduct regulated activities, including advising on pension transfers and opt outs and advising on and arranging deals in investments. Active Wealth's primary business was the provision of pension and investment advice to retail customers.

4.2. During the Relevant Period, Mr Reynolds was the sole director and shareholder of Active Wealth. He was the only person at Active Wealth approved to perform the controlled functions of CF1 (Director), CF10 (Compliance Oversight) and CF11 (Money Laundering Reporting) and was one of two persons approved to perform the CF30 (Customer) function.

4.3. Andrew Deeney was the only other person approved to hold controlled functions at Active Wealth. Mr Deeney was approved from 6 February 2015 to 12 December 2017 to perform the controlled function of CF30 (Customer).

4.4. Both Mr Reynolds and Mr Deeney provided pensions and investment advice to Active Wealth's customers. In addition, individuals referred to in this Notice as Adviser A and Adviser B also provided pensions advice and investment advice to Active Wealth's customers, however, neither of these individuals had the necessary approvals to provide that advice.

4.5. On 18 July 2017, Mr Reynolds voluntarily agreed to the variation of Active Wealth's permission to show that no advice on investments into new non-standard assets could be given.

4.6. At the request of the Authority, on 24 November 2017 Active Wealth voluntarily agreed to the imposition of requirements that it cease accepting new retail customers in respect of its pensions business and to refrain from advising any existing customers, except where the advice had been signed off by an independent third party, until such time as agreed by the Authority.

4.7. The requirements were not lifted before Active Wealth entered into liquidation on 5 February 2018. Mr Reynolds ceased to be an approved person on this date. Active Wealth was declared in default by the FSCS in March 2018, meaning that customers were eligible to claim compensation. Active Wealth was dissolved on 14 May 2019.

4.8. As of 15 August 2022, the FSCS had paid over £17.6 million in compensation to over 470 former customers of Active Wealth. This represented more than 70% of Active Wealth's customers. Almost half of these customers – at least 231 - suffered losses that exceeded the FSCS compensation cap of £50,000 and were significantly harmed as a result of Mr Reynolds' misconduct.

4.9. On 25 May 2021, Mr Reynolds was disqualified by the High Court from being a company director for 13 years following an investigation by the Insolvency Service that found that he failed to act in the best interests of Active Wealth's customers in respect of advice he gave to transfer their pensions to SIPPs and invest in P6.

Pension switching and transfer advice

4.10. Customers who engage advisers and authorised firms to provide them with advice in relation to their pensions place significant trust in those providing the advice because the benefits someone obtains from their 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. It is therefore of paramount importance that advisers act with integrity when advising such customers regarding the switch or transfer of their pensions and ensure that the advice given to a customer is suitable for them, having regard to their circumstances as a whole. Where an adviser fails to do so, it exposes customers to a significant risk of harm.

4.11. The risk of harm is heightened in relation to decisions to transfer out of a Defined Benefit Scheme. A Defined Benefit Scheme is one that guarantees to pay a specified amount to the customer based on factors such as the number of years worked and the customer's salary. Defined Benefit Schemes provide valuable benefits, so most people are best advised not to transfer out of them. A pension transfer from a Defined Benefit Scheme means giving up the guaranteed lifetime income for the person and their dependents.

4.12. Defined Benefit Schemes can be contrasted with Defined Contribution Schemes, where income is not guaranteed but variable depending on the underlying investments of the fund.

4.13. Firms advising customers on whether to transfer their defined benefit pension benefits to another pension scheme should start by assuming that it will not be suitable and should only consider it suitable if the firm can clearly demonstrate, based on contemporary evidence, that the transfer is in the customer's best interests (COBS 19.1.6G).

4.14. An adviser may advise a customer to switch or transfer their pensions from their existing arrangements into a SIPP. A SIPP is a trust-based wrapper for an individual's pension investment. It gives tax relief on the individual's contributions and tax-free growth and offers much wider investment powers than are generally available for other types of personal pensions and group personal pensions. In addition, a SIPP offers a greater degree of control over where and when funds are invested or moved than is permitted by traditional pension arrangements run by investment management and life assurance companies or defined benefit pensions.

4.15. When a financial adviser is advising on an investment wrapper product, such as a SIPP, the financial adviser ought to consider the suitability of the overall proposition i.e., the suitability of both the SIPP wrapper and the underlying investment, in order to be able to provide suitable advice to the customer. The recommendation must be suitable for the customer having regard to the customer's investment knowledge and experience, financial situation, and investment objectives.

4.16. SIPPs are sometimes used to invest in high risk, often highly illiquid unregulated investments. Such investments are unlikely to be suitable for many customers, and even for those customers for whom they may be suitable, it is likely only to be suitable for them to invest a small proportion of their investable assets in such investments.

4.17. The investments that Active Wealth recommended for customers' SIPPs typically depended on the date of the recommendation:

(1) from about March 2015 to September 2016, Active Wealth recommended that at least 288 customers invest in – among other things – a portfolio of high risk, illiquid investments called Portfolio Six or P6 that was managed by

Greyfriars, a DFM. The Authority required Greyfriars to cease accepting new funds into P6 in October 2016;

(2) from no later than December 2016 to March 2017, Active Wealth recommended that about 100 customers invest through a second DFM. One of the investments that this DFM invested in were the sub-funds of a UCITS, which is an investment fund subject to European Union regulations; and

(3) from about April 2017 to November 2017, Active Wealth recommended approximately 290 customers to invest through a third DFM. That DFM invested customer funds in the UCITS sub-funds.

4.18. Active Wealth's customers included about 150 members of the British Steel Pension Scheme who transferred, or took steps to transfer, their pensions to SIPPs following Active Wealth's advice. About 140 of these customers' SIPPs were invested, or were to invest, in the UCITS sub-funds.

Prohibited commission payments

4.19. COBS 6.1A.4R requires firms to ensure that advisers, such as Mr Reynolds and Mr Deeney, do not receive commission, remuneration or benefits of any kind apart from charging for advice provided. The purpose of this rule, introduced in 2012 as a result of the Authority's Retail Distribution Review, is to ensure that advisers act in customers' best interests and do not simply recommend product providers that pay the highest commission.

4.20. Active Wealth charged customers a flat advice fee, typically of about £1,500, which was either paid by the customer directly or was deducted from the customer's SIPP. Active Wealth typically shared 50% of that flat advice fee with the business that introduced the customer to Active Wealth. This meant that typically Active Wealth earned £750 from each of its customers that it advised. Active Wealth received approximately £232,000 in advice fees in the 2016/2017 financial year. This revenue model was not in breach of the Authority's rules.

4.21. The advice fees were the main source of Active Wealth's income. For the three years of Active Wealth's operation:

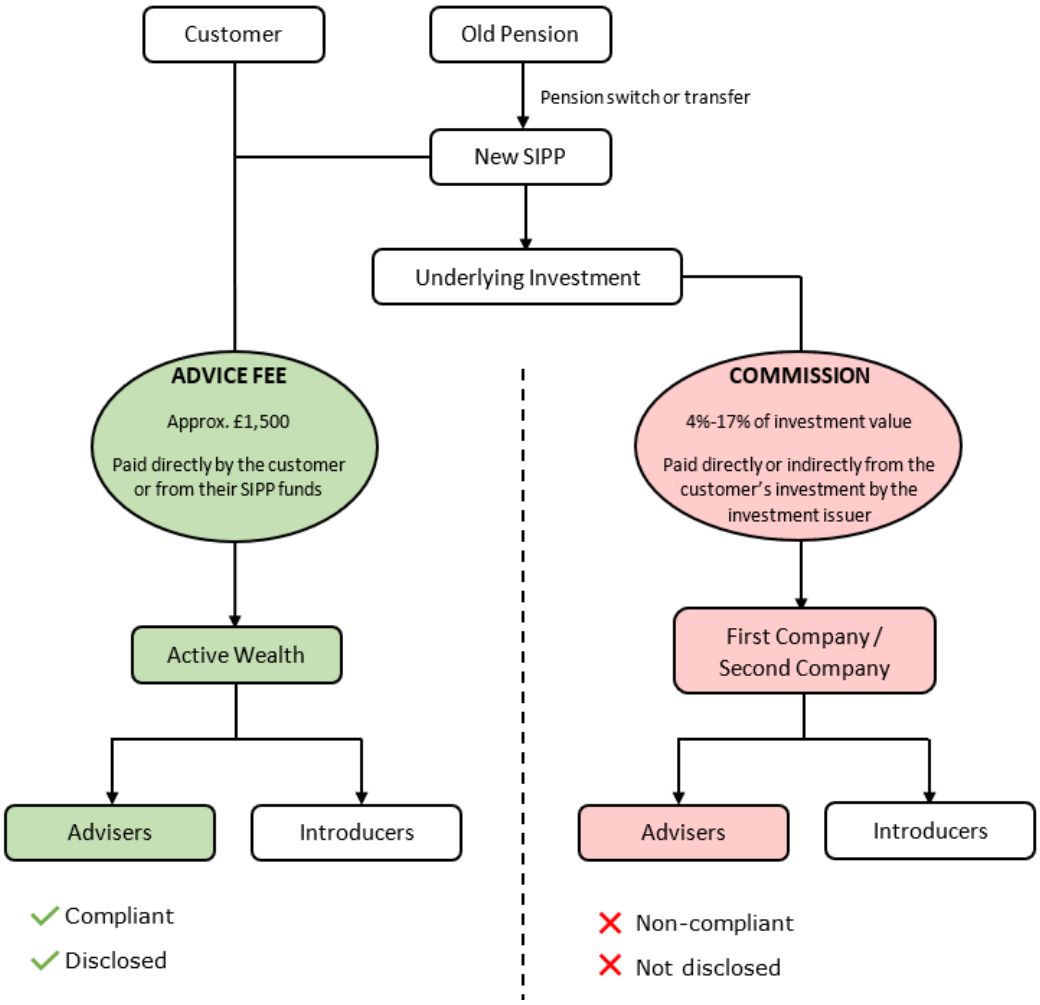
(1) Mr Reynolds received a total salary from Active Wealth of £12,425;

(2) Mr Deeney received total income from Active Wealth of £94,773;

(3) Adviser A received total income from Active Wealth of £17,324; and

(4) Adviser B received total income from Active Wealth of £33,164.

4.22. However, in reality, Active Wealth's advisers had a second source of remuneration which was in breach of the Authority's rules, namely commission paid directly or indirectly from Active Wealth's customers' investments as described in paragraphs 4.25 to 4.41 below. The two sources of remuneration are depicted in the diagram below.



4.23. As set out in paragraphs 4.27 to 4.33 below, Mr Reynolds set up the First Company purportedly to provide administration services for SSASs, and a close relative set up the Second Company purportedly to provide administration services for IFA firms (see paragraphs 4.34 to 4.39). However, in respect of both companies, the

vast majority of their income derived from commission payments paid by issuers of investments into which Active Wealth's customers invested on Active Wealth's personal recommendations. Those payments reflected a percentage of the amounts invested. Mr Reynolds used the First Company and the Second Company to receive and distribute the commission paid to persons including himself and Active Wealth's advisers and companies they controlled. Such commission payments are (and were throughout the Relevant Period) prohibited by COBS 6.1A.4R.

4.24. In addition to the above salary payments in the total amount of £12,425 from Active Wealth, Mr Reynolds directly received net payments of:

(1) £232,000 from the First Company; and

(2) £579,002 from the Second Company.

4.25. Mr Reynolds further financially benefited from the prohibited commission payments because:

(1) the First Company paid £150,000 to Active PMC, of which Mr Reynolds was the sole director and shareholder, and Active PMC directly paid £149,900 of these funds to Mr Reynolds;

(2) the First Company purchased a vehicle costing £41,475 for Mr Reynolds; and

(3) the Second Company also paid Mr Reynolds' legal fees of £12,599.

4.26. In addition to the above payments, prohibited commission payments were also made to other individuals as a result of the advice they provided to customers of Active Wealth:

(1) Mr Deeney received total payments of £123,326 from the First Company and £83,023 from the Second Company;

(2) Adviser A and a company they controlled received total payments of £252,238 from the First Company and £138,379 from the Second Company; and

(3) Adviser B received total payments of £128,402 from the First Company and £104,000 from the Second Company.

The First Company

4.27. Mr Reynolds and the first close family member were the sole directors and shareholders of the First Company, although the first close family member had no actual involvement in the running of the First Company. The First Company commenced trading in the autumn of 2014. Although Mr Reynolds and the first close family member purportedly ceased to be directors of the First Company in December 2016, and the second close family member was subsequently appointed as the sole director in January 2017, in reality Mr Reynolds remained in control of the First Company's activities for the remainder of the Relevant Period.

4.28. The First Company purported to carry out administration services for SSASs. For the period 12 March 2015 to 22 October 2018, the First Company's bank statements show that it received almost £3 million into its bank account. Although Mr Reynolds initially told the Authority that the First Company's income came from providing SSAS administration services, only payments of cheques amounting to £4,926 (0.16% of the total income) could have possibly related to SSAS business, although the Authority has not identified evidence showing that this sum did in fact relate to such business.

4.29. In reality, the First Company received commission pursuant to marketing agreements that it entered into with the issuers of the investments. Of the agreements obtained by the Authority, the commission ranged between 7% and 17% of the sums invested in the investments, and in one instance the percentage was not specified in the agreement. In addition, the First Company also received commission from firms that had their own marketing agreements with issuers for selling investments.

4.30. Mr Reynolds told the Authority that the First Company did not itself conduct any "marketing" or provide marketing materials to introducers, but merely distributed the commission to the introducers. These introducers introduced customers to Active Wealth that went on to be advised by Active Wealth to invest in the investments, as a result of which the First Company collected commission.

4.31. The First Company's bank statements for the period 12 March 2015 to 22 October 2018 show that the First Company received commission of £2.7 million (90.4% of the First Company's receipts for the period) for investments that Active Wealth recommended that its customers invest in, including investments through P6 and one other investment.

4.32. Mr Reynolds received net payments of £381,900 from the First Company to his bank accounts and the bank account of Active PMC (almost of all of which was then transferred from Active PMC's account to Mr Reynolds' personal account). The First Company also purchased a vehicle costing £41,475 for Mr Reynolds. These payments and vehicle purchase represented prohibited commission payments directly derived from investments made by Active Wealth's customers on Active Wealth's personal recommendation.

4.33. Mr Reynolds was also responsible for the payments from the First Company's account to Mr Deeney, Adviser A and Adviser B. These payments represented prohibited commission payments directly derived from investments made by Active Wealth's customers on Active Wealth's personal recommendation.

The Second Company

4.34. The Second Company was established in June 2016 by the third close family member who was its sole director. The Second Company purported to provide administration services to IFA firms. The Second Company's bank statements for the period 14 July 2016 to 23 October 2018 show that during this period the Second Company received a total of £1.74 million into its bank account. Of that, only payments totalling £20,197 (1.2% of total income) actually related to the Second Company's administration services business.

4.35. In reality, 93.4% of the Second Company's receipts were commission payments:

(1) £305,244 (17.6%) represented commission payments for investments in products available through P6;

(2) £1,080,628 (62.1%) represented commission payments for investments in the UCITS sub-funds; and

(3) £237,327 (13.7%) represented commission payments for three other investments.

4.36. Mr Reynolds introduced the Second Company's director, the third close family member, to the issuers and intermediaries for the purposes of setting up marketing and introduction agreements for the above investments. The Second Company then received commission payments pursuant to the marketing and introduction agreements it entered into with issuers and intermediaries, in which the Second Company agreed to sell investments to prospective investors.

4.37. According to the agreements obtained by the Authority, the commission ranged between 4% and 17% of the total amount invested and in several instances the percentage was not specified in the agreement. Mr Reynolds saw the Second Company's activities as being a continuation of those conducted by the First Company. In reality, the third close family member was the Second Company's director in name only and the Second Company was operated under Mr Reynolds' direction and for his benefit. Mr Reynolds therefore knew that the Second Company received commission payments from investments made by Active Wealth's customers on Active Wealth's personal recommendations, including investments through P6, the UCITS sub-funds and three other investments.

4.38. Mr Reynolds received net payments of £579,002 from the Second Company which were directly derived from commission payments paid to the Second Company by the issuers and intermediaries. However, Mr Reynolds, when interviewed by the Authority, and the third close family member, when interviewed by the Insolvency Service, both denied that the payments to Mr Reynolds represented prohibited commission payments to him; they instead maintained that the payments were advances under the Loan Agreement which Mr Reynolds was liable to repay. This, in the view of the Authority, was false and misleading because nothing in the balance sheet of the Second Company reflected the Loan Agreement, and the Second Company has never accounted for these monies as loan monies. The liquidators of the Second Company have subsequently confirmed that they consider that these payments were not made to Mr Reynolds pursuant to a valid loan agreement. The Authority considers that both parties knew that the payments to Mr Reynolds represented prohibited commission payments from investments made by Active Wealth's customers on Active Wealth's personal recommendation and, in reality, Mr Reynolds was not expected to repay the sums to the Second Company.

4.39. Mr Reynolds was also aware that the Second Company paid prohibited commission payments to Mr Deeney, Adviser A, Adviser A's company and Adviser B which derived from investments made by Active Wealth's customers on Active Wealth's personal recommendations.

Conflict of interest

4.40. Contrary to COBS 6.1A.4R, each of Mr Reynolds, Mr Deeney, Adviser A and Adviser B financially benefited from the prohibited commission payments paid to the First Company and the Second Company by the issuers for Active Wealth's part in the facilitation of the sale of the investments to Active Wealth's customers.

4.41. Although Mr Reynolds knew that neither he nor Mr Deeney, nor Adviser A nor Adviser B were permitted to receive the prohibited commission payments, he dishonestly used the First Company and the Second Company as mechanisms to make payments to his bank accounts and bank accounts held by the other advisers.

4.42. These prohibited commission payments represented a conflict of interest between the interests of Mr Reynolds (and the other advisers) on the one hand and the customers' interests on the other hand. This was a conflict of interest that Mr Reynolds created and maintained for his own benefit and the benefit of the other advisers. Mr Reynolds exploited this conflict of interest to the detriment of Active Wealth's customers. There was a significant risk of detriment to Active Wealth's customers because:

(1) the commission provided a financial incentive for Active Wealth's advisers to provide unsuitable advice to customers to invest in the investments;

(2) as a result of the false and misleading information provided by Mr Reynolds to Greyfriars and the SIPP provider about Active Wealth's customers as set out at paragraphs 4.53 to 4.64, Mr Reynolds exposed customers to a significant risk of loss from investments through P6 that he knew were highly likely not to have been suitable for them;

(3) as set out at paragraphs 4.66 to 4.86, Mr Reynolds was responsible for unsuitable advice given by Active Wealth to customers to transfer out of the British Steel Pension Scheme into SIPPs; and

(4) as set out at paragraphs 4.87 to 4.91, Mr Reynolds failed to disclose adequately or at all the exit fee levied by the UCITS sub-funds to customers and deprived them of the opportunity to consider whether the exit fee was contrary to their investment objectives or whether they could bear the risks of the exit fee.

4.43. This risk of detriment crystallised and, as of 15 August 2022, the FSCS had paid over £17.6 million in compensation to over 470 former customers of Active Wealth.

4.44. Further, Mr Reynolds withheld the fact of the prohibited commission payments from Active Wealth's customers.

Active Wealth's relationship with Greyfriars and P6

4.45. The Greyfriars DFM service operated a range of investment portfolios aimed at financial advisers. One of these portfolios was P6, which was made up of mini-bonds including overseas investments in real estate, car parks, renewable energy and holiday resorts. The mini-bonds were not listed on a regulated market and promised returns of between 6% and 15% per annum. P6 investments were high-risk and illiquid and were unlikely to be suitable for retail customers. Following intervention by the Authority, P6 closed to new investment in October 2016.

4.46. On 23 May 2015, Active Wealth entered into the Active Wealth P6 Agreement with Greyfriars. Under the agreement, Active Wealth was responsible for selecting and assessing the suitability of P6 when advising the customer to invest in the portfolio.

4.47. Mr Reynolds was aware of the warnings contained in Greyfriars' documentation about the risks of investing in P6. In addition, the terms of the Active Wealth P6 Agreement signed by Mr Reynolds confirmed his understanding that *"[P6] isn't as liquid as more conventional investments"* and that customers could be "*locked into a security for an indefinite period".*

Mr Reynolds' P6 advice

4.48. Mr Reynolds told the Authority that he believed that P6 was suitable for customers that were high net worth investors who owned more than one property and that Active Wealth only recommended P6 to this type of customer.

4.49. Mr Reynolds' assertion that Active Wealth only advised customers who he defined as high net worth, or who owned more than one property, to invest in P6 was false. Rather, P6 was Active Wealth's default investment for its customers. Active Wealth advised some customers to invest in P6 when it had no genuine basis for believing that they were high net worth individuals or owned more than one property, or both.

4.50. Further, Mr Reynolds admitted that the so-called high net worth customers included those that had "very cautious" or "cautious" attitudes to risk, being those that only wanted to take limited risks with their investments. Mr Reynolds' advice to invest in high-risk, illiquid investments was entirely unsuitable for customers who had "very cautious" or "cautious" attitudes to risk. Mr Reynolds told the Authority that either he or Mr Deeney had a discussion with each of the customers and advised them that to achieve their targeted income they would have to accept greater risk. However, the evidence shows that it was not true that either Mr Reynolds or Mr Deeney gave such advice or that the customers agreed to accept the greater risk.

4.51. Mr Reynolds knew that Greyfriars would not normally accept an investment into P6 where it represented more than 25% of a customer's "investable wealth". The Greyfriars P6 documentation stated that P6 was appropriate only for a "small proportion" of an investor's funds. However, Active Wealth advised customers to invest up to 62% of their "investable assets" in P6.

4.52. For these reasons, Mr Reynolds knew that P6 was not a suitable investment for all of Active Wealth's retail customers but nonetheless allowed it to be Active Wealth's default recommendation and arranged for customers to invest a higher proportion of their SIPP funds than he knew was suitable. This gave rise to a significant risk that Active Wealth's customers would suffer loss that they could not financially bear.

False and misleading statements in P6 Application Forms

4.53. Mr Reynolds, on behalf of Active Wealth, signed a declaration in the P6 Application Form that investments in unregulated investments to the proportions specified were suitable for the relevant customer's risk profile, circumstances, knowledge and experience.

4.54. The Authority has reviewed the P6 Application Forms of 18 customers that invested in P6. In the application forms for each of the 18 customers, Active Wealth specified that one of the reasons that the investment in unregulated investments would be suitable for them was that they each had a "high" risk profile and capacity for loss. This contradicted Active Wealth's assessment of the attitude to risk and capacity for loss of seven customers because it assessed one customer as having a "very cautious" profile; three customers as having "cautious" profiles; and three customers as having "balanced" profiles.

4.55. The Authority considers that Active Wealth and Mr Reynolds knowingly and falsely represented on the P6 Application Forms, and to the Authority in interview, that some customers had a "high" risk tolerance and capacity for loss.

4.56. Customer A, Customer B and Customer C are examples of three customers about whom Active Wealth provided false and misleading information in the P6 Application Forms.

Customer A and Customer B

4.57. Customer A and Customer B are married to one another. Active Wealth arranged for their respective Defined Benefit Scheme benefits to be transferred into two separate SIPPs. Mr Reynolds advised them to invest their respective SIPP funds in P6 and arranged for 62% of Customer A's SIPP funds and 74% of Customer B's SIPP funds to be invested in P6.

4.58. Mr Reynolds completed and signed the P6 Application Forms for both Customer A and Customer B. Both forms stated that investments in unregulated investments were suitable for them because they each had "*a high risk profile [and] capacity for loss, while understanding […] the risks associated with these investments.*" The statements were untrue because neither of them had high risk appetites or capacities for loss. In particular the statements contradicted Active Wealth's assessment of Customer A as being a "cautious" investor. It was also untrue that Customer A and Customer B understood and accepted the risks of the investments because they were not experienced investors, Mr Reynolds did not tell them P6 was a high-risk investment and he did not adequately explain the risks to them.

4.59. When the Authority asked Mr Reynolds about Customer A's P6 Application Form, Mr Reynolds told the Authority that he wrote the statements in respect of Customer

A because it would give Greyfriars the mandate to invest in higher risk portfolios that would provide a better return, and that Customer A had agreed to this course of action. However, Customer A and Customer B told the Authority that they had not agreed to invest in higher risk portfolios. Having regard also to the fact that Active Wealth assessed Customer A as being a "cautious investor", the Authority therefore considers that Mr Reynolds' explanation to the Authority was false.

4.60. In addition, Mr Reynolds knowingly made the following false and misleading statements about Customer A and Customer B in their respective P6 Application Forms:

(1) that they were high net worth investors, when in fact there was no reasonable basis for making these statements;

(2) the investments in P6 represented 9% of Customer A's and 11% of Customer B's "investable assets", when in fact Mr Reynolds had only collected sufficient information to support an assessment that the investments represented 62% of Customer A's and 40% of Customer B's investable assets; and

(3) that they were experienced investors primarily in property and equities, when in fact they had little investment experience.

Customer C

4.61. Following a meeting between Customer C and Mr Deeney, Active Wealth arranged for Customer C's existing pension benefits to be switched to a SIPP. Active Wealth arranged for 47% of Customer C's SIPP funds to be invested in P6.

4.62. The P6 Application Form, which Mr Reynolds completed and signed, stated that investment in unregulated investments was suitable for Customer C because he "*has a high risk profile [and] capacity for loss. He understands [and] accepts the risks associated with investing*". This statement was untrue and contradicted Active Wealth's assessment of Customer C as being a "very cautious" investor. Customer C had a limited capacity for loss because he was retired and reliant on his pension, nearly half of which Mr Reynolds arranged to be invested in P6, for an income. It was also untrue that Customer C understood the risks of investing in P6 because

he had very limited understanding of investment matters, Active Wealth did not tell him that P6 was a high-risk investment and Active Wealth did not adequately explain the risks of investing in P6. The Authority concludes that Mr Reynolds knew that the statements in the P6 Application Form were false.

4.63. Mr Reynolds told the Authority that he would have spoken to Customer C on the telephone and received Customer C's agreement to accept a higher level of risk to achieve his target investment income. However, Mr Reynolds never spoke with Customer C about this nor did Customer C ever agree to accept a higher level of risk.

4.64. In addition, Mr Reynolds knowingly made the following false and misleading statements about Customer C in his P6 Application Form:

(1) that he "*usually invests in property, land [and] cash*", which was false because Customer C had never invested in property or land; and

(2) that he was investing 25% of his "investable assets" in P6, when he knew that Customer C in fact invested about 41% of his investable assets;

4.65. The Authority concludes that Active Wealth and Mr Reynolds knowingly and falsely represented that Customer A, Customer B and Customer C were high net worth, experienced investors with a high-risk tolerance and that they were investing only a small proportion of their investable assets.

The British Steel Pension Scheme

Background

4.66. The British Steel Pension Scheme was one of the largest Defined Benefit Schemes in the UK, with approximately 125,000 members and £15 billion in assets as at 30 June 2017. In March 2017, the British Steel Pension Scheme was closed to future accruals, which meant that no new members could join it and existing members could no longer build up their benefits. The British Steel Pension Scheme also had an ongoing funding deficit.

4.67. In early 2016, various options were being explored in relation to the British Steel Pension Scheme as a result of insolvency concerns relating to one of the sponsoring employers of the scheme. These options included seeking legislative changes which would have allowed pension increases available under the British Steel Pension Scheme to be reduced to the statutory minimum levels, and the sale of one of the sponsoring employers. Ultimately, the position was resolved by an RAA that allowed the sponsoring employer to detach itself from its liabilities in respect of the British Steel Pension Scheme.

4.68. On 11 August 2017, The Pensions Regulator gave its clearance for the RAA. Under the RAA, the British Steel Pension Scheme would receive £550 million from, and a 33% equity stake in, one of the sponsoring employers. The British Steel Pension Scheme would also transfer into the PPF which pays benefits to Defined Benefit Scheme members when the sponsoring employer becomes insolvent. In addition, a new Defined Benefit Scheme was proposed by the sponsoring employers in combination with the RAA proposal. The Pensions Regulator formally approved the RAA on 11 September 2017, which resulted in the British Steel Pension Scheme being separated from the sponsoring employers.

4.69. The consequences of the RAA were that members of the British Steel Pension Scheme were required to make a choice between two options offered by the scheme, namely to either:

(1) remain in the old British Steel Pension Scheme and therefore move into the PPF; or

(2) transfer their benefits into the new Defined Benefit Scheme (BSPS 2) that had been proposed by the sponsoring employers.

4.70. There was also a third option for members to transfer their pension benefits to a Defined Contribution Scheme.

4.71. In October 2017, the British Steel Pension Scheme distributed information packs to members about these options. This was known as the "Time to Choose" pack. Members were required to decide by 22 December 2017.

4.72. The decision presented to members was not necessarily straightforward, particularly for those who had not yet started drawing their pension. The members were in a vulnerable position due to the uncertainty surrounding the future of the scheme. Throughout the entire period, both before the Time to Choose packs were distributed and afterwards, it was important that financial advisers advised customers in a fair and balanced way about the options available to them based on the information available at the time, and that the advice which was given considered the specific customers' circumstances.

Advice process

4.73. During the Relevant Period, Active Wealth advised 153 customers to transfer their British Steel Pension Scheme to an alternative pension arrangement, usually a SIPP. Mr Reynolds advised the vast majority of those British Steel Pension Scheme customers.

4.74. Active Wealth's advice process in relation to the British Steel Pension Scheme was typically as follows.

4.75. First, Active Wealth, or an introducer, met with the customer to collect information about them and their British Steel Pension Scheme pensions. This included personal details, financial details and details about the customer's objectives and attitude to investment risk. A staff member of Active Wealth then typically conducted a comparison of the customer's benefits under the British Steel Pension Scheme and benefits under a Defined Contribution Scheme such as a SIPP.

4.76. An Active Wealth financial adviser subsequently met with the customer and provided their recommendation in relation to the British Steel Pension Scheme. Sometimes during the meeting, the customer signed forms to transfer out from the British Steel Pension Scheme. Pension transfers are generally not reversible once the scheme trustees receive the signed transfer forms and monies have been moved, and therefore it is not possible for the customer to change their mind about the transfer (although in some cases where funds had not already been transferred out, the British Steel Pension Scheme trustees did stop the transfer if requested by the customer).

4.77. Active Wealth's written policy stated that an adviser should present a document to the customer setting out its advice in writing, called a "suitability report", at the

same time or prior to the meeting at which Active Wealth provided its oral recommendation and the customer signed the transfer forms. However, as set out in the following paragraphs, Active Wealth did not always provide the suitability report to its customers and, if it did, in most cases it did not prepare the suitability report until after the customer had signed the transfer forms and Active Wealth had submitted them to the SIPP provider.

Unsuitable advice

4.78. Mr Reynolds knew that a transfer from the British Steel Scheme to a SIPP was unlikely to be suitable for most of Active Wealth's customers. He knew that Defined Benefit Schemes offered valuable, guaranteed benefits which increased annually. He also knew the risks to which a customer would be exposed if they transferred out of a Defined Benefit Scheme following his advice and the potential impact this could have on the customer's pension fund. Mr Reynolds also knew that after transferring to a Defined Contribution Scheme, the customer's pension benefits were not guaranteed but would be dependent on the performance of the underlying investments.

4.79. Mr Reynolds told the Authority that he advised most customers to remain in the British Steel Pension Scheme in order to receive a guaranteed income in retirement, but that customers were "adamant" on transferring to achieve other objectives such as accessing their pension benefits flexibly, improving the death benefits available to the customer's spouse, accessing their pension benefits before reaching the scheme's normal retirement age of 65 years, and accessing a pension commencement lump sum.

4.80. However, customers told the Authority that in fact they were orally advised by Mr Reynolds to transfer out of the British Steel Pension Scheme. Some customers reported that they were encouraged to transfer, with Mr Reynolds telling them that it was a "no brainer" to transfer or that they would "lose everything" if they did not transfer as soon as possible. They thought that they were following Mr Reynolds' advice by transferring out of the British Steel Pension Scheme to alternative arrangements including SIPPs. Mr Reynolds knew that this advice was unlikely to be suitable for most customers. He therefore dishonestly advised and persuaded customers to transfer out of the British Steel Pension Scheme when he knew it was not likely to be in their best interests. Therefore, the Authority considers Mr Reynolds' account to be untrue.

4.81. Some customers also reported that they did not receive any recommendation from Active Wealth, and that Mr Reynolds merely "went along" with the customer's request to transfer; in these cases, Mr Reynolds failed to provide the advice that the customers were entitled to receive.

Suitability reports

4.82. Active Wealth was required to send a suitability report to each of its customers setting out its advice in writing. The Authority reviewed Active Wealth's files for 23 British Steel customers and each of them contained a copy of a suitability report addressed to the customer.

4.83. However, none of the suitability reports prepared by Active Wealth reflected Mr Reynolds' oral advice to transfer out of the British Steel Pension Scheme. Twenty of the 23 customer files reviewed by the Authority contained suitability reports setting out Mr Reynolds' apparent recommendation in identical or very similar wording. The most common version of the written recommendation, which was contained under the heading "Benefits", was as follows:

"It is our recommendation, despite your wish to gain flexibility and control over your benefits […], that you do <u>not</u> take benefits earlier than the normal retirement age of the scheme. Your British Steel Pension Scheme would offer much better benefits if you decided not to take benefits before age 65 and you are unlikely to achieve the same overall income at 65 via a money purchase arrangement. On an income basis alone, without early access, the guarantees offered by a Defined Benefit scheme and their revaluation annually, must draw the conclusion that a transfer of benefit to an alternate arrangement should not be undertaken.

However, even though this was discussed at our previous meeting, you had already made up your mind to access the benefits of your British Steel Pension Scheme flexibly […]

You instructed us to provide an intermediation service and recommend a suitable pension and investment provider for your benefits accrued in the British Steel Pension Scheme."

4.84. In the Authority's view, Mr Reynolds deliberately drafted the suitability reports to give the false impression that Active Wealth customers had been given suitable

advice to remain in the British Steel Pension Scheme and that customers had insisted on transferring to a SIPP against Mr Reynolds' recommendation. This was contrary to Mr Reynolds' oral advice to customers to transfer to a SIPP. The suitability reports were deliberately drafted in this way because Mr Reynolds knew that his oral advice to transfer out of the British Steel Pension Scheme to a SIPP was likely to be unsuitable for most customers.

4.85. Further, some of Active Wealth's customers reported that they never received a suitability report from Active Wealth. In the Authority's view, Active Wealth did not send suitability reports to all of the British Steel customers because Mr Reynolds knew that the suitability reports did not reflect the advice he provided but he wanted to give the Authority the false impression that he had provided suitable advice.

4.86. In most cases the suitability reports were not provided until after Active Wealth had taken steps to transfer them out of the British Steel Pension Scheme and it was too late for them to change their minds. As set out above at paragraph 4.77, this timing was against Active Wealth's written policy. The customers did not have any opportunity or any significant time to read and understand the written recommendation contained in the suitability report and it was unlikely to have influenced their decision to proceed with the transfer. In the Authority's view, the purpose of the timing was to ensure that Active Wealth's customers proceeded with the transfer that they believed was in accordance with Mr Reynolds' recommendation.

The UCITS sub-funds

4.87. Active Wealth instructed two DFMs to create investment portfolios that partly or wholly contained investments in the UCITS sub-funds. Between December 2016 and November 2017, Active Wealth advised about 400 customers to switch or transfer their pensions to SIPPs and to invest in the portfolios consisting of the UCITS sub-funds.

4.88. Active Wealth's customers invested in two share classes of the UCITS sub-funds which imposed a contingent deferred sales charge, commonly referred to as an exit fee, of up to 5% for disinvesting from the UCITS sub-funds within the first five years. The exit fee was 5% for disinvesting in the first year of investment, 4% for disinvesting in the second year, 3% in the third year, 2% in the fourth year and

1% in the fifth year. The exit fee was disclosed in the prospectus and key investor information documents for the sub-funds.

4.89. Mr Reynolds failed to disclose adequately or at all the exit fee to Active Wealth's customers. In some cases (particularly where customers specifically raised with him the question of exit fees), Mr Reynolds dishonestly told customers that no exit fee would apply to their investments or that the exit fee would not apply as long as they remained customers of Active Wealth. Given that Mr Reynolds dishonestly misled customers who asked him about exit fees, the Authority concludes that his failure to inform other customers of the fees was deliberate and dishonest. In doing so, Mr Reynolds deprived customers of the opportunity to consider whether the exit fee was contrary to any plans to access the invested funds within the first five years, or whether they could bear the risk of incurring the exit fee if their circumstances changed and they could no longer follow Active Wealth's investment strategy.

4.90. The Authority concludes that Mr Reynolds' motive in misleading customers about the existence of the exit fees was to ensure that they invested in the UCITS sub-funds in order that Mr Reynolds and Active Wealth's other advisers would earn commission from them doing so. Mr Reynolds and Active Wealth's other advisers received prohibited commission payments that were directly linked to the investments.

4.91. It was therefore in Mr Reynolds' personal financial interests to ensure the highest possible percentage of a customer's pension be invested in the funds, because not only would that maximise his commission, but it would also create a substantial disincentive for the customer to take their money out because of the level of the exit fee. This showed a clear disregard for customers' interests over Mr Reynolds' personal financial gain.

Individuals provided advice without approval

4.92. Mr Reynolds was required, as Director and Compliance Officer of Active Wealth, to take reasonable care to ensure that no person provided advice to Active Wealth's customers unless they had been approved by the Authority to do so. This requirement is in place in order to protect the interests of customers, by ensuring that only suitably qualified and regulated persons are able to give advice.

4.93. Mr Reynolds knew that two individuals, Adviser A and Adviser B, were not approved persons at Active Wealth at any time during the Relevant Period and so were not permitted to provide advice to customers on behalf of Active Wealth.

Adviser A

4.94. Adviser A operated a mortgage and general insurance brokerage firm that was authorised by the Authority during the Relevant Period. Adviser A's firm did not have permissions to provide pension transfer advice. Adviser A's firm was an introducer to Active Wealth.

4.95. During the Relevant Period, Adviser A held himself out as an Active Wealth financial adviser and provided pensions and investment advice to Active Wealth's customers. Mr Reynolds knew that Adviser A was providing advice and allowed him to do so even though he knew that Adviser A was not approved by the Authority to provide the advice and did not have the qualifications required by the Authority to provide pensions advice (see below at paragraph 4.98). Further, Mr Reynolds signed declarations falsely stating that he himself had provided advice to the customers. The Authority considers that Mr Reynolds did so because he knew that Adviser A ought not to be providing regulated pensions advice.

Adviser B

4.96. Adviser B operated an IFA firm which, for part of the Relevant Period, was authorised to provide pensions and investment advice. Adviser B was approved to provide advice through and on behalf of Adviser B's firm. However, Adviser B was never approved to provide advice through or on behalf of Active Wealth. During the Relevant Period, both while Adviser B's firm was authorised and after it ceased to be authorised, Adviser B purported to hold the roles of "office manager" or "operations consultant" at Active Wealth.

4.97. During the Relevant Period while representing Active Wealth, Adviser B provided pensions and investment advice to Active Wealth's customers. Mr Reynolds knew that Adviser B was providing advice on behalf of Active Wealth and that Adviser B was not approved by the Authority to do so. Mr Reynolds told the Authority that these were former customers of Adviser B's IFA firm with whom Adviser B had retained relationships. Mr Reynolds admitted to the Authority that he did not apply

for Adviser B to be approved because he thought that his involvement with another entity would mean that the Authority would not approve him.

Misleading the Authority and the Insolvency Service

Communications with the Authority about advisers

4.98. In March 2016, following a consumer query regarding the role of Adviser A at Active Wealth, the Authority contacted Mr Reynolds to enquire as to what capacity Adviser A was acting in relation to Active Wealth, as Adviser A appeared to be advising on investments without approval. In response, Mr Reynolds assured the Authority that Adviser A was solely acting as a paraplanner and that Active Wealth was taking steps to obtain the relevant approvals for Adviser A before allowing them to provide advice for Active Wealth. These false and misleading assurances prevented the Authority from discovering Mr Reynolds' and Active Wealth's misconduct (allowing Adviser A to advise without approval) for more than a year.

Communications with the Authority about prohibited commission payments

4.99. During 2017 and 2018 (as set out below), Mr Reynolds repeatedly and deliberately provided false and misleading information to the Authority to conceal that he, the other advisers and the introducers received prohibited commission payments and to diminish the extent of the commission he received. Mr Reynolds also provided false and misleading information to the Insolvency Service during the course of an investigation into the Second Company's affairs.

19 January 2017 email

4.100. On 5 January 2017, the Authority emailed Mr Reynolds requesting details of any interests held by the firm in other businesses and its conflicts of interest register. From this time, Mr Reynolds knew that the Authority wanted to know about any conflicts of interest Active Wealth had and any interests it had in other businesses.

4.101. On 19 January 2017, Mr Reynolds responded to the Authority by email providing a copy of Active Wealth's conflicts register. The conflicts register recorded that on 1 December 2016 Active Wealth had identified a potential conflict of interest, namely that the activities of the First Company "*are confined to the administration of SSAS schemes and D Reynolds was periodically to provide regulated advice in his capacity*

of a director this [sic] *company, which he could not do*." Active Wealth recorded that it would mitigate the risk by Mr Reynolds' resignation as director of the First Company.

4.102. However, the information recorded in the conflicts register that the First Company's activities were "*confined to the administration of SSAS schemes*" was false because its primary activities were the receipt and distribution of prohibited commission payments including to Mr Reynolds and the other advisers.

4.103. Moreover, the information in the conflicts register that Mr Reynolds would resign as director of the First Company was also false because he had no intention to resign as director at that time. Although Mr Reynolds purported to resign as director of the First Company in December 2016, he took no steps to formally effect his resignation until 30 July 2017 and the Authority considers that he remained in de facto control of the First Company throughout the Relevant Period.

4.104. The conflicts register was also misleading because it omitted the serious conflict of interest, which Mr Reynolds had dishonestly created, that the First Company paid prohibited commission payments to Mr Reynolds and the other advisers as a result of advice provided by Active Wealth.

4.105. Mr Reynolds deliberately gave the false and misleading information to the Authority because he wanted to conceal the fact that the First Company had received and distributed prohibited commission payments and he wanted to create the false impression that he was no longer in control of the First Company's activities.

17 and 18 July 2017 supervisory visit

4.106. On 17 and 18 July 2017, during a supervisory visit, the Authority asked Mr Reynolds whether he or Active Wealth had received marketing fees and he answered that they had not. This statement that he had not received marketing fees was deliberately misleading because he knew that he and other advisers at Active Wealth received prohibited commission payments from the First Company and the Second Company, and that the sources of those payments were the "marketing fees" paid to those companies.

6 November 2017 letter

4.107. A letter dated 6 November 2017 from Active Wealth's solicitors to the Authority stated that "[t]*he remuneration of our client's introducers is not in any way dependent on the investments recommended to its clients*." Mr Reynolds was aware that Active Wealth's introducers received prohibited commission payments and so he approved the statement made by the solicitors on Active Wealth's behalf knowing that it was false.

20 March 2018 letter

4.108. On 6 March 2018 (after the Relevant Period), the Authority sent a letter to Mr Reynolds requiring him to provide certain information and documents.

4.109. The reply from Mr Reynolds stated that all investment advice was provided by qualified financial advisers who were approved to perform the CF30 (Customer) function. This statement was deliberately false because, as Mr Reynolds knew, Adviser A and Adviser B provided investment advice to Active Wealth's customers without being approved to do so.

Interview on 28 March 2018

4.110 On 28 March 2018, the Authority interviewed Mr Reynolds. During the course of the interview Mr Reynolds made a number of deliberately false and misleading statements to the Authority, including that Mr Reynolds and Active Wealth did not receive prohibited commission payments from investments made by Active Wealth's customers.

Interview on 27 February 2019

4.111 On 27 February 2019, the Authority interviewed Mr Reynolds for a second time. During the interview, the Authority again asked Mr Reynolds several questions about whether he, Mr Deeney or Active Wealth received prohibited commission payments or other financial incentives in relation to investments that Active Wealth recommended to its customers. On each occasion, he denied that he, Mr Deeney or Active Wealth received any such commission or incentives. Mr Reynolds' responses to the Authority's questions were deliberately false and misleading.

4.112 After the Authority presented evidence to Mr Reynolds showing that the First Company and the Second Company received commission from issuers, and that Mr Reynolds and the other advisers had received payments from the First and Second Companies, Mr Reynolds continued deliberately to provide false and misleading information to the Authority. This included statements that:

(1) Mr Deeney did not receive prohibited commission from the First Company for advice Mr Deeney provided to Active Wealth's customers; but rather the payments made by the First Company to Mr Deeney related to the marketing of investments to introducers. This was false because Mr Reynolds was aware that the payments related to the advice given by Mr Deeney on behalf of Active Wealth to customers to invest in the investments;

(2) Mr Reynolds did not receive prohibited commission payments from the Second Company but rather the payments he received from the Second Company were loan advances that he had to repay. This was false because the payments were in reality prohibited commission payments as a result of investments recommended to Active Wealth's customers and not loan advances made under a valid loan agreement; and

(3) the Second Company's payments to Adviser B did not relate to Active Wealth's customers, but rather related to administrative services that Adviser B provided to the Second Company. Mr Reynolds also denied that the payments related to advice provided by Adviser B to Active Wealth's customers. This information was false because, although Adviser B did provide administration services to the Second Company, Mr Reynolds knew that the Second Company also paid prohibited commission payments to Adviser B that were derived from investments made by Active Wealth's customers on Active Wealth's personal recommendation.

Communications with the Insolvency Service

4.113 The Insolvency Service interviewed Mr Reynolds in July 2018 during its investigation into the Second Company's affairs. Mr Reynolds told the Insolvency Service during that interview that the payments he had received from the Second Company were advances under the Loan Agreement. In December 2018, when the Insolvency Service asked Mr Reynolds whether he had informed Active Wealth's

liquidator about the Loan Agreement, he responded that he did not inform the liquidator about the Loan Agreement and that he was discussing the repayment of the loan with the Second Company. As set out at paragraph 4.38 above, this information was false and misleading because despite the existence of the Loan Agreement between Mr Reynolds/Active Wealth and the Second Company, in reality, the payments he received were commission rather than drawdowns on a loan facility which he was required to repay. The liquidators of the Second Company have subsequently confirmed that they consider that these payments were not made to Mr Reynolds pursuant to a valid loan agreement and should be repaid. The liquidators stated that they consider that the payments to Mr Reynolds were made for no consideration and therefore constituted transactions at an undervalue for the purposes of the Insolvency Act 1986.

Destruction of evidence

4.114 On 4 January 2018, the Authority informed Mr Reynolds that investigators had been appointed to investigate his and Active Wealth's conduct of its pensions business. Individuals under investigation must act with integrity and cooperate with the Authority, and Mr Reynolds was specifically warned not to destroy evidence that may be relevant to the investigation.

4.115 Shortly afterwards, Mr Reynolds contacted Adviser B, who owned Active Wealth's email accounts and domain name. Mr Reynolds told Adviser B that he no longer needed the email account as he was placing the firm into liquidation. On or around 23 February 2018, Adviser B logged into the customer control panel of the provider hosting Active Wealth's email accounts and domain name and cancelled Mr Reynolds' mailbox, causing it to be permanently deleted.

4.116 Mr Reynolds was aware that he was under investigation and had been specifically notified of his legal obligation to preserve evidence that was likely to be relevant to the investigation. Mr Reynolds must have been aware of the risk that his instructions to Adviser B might result in the deletion of evidence likely to be relevant to the investigation. The Authority therefore concludes that in making this request Mr Reynolds acted recklessly. As a result of his actions, emails potentially relevant to the investigation were in fact irrecoverably deleted.

Additional matters

Property transfers

4.117 On 14 June 2017, Mr Reynolds transferred ownership of a property that he owned, and which was his family home, to the first close family member for no monetary consideration (the First Transfer).

4.118 At the time of the First Transfer, Mr Reynolds was aware that the Authority intended to conduct a supervisory visit to Active Wealth's offices. As set out at paragraphs 4.101 to 4.105, he had already provided the Authority with false and misleading information about the First Company's activities. The First Transfer also took place around the time he took several steps to distance himself from the First Company's activities. This included removing himself as a signatory of the First Company's bank account and as a director on Companies House records.

4.119 The first close family member subsequently set up a trust, of which Mr Reynolds was one of the trustees. That trust was created on 2 December 2017, eight days after Active Wealth agreed to the imposition of the requirements set out at paragraph 4.6. The Authority considers that, on 2 December 2017, Mr Reynolds believed it was likely that the Authority would open an enforcement investigation into his and Active Wealth's conduct.

4.120 On 4 January 2018, the Authority informed Mr Reynolds that it had opened an investigation into his and Active Wealth's conduct. On 30 January 2018, the first close family member transferred the property to the trust for no monetary consideration (the Second Transfer). At the time of the Second Transfer, the property's value was stated to be £142,000. This was the second transfer of this property, for no monetary consideration, in seven months.

4.121 The Authority considers that Mr Reynolds deliberately effected the First Transfer in order to avoid the Authority or customers or other creditors of Active Wealth having recourse to the property in order to meet his and/or Active Wealth's liabilities. The Authority considers he was concerned that the Authority may discover that he was receiving commission from the First Company. The Authority further considers that Mr Reynolds instigated and facilitated the Second Transfer having previously become a trustee of a trust for that purpose. He took these steps because he knew that the outcome of the Authority's investigation may result in the imposition of a

financial penalty or a requirement to pay restitution. He therefore sought to make his family home unavailable to meet the enforcement of any financial penalty or any other claims by creditors.

5. FAILINGS

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

Statement of Principle 1

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

5.3. During the Relevant Period, Mr Reynolds failed to act with integrity in breach of Statement of Principle 1 as set out in paragraphs 5.4 to 5.11 below.

5.4. As set out above in paragraphs 4.19 to 4.44, Mr Reynolds acted dishonestly and without integrity when he:

(1) knowingly created, maintained and concealed a conflict of interest at the heart of Active Wealth's business model so that he and the other financial advisers at Active Wealth could receive prohibited commission payments. He exploited this conflict of interest to the detriment of Active Wealth's customers;

(2) received prohibited commission payments;

(3) used the First and Second Companies as mechanisms to disguise the prohibited commission payments and conceal the true nature of the payments; and

(4) arranged for the other advisers at Active Wealth to receive prohibited commission payments.

5.5. As set out above in paragraphs 4.45 to 4.65, Mr Reynolds dishonestly arranged for Active Wealth's customers to invest in P6 in the knowledge it was not suitable for them. He acted dishonestly when he misled them about the suitability of P6 and its liquidity and falsified the P6 Application Forms in order to create the false

impression that P6 was suitable for Active Wealth's customers when it was not. P6 was a high-risk illiquid investment and Mr Reynolds knew this. Notwithstanding this knowledge, Mr Reynolds told Active Wealth's customers and the Authority that it was a suitable investment for Active Wealth's customers, when there was clear evidence to the contrary.

5.6. As set out above in paragraphs 4.66 to 4.86, Mr Reynolds dishonestly advised and persuaded customers to transfer out of the British Steel Pension Scheme when he knew it was not likely to be in their best interests to do so and had no regard to whether his advice was suitable. He deliberately drafted suitability reports that gave the false impression that he and Active Wealth had provided suitable advice to customers. The Authority considers that this was dishonest and intended to create the false impression that Mr Reynolds had acted in the best interests of his customers, when in fact he had not. The Authority also considers that Mr Reynolds was dishonestly intent on persuading as many people as possible to transfer out of a Defined Benefit Scheme even though this was likely to be the wrong choice for them.

5.7 The Authority concludes that Mr Reynolds' motivation for acting dishonestly and contrary to his customers' interests was personal financial gain because, as set out in paragraphs 4.19 to 4.44 above, he received prohibited commissions from the issuers of the investments into which those customers' pension monies were invested.

5.8 As set out above in paragraphs 4.87 to 4.91, Mr Reynolds acted dishonestly when he failed to disclose adequately or at all the existence of the UCITS sub-funds exit fee to his customers, and knowingly misled some customers about the existence of the fee. This disregard for customers' interests in favour of Mr Reynolds' personal financial gain is further evidence that Mr Reynolds lacks integrity.

5.9 As set out above in paragraphs 4.92 to 4.97, Mr Reynolds knowingly allowed Adviser A and Adviser B to provide pensions advice to Active Wealth's customers without being approved persons at Active Wealth, recklessly disregarding the risk to the interests of those customers. Moreover, not only was Adviser A not approved to provide pensions advice, he was not even qualified to do so, creating a real risk to the interests of Active Wealth's customers. Although Adviser B held the necessary qualifications, Mr Reynolds knew that the Authority would likely consider him otherwise unsuitable to be an approved person owing to his association with

another firm. As with Adviser A, this created a real risk of detriment to the interests of Active Wealth's customers.

5.10 As set out above in paragraph 4.98, in March 2016 the Authority enquired whether Adviser A may have been providing pensions advice on behalf of Active Wealth. Mr Reynolds knew that Adviser A had provided advice and was neither approved nor qualified to do so but he deliberately provided false and misleading information to the Authority as to the nature of Adviser A's role at Active Wealth.

5.11 As set out above in paragraphs 4.99 to 4.107, Mr Reynolds repeatedly and deliberately provided false and misleading information to the Authority to conceal that he, the other advisers and the introducers, received prohibited commission payments and to conceal the amount of those prohibited commission payments.

Lack of fitness and propriety

5.12 In addition to Mr Reynolds' breach of Statement of Principle 1 set out in paragraphs 5.4 to 5.11 above, the Authority has concluded that Mr Reynolds also acted dishonestly and without integrity after the Relevant Period (between 6 February 2018 and 27 February 2019), in that:

(1) as set out above in paragraphs 4.108 to 4.113, during the course of their respective investigations, Mr Reynolds dishonestly misled the Authority and the Insolvency Service about the existence and nature of the prohibited commission payments, the Second Company's business activities and his relationship to that company, and the conflict of interest at the heart of Active Wealth's business model; and

(2) as set out above in paragraphs 4.114 to 4.116, Mr Reynolds was reckless as to whether evidence likely to be relevant to the investigation was permanently deleted.

5.13 The Authority has concluded based on the matters set out at paragraphs 5.4 to 5.12 above that Mr Reynolds lacks honesty and integrity and is not fit and proper.

6. SANCTION

Financial penalty

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

Step 1: disgorgement

6.2 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.

6.3 Mr Reynolds derived direct financial benefits from his breach of Statement of Principle 1.

6.4 Mr Reynolds received a direct financial benefit from the prohibited commission payments in the amount of £1,014,976, comprised of:

(1) £232,000 (net) from the First Company;

(2) £579,002 (net) from the Second Company;

(3) £149,900 from Active PMC;

(4) the First Company's purchase of a vehicle costing £41,475 for Mr Reynolds; and

(5) the Second Company's payment of his legal fees of £12,599.

6.5 Mr Reynolds derived direct financial benefit from the advice fees generated from customers who:

(1) switched or transferred out of their existing pension arrangements to SIPPs investing in P6 as a result of Active Wealth's unsuitable advice to invest in P6 and/or invested in P6 as a result of Mr Reynolds' false and misleading statements in the P6 Application Forms;

(2) transferred out of the British Steel Pension Scheme as a result of Mr Reynolds' unsuitable advice;

(3) switched or transferred out of their existing pension arrangements into SIPPs investing in the UCITS sub-funds as a result of Mr Reynolds' disclosure failings; and

(4) followed the recommendations of Adviser A or Adviser B who were not approved to provide advice.

6.6 Mr Reynolds' breach tainted the vast majority of the regulated activity conducted by Active Wealth during the Relevant Period, however, the precise extent to which it did so is not accurately quantifiable due to the false and misleading information provided by Active Wealth and Mr Reynolds to the Authority. It is therefore appropriate that Mr Reynolds should not benefit from this ambiguity and for the Authority to consider that 100% of the total advice fees generated by Active Wealth stemmed directly from his breach, pursuant to DEPP 6.5B.1G.

6.7 Therefore, the Authority considers that 100% of Mr Reynolds' salary during the Relevant Period (£12,425) directly stemmed from Mr Reynolds' breach.

6.8 DEPP 6.5A.1G(1) states that the Authority will ordinarily charge interest on the financial benefit. Interest is charged at the rate of 8% simple per year, consistent with the amount of interest typically awarded by the Financial Ombudsman Service, and amounts to £363,015.

6.9 Step 1 is therefore **£1,390,416** comprising £1,014,976 in prohibited commissions, £12,425 in the salary earned from Active Wealth during this time (which directly stems from the breach) and £363,015 in interest**.**

Step 2: the seriousness of the breach

6.10 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.

6.11 The period of Mr Reynolds' breach was from 12 March 2015 to 5 February 2018. The Authority considers his relevant income for this period to be £1,027,401 comprised of:

(1) £1,014,976 derived from prohibited commission payments as set out at paragraph 6.4; and

(2) £12,425 in salary from Active Wealth.

6.12 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%

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

Impact of the breach

6.14 Mr Reynolds' financial gain stemming from his breach was substantial (DEPP 6.5B.2G(8)(a)).

6.15 Mr Reynolds' breach caused Active Wealth's customers to transfer out of the British Steel Pension Scheme when it was not in their best interests and caused customers to invest in investments that were not suitable for them. He also allowed individuals who were not approved persons to provide advice to customers. This exposed a

large number of customers to a risk of a substantial loss (DEPP 6.5B.2G(8)(b) and (c)). British Steel Pension Scheme members were in a particularly vulnerable position due to the uncertainty surrounding the future of the scheme (DEPP 6.5B.2G(8)(d)).

6.16 Mr Reynolds' breach caused considerable distress and inconvenience to customers. Active Wealth's customers should not have been in the position where it was necessary for them to make FSCS claims to recover their losses (DEPP 6.5B.2G(8)(e)).

6.17 As at 15 August 2022, the FSCS had paid compensation of over £17.6 million to over 470 former customers of Active Wealth. This represented more than 70% of Active Wealth's customers. Almost half of these customers – at least 231 - suffered losses that exceeded the FSCS compensation cap of £50,000 and were significantly harmed as a result of Mr Reynolds' misconduct. As set out in paragraphs 4.117 to 4.121, Mr Reynolds deprived customers or other creditors of Active Wealth of recourse to his property which otherwise may have been used to meet his and/or Active Wealth's liabilities.

Nature of the breach

6.18 Mr Reynolds' breach stemmed from multiple areas of misconduct (DEPP 6.5B.2G(9)(a)). His actions were continual and spanned the entire period during which Active Wealth conducted business, being almost three years (DEPP 6.5B.2G(9)(b)).

6.19 Mr Reynolds failed to act with integrity because he acted dishonestly and recklessly (DEPP 6.5B.2G(9)(e)).

6.20 Mr Reynolds caused and encouraged Active Wealth's advisers to commit breaches because he established and maintained the system of prohibited commission payments that they each benefited from contrary to the best interests of Active Wealth's customers. He also allowed Adviser A and Adviser B to provide advice to Active Wealth's customers when they were not approved to do so (DEPP 6.5B.2G(9)(h)).

Level of seriousness

6.21 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) The breach caused a significant loss and risk of loss to a large number of customers (DEPP 6.5B.2G(12)(a));

(2) Mr Reynolds failed to act with integrity (DEPP 6.5B.2G(12)(d)); and

(3) The breach was committed deliberately and recklessly (DEPP 6.5B.2G(12)(g)).

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

6.23 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 £1,027,401.

6.24 Step 2 is therefore **£410,960.**

Step 3: mitigating and aggravating factors

6.25 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.

6.26 The Authority considers that the following factors aggravate the breach:

(1) Mr Reynolds failed to cooperate with the Authority by misleading the Authority during his two interviews and by being reckless as to the destruction of evidence (DEPP 6.5B.3G(2)(b));

(2) as set out in paragraphs 4.117 to 4.121, Mr Reynolds took steps in respect of the First and Second Property Transfers because he believed that the outcome of the Authority's enquiries and investigation may result in the imposition of a financial penalty or a requirement to pay restitution. He therefore sought to make his family home unavailable to meet the

enforcement of any financial penalty and/or any liabilities to Active Wealth's customers or other creditors (DEPP 6.5B.3G(2)(e));

(3) as set out at paragraph 4.98, Mr Reynolds allowed Adviser A to continue providing advice to Active Wealth's customers after the Authority made enquiries as to what capacity Adviser A was acting in relation to Active Wealth (DEPP 6.5B.3G(2)(f));

(4) as set out at paragraph 4.113, Mr Reynolds was dishonest with the Insolvency Service during the course of its investigation into the Second Company's affairs (DEPP 6.5B.3G(2)(b); and

(5) the Authority previously published alerts in 2013 and 2014 relating to the provision of advice on pension transfers or switches to SIPPs with a view to investing in unregulated, high-risk investments. Mr Reynolds' conduct took place after the publication of the alerts (DEPP 6.5B.3G(2)(k) and (l)).

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

6.28 The Authority considers several of the aggravating factors to be very serious warranting a substantial uplift to the Step 2 figure. Having considered these aggravating factors, the Authority considers that the Step 2 figure should be increased by 100%.

6.29 Step 3 is therefore **£821,920**.

Step 4: adjustment for deterrence

6.30 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.

6.31 The Authority considers that the Step 3 figure of £821,120 represents a sufficient deterrent to Mr Reynolds and others, and so has not increased the penalty at Step 4.

6.32 Step 4 is therefore **£821,920**.

Step 5: settlement discount

6.33 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.

6.34 Step 5 is therefore **£821,920**.

Serious financial hardship

6.35 Pursuant to DEPP 6.5D.1G, the Authority will consider reducing the amount of a financial penalty to be imposed on an individual if the individual provides verifiable evidence that payment of the penalty will cause them serious financial hardship. The onus is on the individual to satisfy the Authority that the payment of the penalty will cause them serious financial hardship.

6.36 Mr Reynolds has asserted that the payment of the financial penalty would cause him serious financial hardship. However, although Mr Reynolds provided the Authority with some documents and information in support of his assertion, the Authority does not consider that this is sufficient to amount to verifiable evidence that payment of the penalty will cause him serious financial hardship.

6.37 In any event, it is the view of the Authority that even if Mr Reynolds had provided verifiable evidence that payment of the financial penalty would cause him serious financial hardship, in all of the circumstances of this case it would not be appropriate to reduce the financial penalty due to the seriousness of Mr Reynolds' breach. In particular, the Authority considers that the reduction of the financial penalty would be inappropriate because:

(1) Mr Reynolds directly derived a substantial financial benefit from the breach (DEPP 6.5D.2G(7)(a));

(2) Mr Reynolds acted dishonestly with a view to personal gain (DEPP 6.5D.2G(7(b)); and

(3) Mr Reynolds dissipated assets (his family home) in anticipation of the Authority's enforcement action with a view to frustrating or limiting the impact of action taken by the Authority (DEPP 6.5D.2G(7)(d)).

Penalty

6.38 The Authority therefore has decided to impose a total financial penalty of **£2,212,316** on Mr Reynolds for breaching Statement of Principle 1. This figure is comprised of the Step 1 figure of £1,390,416 and the Step 5 figure of £821,900 (rounded down to the nearest £100 in accordance with the Authority's usual practice).

Prohibition Order

6.39 The Authority has had regard to the guidance in Chapter 9 of EG in deciding to impose a prohibition order on Mr Reynolds. The Authority has the power to prohibit individuals under section 56 of the Act.

6.40 The Authority considers that Mr Reynolds is not a fit and proper person to perform any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm. The Authority has decided that it is therefore appropriate and proportionate in all the circumstances to impose a prohibition order on him under section 56 of the Act in those terms. The prohibition is based on the Authority's conclusion that Mr Reynolds lacks fitness and propriety because he:

(1) acted dishonestly and recklessly and in breach of Statement of Principle 1 during the Relevant Period; and

(2) acted dishonestly after the Relevant Period by misleading the Authority and the Insolvency Service about his receipt of the prohibited commission payments and with a lack of integrity by recklessly allowing the destruction of evidence likely to be relevant to the Authority's investigation.

7. REPRESENTATIONS

7.1 Annex B contains a brief summary of the key representations made by Mr Reynolds in response to the Warning Notice 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 Reynolds, whether or not set out in Annex B.

8. PROCEDURAL MATTERS

8.1. This Notice is given to Mr Reynolds under sections 57(3) and 67(4) of the Act and in accordance with section 388 of the Act.

8.2. The following statutory rights are important.

Decision Maker

8.3. The decision which gave rise to the obligation to give this Notice was made by the RDC. The RDC is a committee of the Authority which takes certain decisions on behalf of the Authority. The members of the RDC are separate to the Authority staff involved in conducting investigations and recommending action against firms and individuals. Further information about the RDC can be found on the Authority's website:

https://www.fca.org.uk/about/who-we-are/committees/regulatory-decisions-committee

The Tribunal

8.4. Mr Reynolds 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 Reynolds 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: The 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). 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 the reference notice (Form FTC3) must also be sent to the Authority at the same time as filing a reference with the Tribunal. A copy of the reference notice should be sent to Rachael Agnew 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.

Third Party Rights

8.7. A copy of this Notice is being given to Greyfriars Asset Management LLP as a third party identified in the reasons above and to whom in the opinion of the Authority the matter to which those reasons relate is prejudicial. That party has similar rights of representation and access to material in relation to the matter which identifies them.

Access to evidence

8.8. Section 394 of the Act applies to this Notice.

8.9. 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.

Confidentiality and publicity

8.10. 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.

8.11. However, the Authority must publish such information about the matter to which a Decision Notice or Final Notice relates as it considers appropriate. A Decision Notice or Final Notice may contain reference to the facts and matters contained in this Notice.

Authority contacts

8.12. For more information concerning this matter generally, contact Roshani Pulle at the Authority (direct line: 020 7066 6241/email: roshani.pulle3@fca.org.uk).

John A. Hull
Deputy Chair, Regulatory Decisions Committee

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

RELEVANT STATUTORY PROVISIONS

1. The Authority's statutory objectives, set out in section 1B(3) of the Act, include the consumer protection objective. The consumer protection objective is defined at section 1C of the Act as securing an appropriate degree of protection for consumers.

2. 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, while an approved person, he has failed to comply with a statement of principle issued under section 64A of the Act, or has been knowingly concerned in a contravention by a relevant authorised person of a relevant requirement imposed on that authorised person.

3. Section 56 of the Act provides that the Authority may make an order prohibiting an individual from performing a specified function, any function falling within a specified description or any function, if it appears to the Authority that 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 a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated actives.

RELEVANT REGULATORY PROVISIONS

Statements of Principle for Approval Persons

4. The Authority's Statements of Principle and Code of Practice for Approved Persons ("APER") have been issued under section 64 of the Act.

5. Statement of Principle 1 states:

> "An approved person must act with integrity in carrying out his accountable functions"

6. SUP 10A and SUP 10C.3 provide that accountable functions also include controlled functions.

The Fit and Proper Test for Approved Persons

7. 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 continuing fitness and propriety of an approved person.

8. FIT 1.3.1G states that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person. The most important considerations will be the person's honesty, integrity and reputation, competence and capability and financial soundness.

The Authority's Conduct of Business Sourcebook (COBS)

9. COBS 6.1A.4R states that a firm must:

"*(1) only be remunerated for the personal recommendation (and any other related services provided by the firm) by adviser charges; and*

(2) not solicit or accept (and ensure that none of its associates solicits or accepts) any other commissions, remuneration or benefit of any kind in connection with a firm's business of advising or any other related services, regardless of whether it intends to refund the payments or pass the benefits on to the retail client; and

(3) not solicit or accept (and ensure that none of its associates solicits or accepts) adviser charges in relation to the retail client's retail investment product or P2P agreement which are paid out or advanced by another party over a materially different time period, or on a materially different basis, from that in or on which the adviser charges are recovered from the retail client."

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

10. The Authority's policy in relation to prohibition orders is set out in Chapter 9 of the Enforcement Guide ("EG").

11. 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.

DEPP

12. Chapter 6 of DEPP sets out the Authority's statement of policy with respect to the imposition and amount of financial penalties under the Act.

ANNEX B

REPRESENTATIONS

1. A summary of the key representations made by Mr Reynolds, and the Authority's conclusions in respect of them (in **bold**), is set out below.

Facilitation and receipt of prohibited commission payments

2. Mr Reynolds does not accept that he acted dishonestly, or that he created and maintained and exploited any conflict of interest. Mr Reynolds regrets that he failed to understand properly the prevailing COBS regime during the Relevant Period. He also admits that he received remuneration by way of marketing fees contrary to the requirements of the Authority's Handbook and regrets this. Mr Reynolds now recognises that the "commission" payments received were not permitted under COBS 6.1A.4R. However, he was not aware of this at the time.

3. The commission payments were not made at his instigation. The proposal that commission payments would be paid to introducers was not devised by him, but rather, was part of a pre-existing and established business structure operated by Greyfriars which marketed P6.

4. Mr Reynolds accepted the payments based on the pre-existing business structure as explained by Greyfriars. It was his understanding that he could receive these payments as marketing fees as they are not defined as income. The documentation from Greyfriars stated that they do not pay commission to advisers. Mr Reynolds trusted Greyfriars as it was a regulated firm, and he also relied on advice from a separate consultant who advised that the structure was permissible. Mr Reynolds also took comfort from the fact that there were regular payments being made from Greyfriars to the issuers of the investments, and that Greyfriars was willing to structure the payments in this way. This was the case until the Authority highlighted the fact that this payment structure was not permitted.

5. Mr Reynolds kept the payments separate from the rest of Active Wealth's business, because Greyfriars told him Active Wealth could not accept marketing fees as it is an IFA, but the other companies (the First Company and the Second Company) could accept marketing fees.

6. Mr Reynolds accepts that the commission payments ought to have been disclosed to Active Wealth's customers. However, he denies the allegation that he sought to hide the existence of the commission payments because he was under the misapprehension that the COBS requirement did not prohibit individuals receiving indirect remuneration from third parties.

7. This misapprehension was (mistakenly) confirmed in his mind by the fact that the commission payments were an integral and established component of the Greyfriars business model. At all material times he understood that the Authority was aware that the commission payments were being made by reason of its investigation into Greyfriars and affiliated entities, which investigation continued throughout the Relevant Period.

8. Mr Reynolds denies that the receipt of the commission payments resulted in either Mr Reynolds or Active Wealth materially altering the advice they gave to customers or that it produced a disadvantageous result for those customers. The introduction of the commission payment structure resulted in Active Wealth lowering the level of

advice fees that would have otherwise been charged to the customer by 2-3%, and so reduced the cost to the customer by approximately 50%.

9. Mr Reynolds admits that certain of the contractual agreements with the issuers of investments theoretically provided for commission payments of up to 17%, but such levels of commission were never paid.

10. Mr Reynolds admits that the commission payments were paid to individuals via the First Company and the Second Company, but he denies that those entities were created for that purpose.

11. The First Company was established to provide (and in fact did provide) administration services for small, self-administered pension schemes (SSASs), albeit in limited terms. Over time, it came to be used for the purpose of receiving commission payments because:

    i) Mr Reynolds' understanding of the ban on firms charging commission was that Active Wealth could not receive the commission payments, but that payments made to a third party, and which were consistent with the Greyfriars model as set out above, were legitimate;

    ii) it was administratively practical to arrange for commission payments to be distributed via a distinct corporate vehicle;

    iii) it was convenient to distribute the payments through a pre-existing entity rather than incorporate a new one; and

    iv) the Second Company was established, in conjunction with the third close family member, to provide (and in fact did so provide) administration services, albeit in limited terms. Upon the Authority contacting the First Company in connection with P6 as part of its investigation into Greyfriars it became administratively and practically expedient to transfer the commission payments through a pre-existing entity, being the Second Company.

12. Mr Reynolds does not accept that he was not expected to repay the sums received under the loan extended by the Second Company. As explained by both he and the third close family member, it was intended that sums advanced pursuant to that loan arrangement would be repaid upon Mr Reynolds successfully selling Active Wealth. The failure to record the loan within the records of the Second Company (whilst regrettable) is no basis for suggesting that the loan was not repayable.

13. Mr Reynolds denies that the apparent conflict of interest created by the commission payments resulted in the £14 million losses to Active Wealth customers because:

    i) at all material times, he understood P6 to be a suitable investment for retail customers which was capable of reasonably constituting a lower risk investment with a targeted return;

    ii) while the existence of commission payments may have affected certain customers' choices on whether to transfer out of a pension scheme or their choice of investment, the overwhelming majority of customers were likely to have been predominantly influenced by other factors (for example, (i) the potential returns available; and/or (ii) the uncertain status of the British Steel Pension Scheme); and

iii) not all of Active Wealth's customers transferred out to investments to which commission payments were received.

14. COBS 6.1A.4R clearly states that a firm must only be remunerated by adviser charges and not solicit or accept any commissions, remuneration or benefit of any kind in connection with a firm's business or advising or any other related services. The Authority does not accept that Mr Reynolds' stated belief that the commission payments were permitted was his true belief. It is the Authority's view that Mr Reynolds knew that all commission payments were prohibited by COBS 6.1.A.4R.

15. There is nothing in COBS 6.1A.4R which suggests that payments which would be prohibited if made directly to an IFA, would be permitted if received indirectly from third parties. This is not a conclusion that an experienced IFA, like Mr Reynolds, could have reached honestly on a reading of COBS 6.1A.4R. The prohibition on commission payments is broadly drafted and is focused on the substance of the prohibited payments, not the mechanism by which they are made. From Mr Reynolds' stated belief that indirect commission payments were permissible, it is implicit that he always understood that payments direct to Active Wealth would have been prohibited. The Authority considers this is an attempt to present the mechanism by which Mr Reynolds sought to conceal the prohibited payments as the reason why he believed they were permitted.

16. If Mr Reynolds believed there was nothing wrong in receiving commission payments via the First and Second Companies, Mr Reynolds would have disclosed them to the Authority at the earliest opportunity. Instead, he concealed them because he knew them to be prohibited.

17. The Authority notes Mr Reynolds' denial that he instigated the commission payments by Greyfriars in respect of investments in P6. However, whether or not that is the case, it is clear from COBS 6.1A.4R that acceptance of commissions is prohibited and that Mr Reynolds recommended that Active Wealth customers invest in P6 because this would earn him commission.

18. Mr Reynolds has not explained satisfactorily why it was "expedient" to switch the commission payments from the First Company to the Second Company. In fact, his assertion is misleading and wrong in the following respects:

i) the Authority did not contact the First Company in connection with its investigation of Greyfriars. The Authority only became aware of the payment of commission to the First and Second Companies in the summer of 2018, after it had opened its investigation into Mr Reynolds and Active Wealth and had conducted a banking analysis of the First and Second Companies as part of that investigation;

ii) this was after payments to the First Company had ceased and receipt of prohibited commission payments had been transferred to the Second Company. The First Company received commission payments in the period from 12 March 2015 to 22 October 2018 and the Second Company received commission payments in the period from 14 July 2016 to 23 October 2018. Commission payments to the First Company ceased in the same month as the Authority's visit to Active

Wealth in July 2017. The First Company entered compulsory liquidation on 8 August 2018; and

iii) the Authority concludes that the reason it was "expedient" for commission payments to be switched from the First Company to the Second Company, was that Mr Reynolds hoped that commission payments to the Second Company would not be discovered by the Authority.

19. The Authority considers that Mr Reynolds characterised the commission payments he received from the Second Company as loans because he believed this would assist his attempt to conceal them from the Authority (there may have been income tax benefits also). His continued assertion that these payments were loans is inconsistent with the accounts of the Second Company, Mr Reynolds' acceptance that they were prohibited commission payments and the view of the liquidators of the Second Company that these payments were not made to Mr Reynolds pursuant to a valid loan agreement.

20. The Authority does not accept the assumption claimed by Mr Reynolds, that the Authority was aware that P6 paid commissions and so he took comfort from this. For the reasons given above, the Authority considers that Mr Reynolds cannot reasonably have thought that the commission payments were legitimate. There is no evidence that the Authority was aware, through its investigation of Greyfriars, of the commission payments to advisers of Active Wealth via those companies. In addition, Greyfriars expressly denied to the Authority that it paid commission to IFAs. Even if Mr Reynolds did take comfort from this, it does not explain why he attempted to conceal the payments from the Authority.

21. The Authority did not publicly announce its investigation into Greyfriars or make any other public statement about that investigation. Any comfort which Mr Reynolds took from his knowledge of that investigation can only have been on the basis of information (if any) provided to him by Greyfriars itself. Mr Reynolds has not set out or otherwise disclosed any such communications from Greyfriars.

22. Despite expressing regret that he received commission, Mr Reynolds' representations consistently seek to downplay the significance of his conduct. For example:

i) he contends that his receipt of commission enabled him to reduce adviser fees charged to customers by "approximately 50%". Thus, he seeks to suggest that his receipt of commission actually benefitted Active Wealth customers;

ii) Mr Reynolds denies that the commission payments altered the advice given to Active Wealth clients. The Authority does not accept this. Active Wealth advised at least 658 customers during the Relevant Period. Of those, 580 customers (just over 88%) invested in investments for which commission payments were made. It is highly improbable – particularly for pension investments or pension holders with a low risk profile - that such a high proportion of customers would have been advised to invest in such a narrow range of investments – or investments of these kinds – were it not for the fact that Mr

Reynolds and/or other Active Wealth advisers would earn commission if they did so;

iii) Mr Reynolds denies that commission of 17% of the amount invested was ever in fact paid but this is not something the Authority is able to verify. Nor does Mr Reynolds deny that when he advised customers to invest in the investment in question, he anticipated receiving commission of 17% such that there was a significant incentive for him to advise customers to choose that investment; and

iv) Mr Reynolds concedes that if certain customers had known of the commission payments, they may have made different investment decisions. However, it is the view of the Authority that Mr Reynolds would not have advised his customers in the same way had he not been receiving commission.

23. In the view of the Authority, the commission payments created an obvious conflict of interest between the interests of Mr Reynolds in receiving commission, and those of his clients in receiving impartial advice as to what was in their best interests.

Advice to invest in P6

24. Active Wealth started advising customers in respect of investing in P6 in 2015, the product having been in operation since April 2014. At that time, Mr Reynolds' understanding as to the composition and operation of P6 was derived from Greyfriars' explanation of the underlying products and the associated marketing materials. As to which:

    i) P6 was not presented by Greyfriars as being unduly high-risk, illiquid or unlikely to be suitable for retail customers. Rather, consistent with Mr Reynolds' own analysis of the investment opportunity, Greyfriars represented that while the mini-bonds could be illiquid up to maturity, P6 would offer good returns (estimated at 5.19% per annum) and there was a 10% capital risk exposure with the remaining 90% secured on assets; and

    ii) while P6 marketing materials did carry certain risk warnings, they also characterised P6 in terms that would suggest the investment products within the portfolio were more appropriate than the Notice suggests.

25. Mr Reynolds' assessment was supported by P6's initial performance in which it offered average effective returns of approximately 8.4% between April 2014 and May 2015. That strong performance was supported by Mr Reynolds' understanding that the investments carried a level of oversight, in that, for example, the investments were held on a regulated investment management platform.

26. In the circumstances, and in reliance on the information provided by Greyfriars, notwithstanding its higher liquidity risk, Mr Reynolds considered P6 was a sound investment proposition (for appropriate customers) when taken as part of a holistic investment approach. Mr Reynolds only ceased to recommend P6 to customers when he observed that the underlying investment was not as described by P6, and that the majority of customers' investments "just went into corporate bonds".

27. Mr Reynolds did not tell the Authority that he believed that P6 was suitable for customers that were high net worth investors who owned more than one property. Rather, he acknowledged that certain of his clients were high net worth who would have owned more than one property and were likely to better understand the liquidity risks posed by P6.

28. Mr Reynolds denies that P6 was the default investment portfolio for all Active Wealth customers. While a higher proportion of customers were invested in P6 by reason of the responses to Active Wealth's risk questionnaire, a significant proportion of customers were either never invested into P6 or were only invested into P6 at significantly reduced levels.

29. Mr Reynolds accepts that a recommendation of a high-risk investment to customers identified as having a very cautious or cautious attitude to risk profile would not be appropriate, however, he denies that he made such recommendations. First, Mr Reynolds did not regard the investments in the P6 portfolio as particularly high-risk; and secondly, Mr Reynolds engaged with customers to ascertain whether they would accept a higher risk for a higher return - this was necessary if they were to achieve their targeted income.

30. Mr Reynolds admits that he permitted customers' levels of investment in P6 to exceed 25% of their investable wealth. However, this step was taken having regard to (if it was a pension transfer) the customers' targeted returns and critical yields given in their transfer value analysis reports and in circumstances where: (i) Mr Reynolds considered the P6 investments were not high-risk; (ii) the perception was that illiquidity (as opposed to default) was the greater risk posed by P6; and (iii) the calculation was done holistically (not just on this investment alone) and so with the awareness that customers' investments were also diversified.

31. During the period in which Mr Reynolds advised customers to invest in the P6 portfolio, he did not regard it as a portfolio representing a high-risk of default but rather a potentially illiquid investment portfolio that, by reason of its strong returns, was capable of assisting customers in realising their targeted returns. In his view, the performance of P6 suffered significant adverse change after the Authority stated its concerns in relation to the portfolio.

32. Mr Reynolds admits that he signed P6 Application Forms in the manner described in the Notice. However, these forms were countersigned by another investment platform operator, whilst the fact-finding component of the documents were signed by the customer in each instance. Mr Reynolds' assessment of knowledge and experience determined the proportion that each customer invested in P6 in the manner set out above.

33. In respect of Mr Reynolds' interactions with Customers A, B and C, he denies that he gave advice to the effect that investments in unregulated investments were suitable because these customers had a high-risk profile and capacity for loss. Neither does Mr Reynolds consider the investment to have been unsuitable for Customers A, B or C in the circumstances, notwithstanding their characterisation as cautious investors.

34. On the basis of the available evidence the Authority does not believe Mr Reynolds' account that he considered the P6 investment portfolio to be "a sound investment proposition (for appropriate customers) when taken as part of a holistic investment approach". It also rejects his contention that P6 was not the default investment for Active Wealth customers. Of the 315 Active Wealth clients in the period up to and including September 2016, 255 customers (just over 80%) invested monies in P6. Nor does the Authority accept Mr Reynolds' assertion that he only ceased to recommend P6 to

customers when he observed that the underlying investment was not as described by P6, and that the majority of customers' investments "just went into corporate bonds".

35. The Authority disagrees with Mr Reynolds' assessment of the risk levels of the investments in P6, and his view that P6 was capable of assisting customers in realising their targeted returns. Mr Reynolds is recorded in the minutes of the Authority's visit to Active Wealth on 17 and 18 July 2017 as stating that he believed that P6 was suitable for customers that were high net worth investors who owned more than one property. Mr Reynolds also repeated this statement in his first interview with the Authority's Enforcement division. The Authority considers that he did so because he knew that it was obvious that P6 investments were too high-risk to be appropriate for customers of more modest means, who would be less able to afford to lose their investment.

36. The high-risk nature of P6 was summarised in statements within the P6 documentation and would also have been apparent to any competent financial adviser. Despite Mr Reynolds' assertions to the contrary, the high-risk nature of P6 was clear from when the first investments were made by Active Wealth customers.

37. Contrary to what was stated in some of the P6 documentation, P6 was not comprised of up to 40% in equities, up to 40% in fixed interest securities and up to 20% in property with the balance in cash (the "40/40/20 composition"). Mr Reynolds was aware of this at the time that he was recommending that Active Wealth customers invest in P6. Active Wealth's own suitability reports for investments in P6 sometimes stated both that the assets were comprised of the 40/40/20 composition, and that "the assets within the portfolio are made up of specific corporate bonds with varying levels of security via a charge against property." When the Authority asked Mr Reynolds about this inconsistency in a letter dated 29 September 2017, Mr Reynolds responded that Active Wealth was "fully aware of the composition of P6" and the reference to the 40/40/20 composition in the suitability reports instead related to "portfolios that sat alongside P6 within the overall recommendation".

38. Greyfriars sent monthly emails to Active Wealth setting out the bonds in which P6 customers were invested. This information made it clear that they were investments in mini-bonds. Mr Reynolds examined this information in detail, as is evidenced by the fact that he informed the Authority that Active Wealth prepared spreadsheets for "nearly every [customer]" setting out the bonds they owned and when coupon payments were due. At least from the time this information was provided in respect of the first Active Wealth customers' investments in P6, Mr Reynolds was aware that customers' monies were being invested solely in mini-bonds.

39. So far as the Authority has been able to ascertain, Active Wealth customers only ceased investing in P6 in the autumn of 2016. The probable reason is that from 7 October 2016 Greyfriars was prohibited by a voluntary requirement, imposed at the request of the Authority on Greyfriars' application, from accepting new money into P6. The Authority, therefore, rejects Mr Reynolds' assertion that he stopped advising Active Wealth customers to invest in P6 as soon as he realised the true nature of the underlying investments. He only did so when further investments were no longer possible.

40. Further, Mr Reynolds ignored Greyfriars' own limits for investments into P6. Mr Reynolds knew that Greyfriars would not normally accept an investment into P6 where it represented more than 25% of a customer's "total investable wealth". The Greyfriars P6 documentation also stated that P6 was appropriate only for a "small proportion" of an investor's funds. Nevertheless, Mr Reynolds and others at Active Wealth often advised customers to invest more than 25%, and on occasion up to 62%, of their "investable assets" in P6.

41. The Authority does not accept that Mr Reynolds advised customers to invest in P6 because he considered this to be in their best interests. Mr Reynolds knew that investing in P6 was high-risk and unsuitable for most Active Wealth customers. He nevertheless advised them to do so because if they did, he would earn commission.

42. Mr Reynolds does not deny that he stated on P6 Application Forms that Active Wealth customers, who he had assessed as having "very cautious", "cautious" and "balanced" risk profiles, had a high-risk profile and capacity for loss. Mr Reynolds has not given any reasonable explanation for this misrepresentation of customer risk profiles. Even if Mr Reynolds did not believe P6 to be a high-risk investment, and considered it to be appropriate for Active Wealth customers with low-risk profiles, this would not justify him misrepresenting their appetite for risk in order to induce Greyfriars to accept their investments.

43. Mr Reynolds does not deny that he knowingly made false and misleading statements to Greyfriars about Customer A and Customer B in their respective P6 Application Forms, in respect of: (i) them being high-net worth investors; (ii) the percentage of their portfolio the investment in P6 would represent; and (iii) them being experienced investors. Mr Reynolds also does not deny that he knowingly made false and misleading statements about Customer C's investment experience and the percentage of investable assets in his P6 Application Form.

44. Even if Mr Reynolds did not appreciate that the investments in the P6 portfolio were high-risk, this would not explain his making the false and misleading statements to Greyfriars.

45. The fact that Mr Reynolds made such false and misleading statements on the P6 Application Forms is evidence that he knew they were not appropriate for these customers. The Authority has seen no evidence to support Mr Reynolds' contention that the customers and Active Wealth's SIPP provider were content for him to make the false statements. However, even if this contention were true, no honest financial adviser would have colluded with customers – or a SIPP provider - to mislead Greyfriars in this way.

46. It appears to the Authority that the SIPP provider was not given the customer questionnaires which contradicted the information in the P6 Application forms. When it countersigned the application forms therefore, the SIPP provider cannot have known that they were not accurate. The Authority concludes that Mr Reynolds' representations that they did so is false.

47. The Authority concludes that Mr Reynolds knew that investing in P6 was not in the best interests of Active Wealth customers, that he deliberately and dishonestly gave them the wrong advice, and misled Greyfriars as to their

circumstances in order to have the customers invest in P6. He took such actions dishonestly in order to maximise the commission paid to himself and other Active Wealth advisers.

British Steel Pension Transfer Advice

48. There was a great deal of uncertainty and customer vulnerability which surrounded the British Steel Pension Scheme during the Relevant Period and customers were considering their options for future pensionable provision in that context. During the Relevant Period, there was also a good deal of change and alteration to transfers out of Defined Benefit Pension schemes, both in terms of laws and guidance.

49. Mr Reynolds did not consider that a transfer out of a Defined Benefit Pension Scheme was a step to be taken lightly, and the suitability reports make it perfectly plain that he understood (and advised) that to be the case. Neither is it the case that a transfer out of a highly vulnerable (and under-funded) scheme such as the British Steel Pension Scheme, and the taking of a transfer value so as to invest through a SIPP, can be reasonably portrayed as inevitably the wrong course of action. Each transfer must be assessed on its own merits. The Authority has not demonstrated a) the unsuitability of any transfer upon which it relies, or b) why, in any event, the Authority alleges that the suitability reports provided in this case (which recommended not transferring out) did not mean what they said.

50. The initial skilled person review of the suitability reports in this case concluded that the advice given was not to transfer and that the customers were insistent customers. Furthermore, the majority of the customers whom Mr Reynolds / Active Wealth advised had already obtained discharge forms prior to Mr Reynolds / Active Wealth first meeting them, had often spoken to other advisers, and often had pre-determined views as to the inadequacy of the proposed British Steel Pension Scheme pension provision and their wish to make alternative pension provision.

51. The Authority has produced no evidence to support its assertion that Mr Reynolds never spoke with Customer C about Customer C's level of risk, and that Customer C never agreed to accept a higher level of risk.

52. Further, the Authority has produced no evidence in support of its assertion that Mr Reynolds was aware that a transfer from the British Steel Pension Scheme to a SIPP was unlikely to be suitable.

53. Mr Reynolds denies that he used the term "no brainer" when providing advice to Active Wealth customers to transfer out of the British Steel Pension Scheme. Each customer was advised in the context of the suitability of their options and in the context of what they were seeking to achieve. Mr Reynolds and Active Wealth complied with the obligation under, inter alia, COBS 9.4.1.1R(4) when preparing suitability reports for each of its customers.

54. The Authority has no basis on which to make the assertion that the suitability reports failed to reflect the oral advice given by Mr Reynolds and Active Wealth, beyond the questionnaires returned to the Authority by the customers during its investigation. These are not contemporaneous documents but are the customers' recollections of past events. The Authority appears to criticise Mr Reynolds because the wording of the suitability reports contained "identical or similar wording." This criticism is unfounded in that:

    i) the templates used to prepare these suitability reports (including their stock wording) were not prepared by Active Wealth or Mr

Reynolds but by a third-party compliance consultant. In the circumstances Mr Reynolds had understood that Active Wealth's reliance on these documents and their format was appropriate;

ii) it is a hardly surprising feature of documents that were prepared on a routine basis that they would rely on template wording; and

iii) in any event, the wording of these reports was routinely adjusted, for example, to ensure that they reflected customer particularities.

55. Mr Reynolds considers that the Authority's conclusion that Active Wealth's suitability reports were drafted in such a way as to suggest that the customers had been advised to remain in the British Steel Pension Scheme mischaracterises the tone of the suitability reports. Rather:

i) it is plain that Active Wealth started from a proposition whereby benefits under the British Steel Pension Scheme were likely to represent the preferable starting position;

ii) in the circumstances, it was the honestly held view of Mr Reynolds and other members of the Active Wealth team, that many of Active Wealth's customers were unable to achieve specific performance goals were they to remain in the Scheme and / or join BSPS 2; and

iii) all Active Wealth customers would have been provided with suitability reports during the advisory process on the terms outlined above.

56. The Authority has reviewed the files of 23 British Steel Pension Scheme members who were customers of Active Wealth. It found that, with the exception of two, the suitability reports post-dated the signature and submission of the forms for the transfer of the customer's British Steel pension to a SIPP. The Authority therefore concludes that Mr Reynolds produced the suitability reports after customers had already instructed the transfer out of the British Steel Pension Scheme (as the dates on the reports show).

57. Mr Reynolds provided the suitability reports after the transfer forms had been signed and submitted because he knew that they did not reflect the advice he had given orally, and to avoid the possibility of Active Wealth customers changing their minds about whether to transfer their pension (which would have resulted in him receiving less commission). The Authority has concluded that the suitability reports purported to record that Mr Reynolds had advised Active Wealth customers not to transfer their British Steel pensions to a SIPP, in an attempt to conceal the advice he had given to customers orally.

58. The Authority sent questionnaires to the 23 Active Wealth customers whose files it reviewed. Of the 15 responses received, 13 stated that Mr Reynolds orally encouraged them to transfer out of the British Steel Pension Scheme. The remaining two did not consider Mr Reynolds to have advised them against transferring; rather, they thought he agreed with their own view that it was necessary to transfer. None of the respondents stated therefore, that Mr Reynolds had advised them against transferring out of the British Steel Pension Scheme, despite this having been the advice recorded in their suitability reports. The Authority therefore considers that Mr Reynolds account that he did not advise the customers to transfer to be, on the balance of probabilities, untrue.

59. The skilled person that originally conducted the paper review of the 23 Active Wealth customer files referred to above concluded, on the basis of the suitability reports taken at their face value, that Active Wealth advised customers not to transfer, but that the customers insisted on doing so. The Authority does not consider that this conclusion can be given any weight however, as the skilled person did not have any evidence from the customers themselves. Nor was the skilled person aware of the commission payments received by Mr Reynolds and others at Active Wealth in respect of the transfers to SIPPs.

60. The Authority also notes that it is unable to verify whether any Active Wealth customers had obtained and signed discharge forms confirming their intention to transfer their Defined Benefit Pension to a SIPP before they were advised by Active Wealth. Of the 23 files which it has analysed in detail however, discharge forms appear to have been signed on the same date as advice was given by Active Wealth, or the transfer application made. These Active Wealth customers therefore only signed their discharge forms (and therefore began the process of transferring their pension) after receiving advice from Active Wealth.

61. Even if, as Mr Reynolds contends, some customers had obtained discharge forms prior to being advised by Active Wealth, had they been properly advised by Mr Reynolds, it is likely that they (or at least the majority of them) would have accepted his advice to remain in the British Steel Pension Scheme / transfer to the BSPS 2, and would therefore not have signed the discharge forms or otherwise taken steps for the transfer of their British Steel pension to a SIPP.

62. In respect of Mr Reynolds' claim that he advised members of the British Steel Pension Scheme to remain in the scheme, but they were determined to transfer out, the Authority concludes on the evidence that Mr Reynolds advised them to transfer their pensions out of the British Steel Pension Scheme.

63. The Authority's guidance at the time regarding DB schemes was clear: from the time of its introduction in November 2007, COBS 19.1.6G has provided that, when advising a retail client who is, or is eligible to be, a member of a defined benefits occupational pension scheme whether to transfer or opt-out, a firm should start by assuming that a transfer or opt-out will not be suitable and that a firm should only then consider a transfer or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer or opt-out is in the client's best interests. Moreover, the Authority published alerts in 2013 and 2014 in relation to the provision of advice on pension transfers or switches to SIPPs with a view to investing in unregulated, high-risk investments.

64. The typical wording used in the suitability reports did not contain any analysis of the PPF or the BSPS2. Nor did it address the uncertainty in relation to the future of the British Steel Pension Scheme before the RAA was approved on 11 August 2017. The Authority concludes that, in truth, Mr Reynolds understood at the time that remaining in the British Steel Pension Scheme (including either being automatically transferred to the PPF or electing to transfer to the BSPS2) would most likely have been better for Active Wealth customers than transferring to a SIPP, particularly if invested in higher risk assets.

65. The Authority has concluded that Mr Reynolds identified the British Steel Pension Scheme membership as a fertile source of potential customers and, therefore, commission payments. He exploited the vulnerability of these customers at a time of uncertainty and recommended that they transfer their pensions to a SIPP because he would earn commission from the SIPP providers which he recommended.

Non-Disclosure of Exit Fees

66. A UCITS sub-fund prospectus, dated 24 December 2013, disclosed the existence of exit fees for the first five years of the investment. This prospectus was not intended for customers, however in most instances Mr Reynolds provided it to customers.

67. While there was a potential for exit fees to be charged such fees were discretionary and were not initially charged. It became necessary to charge such fees upon third parties advising customers to withdraw funds.

68. The existence of these discretionary fees was unlikely to be a key consideration having regard to the intended long-term nature of the investments and the understood intention that exit fees were discretionary and unlikely to be charged.

69. The exit fees were actually set out in a supplement to the prospectus for one of the UCITS sub-funds ("the Supplement"). However, this was a long, technical and detailed document. The exit fees (titled "Contingent Deferred Sales Charge") were set out on page 18 of this document. The Authority is unable to verify whether the Supplement was provided to Active Wealth customers as Mr Reynolds now contends. In Mr Reynolds' second interview he denied having received the Supplement at the time he was advising Active Wealth customers. Even if the Supplement had been provided to Active Wealth customers the Authority does not consider that this would have constituted adequate disclosure of the exit fees.

70. Thirteen Active Wealth customers have told the Authority that Mr Reynolds did not inform them of the exit fees, a further seven customers have told the Authority that Mr Reynolds positively told them that there were no charges or penalties payable on exit. Based on this evidence, the Authority concludes that Mr Reynolds told customers that there were no such exit fees and that, in the cases where the existence or otherwise of exit fees was raised by the customer as part of the process of deciding whether to invest, Mr Reynolds misled them by denying that exit fees were payable. Had Mr Reynolds considered such fees to be of minor importance, the Authority considers that he would not have concealed them from customers in this way.

71. There is nothing in the Supplement which suggests the exit fees were discretionary. Mr Reynolds has not referred to any evidence in support of this contention. The Authority therefore rejects Mr Reynolds' assertion in this regard. Mr Reynolds must have always known that if Active Wealth customers withdrew from the UCITS sub-funds early, the exit fees would be payable.

Enabling Unauthorised Advice

72. Mr Reynolds denies that Adviser A and Adviser B provided advice to customers on behalf of Active Wealth during the Relevant Period. Rather, they each helped to

complete fact finds, and Mr Reynolds himself saw every client that either adviser brought in.

73. Adviser A acted as an introducer to Active Wealth and would receive information and pass it to Active Wealth but could not (and did not) give advice. They additionally had responsibilities other than providing advice to customers, such as acting as office manager (from at least May 2015 to May 2016) and as operations consultant (from at least August 2016 to September 2017) and preparing certain compliance reports. Mr Reynolds intended that Active Wealth would apply for Adviser A to become an approved person once they held the necessary qualifications.

74. Adviser B's main role and responsibility at Active Wealth was assisting with the drafting of suitability reports from March or April 2017. The only customers whom Adviser B visited were friends or longstanding, pre-existing customers of theirs (as opposed to clients of Active Wealth), and as stated above, such individuals were also seen by Mr Reynolds.

75. The Authority considers that the documentary evidence and Active Wealth customers' accounts demonstrate that Adviser A and Adviser B advised numerous customers, none of whom were advised by Mr Reynolds (or indeed ever met, or spoke, with him).

76. Mr Reynolds' account of events is also contradicted by the fact that Adviser A and Adviser B received commission payments via the First Company and the Second Company. It follows that the forms and other documentation which Mr Reynolds prepared and signed, which purported to record advice which he had provided to these customers, was also false and misleading.

Misleading the Authority and the Insolvency Service

77. Mr Reynolds honestly believes that he did not mislead the Authority and that he was fully transparent with the Authority during its queries to him about Adviser A and Adviser B. Mr Reynolds honestly believed that he was not giving false information as to the capacity that Adviser A was acting in relation to Active Wealth at this time, as Adviser A did in fact do paraplanning. As regards the criticism that Adviser A appeared to be advising on investments without approval, all customers were brought to Mr Reynolds for advice (although Mr Deeney may have seen some of them).

78. It was the honest belief of Mr Reynolds that the introducer fees did not constitute a conflict of interest as: (i) he understood that they had been paid before; (ii) he believed that the Authority knew about them; and (iii) he believed that they were permitted in order to promote the business.

79. It is incorrect for the Authority to allege that Mr Reynolds remained in control of the First Company throughout the Relevant Period. The first close family member was appointed as director of the First Company, and it was them - not Mr Reynolds - who ran the First Company on a day-to-day basis. Whilst Mr Reynolds spoke to the first close family member, he did not have day-to-day control over the First Company and (as per his statements during the 27 February 2019 interview) Mr Reynolds had resigned because he "[hadn't] *physically got the time to do it all*".

80. The circumstances of Mr Reynolds' first interview on 28 March 2018 were extremely stressful. Television journalists had very recently turned up at Mr Reynolds' home and (as per his statement during the 27 February 2019 interview) he was receiving "phone calls every other day from newspapers". He had received solicitors' letters

concerning former clients, and Active Wealth had been put into liquidation. Mr Reynolds cannot recall exactly what he said, but if he denied receiving commission, this was due to his understanding of the word 'commission' and his genuinely held view that it did not include the introducer fees, rather than any intention to mislead.

81. During the 27 February 2019 interview by the Authority, Mr Reynolds again understood that he was being asked about prohibited payments, as opposed to marketing fees being paid to introducers (which he thought were legitimate).

82. The statements by Mr Reynolds during the 27 February 2019 interview, that the payments he received from the Second Company were loan advances that he had to repay, were not deliberately false statements, as he and the third close family member did in fact regard the payment(s) as a loan which was to be repaid on the sale of Active Wealth, and he had also obtained confirmation from his accountant that this could be done.

83. In relation to Mr Reynolds' assertion that he did not mislead the Authority when he told the Authority's supervision team that Adviser A was not advising Active Wealth customers, there is clear evidence in the information supplied from Active Wealth customers that Adviser A advised them and Mr Reynolds did not.

84. None of the three reasons given by Mr Reynolds for omitting to include the commission payments in the Active Wealth conflict register, which he provided to the Authority on 19 January 2017, are relevant to that question. Mr Reynolds' inability to recognise the conflict of interest created by the commission payments itself demonstrates his lack of integrity. The Authority does not accept the explanations given by Mr Reynolds as to what he said was the basis for his belief that there was no conflict of interest.

85. Mr Reynolds' denials regarding the control of the First Company do not address the fundamental allegation that Mr Reynolds received the commission payments via the First Company in order to conceal those payments from the Authority. Mr Reynolds' statements to the Authority in his interview of 28 March 2018 were clearly false and misleading. Even if Mr Reynolds believed that the commission payments were permitted, it does not explain why he did not mention them in his answers to direct questions about them. Further, the repetition of the contention that the payments from the Second Company were loans does not assist Mr Reynolds' position (nor does his assertion that he obtained advice from his accountant that "this" could be done, and the Authority has seen no evidence that such advice was provided).

86. Mr Reynolds' efforts to explain his many false and misleading statements to the Authority do not fully address a number of the examples of him misleading the Authority. It is therefore the view of the Authority that he has deliberately and consistently misled the Authority over many years.

<u>Destruction of Evidence</u>

87. Shortly after Active Wealth entered into liquidation on 5 February 2018, Mr Reynolds contacted Adviser B (who owned the Active Wealth website/domain) to explain that he no longer required his Active Wealth email account and could no longer pay for website hosting. He therefore asked for the website to be deleted. Although Mr Reynolds had not asked Adviser B to delete the mailbox, Adviser B subsequently deleted Mr Reynolds' mailbox on 23 February 2018.

88. Mr Reynolds was unaware that his instruction to delete the website would have the effect of destroying his Active Wealth email account and did not do so deliberately, as indeed, many of the emails in the mailbox would have been useful to him. On two occasions during the first interview of Mr Reynolds on 28 March 2018, he referred to his needing to locate relevant emails. In his second interview on 27 February 2019, Mr Reynolds stated that the deletion of his emails was unintentional and that he was of the belief that the emails would be maintained somewhere and recoverable from a server.

89. Mr Reynolds, in any event, considered that the deletion of such emails would not negatively impact or hinder the Authority's investigation as: (i) any relevant client emails would have been saved to the relevant client file on Active Wealth's client relationship management (CRM) system; and (ii) he believed that even if an email address was closed down, the data would remain available via the domain host.

90. Although Active Wealth's computers were sold after it entered into liquidation, Mr Reynolds does not believe any documents relating to Active Wealth's policies and procedures and due diligence on investments (including analysis by Active Wealth on the suitability of investments) have been lost as: (i) Mr Reynolds used to download "everything that was off my computer" onto a hard drive regularly; (ii) Mr Reynolds believed that everything (37 or 40 boxes worth of documents) was passed onto the liquidator; and (iii) there were some paper files remaining.

91. Mr Reynolds was therefore not aware of any risk of deletion of the email accounts and the emails, and so he did not act recklessly.

92. Mr Reynolds accepts that in February 2018 he told Adviser B that he no longer required his Active Wealth email account. Mr Reynolds' recklessness in relation to the deletion of his email account is demonstrated by the fact that:

i) as Mr Reynolds accepts, he told Adviser B that he no longer needed his Active Wealth email account, when this was not true: on 4 January 2018 the Authority had informed Mr Reynolds that investigators had been appointed to investigate him and Active Wealth, and he had been specifically warned not to destroy evidence;

ii) when telling Adviser B that he no longer needed his email account, he did not tell him that he was obliged to preserve it for the purposes of the Authority's investigation; and

iii) whilst Mr Reynolds states that he told Adviser B to delete the Active Wealth website at the same time as telling him he no longer needed his email account (the implication being that only the former was to be deleted), Adviser B has told the Authority that Mr Reynolds told them he did not need his email account anymore. There is no evidence, other than what Mr Reynolds says himself, that Mr Reynolds said anything about deleting the website.

93. The Authority therefore considers that Mr Reynolds was aware of his legal obligation to preserve evidence that was likely to be relevant to the investigation, that he must have been aware that his instructions to Adviser B might result in the deletion of evidence likely to be relevant to the investigations, and that he nevertheless unreasonably told Adviser B that he no longer needed the email account.

Property Transfers

94. While the First and Second Property Transfers are admitted, it is denied that these arrangements were in any way calculated to avoid the Authority or customers or other creditors of Active Wealth having recourse to the property in order to meet his and/or Active Wealth's liabilities. These arrangements were set up for tax and family reasons and Mr Reynolds was not motivated by an intention to place assets out of reach of any subsequent obligation or liability.

95. Although Mr Reynolds asserts that these arrangements were set up for "tax and family reasons", he has not provided satisfactory further evidence or details regarding these reasons. His representations do not provide any meaningful evidence or information about the transfer of his family home into a trust – in respect of which he is named as a trustee. The clear inference from the timing of the First and Second Transfers of his family home, is that they were intended to put his assets beyond the reach of the Authority. If Mr Reynolds wished to rebut that inference, it was incumbent on him to set out that information in his submissions and provide the Authority with relevant supporting evidence. Despite providing copies of the trust documents, and a small number of other documents, to the Authority at a late point in these proceedings, he has failed to provide satisfactory evidence, reasons or explanations that rebut this inference.

Financial Penalty

Limitation

96. On account of the Authority's investigation of Greyfriars and its consequent knowledge and understanding that Active Wealth was advising customers to invest in Greyfriars investments (and specifically P6), the Authority is time-barred from imposing a financial penalty on him, as the Warning Notice was issued more than six years after the Authority could have reasonably inferred that Active Wealth was advising customers to invest in P6.

97. **The Authority agrees that it was information provided to the Authority by Greyfriars that led it to have concerns about the advice being given to Active Wealth clients, but does not agree that this gives Mr Reynolds a limitation defence. The Authority considers that the earliest date on which it might have reasonably been able to infer any aspect of Mr Reynolds' misconduct was 17 August 2016 – this being the date on which the Authority received customer files from Active Wealth which contained information from which Mr Reynolds' misconduct could reasonably be inferred (as required by section 66 of the Act). As the Warning Notice was issued within six years of that date, the Authority is not time-barred from imposing a financial penalty on Mr Reynolds.**

Step 1 Disgorgement

98. Mr Reynolds accepts that he derived direct financial benefits by way of the conduct detailed in the Notice. His income, however, from Active Wealth in the Relevant Period was very modest - he received a salary of only £12,599 in the Relevant Period. While he now admits that his arrangements for remuneration were not permitted under the Authority's rules at the time, it would still have been reasonable to draw some income and expenses from the business. It is wrong, therefore, to start on the

basis that all sums received by him should be liable for disgorgement. They should be subject to a reasonable allowance for living expenses.

99. Mr Reynolds is being pursued to repay the sum of £248,002 by the liquidator of the Second Company and is also in discussions with HMRC as to income tax alleged to be due in respect of payments by the Second Company. It is wrong in principle that he should be subject to repay or disgorge the same amount twice and so these figures (when ascertained) should not be included in the disgorgement figure in any event.

100. It is not appropriate for the Authority to assert, as it does in the Notice, without adducing any supporting evidence, that Mr Reynolds' breach tainted the "vast majority" of the regulated activity conducted by Active Wealth during the Relevant Period. The Authority should quantify the amounts which it alleges derive from Mr Reynolds' alleged breach and this cannot be assumed.

101. While Mr Reynolds accepts that the appropriate rate of interest is 8% simple per annum, the figure on which the interest calculation is not accepted. It is not in fact clear in any event what the basis is for the Authority's calculation (i.e., for which period interest is being calculated or the precise basis on which it is calculated).

102. Mr Reynolds, therefore, does not accept the Step 1 figure in the Notice. If a financial penalty is appropriate at all, the Step 1 figure should be significantly lower.

103. DEPP 6.5B.1G states "Where the success of a firm's entire business model is dependent on breaching FCA rules or other requirements of the regulatory system and the individual's breach is at the core of the firm's regulated activities, the FCA will seek to deprive the individual of all the financial benefit he has derived from such activities." The Authority concluded from Active Wealth's new business register and the financial benefit gained by Mr Reynolds from Active Wealth's revenue generated by its regulated activities, that almost 100% (i.e. the vast majority) of the success of its business model was dependent on breaching the Authority's rules. The Step 1 figure therefore appropriately reflects this.

104. DEPP 6.5B.1G also provides that the Authority "will seek to deprive an individual of the financial benefit derived directly from the breach...". Mr Reynolds expressly accepts he has received benefits in the amount calculated by the Authority. Therefore, there is no basis on which Mr Reynolds can be permitted to retain any of the sums to be disgorged. In addition, the interest has been calculated at 8% simple per annum from the date the benefit was received up to the date of this Notice. Further, the Authority does not consider that, as a matter of principle, the disgorgement element of an individual's financial penalty should be reduced to account for an unpaid tax liability incurred as a consequence of receiving the benefit of their misconduct.

Step 2 The seriousness of the breach

105. Mr Reynolds does not accept the relevant income figure of £1,027,401 for the reasons given above in relation to the Step 1 figure. Nor does Mr Reynolds accept the points made by the Authority in relation to the alleged impact of the breach and nature of the breach. Regarding the level of seriousness of the alleged breach, Mr Reynolds admits he made mistakes in certain respects but does not accept that he acted dishonestly and/or recklessly.

106. Mr Reynolds does not accept that the Step 2 calculation should be based on the seriousness of the breach being determined as level 5, and thus applying a 40% uplift.

107. Mr Reynolds, therefore, does not accept that £410,960 is an appropriate figure for the Step 2 calculation.

108. For the reasons set out in detail in the Notice at paragraphs 6.18 to 6.24, the Authority has assessed the seriousness of Mr Reynolds' breaches to be at the highest level (5), thus justifying the Step 2 calculation. The Authority also considers that the income figure on which this figure is based is appropriate because, as set out above at paragraph 103, the vast majority of Mr Reynolds' salary and financial benefit earned from Active Wealth during the Relevant Period was earned through these activities.

Step 3 Mitigating and Aggravating Factors

109. Mr Reynolds does not accept that certain factors aggravate the breaches. He denies that he acted dishonestly and/or recklessly. Moreover, Mr Reynolds has been a financial adviser for 28 years and has had an unblemished disciplinary record, which affords substantial mitigation. Guidance as to Pension Transfers and Opt-outs in the Relevant Period was limited. Therefore, the aggravating features set out in the Notice are not accepted and there are significant mitigating features. Consequently, Mr Reynolds considers that the Step 3 figure of £821,920 (entailing an increase of 100%) is not justified and is manifestly excessive.

110. Mr Reynolds' submissions on the matters constituting aggravating factors have been addressed above. The Authority considers that he has failed to show that any of the matters relied on by the Authority as aggravating factors in this Notice should be discounted. The 100% uplift in the Step 2 figure is therefore appropriate. This is due to the seriousness of Mr Reynolds' misconduct which demonstrates a serious lack of honesty and integrity, and the harm that his misconduct caused to customers – many of whom were vulnerable.

Proposed penalty

111. For the reasons outlined above, Mr Reynolds disputes the amount of the proposed financial penalty. The five-step test should reasonably lead to a lesser sum.

112. The Authority considers that it has correctly and appropriately applied its penalty policy having taken into account all the relevant aspects of Mr Reynolds' misconduct and the evidence. Therefore, the Authority considers it is appropriate to impose a financial penalty of £2,212,316.

Serious Financial Hardship

113. Mr Reynolds has provided details of his financial position which show that the payment of the financial penalty would cause him serious financial hardship. There is also limited prospect of him being able to pay any financial penalty within a period of three years.

114. As set out in paragraphs 6.36 to 6.38 of the Notice, the Authority considers it is not appropriate to reduce the penalty on the ground that payment would cause him serious financial hardship. As well as it being inappropriate to do so due to the seriousness of his misconduct, despite

having had multiple opportunities to provide such evidence, Mr Reynolds has not provided full, frank and timely disclosure of any such evidence, nor has he co-operated fully in answering questions from the Authority about his financial position.

Prohibition Order

115. Mr Reynolds considers that the evidence fails to show that he is not a fit and proper person to perform functions in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm. While Mr Reynolds does accept fault, any breaches were not deliberate, dishonest or reckless and consequently he does not lack integrity.

116. Mr Reynolds admits to having made mistakes in difficult circumstances. He does not admit to dishonesty or recklessness. He has been a financial adviser for 28 years and has had a previously unblemished disciplinary record. A prohibition order is not necessary for the protection of the public.

117. If, contrary to this, the Authority is minded to impose a prohibition order, Mr Reynolds considers that the Authority should only impose an order which is limited as to scope or function and/or limited as to time. A prohibition order which is limited as to function could be limited to any senior management function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm and any function in relation to the regulated activity of advising on pension transfers and pension opt-outs carried on by an authorised person, exempt person or exempt professional firm.

118. Additionally, Mr Reynolds urges the Authority to consider whether any prohibition order should indicate that the Authority is minded to revoke or vary such an order after a period of five years or less (EG 9.6.2).

119. The Authority considers that the evidence, and its conclusions in respect of the same, demonstrates that Mr Reynolds lacks honesty and integrity. Therefore, he is not a fit and proper person to perform functions in relation to any regulated activity carried on or by any authorised or exempt person or exempt professional firm. The Authority also considers that Mr Reynolds poses a risk to consumers and to the integrity of the financial system.

120. Mr Reynolds' misconduct is so serious that the Authority does not consider it appropriate to indicate in the Notice that the Authority is minded to revoke or vary the prohibition order on application after a certain number of years (EG 9.6.2). Pursuant to section 56(7) of the Act, Mr Reynolds may apply for the revocation of the prohibition order. Should he do so, the Authority will consider all the relevant circumstances, including those set out in EG 9.6.1 and EG 9.6.4, in deciding whether to grant or refuse the application.