

This decision notice has been referred to the Upper Tribunal to determine, in the case of the decision to impose a disciplinary sanction: what (if any) the appropriate action is for the Authority to take, and remit the matter to the Authority with such directions as the Tribunal considers appropriate; and in relation to the prohibition order: whether to dismiss the reference or remit it to the Authority with a direction to reconsider 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 Mr Goodchild 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.



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DECISION NOTICE

To: **James Paul Goodchild**

Individual
Reference
Number: **JPG01089**

Born: **06/1978**

To: **Stephen Joseph Burdett
(as a third party pursuant to section 393(4) of the Act)**

Individual
Reference
Number: **SJB01626**

Date: **19 August 2022**

1. ACTION

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

- (1) impose on James Paul Goodchild a financial penalty of £47,600 pursuant to section 66 of the Act;

- (2) make an order, pursuant to section 56 of the Act, prohibiting Mr Goodchild from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm; and
- (3) withdraw, pursuant to section 63 of the Act, the approval given to Mr Goodchild to perform the controlled function of SMF27 (Partner) at Westbury Private Clients LLP ("**Westbury**").

2. SUMMARY OF REASONS

- 2.1. Between 7 October 2015 and 5 August 2016 (the "**Relevant Period**") Mr Goodchild breached Statement of Principle 1 (Integrity) of the Authority's Statements of Principle and Code of Practice for Approved Persons by acting recklessly when performing his controlled functions in relation to the pension business of Westbury. Mr Goodchild recklessly invested 207 pension funds in unsuitable, high risk investments and exposed pension holders to a significant risk of loss.
- 2.2. During the Relevant Period, Mr Goodchild held the controlled functions of CF4 (Partner – now SMF27) and CF30 (Customer) at Westbury. He was the Chief Investment Officer and had ultimate responsibility for deciding on Westbury's business activity and investment decisions. A small financial advisory firm called Synergy Wealth Limited ("**Synergy**") advised retail pension holders on whether to switch their pensions into a scheme called the Westbury SIPP, which was created and managed by Mr Goodchild. Mr Goodchild used self-invested personal pensions ("**SIPPs**") to invest retail pension holders' funds based on one of three model portfolios of assets which he created and managed ("**the Model Portfolios**"). The Model Portfolios exposed the majority of the pension holders whom Synergy advised to switch into them to an unacceptable risk of financial loss. Mr Goodchild was aware of, but unreasonably ignored, this obvious risk.
- 2.3. Mr Goodchild's failings in his role resulted in Westbury investing 39% of pension holders' aggregate funds in high-risk investments relating to a single offshore property development business (the "**Developer**" and the "**Developer Investments**"). His actions exposed pension holders to a significant risk of loss. For 207 (89%) of the pension funds switched, it was obvious that the Model Portfolios were unacceptably risky for the pension holders. The Financial Services Compensation Scheme ("**FSCS**") has to date paid over £1.4m in compensation to over 100 pension holders who invested in the Westbury SIPP.

- 2.4. Pensions are a traditional way of saving and investing money in a tax-efficient way for retirement. The value of someone's pension can have a significant impact on their quality of life during retirement and, in some circumstances, may affect whether they can afford to retire at all. Pension holders place a significant amount of trust in the firms they rely on to manage the funds in their pensions. Where a firm or an individual fails to act with integrity, and puts their interests above those of pension holders, it exposes pension holders to a significant risk of loss.
- 2.5. A contract between Westbury and Synergy signed by Mr Goodchild provided that Westbury was responsible for allocating the funds of pension holders advised by Synergy to investments managed by Westbury based on pension holders' Risk Profile Scores. A Risk Profile Score is a score between 1 and 10 which is intended to represent the level of risk an investor is comfortable in taking with an investment (i.e. appetite for risk). The contract also stated that Westbury took "full responsibility for ensuring the investment suitability at the point of sale and on-going is appropriate for the [Synergy pension holder] client[s]". Westbury therefore undertook to invest the funds of pension holders referred to it by Synergy in investments suitable for pension holders' Risk Profile Scores. Westbury's three Model Portfolios, which were the only portfolios it made available to pension holders referred by Synergy, thus had to be suitable for persons with the Risk Profile Scores notified by Synergy to Westbury for all pension switch clients. Mr Goodchild personally controlled this aspect of Westbury's business.
- 2.6. However, all three Model Portfolios designed by Mr Goodchild were high risk and unsuitable for most pension holders referred by Synergy. The Developer had indicated to Messrs Goodchild and Burdett (one of Synergy's directors) that the Model Portfolios designed by Mr Goodchild should allocate pension holders' funds to the Developer Investments. Mr Goodchild in response designed all Model Portfolios – even those which he designed for pension holders seeking low or medium risk investments – to allocate 40% of pension funds to the high-risk Developer Investments. In return for providing funding to the Developer and its affiliates through the 40% allocation to the Developer Investments, Westbury and Synergy benefited from marketing and client referral provided by a subsidiary of the Developer. Mr Goodchild also received a personal loan from a company assisting the Developer (Company A).
- 2.7. The Developer Investments to which Mr Goodchild through Westbury ultimately allocated 39% of low and medium risk pension holders' aggregate funds (the

target allocation having been 40%) included investments which the Developer or its affiliates themselves described as “speculative” and involving “substantial risk” in offer documents which Mr Goodchild admitted he read.

- 2.8. During a recorded telephone conference call relating to a different, although similar, planned investment scheme, Messrs Goodchild and Burdett acknowledged that a high allocation to the Developer Investments would make a portfolio high risk. When asked during the call whether they would allocate 60% of pension holders’ funds to the Developer Investments, Messrs Goodchild and Burdett did not say that they would do so because the Developer Investments were low risk. Instead, Mr Goodchild endorsed Mr Burdett’s view that a 60% Developer Investment allocation could be considered only for clients who were both willing to accept “high risk” and were “a reasonable way [from] retirement”. Further, in an email Mr Goodchild recognised that low risk clients should have a Developer Investment allocation below 40%. In addition, on 4 April and 28 April 2016, an affiliate of the Administrator of the SIPP sent Mr Goodchild emails specifically highlighting the Administrator’s concerns about 40% of pension holders’ funds being invested in assets relating to the Developer. Yet both Messrs Goodchild and Burdett proceeded with a 40% Developer Investment allocation model for low and medium risk clients. This was unreasonable, ignored the obvious risk that consumers would receive unsuitable investments and would suffer loss, and was reckless. Based on the information that Mr Goodchild accepts he considered, and the other documents in his possession and/or which he should have had regard to, it should have been obvious to him as a qualified and experienced investment manager that the Developer Investments were high risk and unsuitable for customers with a Risk Profile Score below 8. Mr Goodchild closed his mind to the risk that the investments were not suitable, and in so doing he acted recklessly.
- 2.9. In addition, it should have been obvious to Mr Goodchild that the names he gave to two of the Model Portfolios were misleading. The Global Cautious and Global Balanced portfolios were both designed to allocate 40% of pension holders’ money to the Developer Investments, which were obviously high risk in the light of the risk warnings in documents that Mr Goodchild accepts he read. Mr Goodchild recklessly gave these two high risk portfolios names which falsely implied that they were suitable for pension holders seeking low or medium risk investments.

- 2.10. During the Relevant Period Westbury was paid £234,099 in commission as a result of pension switches to the Westbury SIPP. Mr Goodchild was paid over £150,000 by Westbury in the year ending August 2016.
- 2.11. The Authority considers Mr Goodchild's failings to be serious because:
- (1) they related to the pension funds of a large number of pension holders;
 - (2) Mr Goodchild recklessly designed Model Portfolios for pension holders for whom they were unsuitable and allocated these pension holders' funds to them. Mr Goodchild was an experienced investment manager. The fact that the Model Portfolios were unsuitable for the majority of the pension holders was obvious from information reviewed by Mr Goodchild;
 - (3) Mr Goodchild failed to conduct his business with integrity, and his breaches of Principle 1 were committed recklessly, repeatedly and over an extended period of time.
- 2.12. The Authority considers that Mr Goodchild's reckless conduct during the Relevant Period demonstrates that he lacks integrity and is therefore not a fit and proper person. He poses a significant risk to consumers and the integrity of the United Kingdom financial system. Accordingly, the Authority has decided to withdraw Mr Goodchild's approval to perform the SMF27 (Partner) function, and to impose a prohibition order on him, as described at paragraphs 1.1(2) and 1.1(3) of this Notice. Further, the Authority has decided to impose a financial penalty on Mr Goodchild in the amount of £47,600 for his breach of Statement of Principle 1.
- 2.13. This action supports the Authority's operational objectives of securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.

3. DEFINITIONS

3.1. The definitions below are used in this Notice:

“the Act” means the Financial Services and Markets Act 2000.

“the Adviser” means an individual who advised the pension holders referred to in this Notice on behalf of Synergy.

“Appointed Representative” means a firm or person which conducts regulated activities as an agent for a firm directly authorised by the Authority. The Principal takes full responsibility for ensuring that the Appointed Representative complies with the Authority’s rules (see section 39 of the Act).

“the Authority” means the Financial Conduct Authority, formerly the Financial Services Authority.

“the Bonds” means corporate bonds connected with the Developer.

“Company A” means the company that introduced Mr Goodchild to companies and individuals (including the Developer) involved in switching pension holders’ funds to the Westbury SIPP and the Developer Investments.

“the Custodian” means the firm that held the funds under Westbury’s management, including those of the Westbury SIPP. The Custodian also acted as a broker for Westbury, buying and selling investments as directed by Westbury.

“DEPP” means the Decision Procedure and Penalties Manual part of the Authority’s Handbook.

“the Developer” means an offshore property developer which created a number of investment products as a means of funding its property development projects.

“the Developer Investments” means the three investment products related to the Developer in which 39% of pension holders’ aggregate funds in the Westbury SIPP were invested. They are referred to as the Bonds, the Fund and the Notes.

"DFM" means discretionary fund manager (i.e. a firm which makes investment decisions for a fund on behalf of third parties).

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

"the Fund" means an investment fund connected with the Developer.

"FIT" means the Fit and Proper test for Employees and Senior Personnel part of the Authority's Handbook.

"FSCS" means the Financial Services Compensation Scheme.

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

"the Introducer" means a firm which introduced pension holders to Synergy to receive advice on whether to switch their pensions into the Westbury SIPP.

"the Notes" means investment notes connected with the Developer.

"a model portfolio" means a portfolio designed by a discretionary fund manager and managed within a set of investment parameters. These parameters are then applied to the management of each individual pension holder's funds.

"the Model Portfolios" means the three model portfolios designed by Westbury called Global Cautious, Global Balanced and Global Growth.

"OECD" means the Organisation for Economic Co-operation and Development.

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

"Principal" means an authorised firm which permits its Appointed Representatives to carry on regulated activities under its permission given by the Authority under Part 4A of the Act.

"the Relevant Period" means 7 October 2015 to 5 August 2016.

“Risk Profile Questionnaire” means Synergy’s questionnaire containing 20 questions designed to measure a pension holder’s Risk Profile Score.

“Risk Profile Score” means a score between 1 and 10 which is intended to represent the level of risk an investor is comfortable in taking with an investment (i.e. appetite for risk). It is based on the scoring from the Risk Profile Questionnaire.

“SIPP” means a self-invested personal pension, which allows individuals to make their own investment decisions from the range of investments approved by Her Majesty’s Revenue and Customs.

“SIPP Administrator” means the company having undertaken to act as administrator for the Westbury SIPP and includes other affiliated companies which were part of the same group, including the SIPP trustee.

“SWUK” means Strategic Wealth UK Limited. SWUK was a financial advisory firm and the Principal firm which set up Synergy as its Appointed Representative.

“Synergy” means Synergy Wealth Limited. Synergy was a financial advisory firm and an Appointed Representative of SWUK.

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

“Westbury” means Westbury Private Clients LLP.

“Westbury Allocation Parameters” means the range of Risk Profile Scores that Westbury told the Authority it allocated to each Model Portfolio: 3-4 to Global Cautious; 5- 7 to Global Balanced; and 8-9 to Global Growth.

“the Westbury SIPP” means the SIPP product to which pension holders switched their pensions as recommended by Synergy, funds in which were invested based on the Model Portfolios.

4. FACTS AND MATTERS

Background

- 4.1. Westbury was a discretionary investment manager based in London. It became directly authorised by the Authority on 1 July 2013 with permission to conduct regulated activities, including managing investments. In the first years of its operation, Westbury managed the assets of private professional clients. From October 2015, Westbury's business model changed significantly with a new focus on carrying out discretionary fund management for the clients of financial advisers.
- 4.2. Mr Goodchild was the founder and Chief Investment Officer of Westbury. He had ultimate responsibility for deciding on Westbury's business activity and investment decisions. Synergy advised pension holders referred to it by a subsidiary of the Developer on whether to switch their pensions into individual SIPPs designed and managed by Mr Goodchild for Westbury. Mr Goodchild invested pension holders' funds held in the Westbury SIPPs based on the Model Portfolios.
- 4.3. Mr Goodchild was responsible for ensuring the investments in the Model Portfolios matched Risk Profile Scores assigned to pension holders by Synergy and communicated to Westbury by Synergy. The Model Portfolios were all obviously unsuitable for most pension holders because they were all designed by Mr Goodchild to invest 40% of pension holders' funds in the Developer Investments.
- 4.4. The FSCS has to date paid over £1.4m in compensation to over 100 pension holders because they had received unsuitable pension switch advice from Synergy to switch their pensions into the Westbury SIPP designed and managed by Mr Goodchild on behalf of Westbury.
- 4.5. In August 2016, following intervention by the Authority, Mr Goodchild signed undertakings on behalf of Westbury to cease pensions business where the beneficiary of the pension scheme was a "retail client" as defined in the Handbook. On 15 September 2017, Westbury entered liquidation. This Notice focusses on Mr Goodchild's activity between October 2015 and August 2016.

Mr Goodchild's role at Westbury

- 4.6. During the Relevant Period, Mr Goodchild held the controlled functions of CF4 (Partner) and CF30 (Customer) at Westbury. Mr Goodchild was one of two

Westbury employees approved to perform the controlled function of CF4 (Partner) and one of four Westbury employees approved to perform the controlled function of CF30 (Customer). As of 4 June 2016, Mr Goodchild had a controlling interest in Westbury, holding between 50% and 75% of the voting rights.

- 4.7. Mr Goodchild designed, created and managed the Model Portfolios and invested pension holders' funds held in the Westbury SIPPs based on them. Mr Goodchild's role involved allocating pension holders' funds to the appropriate Model Portfolio and selecting investments to be included in the Model Portfolios. Mr Goodchild was responsible for ensuring the investments in the Model Portfolios matched the Risk Profile Scores advised by Synergy for each client. A Risk Profile Score is a score between 1 and 10 which is intended to represent the level of risk an investor is comfortable in taking with an investment (i.e. appetite for risk).
- 4.8. Mr Goodchild was responsible for establishing Westbury's business arrangements with the other entities involved in the process of switching pension holders' funds into the Westbury SIPP, including: Synergy; the Developer; the SIPP Administrator; and the firm which introduced pension holders to Synergy (the Introducer).
- 4.9. On 7 October 2015, Mr Goodchild signed a Memorandum of Understanding with the SIPP Administrator on behalf of Westbury. The function of the Memorandum of Understanding was to set out the terms of engagement between Westbury and the SIPP Administrator regarding the creation of the Westbury SIPP. By 2 November 2015, Westbury and the SIPP Administrator had signed an agreement to work together to create the Westbury SIPP.
- 4.10. On 2 November 2015, a firm (Company A) introduced Mr Goodchild to a representative of the Developer via email. The email from Company A to Mr Goodchild, copying a representative of the Developer, indicated that Company A and the Developer would like Mr Goodchild to allocate pension holders' funds to a particular Developer Investment. This email stated: "please meet Jamie who is head of Buisness [sic] development for the [Developer] and is leading the launch of there [sic] new ... [F]und [A]s we discussed this morning of the funds that pass to you as DFM [discretionary fund manager] from [the Developer's] clients we would like a % of those funds to be invested into the new ... Fund based on the clients [sic] risk profile assessment done by the IFA [Synergy]. We are looking

at switching the current regulated offering under the [Developer] model portfolios to Westbury”.

- 4.11. On 12 January 2016, Mr Goodchild signed the Terms of Business between Synergy and Westbury, which provided that Westbury was responsible for allocating the funds of pension holders advised by Synergy to investments managed by Westbury based on pension holders’ Risk Profile Scores and that Westbury took “full responsibility for ensuring the investment suitability at the point of sale and on-going is appropriate for the [Synergy pension holder] client[s]”.
- 4.12. The Introducer’s marketing of Synergy’s services and of the Westbury SIPP, and the Introducer’s referral of pension holders directly to Synergy and indirectly to Westbury, was conditional on Westbury’s agreement to include allocation to the Developer Investments within its Model Portfolios, and Mr Goodchild was aware of this.
- 4.13. On 5 February 2016, Mr Burdett sent Westbury an email which stated that he had met with the Developer that day and “they [the Developer] are ready to go with the UK SIPP business as soon as we are in the UK. I reckon this will be in the coming days”.
- 4.14. The Authority considers that Mr Goodchild was directly involved in the business model which Company A had introduced to him. Mr Goodchild established Westbury’s relationships with individuals and corporate entities involved in each stage of the process; was aware that the Introducer’s marketing of the Westbury SIPP was conditional on allocation to the Developer Investments; and corresponded with the Introducer and Company A to develop marketing material for the Introducer and Westbury.
- 4.15. Mr Goodchild was involved in the process of Westbury conducting due diligence on the Developer Investments. Mr Goodchild corresponded with firms and individuals involved in the advice process, including the Developer, and obtained material relating to the Developer and the Developer Investments. A Westbury research note was produced and this note was signed off by Mr Goodchild:
- 4.16. Mr Goodchild and three other individuals were members of Westbury’s Investment Committee, which met quarterly and also on an ad-hoc basis. The function of the Investment Committee was to set the parameters within which Mr Goodchild could

trade on behalf of Westbury. In January 2016, the SIPP Administrator asked Mr Goodchild to provide minutes of an Investment Committee meeting indicating the committee's approval of the inclusion of Developer Investments in the Model Portfolios. In response, Mr Goodchild sent the SIPP Administrator minutes which did not indicate approval by the Investment Committee but rather that further due diligence on the Developer was to be carried out after the meeting. Mr Goodchild subsequently told the Authority that the Investment Committee may not have been required to approve an investment if it fitted within Westbury's risk assessment framework.

- 4.17. Mr Goodchild and three other individuals also sat on Westbury's Compliance Committee, which met quarterly and also on an ad-hoc basis. The Compliance Committee could overrule investment decisions made by the Investment Committee, although this never happened in practice.
- 4.18. By 2016, Mr Goodchild was an experienced investment manager with over 12 years' investment experience. He holds a Master's degree in finance with distinction and an honours degree in law. He held the Investment Management Certificate, Chartered status at the Chartered Institute for Securities and Investment, and SII Level 3 Certificates in Investment Management, Financial Regulation and Securities.

Risks associated with the Developer Investments and Model Portfolios

The Developer

- 4.19. The Developer is an offshore property developer incorporated in a small jurisdiction outside the OECD, with support offices in the UK and offshore. Mr Goodchild designed the Model Portfolios to invest 40% of pension holders' funds in the Developer Investments and went on to invest 39% of pension holders' aggregate funds in them. It should have been obvious to Mr Goodchild that all three of the Developer Investments were high risk for reasons detailed in paragraphs 4.21-4.45 below.
- 4.20. At the end of the Relevant Period, 232 pension funds with a total value of £10,492,857.27 had been switched into Westbury SIPPs following pension switch recommendation advice to pension holders from Synergy. Mr Goodchild was responsible for £4,065,146.01 (39%) of this being invested in the Developer

Investments. Across all pension holders, £2,431,437.01 (23%) was invested in the Fund; £1,623,709.00 (15%) in the Notes; and £10,000 (0.1%) in the Bonds. £2,788,653.68 (27%) was in cash.

The Bonds

- 4.21. The undated draft offer document for the Bonds relied on by Mr Goodchild noted that the Bonds were issued by a 100% owned subsidiary of the Developer which would lend all of the funds it received from issuing the bonds to the Developer. The Bonds therefore exposed investors to the credit risk of the Developer itself. The Developer was: (i) a property development company; with (ii) a weak balance sheet in its financial statements dated 31 December 2015; which (iii) operated in a single non-OECD jurisdiction. OECD jurisdictions are generally considered to be mature, developed economies, and lower risk than non-OECD jurisdictions. Each of these factors should be considered as high-risk factors for credit exposure.
- 4.22. The statement of financial position in the Developer's consolidated financial statements dated 31 December 2015 shows that the Developer had:
- (1) negative total equity. Its liabilities were greater than its assets;
 - (2) negative current balance. Its current assets were less than its current liabilities, indicating a high risk of failing through lack of liquidity; and
 - (3) included tens of millions of euros of deferred revenue in the balance sheet, which was not yet recognised for accounting purposes. The Authority notes that recognition of the deferred revenue would do little to improve the weak liquidity position of the Developer.
- 4.23. The Developer accounts present a picture of a company short of liquidity and with a weak balance sheet. Should there be any adverse developments with regard to the individual project developments, the political stability of the region or the global tourism market then there would be clear risks to the viability of the Developer.
- 4.24. All of the points in paragraphs 4.21, 4.22 and 4.23 together mean an investment into the Bonds could only be regarded as high risk.
- 4.25. Note 2 in the financial statements under the heading "Going concern" indicates that the business is only a going concern on the assumption that the deferred revenue from a specified property development becomes fully recognised in the

accounts in the following financial year. Any due diligence would need to establish a high degree of comfort on this point before recommending any investment into the Bonds.

- 4.26. The draft offer document states that the offer can only be made to, or directed at, fewer than 150 persons or to persons who have professional experience in matters relating to investments. Restricting an offer to fewer than 150 investors avoided the requirements of issuing a full prospectus. The draft offer document also states that: investment in a security of this nature is speculative, involving a degree of risk; it may not be possible to obtain reliable information about the risks to which investors are exposed; and investors will not have any recourse to the FSCS for compensation. The risk factors section highlights that there are construction and development risks; and cost overruns and delays will impact the ability of the company to make repayments. Such overruns and delays are common in the construction industry. Existing debt of £31 million is disclosed as well as the Developer's intention to raise further debt, and some of the same assets used as security will be used as security for future debt issues, which severely undermines the value of such security. Further, it is noted that the security interests will be governed by the law of the non-OECD jurisdiction.
- 4.27. All of the disclosures referred to in paragraphs 4.25 and 4.26 together mean an investment into the Bonds could only be regarded as high risk. This should have been obvious to Mr Goodchild, given his professional experience and qualifications. Mr Goodchild told the Authority that he had reviewed the draft offer document and consolidated financial statements referred to in paragraphs 4.21-4.26 above when assessing whether to invest pension holders' funds in the Developer Investments. Mr Goodchild also told the Authority that he had considered a number of the risks detailed in these paragraphs, including the financial position of the Developer, the lack of recourse to the FSCS, and risk factors section of the offer document.

The Fund

- 4.28. The Fund is a sub-fund of an investment company meaning that it is a class of shares in the investment company in respect of which a separate investment portfolio of securities is maintained. Risks attributable to the investment company are attributable to the Fund.

- 4.29. The Fund was listed on an exchange in a non-OECD jurisdiction in 2015 and delisted in 2020. During this period there was no trading in the Fund on the exchange.
- 4.30. A brochure for the Fund contained extensive references to the Developer and investments connected with the Developer, identified the Developer as the “promoter” of the Fund, and stated that the Fund focuses on the development of property development projects and has secured deal flow for a number of projects by association with the Developer.
- 4.31. The front cover of the offering memorandum relating to the Fund dated 2015 stated that: [it] “is a Professional Investor Fund which is available to investors qualifying as experienced and qualifying investors. Professional Investor Funds are non-retail schemes”. This meant that protections and requirements for retail schemes did not apply; investors in professional adviser funds were not protected by any statutory compensation arrangements in the event of the fund’s failure.
- 4.32. The offering memorandum also states the investment company to which the Fund relates is an unregulated collective investment scheme (UCIS) for the purposes of UK law and FSCS protections are not applicable. The lack of regulatory protections alone is a high-risk factor for the investment for a retail client. Mr Goodchild was aware that Synergy’s clients were retail clients. A fact sheet issued by the Authority in 2011 (inter alia) stated “[UCIS] are generally considered to be a high risk investment” and a Policy Statement in 2013 stated that “we regard UCIS as niche products almost certainly inappropriate for ordinary retail investors”
- 4.33. The investment risk section states that “Investment in the Company and its sub-funds [which would include the Fund] carries substantial risk”.
- 4.34. The front page of one of the offering supplements relating to the Fund also highlights the Professional Investor Fund status and lack of investor protections. The Investment Policies definition states that the assets of the Fund would primarily seek opportunities linked with property development and infrastructure projects related to tourist resorts. The offering supplement noted that there were few investment restrictions that the directors were required to adhere to, other than a 30% restriction on immovable property. There was no restriction on exposure to a single firm like the Developer. Further, the terms of all the underlying investments would need to be individually negotiated with the

Developer (or other firms if there were any) and would not be visible to investors at the point of investment.

- 4.35. The dividend policy section notes that the directors do not intend to pay dividends or make any other distributions during the (indefinite) term of the fund. An investor's return is thus limited to potential capital gain when they choose to redeem their holding.
- 4.36. The risk factors section highlights:
- (1) the lack of operating history for the Fund;
 - (2) the potential credit risks involved in the Fund's investments;
 - (3) some general risks of real estate development as an activity; and
 - (4) the illiquidity of the assets held by the Fund and the potential impact on its ability to meet redemptions.
- 4.37. The brochure relating to the Fund makes clear that the Fund intends to invest in mezzanine debt securities of the Developer, so that it should have been obvious that the risks of investing in the Fund were likely to be similar to the risks associated with investing in the Bonds. Taken together, the factors set out in 4.30 to 4.36 make the Fund a high-risk investment. This should have been obvious to Mr Goodchild, given his professional experience and qualifications.
- 4.38. On 26 February 2016, Mr Goodchild was emailed a copy of the brochure relating to the Fund and forwarded this to the SIPP Administrator as an example of a document reviewed by Westbury as part of its due diligence on the Fund. Mr Goodchild told the Authority that he had reviewed the draft offering memorandum and offering supplement referred to in paragraphs 4.31 to 4.36 above when assessing whether to invest pension holders' funds in the Developer Investments. Mr Goodchild also told the Authority that he had considered all the risks referred to in these paragraphs when assessing whether to invest in the Developer Investments but considered the Fund to be low risk because it related to bonds and property.
- 4.39. On 22 April 2016, Mr Goodchild sent an affiliate of the SIPP Administrator an email which stated: "We feel that the 40% [investment in the Fund] is appropriate for a balanced client, a higher risk client may actually be deemed to warrant more of a weighting and a lower risk client should have a weighting below 40%". This

indicates that Mr Goodchild was subjectively aware that the Fund was a higher risk investment.

The Notes

- 4.40. The Notes were listed on two exchanges in OECD jurisdictions between 2016 and 2021. During this period there was no trading in the Notes on either exchange. Although there was no trading, the price of the Notes quoted on one of the exchanges fell by almost 30% between July 2016 and February 2021.
- 4.41. A brochure relating to the Notes dated May 2016 stated all investments would be linked to the development and operation of tourist resorts and related commercial property and infrastructure projects created by the Developer. The brochure also noted the assets would primarily be in a single non-OECD jurisdiction.
- 4.42. Drawdown particulars relating to the Notes dated 2016 provide for the Developer as "Sponsor" to make recommendations as to how funds raised from the Notes would be invested. The drawdown particulars also highlight risk factors relating to the Developer which are similar to those for the Bonds, as described above. These included:
- (1) exposure to external events, in particular to events in the non-OECD jurisdiction in which the assets would primarily be based;
 - (2) the potential for cost overruns or delays in the construction phase of the project;
 - (3) the fact that enforcement of security will take place in an external jurisdiction;
 - (4) the limited liquidity of the investment; and
 - (5) the expectation that further debt will be raised based on the same security.
- 4.43. Property development is an inherently high-risk activity. A site must be purchased at a large capital cost at an initial point in time, and then a construction project must be undertaken, involving the purchase and management of labour and materials, often subject to the vagaries of the weather and subject to local laws, planning regulations and taxes. Only then can property sales or rentals be made at prices pertaining at that time. Typically, debt is used to finance some of the costs, which has the effect of magnifying positive or negative returns to equity for the project.

- 4.44. The Authority has not seen adequate information in the drawdown particulars, the Notes brochure or among the material Westbury says it relied on for due diligence on the Notes which would allow an investor to assess the value and quality of any of the assets that the holding company associated with the Notes mentioned in the drawdown particulars was to buy or any financial projections for the holding company. Without these, no assessment of the Notes' credit quality could be made at the time of the issue of the Notes.
- 4.45. Each of the points in paragraphs 4.42, 4.43 and 4.44 individually and all of them together mean an investment into the Notes could only be regarded as high risk. This should have been obvious to Mr Goodchild, given his professional experience and qualifications. Mr Goodchild told the Authority that he had reviewed the drawdown particulars referred to in paragraphs 4.42 above when assessing whether to invest pension holders' funds in the Developer Investments. Mr Goodchild also told the Authority that he had considered all the risks referred to in paragraph 4.42 when assessing whether to invest in the Developer Investments.

Model Portfolios

- 4.46. Each of the Model Portfolios was designed by Mr Goodchild to invest 40% of pension holders' funds in the Developer Investments, while 60% of assets were to be allocated to a range of assets unrelated to the Developer. For the reasons set out above, each of the Developer Investments was high risk.
- 4.47. All three Model Portfolios were obviously high risk because of the risks (including concentration risks) arising from the 40% allocation to the Developer Investments. The concentration risk created by allocating 40% of a pension holder's funds to investments in a single non-OECD jurisdiction and related to a single company and operating in a single industry sector, is extremely high. Given the 40% allocation to Developer Investments, all of Westbury's Model Portfolios were obviously unsuitable for pension holders willing to accept only a low or medium risk of loss for their pensions. In addition, Westbury's descriptions of two of the Model Portfolios as "Global Cautious" and "Global Balanced" were obviously incorrect, as any portfolio with a 40% Developer Investment allocation is high risk.

Persons involved in pension switches

4.48. The following sections describe the role of different companies in the process of pension holders' pension funds being switched from their existing pension scheme(s) to the Westbury SIPP and invested based on the Model Portfolios containing the Developer Investments.

Call centre firm

4.49. A call centre firm, which was wholly owned by the Developer, obtained pension holders' details from a data provider and called them offering a free summary of their pension holdings. If a pension holder accepted, the call centre firm arranged for the pension holder to give the Introducer the authority to obtain details of the pension holder's existing pension from their pension provider.

The Introducer

4.50. The Introducer, also wholly owned by the Developer, told the Authority:

- (1) it obtained information from pension providers and gave the pension holder a summary of their pension holdings including information such as fund values and projected income at retirement;
- (2) it gave pension holders information about the possibility of holding their pensions in alternative structures and the possibility of those structures holding commercial property and other investments;
- (3) it referred pension holders that showed an interest to Synergy to receive advice on whether to switch their pensions funds to new investments; and
- (4) it met with the pension holder to complete documentation which would be sent to Synergy.

4.51. All the pension holders advised by Synergy to switch their pension funds into the Westbury SIPP who agreed to switch were introduced to Synergy by the Introducer.

4.52. The Introducer's marketing of Synergy's services and of the Westbury SIPP, and the Introducer's referral of clients directly to Synergy and indirectly to Westbury, was conditional on Westbury's agreement to include allocation to the Developer Investments within its Model Portfolios and Mr Goodchild was aware of this. Mr

Goodchild had worked with the Developer, the Introducer and Synergy on the marketing campaign and had assisted the Introducer with the preparation of marketing materials for the Westbury SIPP.

Synergy

- 4.53. Synergy obtained documents from the Introducer including: a signed client agreement between Synergy and the pension holder detailing the terms of their relationship; and a completed questionnaire containing 20 questions designed to measure a pension holder's Risk Profile Score ("**Risk Profile Questionnaire**").
- 4.54. The Westbury SIPP was the only product Synergy advised pension holders on whether to switch their pensions into. Pension holders who accepted Synergy's recommendation to switch their pensions into the Westbury SIPP signed application documentation, which stipulated that individual pension holders were thereby accepting Westbury's terms and conditions of business (as well as those of the SIPP Trustee and SIPP Administrator).

Westbury

- 4.55. Synergy communicated pension holders' Risk Profile Scores to Westbury. As noted in paragraph 4.7, Mr Goodchild designed, created and ran the Model Portfolios and invested pension holders' funds held in the Westbury SIPPs based on these Risk Profile Scores. Mr Goodchild's role involved allocating pension holders' funds to the appropriate Model Portfolio and selecting investments to be included in the Model Portfolios. Mr Goodchild was responsible for ensuring the investments in the Model Portfolios matched certain Risk Profile Scores.
- 4.56. As noted above, all Risk Profile Scores were between 1 and 10, with 1 applying to the most risk averse individuals and 10 indicating the greatest willingness to accept risk. A document titled "DT Risk Profiling", dated 28 October 2013, described the appetite for risk which particular Risk Profile Scores represented and the types of investment appropriate for pension holders with a particular Risk Profile Score. Mr Goodchild confirmed that he used this document when designing the Model Portfolios in the Westbury SIPP. All of Synergy's clients who switched their funds into the Westbury SIPP had a Risk Profile Score of between 3 and 9. The descriptions of these Risk Profile Scores in the DT Risk Profiling document are in the table in Annex B.

- 4.57. Westbury told the Authority that pension holders' funds were allocated to a Model Portfolio as follows: funds of a pension holder with a Risk Profile Score of 3-4 would be allocated to the "Global Cautious" Model Portfolio; scores 5-7 would be allocated to the "Global Balanced" Model Portfolio; and scores 8-9 would be allocated to the "Global Growth" Model Portfolio (Westbury Allocation Parameters).
- 4.58. The Introducer had conveyed to Mr Goodchild that they and the Developer wished to see a percentage of pension holders' funds allocated to the Developer Investments. The Introducer's marketing efforts and referral of clients to Synergy and Westbury were conditional on this allocation and Mr Goodchild was aware of this. In response, Mr Goodchild allocated 40% of each of the Model Portfolios to the Developer Investments, which Mr Goodchild told the Authority he classified as low risk. The remaining 60% was to be invested in assets which Mr Goodchild told the Authority he considered to be "making up the risk" of the Model Portfolios. As noted above, the Authority considers each of the Developer Investments to have been obviously high risk.
- 4.59. The table in Annex B details the number of pension funds associated with different Risk Profile Scores switched to the Model Portfolios.
- 4.60. Westbury received management fees from pension holders equal to a percentage of the pension funds under management. Thus, Westbury's fee income increased directly as a result of referral of pension holders to Synergy through the marketing efforts of the Introducer (a wholly owned subsidiary of the Developer) and through pension holders accepting Synergy's advice to switch their pensions into the Westbury SIPP. The total fees paid to Westbury as a result of pension holders advised by Synergy switching to the Westbury SIPP were £234,099. These fees were received by Westbury as annual management charges paid by the SIPP Administrator, calculated at 1.09% of the funds under management plus VAT. As of 4 June 2016, Mr Goodchild had a controlling interest in Westbury, and so he stood to derive significant personal benefit from profits made by Westbury as a result of the marketing efforts of the Introducer, which were dependent on allocation of a percentage of pension holders' funds to the Developer Investments. Mr Goodchild was paid over £150,000 by Westbury in the year ending August 2016. Had the Authority not intervened in 2016, Westbury's profit distributions to

Mr Goodchild resulting from the Westbury SIPP are likely to have continued over subsequent years.

- 4.61. Mr Goodchild thus stood to derive significant financial benefits from his willingness to allocate a substantial portion of pension holders' funds to the Developer Investments, as requested by the Introducer. In addition, Mr Goodchild in an email expressed anxiety that the Developer should not be "annoyed". Further, under an agreement dated 28 June 2016, Mr Goodchild received a short-term £50,000 interest free loan from Company A, which had introduced him to the Developer. Mr Goodchild wanted the loan to enable him to purchase a residential house close to a popular school.

Mr Goodchild's reckless decision to expose low and medium risk clients to high-risk Developer Investments

- 4.62. Westbury was a discretionary fund manager which managed retail consumers' pension funds. Pension holders agreed to Westbury's terms and conditions when signing application documentation to transfer their pensions into the Westbury SIPP and accepted the terms and conditions of the SIPP Administrator and the SIPP Trustee. Westbury had a duty under COBS 9.2 to "take reasonable steps to ensure that ... a decision to trade, [was] suitable for its client". Further, COBS 2.1.1R provided that "a firm must act honestly, fairly and professionally in accordance with the best interests of its client", and COBS 9.3.1G directed attention to suitability of both investments and portfolios.
- 4.63. Mr Goodchild, who held the CF4 function and led Westbury's business, was aware of Westbury's suitability obligation. Westbury, in a contract with Synergy signed by Mr Goodchild himself, undertook to invest pension holders' funds in accordance with the Risk Profile Scores advised by Synergy and took "full responsibility for ensuring the investment suitability at the point of sale and on-going is appropriate for the [Synergy pension holder] client[s]". Further, during a conference call discussing the Westbury SIPP and a similar pension switching scheme also involving allocation of a high percentage of pension holders' funds to Developer-related assets, Mr Goodchild acknowledged that "I mean yeah basically Westbury is obviously taking full responsibility in the grand scheme of things for investment suitability." In addition, Mr Goodchild confirmed to the Authority that his role was to design Model Portfolios to match pension holders' risk profiles.

- 4.64. Synergy communicated to Westbury the Risk Profile Scores of pension holders who wished to switch their pensions into the Westbury SIPP. Mr Goodchild was thus aware that most pension holders had low and medium Risk Profile Scores. Mr Goodchild acknowledged in correspondence with the Authority that "we appreciate that the underlying SIPP clients are retail customers and the funds represent their pensions".
- 4.65. All pension holders advised by Synergy who switched their pensions into the Westbury SIPP had their funds invested on the basis of Westbury's Model Portfolios, each of which was designed to have a 40% allocation to the Developer Investments. For 207 of the 232 pension funds switched to the Westbury SIPP with Risk Profile Scores between 3 and 7 (low and medium risk), it should have been obvious to Mr Goodchild, given his qualifications in finance and law and his fund management experience, that all the Model Portfolios were unsuitable because the 40% allocation to the Developer Investments was high risk, for the reasons outlined above.
- 4.66. Further, Mr Goodchild must have recognised the risk that these pension holders would receive unsuitable investments. Mr Goodchild told the Authority that he read the offer documents for the Developer Investments before allocating pension holders' funds, and these documents included warnings that the Developer Investments were "speculative" and involved "substantial risk". Mr Goodchild claimed that he regarded the Developer Investments as "the low risk proportion of the Model Portfolios" because of their "bonds and property" components. But during a recorded telephone conference call relating to a planned investment scheme similar to the Westbury SIPP he and Mr Burdett acknowledged that a high allocation to the Developer Investments would make a portfolio high risk. When asked during the call whether they would allocate 60% of pension holders' funds to the Developer Investments, Messrs Goodchild and Burdett did not say that they would be willing to do so because they viewed the Developer Investments as low risk. Instead, Mr Goodchild endorsed Mr Burdett's view that a 60% Developer Investment allocation could be considered only for clients who were willing to accept "high risk" and were "a reasonable way [from] retirement". While he said that a 40% Developer Investment allocation was acceptable, Mr Goodchild was acknowledging that a high Developer Investment allocation in a portfolio created significant risks. Similarly, Mr Goodchild commented in an email that "a higher risk client may actually be deemed to warrant more of a weighting and a lower risk client should have a weighting below 40% [of the Developer Investments in

their portfolio]”. This again was a recognition by him of the risks created by a high allocation to the Developer Investments in a portfolio.

- 4.67. Despite recognising that clients seeking low risk investments should have a Developer Investment allocation below 40%, Mr Goodchild caused low risk pension holders to receive a 40% Developer Investment allocation through the Westbury SIPP. Despite reading offer documents which made the high-risk nature of the Developer Investments obvious and despite his comments quoted above acknowledging the high-risk nature of a portfolio with a high Developer Investment allocation, Mr Goodchild allocated 40% of the pension funds of pension holders seeking low and medium risk portfolios to the high risk Developer Investments, comprising bonds and property funds all related to a single offshore property development company. Mr Goodchild’s conduct in the face of the obvious risk, at least at times acknowledged by him, that consumers would receive wholly unsuitable pension investment portfolios, was wholly unreasonable and reckless. In the light of the foregoing the Authority infers that Mr Goodchild failed to address his mind to the unreasonable risk that the Developer Investments were not low risk investments and that the Model Portfolios were unsuitable for most pension holders. Mr Goodchild wilfully disregarded the information which indicated that the Developer Investments were high risk and/or failed to follow up on obvious signs that the investments were high risk.
- 4.68. On 4 April and 28 April 2016, the SIPP Administrator sent Mr Goodchild emails which highlighted the Administrator’s concerns about a high proportion of a pension holders’ funds being allocated to the Developer Investments.
- 4.69. On 3 June 2016, Mr Goodchild received an email from a Westbury employee which stated: “a comment below has scared me a little - 8.5% comm[ission]s???? Are they mad? That will take a couple of years to earn back effectively!”. While Mr Goodchild pointed out to the Authority that the commissions were “up to” 8.5% and might have been lower, he did not say that he investigated this at the relevant time and satisfied himself that commissions were in fact significantly less than 8.5%. As the Westbury employee appreciated, if the Developer paid 8.5% commission to those marketing its financial products, then its property developments had to generate very high returns in order to allow both repayment of investors’ original investment and some additional return for investors. The significant risks to pension holders’ funds which this created were obvious to the

employee and should have been obvious to Mr Goodchild, particularly after receipt of the 3 June 2016 email.

- 4.70. The Authority infers that the remuneration which Westbury received from the SIPP Administrator, coupled with the financial benefits of the relationship with the Introducer and Synergy, which was conditional on investments into the Developer Investments, at least subconsciously influenced Mr Goodchild's decision both to include the Developer Investments within the Model Portfolios and to invest 39% of pension holders' aggregate funds in the Developer Investments. In order to retain the benefit of pension holder introductions, Mr Goodchild closed his mind to the true risks of the Developer Investments.

Mr Goodchild recklessly gave two of Synergy's Model Portfolios misleading names implying lower risk

- 4.71. Mr Goodchild named two of Westbury's Model Portfolios "Global Cautious" and "Global Balanced", or allowed others at Westbury to give them these names, despite knowing that 40% of both portfolios was allocated to the Developer Investments. For the reasons detailed in paragraphs 4.21-4.69 it should have been obvious to Mr Goodchild, given his qualifications and experience and the due diligence material he reviewed, that these two portfolios were in fact high risk and were unsuitable for investors seeking "cautious" or "balanced" investments. Given his recognition at least at times of the risks created by a high Developer Investment allocation in a portfolio (as explained above in paragraphs 4.21-4.69), Mr Goodchild recklessly risked misleading pension holders and others who saw the "Global Cautious" and "Global Balanced" portfolio names in factsheets and other marketing material.

5. FAILINGS

- 5.1. Regulatory provisions relevant to this Notice are referred to in Annex A.

Principle 1

- 5.2. Statement of Principle 1 (APER 2.1A.3R) required Mr Goodchild to act with integrity in carrying out his controlled functions. An individual may lack integrity where they act recklessly by turning a blind eye to what was obvious to them in their position. It was obvious from the information Mr Goodchild reviewed that the

Developer Investments were high risk. By virtue of the documents identified above, which he accepts he read, Mr Goodchild had been alerted to numerous factors which obviously made the Developer Investments high risk. Mr Goodchild wilfully disregarded this information and/or failed to follow up on obvious signs that the investments were high risk. During the Relevant Period, Mr Goodchild breached Principle 1 by acting recklessly as detailed below:

- (1) Mr Goodchild was responsible for creating the Model Portfolios and ensuring that pension holders' funds were invested in investments consistent with their Risk Profile Scores. Mr Goodchild acted recklessly by unreasonably ignoring the obvious risk that he would allocate pension holders' funds to Model Portfolios that were not suitable by: designing Model Portfolios containing 40% high risk Developer Investments for pension holders with a low and medium Risk Profile Scores; and allocating these pension holders' funds to them. As noted in paragraph 4.65, Mr Goodchild allocated 207 of 232 pension funds (89%) to unsuitable Model Portfolios which were inconsistent with pension holders' Risk Profile Scores, exposing them to a significant risk of loss and/or causing actual loss.
- (2) Mr Goodchild used the names Global Cautious and Global Balanced for high-risk Model Portfolios. Mr Goodchild acted recklessly by unreasonably ignoring the obvious risk that this could mislead pension holders and others as to the high risks involved when investing in these two Model Portfolios.

Lack of fitness and propriety

- 5.3. The Authority considers that based on the matters set out above, and in particular his reckless conduct, that Mr Goodchild lacks integrity and is not a fit and proper person. He poses a serious risk to consumers and to the integrity of the UK financial system.

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. It is not practicable to quantify the benefit that Mr Goodchild directly derived from his breaches of Principle 1.
- 6.4. Step 1 is therefore £0.

Step 2: the seriousness of the breach

- 6.5. 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.
- 6.6. Pursuant to DEPP 6.5B.2G(2), where the breach lasted less than 12 months, the relevant income will be that earned by the individual in the 12 months preceding the end of the breach.
- 6.7. The period of Mr Goodchild's breach of Statement of Principle 1 was from 7 October 2015 to 5 August 2016. The Authority therefore considers the relevant income to be that earned by Mr Goodchild in the 12 months preceding 5 August 2016. The Authority considers Mr Goodchild's relevant income for this period to be £151,298.45.
- 6.8. In deciding on the percentage of the relevant income that forms the basis of the Step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 40%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach; the more serious the breach, the higher the level. For penalties imposed on individuals in non-market abuse cases there are the following five levels:

Level 1 – 0%

Level 2 – 10%

Level 3 – 20%

Level 4 – 30%

Level 5 – 40%

- 6.9. In assessing the seriousness level, the Authority takes into account various factors which reflect the nature and impact of the breach, and whether it was committed deliberately or recklessly. The Authority considers the following factors to be relevant:

Impact of the breach

- 6.10. DEPP 6.5B.2G(8) lists factors relating to the impact of a breach committed by an individual.
- 6.11. Mr Goodchild gained significant financial benefit from the breach (DEPP 6.5B.2G(8)(a)).
- 6.12. Mr Goodchild's breaches of Principle 1 caused a significant and unacceptable risk of loss to a large number of pension holders who switched in excess of £10 million to the Westbury SIPP. As a result of Mr Goodchild's breaches, the FSCS has paid over £1.4m compensation to date to over 100 pension holders advised by Synergy. The value of someone's pension can have a significant impact on their quality of life during retirement and, in some circumstances, may affect whether they can afford to retire at all (DEPP 6.5B.2G(8)(c)).
- 6.13. Mr Goodchild's breaches of Principle 1 caused inconvenience and potentially distress to pension holders who switched to the Westbury SIPP (DEPP 6.5B.2G(8)(e)).

Nature of the breach

- 6.14. DEPP 6.5B.2G(9) lists factors relating to the nature of a breach committed by an individual.
- 6.15. Mr Goodchild breached Principle 1 repeatedly and over an extended period of time (DEPP 6.5B.2G(9)(a) and (b)).
- 6.16. Mr Goodchild failed to act with integrity (DEPP 6.5B.2G(9)(e)).
- 6.17. Mr Goodchild was an experienced industry professional (DEPP 6.5B.2G(9)(j)).
- 6.18. Mr Goodchild held a senior position at Westbury as the Chief Investment Officer as well as being one of only two staff to hold the CF4 (Partner) controlled function (DEPP 6.5B.2G(9)(k)).
- 6.19. The subject of the breaches was investment suitability for which Mr Goodchild had a large degree of responsibility as he was Westbury's Chief Investment Officer (DEPP 6.5B.2G(9)(l)).

Reckless misconduct

- 6.20. Mr Goodchild acted recklessly in respect of the pension switches to the Westbury SIPP (DEPP 6.5B.2G(11)).

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) Mr Goodchild's breaches of Principle 1 caused a significant risk of loss to a large number of pension holders (DEPP 6.5B.2G(12)(a));
 - (2) Mr Goodchild failed to act with integrity (DEPP 6.5B.2G(12)(d)); and
 - (3) Mr Goodchild's breaches of Principle 1 were committed 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 applies.

6.23. Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 4 and so the Step 2 figure is 30% of £151,298.45.

6.24. Step 2 is therefore £45,389.54.

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. There are no mitigating factors.

6.27. The Authority considers that the following factor aggravates the breach:

- (1) The Authority had previously issued an alert on investing pension monies into unregulated products through a SIPP, in which it specified a model similar to the customer journey in this case as well as naming overseas property developments as an example of a concerning investment. Following this, a second alert was issued after further Supervisory work on the issue, which stated that pension switches to SIPPs intended to hold non-mainstream propositions are unlikely to be suitable options for the vast majority of retail customers. In addition, a fact sheet issued by the Authority in 2011 stated “[UCIS] are generally considered to be a high risk investment”, and a 2013 Policy Statement stated that “we regard UCIS as niche products almost certainly inappropriate for ordinary retail investors” (DEPP 6.5B.3G(2)(k)).

6.28. Having taken into account this aggravating factor, the Authority considers that the Step 2 figure should be increased by 5%.

6.29. Step 3 is therefore £47,659.01.

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 the Step 3 figure of £47,659.01 represents a sufficient deterrent, and so has not increased the penalty at Step 4.
- 6.32. The Step 4 figure is therefore £47,659.01.

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. No settlement discount applies.
- 6.35. Step 5 is therefore £47,600 (rounded down to the nearest £100).

Penalty

- 6.36. The Authority has therefore decided to impose a financial penalty of £47,600 on Mr Goodchild for breaching Statement of Principle 1.

Prohibition Order and Withdrawal of Approval

- 6.37. The Authority has the power to prohibit individuals under section 56 of the Act and under section 63 to withdraw approvals given. The Authority has had regard to the guidance in Chapter 9 of EG and FIT 2 of the Handbook, including at EG 9.3.2 and FIT 2.1.3, in considering whether Mr Goodchild is a fit and proper person and whether to impose a prohibition order on him.
- 6.38. The Authority has had regard to all relevant circumstances of the case. In particular, the Authority has considered Mr Goodchild's fitness and propriety and the severity of the risk which Mr Goodchild poses to consumers and to confidence in the financial system. Given the nature and seriousness of the failings outlined above, the Authority considers that during the Relevant Period Mr Goodchild acted recklessly and without integrity in breach of Statement of Principle 1.

- 6.39. The Authority considers that Mr Goodchild is not a fit and proper person to perform any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm. The Authority considers that it is therefore appropriate and proportionate in all the circumstances to withdraw the approval given to Mr Goodchild to perform the controlled function of SMF27 (Partner) at Westbury and to impose a prohibition order on him under section 56 of the Act.

7. PROCEDURAL MATTERS

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

- 7.2. The following statutory rights are important.

Decision maker

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

The Tribunal

- 7.4. The person to whom this Notice is given has the right to refer the matter to the Tribunal. The Tax and Chancery Chamber is the part of the Upper Tribunal, which, among other things, hears references arising from decisions of the Authority. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the person to whom this Notice is given has 28 days to refer the matter to the Tribunal.

- 7.5. A reference to the Tribunal is made by way of a reference notice (Form FTC3) signed by the person making the reference (or on their behalf) and filed with a copy of this Notice. The Tribunal's correspondence address is 5th Floor, The Rolls Building, Fetter Lane, London EC4A 1NL.

- 7.6. Further details are available from the Tribunal website:

<https://www.gov.uk/government/collections/upper-tribunal-tax-and-chancery-chamber>

7.7. A copy of Form FTC3 must also be sent to Rory Neary at the Financial Conduct Authority, 12 Endeavour Square, Stratford, London E20 1JN at the same time as filing a reference with the Tribunal.

Access to evidence

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

7.9. 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.

7.10. There is no such secondary material.

Third party rights and interested parties

7.11. A copy of this Notice is being given to the following person 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. This party has similar rights of representation and access to material in relation to the matter which identifies them:

(1) Mr Stephen Joseph Burdett.

7.12. This Notice would ordinarily be given to Westbury as an interested party in the withdrawal of Mr Goodchild's approval pursuant to section 63(3) of the Act and also to Westbury and SWUK as third parties identified and to whom this Notice is prejudicial. However, the liquidators of Westbury and SWUK have notified the Authority that these firms will not exercise any rights as third or interested parties.

Confidentiality and publicity

7.13. This Notice may contain confidential information and, unless it has been published by the Authority, should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). Under section 391(1A) of the Act a person to whom a decision 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.

Authority contacts

7.14. For more information concerning this matter generally, contact Rory Neary at the Authority (direct line: 020 7066 7972/email: Rory.Neary2@fca.org.uk).

Mark Steward

Settlement Decision Maker, for and on behalf of the Authority

Debbie Gupta

Settlement Decision Maker, for and on behalf of the Authority

ANNEX A - STATUTORY AND REGULATORY PROVISIONS

1. Statutory Provisions

- 1.1. The Authority's statutory objectives, set out in section 1B(3) of the Act, include the consumer protection objective and integrity objectives.
- 1.2. 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 64 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.
- 1.3. 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 activities.
- 1.4. Section 63 provides that the Authority may withdraw an approval under section 59 in relation to the performance by a person of a function if the Authority considers that the person is not a fit and proper person to perform the function.

2. Regulatory Provisions

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

- 2.1. The Authority's Statements of Principle and Code of Practice for Approved Persons have been issued under section 64 of the Act.

- 2.2. APER sets out descriptions of conduct which, in the opinion of the Authority, do not comply with a Statement of Principle. It also sets out factors which, in the Authority's opinion, are to be taken into account in determining whether an approved person's conduct complies with a Statement of Principle.
- 2.3. APER 2.1A.3R, which applies from 1 April 2013, sets out Statement of Principle 1 which states that an approved person must act with integrity in carrying out his accountable functions.
- 2.4. APER 3.1.3G (from 7 March 2016) provided that, when establishing compliance with, or a breach of, a Statement of principle, account will be taken of the context in which a course of conduct was undertaken, including the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour expected in that function.
- 2.5. APER 3.1.4G provides that an approved person will only be in breach of a Statement of Principle if they are personally culpable, that is, where their conduct was deliberate or where their standard of conduct was below that which would be reasonable in all the circumstances.

The Fit and Proper Test for Approved Persons

- 2.6. 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. The Authority has had regard to FIT, including the criteria identified in FIT 1.3.1G and 2.1.3G.

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

2.7. The Authority's policy in relation to prohibition orders is set out in Chapter 9 of the Enforcement Guide ("EG"). The Authority has had regard to this, including the criteria identified in EG 9.3.

2.8. EG 9.3.2 provides that when the Authority decides whether to make a prohibition order against an approved person the Authority will consider all the relevant circumstances of the case. These may include, but are not limited to:

- (2) Whether the individual is fit and proper to perform functions in relation to regulated activities;
- (5) The relevance and materiality of any matters indicating unfitness;
- (8) The severity of the risk which the individual poses to consumers and to confidence in the financial system.

Decision Procedure and Penalties Manual ("DEPP")

2.9. 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.

Conduct of Business Sourcebook ("COBS")

2.10. COBS contains relevant rules and guidance concerning discretionary fund managers, including the following:

COBS 9.2.1R

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

Annex B – Table with details of Risk Profile Scores 3-9

Risk Profile Score	Name	Description of Risk Profile Score	No. pension holders
3	Low risk	<ul style="list-style-type: none"> Your attitude to accepting risk is 'low'. While you are likely to be concerned with not getting as much back from your investments as you put in, you may also want to make higher returns on your investments. Your preferred investments are likely to be mainly lower-or medium-risk investments such as cash, bonds or property, with a few higher-risk investments such as shares. 	2
4	Lowest medium risk	<ul style="list-style-type: none"> Your attitude to accepting risk is 'lowest medium'. While you are likely to be concerned with not getting as much back from your investments as you put in, you may also want to make higher returns on your investments. Your preferred investments are likely to be mainly lower-or medium-risk investments such as cash, bonds or property, with typically fewer higher-risk investments such as shares. 	15
5	Medium risk	<ul style="list-style-type: none"> Your attitude to accepting risk is 'medium'. While you are likely to be concerned with not getting as much back from your investments as you put in, you also probably want to make higher returns on your investments. Your preferred investments are likely to include a balanced mix of lower- and medium-risk investments such as cash, bonds and property, and higher-risk investments such as shares. 	48
6	High medium risk	<ul style="list-style-type: none"> "Your attitude to accepting risk is 'high medium'. While you are likely to be concerned with not getting as much back from your investments as you put in, you also want to make higher returns on your investments. Your preferred investments are likely to include mainly higher-risk investments such as shares and typically some lower-and medium-risk investments such as cash, bonds and property." 	63
7	Highest medium risk	<ul style="list-style-type: none"> Your risk is 'highest medium'. Your priority is likely to be making higher returns on your investments but you are still probably concerned about losing money due to rises and falls. Your preferred investments are likely to contain mainly higher-risk investments such as shares with a few lower-and medium-risk investments such as bonds and property. 	79
8	High risk	<ul style="list-style-type: none"> Your attitude to accepting risk is 'high'. Your priority is likely to be making higher returns on your investments but you are still probably concerned about losing money due to rises and falls. Your preferred investments are likely to contain mainly higher-risk investments such as shares with the occasional lower-and medium-risk investments such as bonds and property. 	24
9	Very high risk	<ul style="list-style-type: none"> Your attitude to accepting risk is 'very high'. Your priority is likely to be making higher returns on your investments and so you accept that you may not get as much back from your investments as you put in. Your preferred investments are likely to contain a large percentage of higher-risk investments such as shares. 	1