

Mr Martin has referred this Decision Notice 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 conduct of Mr Martin 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: **Liam Patrick George Martin**

Individual
Reference
Number: **LPM00003**

Date: **19 March 2024**

1. ACTION

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

- (1) impose on Liam Martin a financial penalty of £128,356 pursuant to section 66 of the 2000 Act; and
- (2) make an order, pursuant to section 56 of the 2000 Act, prohibiting Mr Martin from performing any function in relation to any regulated activity carried on by an authorised person, exempt person, or exempt professional firm.

2. SUMMARY OF REASONS

2.1. Mr Martin, a qualified Pension Transfer Specialist, was approved by the Authority to perform the CF30 (Customer) function at St Martin's Partners LLP ("SMP")

during the Relevant Period (1 October 2015 to 31 July 2016). SMP was a small financial advice firm based in Essex which was authorised by the Authority during the Relevant Period with permission to conduct regulated activities, including advising on Pension Transfers and Pension Opt Outs.

- 2.2. During the Relevant Period, SMP partnered with First Review Pension Services Ltd ("FRPS"), an introducer firm which was not authorised by the Authority, to design and operate the Pension Transfer Model. FRPS had a material financial interest in promoting investments offered by its parent company The Resort Group plc ("TRG"), a property developer based in Gibraltar offering investment opportunities in hotel developments in Cape Verde. These investments were high-risk, illiquid and unregulated property investments and unlikely to be covered by FOS or FSCS protection, and therefore unlikely to be suitable for retail clients. The Authority considers that FRPS instigated this advice model with a view to bringing about investments of SMP clients' pension funds into TRG. SMP, as a firm authorised by the Authority, had a critical role in that process, namely to provide advice to those clients and thereby provide the statutory basis upon which the trustees of the ceding pension schemes were permitted to authorise the release of members from their schemes.
- 2.3. Mr Martin had a key role in designing the Pension Transfer Model which, as designed, failed to gather sufficient information before advice was provided to clients on the appropriateness of transferring out of their Defined Benefit Pension Schemes. The Pension Transfer Model did not properly take account of clients' financial circumstances and objectives, their attitude to risk and their capacity for loss. Additionally, the Pension Transfer Model did not seek to understand the nature, risks and fees of the actual onward investment and instead was designed so that SMP's advisers, including Mr Martin, would base their analysis and advice on a generic onward investment across those clients who were subject to the Pension Transfer Model. Investment advice was intended to be subsequently provided to the clients by the Overseas Adviser Firm, a financial advisory group based in Cyprus and not authorised by the Authority, and which was a business partner of FRPS and TRG.
- 2.4. The design of the Pension Transfer Model meant that SMP, including Mr Martin, was not in a sufficiently informed position to give its clients appropriate advice on the nature of the risks or benefits associated with transferring their pensions. Although Mr Martin cautioned his clients that his advice was subject to limited

information and in the majority of cases advised them not to transfer, the fact that his clients had obtained advice from SMP, a firm authorised by the Authority, nevertheless provided the statutory basis upon which the trustees of the ceding pension schemes were permitted to authorise the release of members from their schemes. This was not the case for a very small number of SMP clients whose CETV was below the minimum threshold of £30,000, and for whom the trustees were not under a statutory obligation to check that they had received appropriate independent advice prior to making a transfer.

- 2.5. In addition to FRPS, at least 16 other introducers introduced clients who were advised by SMP during the Relevant Period. SMP advised at least 547 clients under the Pension Transfer Model during the Relevant Period, of which 440 clients were introduced to SMP by FRPS. The total value of the Defined Benefit Pension Schemes on which SMP advised under the Pension Transfer Model was just under £60 million, with an average value of approximately £104,000. Mr Martin advised at least 492 of these 547 clients. The combined value of the Defined Benefit Pension Schemes on which Mr Martin advised was more than £54 million, with an average value of approximately £104,000.
- 2.6. Mr Martin did not earn a base salary from SMP and was not an employee. Instead, Audley Asset Management, a company in which Mr Martin and Adrian Douglas were directors and the sole, equal, shareholders, during the Relevant Period earned 70% of the fees charged to clients by way of commission, with the remainder retained by SMP. Mr Martin received 50% of the fees payable to Audley Asset Management. In total, he received £162,318 in respect of the financial benefit from the fees generated from the Pension Transfer Model.
- 2.7. On 14 June 2019 SMP entered liquidation. The FSCS declared SMP in default on 23 September 2019 and is investigating claims made by SMP's clients who were advised by SMP under the Pension Transfer Model. As at 26 May 2022, the FSCS had paid over £9 million in compensation to SMP's clients as a result of loss they had suffered following advice they had received from SMP.

Mr Martin's misconduct

- 2.8. The Authority considers that, during the Relevant Period, Mr Martin acted recklessly in relation to his role in designing the Pension Transfer Model and

thereby failed to act with integrity in carrying out his accountable functions at SMP, in breach of Statement of Principle 1. In particular, Mr Martin:

- (a) failed to address the significant risk that clients introduced to SMP by FRPS for the purpose of receiving advice under the Pension Transfer Model would be encouraged by the Overseas Adviser Firm to transfer out of their Defined Benefit Pension Schemes and invest into high-risk, illiquid and unregulated property investments offered by TRG which were unlikely to be suitable for them. This was notwithstanding the clear indications he received, as a point of contact with FRPS, of FRPS' material financial interest in promoting investments offered by TRG. This risk would have been clear to Mr Martin particularly in light of his experience as a Pension Transfer Specialist with 25 years of industry experience. Mr Martin failed both to investigate the investments promoted by FRPS and to ensure that, when SMP gave advice, consideration was given to whether these investments were suitable for clients who were transferring out of their Defined Benefit Pension Schemes. Mr Martin was aware of this risk, and it was unreasonable for him to have exposed SMP's clients to it;
- (b) had a key role in designing the Pension Transfer Model which had significant and clear deficiencies, including that:
 - (i) the Pension Transfer Model failed to take into account the client's attitude to risk, meaning SMP was unable to ascertain whether a Pension Transfer was suitable in accordance with the client's risk tolerance;
 - (ii) the Pension Transfer Model failed to gather information on the client's financial situation and income needs throughout retirement, meaning SMP was unable to determine whether a client could bear the risks of losing the guaranteed income they would otherwise receive during their retirement from their Defined Benefit Pension Scheme;
 - (iii) the Pension Transfer Model failed to gather information on the client's knowledge and experience of relevant investments, meaning SMP was unable to assess whether their clients fully understood the financial implications of their advice;

- (iv) Personal Recommendations were provided to clients on the basis of very limited information gathered from the client and solely on the basis of a TVAS Report;
- (v) the TVAS Report took no account of the onward investment scheme and instead used a generic personal pension scheme; and
- (vi) confirmation of advice letters, enabling Pension Transfers, were issued to the trustees of the ceding schemes at a point when SMP's clients had received this very limited advice.

Mr Martin was aware of the significant risk that SMP's clients would proceed with a Pension Transfer without receiving complete advice, and his failure to assess and address the clear deficiencies in the Pension Transfer Model was unreasonable in the circumstances.

For the above reasons, it appears to the Authority that Mr Martin's actions during the Relevant Period in relation to his role in designing the Pension Transfer Model amount to a failure to act with integrity, in breach of Statement of Principle 1.

- 2.9. The Authority has therefore decided to impose on Mr Martin a financial penalty of £128,356 for his failure to comply with Statement of Principle 1.

Lack of Fitness and Propriety

- 2.10. The Authority also considers that Mr Martin's actions in relation to his role in operating the Pension Transfer Model were reckless. In particular, Mr Martin:
- (a) failed to gather sufficient information from clients to be able to provide suitable Pension Transfer advice;
 - (b) facilitated Pension Transfers under the Pension Transfer Model by issuing confirmation of advice letters to the trustees of ceding schemes at a point when the client had only received very limited advice, thereby providing the statutory basis upon which the trustees of the ceding pension schemes were permitted to authorise the release of that member from their scheme;

- (c) made Personal Recommendations to clients based solely on a TVAS Report and a critical yield calculation;
- (d) prepared the TVAS Report without consideration of the onward investment; and
- (e) failed to place clients who wished to proceed with a Pension Transfer against his advice in an informed position to understand that they had received flawed advice, through the process of expecting them to complete a 'Reasons to Transfer' letter.

2.11. The Authority considers Mr Martin's actions in relation to his role in operating the Pension Transfer Model to be serious because:

- (a) it related to a large number of clients, both in terms of the (at least) 547 clients who were advised by SMP under the Pension Transfer Model which Mr Martin had a key role in designing and the at least 492 clients Mr Martin directly advised;
- (b) it would have been clear to Mr Martin that there was a significant risk that clients introduced to SMP by FRPS would be encouraged by the Overseas Adviser Firm to invest into high-risk, illiquid and unregulated property investments offered by TRG which were unlikely to be suitable for retail clients, yet he took no steps to address this risk;
- (c) Mr Martin was an experienced and qualified Pension Transfer Specialist, and yet he still played a key role in designing and operating a clearly deficient advice process which exposed his clients to significant risk of financial detriment; and
- (d) Mr Martin obtained substantial financial benefits as a result of his failings from the deficient Pension Transfer Model.

2.12. As a result of Mr Martin's failure to have regard to the clear risks arising from the matters described in paragraphs 2.8 and 2.10 above, of which he must have been aware, and to take appropriate action in light of them, Mr Martin was reckless and failed to act with integrity. For this reason, the Authority considers he is not fit and proper to perform any function in relation to any regulated activity carried on

by an authorised person, exempt person, or exempt professional firm. The Authority has therefore decided to make an order prohibiting Mr Martin from performing any such functions. The Authority considers that doing so is necessary in order to secure an appropriate degree of protection for consumers.

3. DEFINITIONS

3.1. The definitions below are used in this Notice:

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

“the 2001 Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

“the 2015 Act” means the Pension Schemes Act 2015;

“the 2015 Regulations” means the Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015;

“ACER” means ACER IM Ltd (dissolved on 29 January 2019);

“the ACER Introducers Agreement” means a partially executed agreement dated 23 November 2015 between ACER and SMP for ACER to introduce third party introducers to SMP;

“Audley Asset Management” means Audley Asset Management Limited, a company incorporated on 7 September 2015 in which Mr Douglas and Mr Martin were directors and the sole, equal, shareholders, during the Relevant Period;

“the Authority” means the Financial Conduct Authority;

“CETV” means cash equivalent transfer value, which is the cash value of benefits which have been accrued to, or in respect of, a member of a pension scheme at a particular date, representing the expected costs of providing the member’s benefits within the scheme;

“COBS” means the Conduct of Business Sourcebook, part of the Handbook;

“Compliance Consultant” means the independent, third-party compliance consultancy engaged by SMP during the Relevant Period;

“Compliance Manager” means SMP’s compliance manager to whom Mr Cuthbert delegated compliance responsibilities throughout the Relevant Period;

“COO” means Chief Operating Officer;

“Defined Benefit Pension Scheme” means an occupational pension scheme as defined by Article 3(1) of the 2001 Order, 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);

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

“EG” means the Authority’s Enforcement Guide set out in the Handbook;

“FOS” means the Financial Ombudsman Service;

“FRPS” means First Review Pension Services Ltd (dissolved on 12 September 2017);

“the FRPS Introducers Agreement” means an agreement between FRPS and SMP dated 1 April 2016 for FRPS to introduce clients to SMP;

“FSCS” means the Financial Services Compensation Scheme;

“Full Advice Model” means a Pension Transfer advice model where a single adviser gives the defined benefit transfer advice and the investment advice on the proposed onward investment, in order for the Pension Transfer to proceed;

“the Handbook” means the Authority’s Handbook of rules and guidance;

“Mr Cuthbert” means Alec Cuthbert, a qualified Pension Transfer Specialist who held the CF4 (Partner), CF10 (Compliance Oversight), CF11 (Money Laundering

Reporting), CF30 (Customer) and Responsible for Insurance Mediation functions at SMP during the Relevant Period;

“Mr Douglas” means Adrian Douglas, a qualified Pension Transfer Specialist who held the CF30 (Customer) function at SMP during the Relevant Period;

“Mr Martin” means Liam Martin;

“Mr Oxberry” means Frank Oxberry who held the CF4 (Partner) and CF30 functions at SMP during the Relevant Period;

“the October 2016 Meeting” means the meeting the Authority held with Mr Oxberry, Mr Cuthbert and Mr Douglas on 3 October 2016;

“the Overseas Adviser Firm” means a financial advisory group based in Cyprus which was not authorised by the Authority and which was a business partner of FRPS and TRG;

“Pension Opt Out” has the meaning given in the Handbook and includes a transaction resulting from the decision of a retail client to opt out of an occupational pension scheme to which his employer contributes and of which he is a member;

“Pension Transfer” has the meaning given in the Handbook and includes the transfer of deferred benefits from an occupational pension scheme (with safeguarded benefits, such as a Defined Benefit Pension Scheme) to a personal pension scheme;

“Pension Transfer Model” means the Pension Transfer advice model operated by SMP during the Relevant Period characterised by advice provided solely on the basis of critical yield values of the ceding scheme against a generic scheme with no consideration of the client’s final investment;

“Pension Transfer Specialist” has the meaning given in the Handbook and includes an individual appointed by a firm to check the suitability of, amongst other things, a Pension Transfer, who has passed the required examinations as specified in the Training and Competence Sourcebook, part of the Handbook;

“Personal Recommendation” means a recommendation that is advice on transfer of pension benefits into a personal pension or SIPP, and is presented as suitable for the client to whom it is made, or is based on a consideration of the client’s circumstances;

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

“Relevant Period” means 1 October 2015 to 31 July 2016;

“SMP” or “the Firm” means St Martin’s Partners LLP;

“Statements of Principle” means the Authority’s Statements of Principle and Code of Practice for Approved Persons;

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

“TRG” means The Resort Group plc, a property developer based in Gibraltar offering investment opportunities in hotel developments in Cape Verde;

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

“TVAS” means ‘transfer value analysis’ and is the comparison that a firm must carry out in accordance with COBS 19.1.2R when a firm gives advice or a Personal Recommendation about, amongst other things, a Pension Transfer;

“TVAS Report” means a document that reports to the client in respect of the comparison firms are required to carry on in accordance with COBS 19.1.2R;

“Two-Adviser Model” means a Pension Transfer advice model operated by some firms where one firm gives defined benefit transfer advice and another firm, acting as an introducer, gives investment advice on the proposed onward investment, in order for the Pension Transfer to proceed; and

“Warning Notice” means the Warning Notice given to Mr Martin dated 13 July 2023.

4. FACTS AND MATTERS

Background

Mr Martin

- 4.1. Mr Martin was approved by the Authority to perform the CF30 (Customer) function at SMP from September 2015 and held this function throughout the Relevant Period. Prior to his approval as CF30 (Customer) at SMP, Mr Martin was approved by the Authority at other firms authorised by the Authority as CF21 (Investment Adviser) and as CF24 (Pension Transfer Specialist). Mr Martin had approximately 25 years of industry experience within the pension advice sector by the start of the Relevant Period and held all Pension Transfer qualifications. Mr Martin and Mr Douglas set up Audley Asset Management in September 2015 and were the sole, equal, shareholders and its two directors.

Mr Martin's relationship with SMP

- 4.2. SMP was a small financial advice firm based in Chelmsford, Essex which was authorised by the Authority during the Relevant Period to, amongst other things, advise on Pension Transfers and Pension Opt Outs. SMP entered liquidation on 14 June 2019.
- 4.3. Mr Martin and Mr Douglas joined SMP as self-employed Pension Transfer Specialists in September 2015 and provided advice to Pension Transfer clients. Both Mr Martin and Mr Douglas provided advice to SMP's clients under the Pension Transfer Model throughout the Relevant Period.
- 4.4. Throughout the Relevant Period, Mr Oxberry and Mr Cuthbert were the two CF4s (Partner) at SMP.
- 4.5. Mr Cuthbert as CF10 (Compliance oversight) delegated responsibility for day-to-day operational compliance oversight to the Compliance Manager. The Compliance Manager, unlike Mr Cuthbert, Mr Martin and Mr Douglas, was not a qualified Pension Transfer Specialist, nor did he hold compliance-related controlled functions.

- 4.6. During the Relevant Period, SMP operated out of a small, open plan office with Mr Martin, Mr Douglas, Mr Oxberry and the Compliance Manager all sitting in close proximity on the same floor.

Pension transfers

- 4.7. Pensions are a traditional and tax-efficient way of saving money for retirement. The benefits someone obtains from their pension, particularly under a Defined Benefit Pension Scheme, can have a significant impact on their quality of life during retirement and, in some circumstances, can affect when an individual is able to retire. A Defined Benefit Pension Scheme is particularly valuable because it offers a secure, guaranteed income for life to members, which typically increases each year in line with inflation.
- 4.8. It is possible to “transfer out” of a Defined Benefit Pension Scheme. This involves the scheme member giving up the guaranteed benefits associated with membership in exchange for a CETV, which is typically then invested in a defined contribution pension. Pursuant to section 48 of the 2015 Act, where the value of the assets in a Defined Benefit Pension Scheme exceeds £30,000, pension providers must ensure members take “appropriate independent advice” before allowing a transfer to proceed. Pension Transfer Specialists are suitably qualified individuals with permission to advise on such Pension Transfers in accordance with the Authority’s rules.
- 4.9. Unlike a Defined Benefit Pension Scheme, a defined contribution pension does not provide a guaranteed income for its members but sets the payments that are required to be paid into the fund to provide a pension benefit, and is itself highly dependent on the performance of the underlying investment. Pursuant to COBS 19.1.6G, the Authority sets out a general starting assumption for an authorised firm that transferring out of a Defined Benefit Pension Scheme will not be suitable for a retail client, unless the firm can clearly demonstrate, on contemporaneous evidence, that the transfer is in the client’s best interests. This is in light of the valuable guaranteed benefits offered by Defined Benefit Pension Schemes.
- 4.10. Authorised firms and Pension Transfer Specialists act as gatekeepers between clients and the transfer of their pension. Accordingly, clients place significant trust in them to provide advice on Defined Benefit Pension Scheme transfers. It is the responsibility of the Pension Transfer Specialist to understand the client’s needs

and account for all the relevant individual circumstances and how these might affect the advice provided when advising on the suitability of any Pension Transfer.

FRPS/TRG/ACER/The Overseas Adviser Firm

- 4.11. FRPS was a UK firm which was not authorised by the Authority. TRG was the parent company of FRPS from the start of the Relevant Period until 7 July 2016. FRPS was dissolved on 12 September 2017.
- 4.12. On 8 February 2016, The Pensions Regulator issued a Final Notice, in respect of an Occupational Pension Scheme which identified Matthew Welsh, a Director of ACER, a firm not authorised by the Authority, as a former Trustee of that scheme, in which the underlying investments were found to be high risk and illiquid and considered by an independent review to be promising implausibly high returns, including investments in TRG which were described as being in a class of investments which had been highlighted by Action Fraud as “potentially fraudulent”. On 11 July 2016, a BBC Panorama programme aired which focused on FRPS’s close connections to TRG, a property developer based in Gibraltar which offered investments in hotel developments in Cape Verde, and how FRPS was said to have solicited pension reviews and encouraged pension transfers into TRG’s investments.
- 4.13. The property investments offered by the TRG were (1) illiquid, as they could only be sold upon completion and potentially lacked a viable secondary market, and (2) unlikely to be covered by FOS or FSCS protection. These investments were high-risk and were unlikely to be suitable for retail clients.
- 4.14. According to Mr Martin, FRPS was a business partner of the Overseas Adviser Firm, a financial advisory group based in Cyprus which was not authorised by the Authority and which did not have the relevant permissions to advise on Pension Transfers in the UK.

Design of the Pension Transfer Model

- 4.15. In October 2015, Mr Martin was contacted by Mr Welsh. Mr Welsh was seeking a partner for FRPS, which itself was seeking a firm authorised by the Authority to

assist with providing the transfer advice component of advice under an advisory model which was similar to a Two-Adviser Model.

- 4.16. In October 2015, Mr Martin took part in discussions between SMP, FRPS and ACER, following which it was agreed that an advice model, the Pension Transfer Model, would be established at SMP. Mr Oxberry agreed (and Mr Martin understood) that under the Pension Transfer Model, SMP would provide initial advice on the Pension Transfer, with the Overseas Adviser Firm providing the risk profiling and investment advice component of the advice process. Together with Mr Douglas, Mr Martin then drafted the process documentation, to create what would become the Pension Transfer Model. Mr Martin and Mr Douglas streamlined SMP's typical full pension transfer advice process by removing the requirement to gather the client's information or attitude to risk profiler, which was replaced with an advice model where advice would be provided based solely on a TVAS Report and critical yield analysis. Further, Mr Martin assisted in designing the template documentation used in the Pension Transfer Model, including by suggesting that the analysis of the client's objectives and any warnings that the client should rely on a third-party financial adviser to provide the investment advice should be removed as these were intended to be provided by the other adviser, the Overseas Adviser Firm. The principal features of the Pension Transfer Model are set out in more detail at paragraphs 4.31 to 4.66 below.
- 4.17. SMP received the ACER Introducers Agreement signed on behalf of ACER and dated 23 November 2015, to be countersigned by SMP, which provided that ACER would introduce other third-party introducers to SMP. Mr Douglas negotiated and drafted the ACER Introducers Agreement with Mr Welsh; however, the Authority has not seen any evidence that the ACER Introducers Agreement was countersigned by SMP during the Relevant Period. Rather, the terms of this agreement remained under discussion during this period (see paragraph 4.20(g) and (i) below). Mr Welsh introduced to SMP a number of third-party introducers who then also introduced to SMP clients to be advised using the Pension Transfer Model which was originally developed for FRPS. All clients advised under the Pension Transfer Model were brought to SMP via introducers or financial advisers. The majority of clients were introduced to SMP by FRPS, which introduced 440 of the at least 547 clients who were advised by SMP under the Pension Transfer Model. In addition to FRPS, at least 16 other third-party introducers introduced clients who were advised by SMP under the Pension Transfer Model.

- 4.18. SMP signed the FRPS Introducers Agreement on 1 April 2016, which provided that SMP would receive from FRPS £795 for every client referred which SMP advised. This was approximately four months after the first client was introduced to SMP by FRPS and advised under the Pension Transfer Model, and notwithstanding that FRPS was the principal introducer of clients under the Pension Transfer Model.
- 4.19. At or around the time that Mr Welsh approached SMP, Mr Martin knew that Mr Welsh had been a Trustee of an Occupational Pension Scheme which was subject to an investigation from The Pensions Regulator (see paragraph 4.12). Mr Martin did not question whether it was appropriate for SMP to be referred to introducers via Mr Welsh, who had demonstrated he had a track record of partnering with introducers who promoted unsuitable investments, on the basis that he considered it was unnecessary to carry out any due diligence on him or ACER and that SMP would in due course carry out due diligence on any introducers with which it proposed to partner. Mr Martin also stated to the Authority that he was not aware at the time of the Final Notice of The Pensions Regulator.
- 4.20. The Authority considers that Mr Martin knew during the Relevant Period that FRPS, TRG and the Overseas Adviser Firm were connected entities with a shared financial interest in promoting TRG's high-risk property investments. In particular:
- (a) on 26 October 2015, Mr Douglas emailed the Managing Director of TRG, Mr Welsh and Mr Martin copying Mr Oxberry, stating, *"Good to meet you [...] There's no rush at all as we're concentrating on sorting the TVAS advice route through [the Overseas Adviser Firm], but if you get the chance to send across some due diligence-style information on TRG then we can read at our leisure!"* The Managing Director of TRG responded the same day, stating, *"I will send this through tomorrow without fail";*
 - (b) on 9 November 2015, Mr Douglas circulated draft client advice letters he had prepared to Mr Martin and SMP's Compliance Manager. These drafts described TRG as *"a property developer of the highest quality" who "specialise in developing luxurious beach front hotels & resorts in partnership with world-class hotel operators"* and specifically referred to TRG, not FRPS, as the introducer. These draft letters also explicitly stated: *"The Resort Group do not offer or provide pension advice therefore they outsource the regulated advice requirements for pension transfer advice to St Martin's Partners LLP (amongst other firms)."* The Authority considers that this describes the outsourced role

that SMP ultimately performed under the Pension Transfer Model. On 11 November 2015, Mr Douglas deleted in one of the draft letters the reference to TRG outsourcing advice to SMP, namely that "*they outsource the regulated advice requirements for pension transfer advice to St Martin's Partners LLP (amongst other firms)*";

- (c) on 12 November 2015, the Managing Director of FRPS emailed Mr Douglas, copying Mr Martin, the Managing Director of TRG and Mr Welsh, requesting that references to FRPS and TRG be removed from SMP's template client advice letter. Subsequently, the information which would have explained to clients that their funds would be invested into TRG, which had been described as a "*property developer offering overseas investment opportunities to property owners and investors*", was removed. Mr Martin did not question why the Managing Director of FRPS had requested the removal of this information and did not seek to ascertain whether this was because, for example, FRPS intended to conceal its links with TRG or if it was because only a small proportion of funds were being invested into TRG. Mr Martin also did not inform SMP's compliance function that more effective due diligence should be carried out on FRPS, TRG or its investments in light of FRPS's request to remove this information;
- (d) SMP received the ACER Introducers Agreement signed on behalf of ACER and dated 23 November 2015, to be countersigned by SMP, in which FRPS and TRG were referred to together as "*3rd Party Introducer 1: FRPS / The Resort Group*". This agreement provided that SMP would pay to ACER £200 or £250 for each client introduced to SMP via these entities. It also provided that ACER would introduce other third-party introducers to SMP (having already introduced FRPS to SMP in October 2015). Mr Douglas negotiated and drafted the ACER Introducers Agreement, and sent a subsequent draft of this agreement to Mr Oxberry by email, copying Mr Martin, on 18 January 2016;
- (e) Mr Martin received meeting invitations for meetings to which the COO of TRG, the Managing Director of FRPS and Mr Welsh were also invited. These included a meeting on 8 December 2015, at the time when SMP's partnership with TRG and FRPS was still being negotiated;
- (f) on 17 February 2016, Mr Welsh emailed Mr Douglas and Mr Oxberry, copying Mr Martin, requesting that the appendix of the ACER Introducers Agreement

be updated before they signed it to include the wording “*following introductions that [they] have now made*”, including TRG, FRPS and the Overseas Adviser Firm in close proximity with each other (amongst other entities); and

(g) Mr Martin corresponded with staff directly via TRG’s email addresses, and in some cases, the same individual employee sent correspondence to Mr Martin using TRG and FRPS email addresses interchangeably in order to advance the process of transferring the client’s pension.

4.21. Further, Mr Martin stated that he understood at the time that FRPS was acting as an administrator for the Overseas Adviser Firm. Mr Martin also stated that he understood at the time that the Overseas Adviser Firm would potentially invest client funds into a portfolio, of which approximately 5% might include investments in TRG.

4.22. Notwithstanding that he knew, or must have known, of the connections and shared financial interest of FRPS and the Overseas Adviser Firm in promoting TRG’s investments, Mr Martin unreasonably failed to address the risks that the Pension Transfer Model would be used to bring about investment of SMP clients’ pension funds into investments offered by TRG and that these investments would be unsuitable for SMP’s clients.

Mr Martin’s compliance responsibilities

4.23. Mr Douglas told the Authority that the Pension Transfer Model was signed off by SMP’s Compliance Manager and Mr Cuthbert, who together formed SMP’s compliance function.

4.24. SMP’s compliance function was not copied into such discussions concerning TRG, nor did Mr Martin bring such risks to SMP’s compliance function’s attention. Once the Pension Transfer Model was signed off by SMP’s compliance function, Mr Martin did not question the extent to which the advice model fulfilled relevant regulatory requirements. Mr Martin stated that the extent of his compliance responsibilities was to ensure his advice was in accordance with the agreed advice model, and to liaise with clients to ensure that the established processes were followed. Therefore, Mr Martin (a highly experienced Pension Transfer Specialist) placed full reliance on SMP’s compliance function (notwithstanding that the Compliance

Manager was not a qualified Pension Transfer Specialist and that Mr Cuthbert was not working full time in the lead-up to his retirement) to verify the advice model which, once verified, he followed and did not question.

- 4.25. Mr Martin did not take steps to satisfy himself that the risk that the Pension Transfer Model was not compliant with relevant regulatory requirements had been adequately addressed. This was despite Mr Martin's knowledge of the genesis of the Pension Transfer Model, his greater level of knowledge than SMP's compliance function of the risks relating to TRG being the likely onward investment for a majority of clients advised under the Pension Transfer Model, and his acceptance and understanding that he had some responsibility for the compliance aspects of the Pension Transfer Model. This was also despite Mr Martin having a key role in developing the Pension Transfer Model and being a point of contact with Mr Welsh and FRPS, with whom the proposals for SMP to develop the Pension Transfer Model were initiated (see paragraphs 4.15 to 4.20).

SMP's Pension Transfer Model as compared to the Full Advice and Two-Adviser Model

The Full Advice Model

- 4.26. During the Relevant Period, Mr Martin provided advice on Defined Benefit Pension Scheme transfers to clients using both the Full Advice Model and the Pension Transfer Model. The Full Advice Model differed from SMP's Pension Transfer Model and operated as follows:
- (a) a range of information would be gathered from the client by the adviser, including information about the client's financial goals and circumstances, (such as their possession of life cover and information about total assets and liabilities), attitude to transfer or investment risk and capacity for financial loss. This was commonly obtained through a face-to-face or direct meeting with the client;
 - (b) a letter and report would be sent to the client and a meeting arranged to discuss its findings. A TVAS Report would set out, amongst other things, a comparison relating to specific benefits (for example, death benefits) and a critical yield calculation. The critical yield offers guidance based on set assumptions (expressed as a percentage) on the level of return the client's

proposed onward investment will need to achieve, up to the point they start drawing from the pension, to match the benefits they would receive from their Defined Benefit Pension Scheme. The timing from the initial client contact through to the provision of the TVAS Report would usually take three to four weeks;

(c) the adviser would also advise on the onward investment product into which the client's Defined Benefit Pension Scheme funds would be released. The adviser's knowledge of the onward investment product was the basis of the overall Pension Transfer advice, with the adviser comparing the ceding scheme against the proposed onward investment and assessing the client's suitability. This provides the client with a clear understanding of what the existing benefits which they are entitled to and what they are projected to be entitled to after transferring their pension; and

(d) if the adviser's Personal Recommendation was for a client to proceed with a Pension Transfer, SMP would provide a confirmation of advice letter to the trustee of the client's occupational pension scheme, authorising the trustee to release the client's funds from their occupational pension.

4.27. In summary, the Full Advice Model consisted of a single adviser giving two separate pieces of advice: (1) whether to give up the safeguarded Defined Benefit Pension Scheme, and (2) where the client's pension funds should be invested, should the Pension Transfer proceed. It is critical that the advice given by a single adviser under the Full Advice Model covers both parts of the Pension Transfer, which cannot be advised on in isolation. This is because, for the adviser to determine the suitability of a Pension Transfer, the adviser must assess the proposed investment against the projected performance of the ceding scheme and consider whether that proposed investment is suitable in accordance with the client's circumstances and attitude to risk.

4.28. At SMP, each Full Advice Model case took several months from initial contact to completion with the transfer of funds. Instead of earning a flat fee (as for advice under the Pension Transfer Model), SMP would charge the client its normal rates which would be significantly greater. In some cases, clients who were referred for advice under the Pension Transfer Model were switched to the Full Advice Model. No criticism of the Full Advice Model as operated by the Firm is made by the Authority.

The Two-Adviser Model

- 4.29. In contrast, a Two-Adviser Model differs from the Full Advice Model in that one firm provides defined benefit transfer advice (paragraphs 4.26(a), (b) and (d) above) and another firm provides investment advice on the proposed onward investment (paragraph 4.26(c) above), if the Pension Transfer were to proceed.
- 4.30. It is common for clients who use a Two-Adviser Model to have the process of their Pension Transfers managed by introducers who manage the client's end-to-end journey on the client's behalf. Using this model, the introducers can organise two separate advisers to provide advice on the separate parts of the client's Pension Transfer.
- 4.31. However, the Two-Adviser Model introduces additional risks over the Full Advice Model because the Pension Transfer advisers may have limited oversight over how onward investment advice is provided to the client, meaning clients may not receive complete advice on all the necessary aspects of the transfer. These risks need to be appropriately managed by the Pension Transfer advisers.

SMP's Pension Transfer Model

- 4.32. SMP's Pension Transfer Model was more akin to the Two-Adviser Model in that SMP only advised on the Pension Transfer out of the ceding scheme and did not advise on aspects relating to the onward investment of the pension funds.
- 4.33. SMP advised at least 547 clients under the Pension Transfer Model during the Relevant Period. The total value of the Defined Benefit Pension Schemes on which SMP advised under the Pension Transfer Model was just under £60 million, with an average value of approximately £104,000.
- 4.34. The Pension Transfer Model was used by Mr Martin to advise at least 492 clients. The combined value of the Defined Benefit Pension Schemes on which Mr Martin advised was just under £54 million, with an average value of approximately £104,000.

Limited information obtained from clients

- 4.35. As a result of the design of SMP's Pension Transfer Model, Mr Martin received very limited information from clients. Mr Martin did not gather full information from clients in order to determine independently the client's best interests. Instead, he received from introducers a data capture containing very limited client details, typically the client's contact information and general information regarding their ceding scheme, which did not include the client's full financial or personal circumstances (such as their possession of life cover and information regarding total assets and liabilities), attitude to transfer or investment risk or capacity for financial loss. Mr Martin did not meet any of the clients advised through the Pension Transfer Model and the firm's primary point of contact was introducers, rather than clients themselves. On the occasions where SMP's advisers conversed with clients directly, this was on an ad hoc basis to address client queries and was not to discuss the client's full financial or personal circumstances with a view to providing complete transfer advice.
- 4.36. Mr Martin received assurances that the full client information gathering exercise, and the provision of full advice by a third-party financial adviser such as the Overseas Adviser Firm, would take place after SMP's initial involvement of providing an advice letter based on a TVAS Report (see paragraphs 4.55 to 4.58 below).
- 4.37. When the relevant client's details were required as inputs to generate a TVAS Report and issue a Personal Recommendation, much of the inputted information was assumed by Mr Martin (including the client's employment status and estimated retirement age).
- 4.38. The Authority assessed a sample of 16 advice files of clients who were advised by Mr Martin under the Pension Transfer Model during the Relevant Period. The Authority found that all 16 advice files were non-compliant with relevant regulatory requirements because of material information gaps in the collection of client information. Due to these material information gaps, the Authority was unable to assess the suitability of the transfer advice given by Mr Martin. In particular, Mr Martin failed to gather:
- (a) information on the client's knowledge and experience relevant to the specific investment, as required by COBS 9.2.1R(2)(a) and 9.2.3R;

- (b) information on the client's financial situation, including information on the source and extent of their regular income, their assets and regular financial commitments, as required by COBS 9.2.1R(2)(b) and 9.2.2R(3); and
- (c) information about the client's investment objectives, including their preferences regarding risk taking and their risk profile, as required by COBS 9.2.1R(2)(c) and 9.2.2R(2).

Use of a model portfolio within the TVAS Report

- 4.39. During the Relevant Period, COBS 19.1.2R(1) required that a firm preparing and providing a transfer analysis had to compare the benefits likely (on reasonable assumptions) to be paid under a Defined Benefit Pension Scheme with the benefits afforded by a personal pension scheme, stakeholder pension scheme or other pension scheme with flexible benefits, before advising a retail client to transfer out of a Defined Benefit Pension Scheme. COBS 19.1.3G(1) required that this comparison should take into account all of the client's relevant circumstances and COBS 19.1.3G(4) required that this comparison should be illustrated on rates of return which take into account the likely expected returns of the assets in which the retail client's funds would be invested.
- 4.40. However, since SMP did not receive from the introducer for the purposes of the TVAS any information regarding the onward investment or the likely expected returns of the assets into which the client's funds would be invested, each client's TVAS Report had to be generated based on limited information.
- 4.41. Instead, when client TVAS Reports were produced, the advisers made assumptions for each client that they would be investing into a generic personal pension scheme. The TVAS calculation for all clients advised under the Pension Transfer Model was therefore entirely unreliable, in failing to, amongst other things, account for the reality of the proposed investment.
- 4.42. In all 16 of Mr Martin's advice files reviewed by the Authority, there was no information indicating that Mr Martin took the proposed onward investment into account when making his Personal Recommendation.

Personal Recommendation to transfer based solely on TVAS calculation

- 4.43. COBS 9.2.1R required that when making a Personal Recommendation, an authorised firm must obtain necessary information regarding the client's knowledge and experience relevant to the specific investment, financial situation and investment objectives. Instead, SMP based its client advice solely on a TVAS Report and a critical yield calculation. This placed its clients at risk because it issued Personal Recommendations and facilitated Pension Transfers without fully considering the client's circumstances or suitability.
- 4.44. SMP's template advice letter included a statement that the recommendation considered "*the critical yield in isolation*" and the recommendation "*does not take into account... personal circumstances or attitude to risk and objectives*".
- 4.45. Further, if SMP's TVAS Report generated a critical yield above a certain threshold (initially 7.5%, and later 6%), Mr Martin would not advise the client to transfer out of their current scheme. Therefore, this percentage threshold was not a figure individually applied to each client's circumstances in accordance with, for example, their individual attitudes to investment risk.
- 4.46. In one of the files of Mr Martin which the Authority assessed, Mr Martin recommended to the client that she should transfer out her pension from her Defined Benefit Pension Scheme. Mr Martin's recommendation was made solely on the basis of a critical yield value of 5.5% being below the critical yield threshold, and the client could achieve higher returns outside of the Defined Benefit Pension Scheme without taking too high an investment risk. However, there was no mention in Mr Martin's advice regarding the specific proposed investment and whether the investment would align with the client's personal circumstances, objectives or risk tolerance. Mr Martin's recommendation failed to demonstrate, amongst other things, that he had adequately considered the presumption against defined benefit transfers by proving, based on full contemporaneous evidence, that such a transfer would be in the client's best interests.
- 4.47. For 74 of the 519 defined benefit schemes which Mr Martin advised on under the Pension Transfer Model, Mr Martin recommended that a Pension Transfer may be in the client's interest on the basis of having critical yields below the threshold used at SMP at the time. For 445 of the 519 schemes, Mr Martin's clients were recorded as being advised not to transfer.

Confirmation of advice letter issued to the ceding scheme trustee

- 4.48. Following the generation of a TVAS Report, Mr Martin issued confirmation of advice letters which were addressed to the ceding scheme trustee. These letters were provided to the client's introducers and would be forwarded to the ceding scheme trustee as the basis of the authority to transfer the client's pension funds.
- 4.49. The template confirmation of advice letters issued by Mr Martin contained the following declarations:
- (a) SMP was "*authorised and regulated by the Financial Conduct Authority, FCA No 537804 [...] to carry on the regulated activity in 53E [sic] of the Regulated Activities Order*" to advise on Pension Transfers;
 - (b) confirmation that Mr Martin held "*the appropriate permission under Part 4A of the Financial Services and Markets Act 2000 [...] to carry on the regulated activity (advising on conversion or transfer of pension benefits) in Article 53E of the FCA Regulated Activities Order*";
 - (c) confirmation that Mr Martin had advised the client, with the following templated statement: "*I, Liam Martin (LMP0003) can confirm that I have given advice solely in relation to a Transfer Valuation Advice Reportt in respect of [the client's] benefits in [the client's Defined Benefit Pension Scheme]*"; and
 - (d) depending on whether the client's critical yield lay above or below SMP's critical yield threshold (see paragraph 4.45), a recommendation regarding whether the client should transfer their pension benefits with the statement of either:
 - (i) "*Based on the TVAS only we do not recommend that [the client] transfers their pension benefits away from [the client's Defined Benefit Pension Scheme]*"; or
 - (ii) "*Taking the critical yield in isolation... we would normally recommend that [the client] considers transferring their pension benefits away from [the client's Defined Benefit Pension Scheme].*"

- 4.50. SMP's template confirmation of advice letters were also issued with a declaration that the client was advised solely on the basis of a critical yield analysis and that the Firm's advice "*does not take into account the client's personal circumstances, attitude to risk and objectives*". Further, the letters contained a caveat that the adviser did not give advice regarding the receiving investment scheme. For the purposes of the trustees' legal position for releasing members from their schemes, it was immaterial as to whether SMP had advised the client whether to transfer out of their Defined Benefit Pension Scheme or not.
- 4.51. Despite the caveats in these confirmation of advice letters, these letters from SMP, an authorised independent adviser, provided the statutory basis upon which ceding scheme trustees were able to release clients' funds from their Defined Benefit Pension Schemes. It was not necessary for the purposes of section 48 of the 2015 Act for trustees to have sight of the underlying advice given by the adviser once written confirmation of advice was received in the form prescribed by Regulation 7 of the 2015 Regulations, confirming that advice had been provided by an authorised independent adviser with permission to advise on Pension Transfers. Trustees were not responsible for verifying the adequacy of the advice obtained by clients and relied on the adviser to have discharged his responsibilities to advise on Pension Transfers appropriately.
- 4.52. Mr Martin issued confirmation of advice letters to ceding scheme trustees under the Pension Transfer Model, notwithstanding his awareness that ceding scheme trustees were not required to verify the completeness of the advice given, and that they were only required to check that advice had been received from an authorised firm. SMP provided confirmation of advice letters for the vast majority of clients it advised under the Pension Transfer Model (at least 484 out of 547 clients), including those clients whom the Firm had advised should not proceed with a Pension Transfer. This included clients whom the Compliance Manager described as being in the category of "*definitely never transfer*", such as those with critical yield values of above 15%.

Mr Martin's advice constituted a Personal Recommendation

- 4.53. Until May 2016, SMP's client advice letters were only provided to SMP's partner introducers, who were trusted to send these letters onto clients and to arrange for the client to receive full advice from a third-party financial adviser if they were to proceed with a Pension Transfer. From 13 May 2016, however, because of

concerns at SMP that clients were not always being provided with a copy of their advice letter by the introducers, SMP's internal processes were changed to mandate that clients should receive these advice letters directly from SMP. Mr Martin stated that he did not believe that SMP was providing Personal Recommendations to clients because:

- (a) SMP was dealing directly with partner introducers (and not the client) and received all client information via its partner introducers; and
- (b) SMP client advice letters contained caveats that SMP's advice was based solely on a TVAS report and that clients should first receive full advice and the necessary Personal Recommendation from a third-party independent financial adviser before proceeding with a Pension Transfer.

4.54. Further, SMP was remunerated by its partner introducers per case advised upon (rather than being paid a fee directly from the client who was being advised).

4.55. The Authority considers that, notwithstanding the caveats contained within SMP's client advice letters, Mr Martin was, in each case, providing Personal Recommendations to SMP's clients when issuing advice letters to introducers. The Authority considers that the giving of advice solely based on a TVAS Report constituted the provision of Pension Transfer advice and a Personal Recommendation, an arrangement which did not avoid the regulatory requirements to consider fully the client's circumstances and suitability for a Pension Transfer. The Authority considers that this would have been clear to Mr Martin in light of his experience as an experienced Pension Transfer Specialist. It was irrelevant that, prior to May 2016, the client advice letter was directed to SMP's partner introducers and not the clients themselves.

Reliance on introducers to perform regulatory obligations with minimal contact with other financial advisers

4.56. Authorised financial advisers should not delegate regulated advice to unauthorised firms and must retain control and responsibility for the advice provided. The Authority published guidance in November 2015 that "*firms that are approached to delegate their regulated activities, such as providing pension switching advice, to an unauthorised third party need to be aware of the serious implications that may arise as a result of entering into this type of arrangement.*"

- 4.57. Mr Martin's failure to obtain sufficient client information, and his reliance on SMP's introducers or third-party financial advisers to perform those obligations, is reflected through his template advice letters to clients. These stated:

"Taking the critical yield in isolation, based on the above we would not recommend that you transfer your FS pension benefits away from [the relevant pension plan].

This recommendation does not take into account your personal circumstances, attitude to risk and objectives. If you have a low attitude to risk the transfer may not be suitable for you... If you still intend to proceed with the transfer it is recommended that you seek full advice that takes into account the above areas."

- 4.58. Mr Martin issued confirmation of advice letters to clients on the assumption that clients would eventually be passed onto a third-party financial adviser to be given full advice. Mr Martin expected these third-party financial advisers to advise the client using the Full Advice Model, which would address the shortcomings of SMP's Pension Transfer Model, because SMP's Pension Transfer Model did not aim to collect the client's full information or provide a full analysis of the suitability of the proposed Pension Transfer.

- 4.59. Mr Martin told the Authority that he believed that non-regulated financial advisers would refer clients to regulated independent financial advisers. However, Mr Martin could not say who those regulated independent financial advisers were. In reality, Mr Martin was not in a position to know whether his clients did subsequently receive full advice from authorised financial advisers because Mr Martin's confirmation of advice letters were considered by the trustees of ceding schemes to fulfil the requirements of section 48 of the 2015 Act and were used to release client funds from their respective Defined Benefit Pension Schemes.

- 4.60. Mr Martin also stated that it was sufficient, from a compliance perspective, that a non-UK advice firm, such as the Overseas Adviser Firm, was being relied upon to handle the subsequent aspects of the Pension Transfer advice, because the firm was passported into the UK by the Authority. If this was Mr Martin's belief, then the Authority does not consider that it was reasonable for him to hold it, as it would have been clear to Mr Martin at the time as an experienced financial adviser

and as a person approved by the Authority to perform the CF30 (Customer) function at an authorised firm that the Overseas Adviser Firm did not hold the appropriate UK permissions to advise on Pension Transfers.

Misleading 'Reasons to Transfer' letters directed to clients who wished to proceed with a Pension Transfer against Mr Martin's advice

- 4.61. In February 2016, when SMP's Compliance Manager first realised that confirmation of advice letters were being sent to ceding scheme trustees for clients on almost every occasion, he raised this with Mr Martin. This included for clients in the category of "definitely never transfer", such as those with critical yield values of above 15%. The Compliance Manager also recommended to Mr Martin, via a compliance memorandum, that confirmation of advice letters should not be provided to trustees in relation to clients, when it was not in their best interests to transfer.
- 4.62. In response, from April 2016, SMP changed its internal processes to require clients to complete a 'Reasons to Transfer' letter, confirming that they had not received full advice but still wished to proceed with a Pension Transfer based on the TVAS Report and critical yield. This was a template letter containing an empty box, which the client was expected to complete in their own words and handwriting, giving the reason for their transfer.
- 4.63. An example of Mr Martin's failure to place such clients in an informed position is the case of Ms A, whom Mr Martin advised in June 2016, and whose 'Reasons to Transfer' letter provided her reasons for deciding to transfer her fund and included a signed disclaimer stating:

"I can confirm, that although I have not received full advice, as recommended in your letter, I still wish to go ahead based on the Transfer Value Analysis Report and the critical yield required of 6.6%.

Please, therefore confirm to the trustees that I have received the required level of advice in order for the funds to be released.

I understand that I will be losing all guarantees attached to my transferred plan."

- 4.64. Ms A's file included no evidence that Mr Martin attempted to explain further the risks associated with the transfer, such as the loss of all defined benefit guarantees. The reason for transfer was purely based on the critical yield of 6.6%, which failed to consider Ms A's circumstances, financial objectives or attitudes, and applied an arbitrary critical yield threshold (of 6%) which ignored the client's investment risk tolerance.
- 4.65. Further, the template 'Reasons to Transfer' letter used by Mr Martin was also misleading because of the following statements: "[...] *although I have not received full advice [...] I still wish to go ahead based on the Transfer Value Analysis Report*", and "[...] *I have received the required level of advice in order for the funds to be released.*" Mr Martin stated that the "full advice" was not provided by SMP, but the "full" and "required level of advice" was received from the relevant financial adviser, such as the Overseas Adviser Firm. However, the Authority considers that this communication was misleading and failed to treat the clients fairly because it assumed that clients understood the difference between SMP's limited advice and the complete advice they could have received under a Full Advice Model. The statements imply that:
- (a) Ms A was placed in an informed position to understand that Mr Martin's critical yield analysis did not constitute full advice, but was nonetheless sufficient to facilitate a Pension Transfer; and
 - (b) Ms A appreciated the difference between the limited advice she received from Mr Martin, and the more extensive advice she could have received under a Full Advice Model, but nonetheless confirmed that Mr Martin's Pension Transfer Model advice should form the basis of her decision.
- 4.66. No steps were taken by Mr Martin to ensure his clients fully understood the implications of the 'Reasons to Transfer' letter which, together with the confirmation of advice letter, facilitated Pension Transfers from Defined Benefit Schemes on the basis of limited advice under the Pension Transfer Model. Therefore, Mr Martin wrote to Ms A and other clients in an unclear and misleading way. Such conduct placed clients at risk because clients were exposed to SMP's seriously flawed advice process but were not given sufficient warning that their pension funds would be better safeguarded through receiving full and comprehensive advice.

Example of advice journey under the Pension Transfer Model

- 4.67. The main steps in the provision of Mr Martin's advice under the Pension Transfer Model to Ms A, a client introduced via FRPS, in June 2016 were as follows:
- (a) Ms A was contacted by FRPS regarding her existing pension and was then introduced to SMP;
 - (b) the extent of client information regarding Ms A, provided to SMP by FRPS, and which was present on Ms A's client file, was that she was (i) single with two dependent children and (ii) was in possession of a Defined Benefit Pension Scheme with a CETV of over £380,000 and was projected to receive an annual pension of above £20,000, or a pension commencement lump sum of over £94,000 and a reduced annual pension of over £14,300;
 - (c) based on the limited information received, Mr Martin carried out a TVAS Report. This TVAS Report was carried out without gathering relevant information regarding Ms A's circumstances, investment objectives or risk profile. Further, Mr Martin did not receive information regarding Ms A's intended investment. As set out in paragraphs 4.38 to 4.41, this meant Mr Martin was unable to generate an accurate TVAS Report which compared the benefits given up from Ms A's Defined Benefit Pension Scheme against that which she would receive under a different scheme;
 - (d) Mr Martin then advised Ms A not to proceed with a Pension Transfer based on the critical yield of 6.6% (which was above the 6% threshold which SMP considered was acceptable). As set out in paragraph 4.44, this meant Mr Martin provided his analysis by applying an arbitrary threshold without due consideration of Ms A's individual circumstances or attitude to risk. Mr Martin's advice letter was also caveated to state that his advice did not take into account Ms A's circumstances, investment objectives or risk profile and she was advised to seek full advice from a third-party financial adviser prior to proceeding with a Pension Transfer. As set out in paragraphs 4.55 to 4.58, Mr Martin therefore inappropriately relied upon a third-party adviser to advise Ms A in circumstances, when he was not in a position to know whether or not she had received full advice;

- (e) Mr Martin then provided Ms A with a 'Reasons to Transfer' template letter for her to explain, in her own handwriting, why she wished to proceed with a Pension Transfer, despite Mr Martin's advice. Ms A wrote, "*I am looking to transfer to invest in more diverse funds, release tax free cash at 55 y/o and benefit from drawdown option [sic]. I also wish to benefit from increased death benefits for my children*". She signed the letter, which contained the statements: "[...] *although I have not received full advice... I still wish to go ahead based on the Transfer Value Analysis Report*", (ii) "*...I have received the required level of advice in order for the funds to be released.*" As set out in paragraphs 4.60 to 4.65, Mr Martin thereby failed to ensure his client understood the difference between the limited advice under the Pension Transfer Model and the full advice she could have received under a Full Advice Model;
- (f) Mr Martin then issued a confirmation of advice letter addressed to Ms A's ceding scheme. This letter stated "*I, Liam Martin (LPM0003) can confirm that I have given advice solely in relation to a Transfer Valuation Advice Report (TVAS) in respect of [Ms A's] benefits*" and "*Our advice is based solely on providing the client with a Transfer Analysis Report (TVAS) and does not take into account the clients personal circumstances, attitude to risk and objectives*". As set out in paragraphs 4.47 to 4.51, Mr Martin's confirmation of advice letter granted sufficient authority to Ms A's ceding scheme trustee to effect her Pension Transfer, despite her having only received incomplete advice under the Pension Transfer Model;
- (g) following Mr Martin's confirmation that regulated advice was provided by an authorised Pension Transfer Specialist, FRPS could then arrange for the transfer of Ms A's pension funds ; and
- (h) pursuant to the FRPS Introducers Agreement, FRPS paid a fee to SMP of £795 for preparing Ms A's TVAS Report, issuing advice and providing the confirmation of advice letter. FRPS would also receive a fee for its services.

Due diligence on introducers

- 4.68. According to Mr Douglas, he and Mr Martin had responsibility to ensure due diligence was performed on introducers (such as FRPS) and to liaise with introducers for this purpose. The extent of Mr Martin's due diligence on introducers

was inadequate in light of the clear risks to clients due to the shortcomings of the Pension Transfer Model. Further, Mr Martin's due diligence was also inadequate in light of the fact that SMP was relying on these very introducers to ensure the client was fully advised by third-party financial advisers, such as the Overseas Adviser Firm, before proceeding with a Pension Transfer. SMP's due diligence and onboarding process of introducers was very limited, and consisted of:

- (a) a high level questionnaire which only requested basic information on the introducer, namely its name and address, in addition to details of the type of introduction it would be making to SMP, its projected figures for the number of introductions it would make, and its fees. This questionnaire was not completed for every introducer, nor was the questionnaire consistently followed up on and no central record of introducers was kept;
- (b) a generic introducer agreement to be entered into between SMP and the introducer which entitled the introducer to be paid for its services. However, in certain instances the introducer agreement was signed many months after Pension Transfers were finalised.

No additional due diligence was undertaken on introducers and no formal process for carrying out meaningful due diligence was in place. The extent of due diligence performed on introducers was wholly inadequate for the purposes of safeguarding clients. SMP's Compliance Consultant reached the conclusion, in September 2016, that *"it [was] unclear if due diligence has been completed on any of the introducers."*

- 4.69. Mr Martin and Mr Douglas continued to accept further referrals from introducers via Mr Welsh after SMP was introduced to FRPS, pursuant to the ACER Introducers Agreement, whereby Mr Welsh would introduce further third-party introducers to SMP who would provide clients to be advised through the Pension Transfer Model. Mr Martin facilitated this ongoing relationship despite the clear indications he received that Mr Welsh was partnering with unsuitable introducers (see paragraph 4.20).

Significant volume of SMP's Pension Transfer advice

- 4.70. Under the Pension Transfer Model, the limited fact-find and accelerated provision of advice allowed SMP to achieve a significant volume of transfer advice. At least

547 clients were advised in a 9 month period from November 2015 to July 2016, with at least 149 cases in April 2016, 71 cases in May 2016, and 137 cases in June 2016.

- 4.71. As set out in paragraph 4.37, each of Mr Martin's 16 advice files assessed by the Authority were non-compliant because of material information gaps in the collection of client information. Further, as set out in paragraphs 4.43 to 4.47, Mr Martin based his advice solely on a TVAS Report and a critical yield calculation. This highly streamlined approach to client information collection and advice enabled Mr Martin to turn over clients at such a fast rate.
- 4.72. The advice model operated on a high-volume basis, using administrative staff to assist with highly templated work. For example, approximately 42% of TVAS Reports were provided by SMP's administrative staff or paraplanners, whose work was supervised by Mr Martin and Mr Douglas.
- 4.73. The significant volume of advice provided under the Pension Transfer Model occurred in circumstances where Mr Martin was financially incentivised to pursue higher client volumes (see paragraphs 4.74 to 4.75), which were unprecedented in SMP's experience.

Benefit derived by Mr Martin

- 4.74. The FRPS Introducers Agreement provided that SMP would be paid £795 for each client it introduced to SMP. Other introducers paid similar fees to SMP.
- 4.75. Mr Martin and Mr Douglas had an arrangement with SMP for 70% of fees generated under the Pension Transfer Model to be paid to Audley Asset Management, with the remaining 30% remaining with SMP, and a percentage pay-away being received by the individual who introduced the relevant introducer to SMP (as negotiated in the respective introducer agreement). Audley Asset Management received £324,636 from SMP in connection with the Pension Transfer Model, being 70% of the sum of £463,766 which SMP received from its partner introducers during the Relevant Period and the Relevant Period. Mr Martin received 50% of the fees payable to Audley Asset Management. In total, he received £162,318 in respect of the financial benefit from the fees generated from the Pension Transfer Model.

5. FAILINGS

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

Statement of Principle 1

- 5.2. The Authority considers that during the Relevant Period, Mr Martin acted recklessly in relation to his role in designing the Pension Transfer Model and thereby failed to act with integrity in carrying out his accountable functions at SMP, in breach of Statement of Principle 1. Mr Martin must have been aware of the clear risks arising in designing the Pension Transfer Model but failed to have regard to those risks and failed to take appropriate action in light of them. In particular, Mr Martin:

- (a) failed to address the significant risk that clients introduced to SMP by FRPS for the purpose of receiving advice under the Pension Transfer Model would be encouraged to transfer out of their Defined Benefit Pension Schemes and invest into high-risk, illiquid and unregulated property investments offered by TRG which were unlikely to be suitable for them. This was notwithstanding the clear indications he received that FRPS, TRG and the Overseas Adviser Firm were connected entities with a shared financial interest in promoting TRG's high-risk property investments. Mr Martin was aware of this risk when agreeing to partner with Mr Welsh, FRPS and TRG to design the Pension Transfer Model, and it was unreasonable for him to take this risk. Mr Martin failed to investigate the investments promoted by FRPS and, when advising his clients, failed to consider whether these investments were suitable for clients who were transferring from their Defined Benefit Pension Schemes. Mr Martin also did not consider it was necessary to perform due diligence on Mr Welsh, who introduced a number of introducers to Mr Martin, Mr Douglas and SMP;
- (b) had a key role, along with Mr Douglas, in designing the Pension Transfer Model which, as designed, had significant and clear deficiencies, and which would unreasonably expose SMP's clients to a risk that they would proceed with a Pension Transfer without receiving complete advice. The clear deficiencies in the Pension Transfer Model included that:

- (i) it failed to take into account the client's attitude to risk, meaning SMP was unable to ascertain whether a Pension Transfer was suitable in accordance with the client's risk tolerance;
- (ii) it failed to gather information on the client's financial situation and income needs throughout retirement, meaning SMP was unable to determine whether a client could bear the risks of losing the guaranteed income they would otherwise receive during their retirement from their Defined Benefit Pension Scheme;
- (iii) it failed to gather information on the client's knowledge and experience of relevant investments, meaning SMP was unable to assess whether their clients fully understood the financial implications of their advice;
- (iv) Personal Recommendations were provided to clients on the basis of very limited information gathered from the client and solely on the basis of a TVAS Report;
- (v) the TVAS Report took no account of the onward investment scheme and instead used a generic personal pension scheme; and
- (vi) confirmation of advice letters were issued to the trustees of the ceding schemes at a point when SMP's clients had received this very limited advice, thereby enabling Pension Transfers.

5.3. Mr Martin had a greater understanding of the design of the Pension Transfer Model than SMP's compliance function had. These deficiencies must have been clear to Mr Martin as an experienced Pension Transfer Specialist. In those circumstances and bearing in mind that the Compliance Manager was not a qualified Pension Transfer Specialist and that Mr Cuthbert was not working full time in the lead-up to his retirement, it was inappropriate for Mr Martin to take the position that he was entitled to place full reliance on SMP's compliance function to verify the Pension Transfer Model, which, once approved, he followed and did not question. Mr Martin was aware of the significant risk that SMP's clients would proceed with a Pension Transfer without receiving complete advice, and his failure to assess and address the clear deficiencies in the Pension Transfer Model was unreasonable in the circumstances. For the above reasons, it appears to the Authority that Mr Martin's actions during the Relevant Period in relation to his role in designing the

Pension Transfer Model amount to a failure to act with integrity, in breach of Statement of Principle 1; in the alternative, it appears to the Authority that those same actions amount to a failure by Mr Martin to act with due skill, care and diligence in carrying out his accountable functions at SMP, in breach of Statement of Principle 2.

Lack of Fitness and Propriety

5.4. The Authority also considers that Mr Martin must have been aware of the clear risks arising in relation to operating the Pension Transfer Model but failed to have regard to those risks and failed to take appropriate action in light of them. As such he acted recklessly. In particular, Mr Martin:

- (a) failed to gather sufficient information from clients to provide suitable Pension Transfer advice. In doing so, Mr Martin failed to treat his clients fairly, failed to adequately consider his clients' financial situation, income needs, retirement objectives or attitudes to risk, and failed to properly consider whether the proposed onward investment was suitable for his clients. In all five of the advice files of clients advised by Mr Martin under the Pension Transfer Model which the Authority assessed, there were material information gaps, including in relation to the client's financial situation, their investment objectives and attitude to transfer risk, and their knowledge and experience of investing;
- (b) facilitated Pension Transfers under the Pension Transfer Model by issuing confirmation of advice letters to the trustees of ceding schemes at a point when the client had only received his very limited advice, thereby providing the statutory basis upon which the trustees of the ceding pension schemes were permitted to authorise the release of that member from their scheme. Mr Martin stated that clients would receive full advice from another regulated independent financial adviser, notwithstanding that he had already provided the statutory basis upon which the trustees of the ceding pension schemes were permitted to authorise the release of that member from their scheme. The caveats included in those letters by Mr Martin that the advice was based solely on a critical yield analysis and that clients should seek full advice from a third-party financial adviser before proceeding with a Pension Transfer were ineffective to protect clients, a risk which would have been clear to Mr Martin;

- (c) made Personal Recommendations to clients based solely on a TVAS Report and a critical yield calculation. Mr Martin therefore did not receive or consider all the relevant circumstances concerning the client, such as the client's knowledge and experience relevant to the specific investment and the client's financial situation and investment objectives. Following the TVAS Report's critical yield calculation, Mr Martin applied a simplistic criterion by advising clients whose analysis generated a critical yield below 6% (originally 7.5%) that a Pension Transfer might be in their interests. Mr Martin therefore utilised a simplistic criterion which was not a threshold individually applied to each client's full circumstances in accordance with, for example, their attitude to investment risk;

- (d) prepared the TVAS Report without consideration of the onward investment. Mr Martin performed TVAS calculations and provided Personal Recommendations to his clients without using necessary information regarding the receiving investment scheme. The details of any proposed onward investment were not received from introducers to account for the likely expected returns from which the client's funds would be invested. Instead, a model portfolio was used to generate each client's TVAS Report using generic assumptions. This meant that it was impossible for Mr Martin to recommend to clients specific transfers which considered the client's investment objectives, attitude to investment risk or financial sophistication. Therefore, Mr Martin failed to assess whether the risk profile of the intended transaction matched the risk appetite of his clients; and

- (e) failed to place clients who wished to proceed with a Pension Transfer contrary to his advice in an informed position to understand that they had received very limited advice, through the process of expecting them to complete a 'Reasons to Transfer' letter.

5.5. The Authority has concluded that based on the matters set out at paragraphs 5.2 to 5.4 that Mr Martin lacks 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. 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 Martin derived direct financial benefit from the fees generated by the Pension Transfer Model. SMP received £463,766 from its partner introducers during the Relevant Period. Audley Asset Management received 70% of the fees which SMP received for the Pension Transfer Model during and after the Relevant Period; accordingly, it received £324,636 from SMP in connection with the Pension Transfer Model. The Authority considers that Mr Martin received the benefit of half of this sum, namely £162,318, by virtue of his 50% ownership of that company. Of this sum of £162,318, the Authority considers that £21,577 is directly attributable to Mr Martin's reckless actions in relation to his role in designing the Pension Transfer Model during the Relevant Period, and therefore derives directly from his breach of Statement of Principle 1.
- 6.4. The Authority has charged interest on Mr Martin's financial benefit at 8% per year from the end of the Relevant Period to the date of this Notice, amounting to £13,179.
- 6.5. Step 1 is therefore £34,756.

Step 2: the seriousness of the breach

- 6.6. Pursuant to DEPP 6.5B.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. That figure is based on a percentage of the individual's relevant income. The individual's relevant income is the gross amount of all benefits received by the individual from the employment in connection with which the breach occurred, and for the period of the breach.
- 6.7. The period of Mr Martin's breach of Statement of Principle 1 in relation to his role in designing the Pension Transfer Model was from 1 October 2015 to 31 July 2016.

The Authority considers Mr Martin's relevant income for this 10 month period to be £236,550. This figure should be pro-rated to represent a 12 month period rather than the 10 month period to £283,860 (DEPP 6.5B.2G(2)).

- 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 selects a percentage between 0% and 40%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach; the more serious the breach, the higher the level. For penalties imposed on individuals in non-market abuse cases there are the following five levels:

Level 1 – 0%

Level 2 – 10%

Level 3 – 20%

Level 4 – 30%

Level 5 – 40%

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

Impact of the breach

- 6.10. DEPP 6.5B.2.2G(8) lists factors relating to the impact of a breach committed by an individual.
- 6.11. Mr Martin substantially benefitted from his breach of Statement of Principle 1 (DEPP 6.5B.2G(8)(a)).
- 6.12. Mr Martin's breach also caused a significant risk of loss to a very large number of consumers who received advice from SMO under the Pension Transfer Model (DEPP 6.5B.2G(8)(c)).
- 6.13. Mr Martin's breach caused inconvenience and potential distress to pension holders who transferred out of their Defined Benefit Pension Schemes (DEPP 6.5B.2G(8)(e)).

Nature of the breach

- 6.14. DEPP 6.5B.2.2G(9) lists factors relating to the nature of a breach committed by an individual.
- 6.15. Mr Martin's failings in relation to his role in designing the Pension Transfer Model occurred over a sustained period (ten months) (DEPP 6.5B.2G(9)(b)).
- 6.16. Mr Martin failed to act with integrity because he acted recklessly throughout the Relevant Period (6.5B.2G(9)(e)).
- 6.17. Mr Martin had substantial experience in Pension Transfer work, and yet he still had a key role in designing a seriously flawed advice process for advising Pension Transfer clients (DEPP 6.5B.2G(9)(j)).
- 6.18. Mr Martin had a key role in designing the Pension Transfer Model (DEPP 6.5B.2G(9)(l)).

Whether the breach was deliberate and/or reckless

- 6.19. DEPP 6.5B.2G(10) and (11) list factors tending to show whether the breach was deliberate or reckless. The Authority considers that a factor tending to show the breach was reckless is present in this case, namely, that Mr Martin appreciated there was a risk that his actions or inaction could result in a breach and failed adequately to mitigate that risk (DEPP 6.5B.2G(11)(a)).

Level of seriousness

- 6.20. DEPP 6.5B.2G(12) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the Authority considers the following factors to be relevant:
 - (1) Mr Martin caused a significant loss or risk of loss to individual consumers, investors or other market users (DEPP 6.5B.2G(12)(a));
 - (2) Mr Martin failed to act with integrity (DEPP 6.5B.2G(12)(d)); and
 - (3) Mr Martin committed the breach recklessly (DEPP 6.5B.2G(12)(g)).

- 6.21. DEPP 6.5B.2G(13) lists factors likely to be considered 'level 1, 2 or 3 factors'. The Authority considers that none of these apply.
- 6.22. 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 £283,860.
- 6.23. Step 2 is therefore £85,158.

Step 3: mitigating and aggravating factors

- 6.24. Pursuant to DEPP 6.5B.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the breach.
- 6.25. The Authority considers that the following factors aggravate the breach:
- (1) on 18 January 2013 and 28 April 2014 the Authority issued alerts to firms advising on Pension Transfers with a view to investing pension monies into unregulated products through investment wrappers. These clearly related to the advice Mr Martin was providing and were intended to prevent precisely the type of consumer detriment which occurred in this case. Mr Martin's conduct took place after the publication of the two Authority alerts (DEPP 6.5B.3G(2)(k)); and
 - (2) in September 2015, a SIPP provider sent copies of the alerts referred to above to Mr Martin. Notwithstanding that the Authority had publicly called for an improvement in standards in relation to the behaviour constituting the breach or similar behaviour, and that these alerts were brought to the attention of Mr Martin prior to the Relevant Period, Mr Martin played a key role in the design of the Pension Transfer Model (DEPP 6.5B.3G(2)(a)).
- 6.26. The Authority considers that there are no factors that mitigate the breach.
- 6.27. Having taken into consideration these aggravating factors, the Authority considers that the Step 2 figure should be increased by 10%.
- 6.28. Step 3 is therefore £93,674.

Step 4: adjustment for deterrence

- 6.29. Pursuant to DEPP 6.5B.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the individual who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.
- 6.30. The Authority considers that the Step 3 figure of £93,674 represents a sufficient deterrent to Mr Martin and others, and so has not increased the penalty at Step 4.
- 6.31. Step 4 is therefore £93,674.

Step 5: settlement discount

- 6.32. Pursuant to DEPP 6.5B.5G, if the Authority and the individual on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the individual reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.
- 6.33. No settlement discount applies. Step 5 is therefore £93,674. In accordance with the Authority's usual practice this is to be rounded down to £93,600.

Penalty

- 6.34. The Authority has therefore decided to impose a total financial penalty of £128,356 (the Step 1 and Step 5 figures added together) on Mr Martin for breaching Statement of Principle 1 in relation to his role in designing the Pension Transfer Model during the Relevant Period.

Prohibition Order

- 6.35. The Authority has the power to prohibit individuals under section 56 of the 2000 Act and to withdraw an approval given by the Authority in relation to the performance by a person of a function under section 63 of the 2000 Act. The Authority has had regard to the guidance in Chapter 9 of EG and FIT 2 of the Handbook, including the criteria at EG 9.3.2, FIT 2.1.3 and FIT 2.2.1, in considering whether to impose a prohibition order on Mr Martin.

- 6.36. In considering whether to impose a prohibition order, the Authority has had regard to all relevant circumstances of the case. In particular, in relation to EG 9.3.2 and FIT 2.1.3, the Authority has considered Mr Martin's fitness and propriety, his reckless actions displaying a lack of integrity and disregard for customers' interests and the regulatory system, and the severity of the risk which Mr Martin poses to consumers and to confidence in the financial system.
- 6.37. The Authority considers that it is appropriate and proportionate in all the circumstances to prohibit Mr Martin from performing any function in relation to any regulated activity carried on by an authorised person, exempt person, or exempt professional firm, on the grounds that his conduct during the Relevant Period demonstrates a reckless lack of integrity.

7. REPRESENTATIONS

- 7.1. Annex B contains a brief summary of the key representations made by Mr Martin, and by the third parties, The Resort Group Plc and Matthew Welsh, 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 Martin and by the third parties, The Resort Group and Mr Welsh, whether or not set out in Annex B.

8. PROCEDURAL MATTERS

- 8.1. This Notice is given to Mr Martin under section 57 and 67 and in accordance with section 388 of the 2000 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 Martin 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 Martin has 28 days from the date on which this Notice is given to him to refer the matter to the Tribunal. A reference to the Tribunal is made by way of a signed reference notice (Form FTC3) filed with a copy of this Notice. The Tribunal's contact details are: Upper Tribunal, Tax and Chancery Chamber, Fifth Floor, Rolls Building, Fetter Lane, London EC4A 1NL (tel: 020 7612 9730; email: fs@hmcts.gsi.gov.uk).

8.5. 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>

8.6. Once any such referral is determined by the Tribunal and subject to that determination, or if the matter has not been referred to the Tribunal, the Authority will issue a Final Notice about the implementation of that decision.

Access to evidence

8.7. Section 394 of the 2000 Act applies to this Notice.

8.8. The person to whom this Notice is given has the right to access:

(1) the material upon which the Authority has relied in deciding to give this Notice; and

(2) the secondary material which, in the opinion of the Authority, might undermine that decision.

Third party rights

8.9. A copy of this Notice is being given to the following person as third parties identified in the reasons above and to whom in the opinion of the Authority the matter to which those reasons relate is prejudicial. Each of these parties has similar rights of representation and access to material in relation to the matter which identifies them:

- (1) Audley Asset Management Ltd;
- (2) The Resort Group Plc.
- (3) St Martin's Partners LLP;
- (4) Alec Cuthbert;
- (5) Matthew Welsh;
- (6) The Chief Operating Officer of The Resort Group Plc;
- (7) The Managing Director of The Resort Group Plc; and
- (8) The Managing Director of First Review Pension Services Ltd.

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 2000 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. The persons to whom this Notice is given or copied should therefore be aware that the facts and matters contained in this Notice may be made public.

Authority contacts

- 8.12. For more information concerning this matter generally, contact William Byrne (direct line: 020 7066 9821/email: william.byrne@fca.org.uk) at the Authority.

Tim Parkes

Chairman, Regulatory Decisions Committee

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. RELEVANT STATUTORY PROVISIONS

The 2000 Act

- 1.1. The Authority's operational objectives, set out in section 1B(3) of the 2000 Act, include the consumer protection objective of securing an appropriate degree of protection for consumers (section 1C) and the integrity objective of protecting and enhancing the integrity of the UK financial system (section 1D).
- 1.2. Section 56 of the 2000 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.
- 1.3. Section 66 of the 2000 Act¹ 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.
- 1.4. During the Relevant Period, under section 66(2) of the 2000 Act (in force until 6 March 2016) misconduct included failure, while an approved person, to comply with a Statement of Principle issued under section 64 of the 2000 Act or to have been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that approved person by or under the 2000 Act.
- 1.5. During the Relevant Period, under section 66A of the 2000 Act (in force from 7 March 2016) a person was guilty of misconduct if, inter alia, he at any time failed to comply with rules made by the Authority under section 64A of the 2000 Act and

¹ Section 66 was amended and section 66A added during the Relevant Period, but those changes are not material to the manner in which the Authority has exercised its powers as set out in this Notice.

at that time was an approved person, or had been knowingly concerned in a contravention of relevant requirement by an authorised person and at that time the person was an approved person in relation to the authorised person.

The 2015 Act and the 2015 Regulations

- 1.6. Section 48(1) of the 2015 Act provides that trustees or managers of a defined benefit pension scheme are, and were during the Relevant Period, required to check that a member of the scheme had received appropriate independent advice before, amongst other things, making a transfer payment in respect of any of the benefit with a view to acquiring a right or entitlement to flexible benefits for the member under another pension scheme.
- 1.7. Section 48(8) of the 2015 Act provides that “appropriate independent advice” means advice that is given by an authorised independent adviser and meets any other requirement specified in regulations made by the Secretary of State. Regulation 3 of the 2015 Regulations provides that the advice must be specific to the type of relevant transaction proposed by the member.
- 1.8. Section 48(8) of the 2015 Act provides that “authorised independent adviser” means a person who has permission under Part 4A of the 2000 Act, or resulting from any other provision of the 2000 Act, to carry on a regulated activity specified in regulations made by the Secretary of State and meets such other requirements as may be specified in regulations made by the Secretary of State for the purpose of ensuring that the person is independent. Regulation 4 of the 2015 Regulations provides that the specified regulated activity is the activity described in article 53E of the 2001 Order, which is the activity of advising on the conversion or transfer of pension benefits.
- 1.9. Section 48(3) of the 2015 Act provides that the Secretary of State may by regulations create an exception to section 48(1) in the case of a member or survivor whose subsisting rights in respect of safeguarded benefits under the scheme, or safeguarded benefits under the scheme and any other schemes, are worth less than a specified amount. Regulation 5 of the 2015 Regulations provides that the trustee or members are not required to carry out the check required under section 48(1) of the 2015 Act if the total value of the member or survivor’s benefits under a defined benefit pension scheme is £30,000 or less on the valuation date.

1.10. Regulation 7 of the 2015 Regulations provides that confirmation from the member that appropriate independent advice has been received must be in the form of a statement in writing from the authorised independent adviser providing the advice confirming:

- (a) that advice has been provided which is specific to the type of transaction proposed by the member;
- (b) that the adviser has permission under Part 4A of the 2000 Act to carry on the regulated activity in article 53E of the 2001 Order;
- (c) the firm reference number of the company or business in which the adviser works for the purposes of authorisation from the Authority to carry on the regulated activity in article 53E of the 2001 Order; and
- (d) the member's name, and the name of the scheme in which the member has subsisting rights in respect of safeguarded benefits to which the advice given applies.

2. RELEVANT REGULATORY PROVISIONS

Statements of Principle and Code of Practice for Approval Persons

- 2.1. The Authority's Statements of Principle and Code of Practice for Approved Persons have been issued under section 64 of the 2000 Act². The Code of Practice for Approved Persons 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.
- 2.2. During the Relevant Period, APER 1.1A.2P (in place until 7 March 2016) and APER 1.1A.2R (in place from 7 March 2016) stated that APER applies to: (1) the performance by an approved person of an Authority controlled function (whether or not approval has been sought and granted) in relation to the authorised persons in relation to which that person is an approved person; and (2) the performance by an approved person of any other functions in relation to the carrying on of a regulated activity by the authorised persons referred to in (1).

² Section 64A of the 2000 Act from 7 March 2016.

2.3. During the Relevant Period, Statement of Principle 1 stated:

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

2.4. During the Relevant Period, Statement of Principle 2 stated:

"An approved person must act with due skill, care and diligence in carrying out his accountable functions".

2.5. During the Relevant Period, accountable functions are in summary: the Authority's controlled functions; the Prudential Regulatory Authority's controlled functions; and any other functions in relation to the carrying on a regulated activity; in relation to the authorised persons in relation to which that person is an approved person.

Conduct of Business Sourcebook

2.6. The following rules and guidance in COBS (as were in place during the Relevant Period) are relevant to assessing suitability of Pension Transfer advice given to clients.

2.7. COBS 2.1.1R stated that a firm must act honestly, fairly and professionally in accordance with the best interests of its client.

2.8. COBS 4.2.1R(1) stated that a firm must ensure that a communication or a financial promotion is fair, clear and not misleading.

2.9. COBS 9.2.1R stated that:

(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.

2.10. COBS 9.2.2R (1) stated that a firm must obtain from the client such information as is necessary for the firm to understand the essential facts about him and have a reasonable basis for believing, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended, or entered into in the course of managing:

(a) meets his investment objectives;

(b) is such that he is able financially to bear any related investment risks consistent with his investment objectives; and

(c) is such that he has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.

2.11. COBS 9.2.2R(2) stated that the information regarding the investment objectives of a client must include, where relevant, information on the length of time for which he wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment.

2.12. COBS 9.2.2R(3) stated that the information regarding the financial situation of a client must include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments.

2.13. COBS 9.2.3R stated that the information regarding a client's knowledge and experience in the investment field includes, to the extent appropriate to the nature of the client, the nature and extent of the service to be provided and the type of

product or transaction envisaged, including their complexity and the risks involved, information on:

- (1) the types of service, transaction and designated investment with which the client is familiar;
- (2) the nature, volume, frequency of the client's transactions in designated investments and the period over which they have been carried out;
- (3) the level of education, profession or relevant former profession of the client.

2.14. COBS 9.2.6R stated that if a firm does not obtain the necessary information to assess suitability, it must not make a personal recommendation to the client or take a decision to trade for him.

2.15. COBS 9.4.1R(4) stated that a firm must provide a suitability report to a retail client if the firm makes a personal recommendation to the client and the client enters into a pension transfer, pension conversion or pension opt-out.

2.16. COBS 9.4.7R stated that the suitability report must, at least:

- (1) specify the client's demands and needs;
- (2) explain why the firm has concluded that the recommended transaction is suitable for the client having regard to the information provided by the client;
and
- (3) explain any possible disadvantages of the transaction for the client.

2.17. COBS 19.1.1R stated that if an individual who is not a Pension Transfer Specialist gives advice or a personal recommendation about a pension transfer, a pension conversion or pension opt-out on a firm's behalf, the firm must ensure that the recommendation or advice is checked by a Pension Transfer Specialist.

2.18. COBS 19.1.2R stated that a firm must:

- (1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme or other pension scheme with safeguarded

benefits with the benefits afforded by a personal pension scheme, stakeholder pension scheme or other pension scheme with flexible benefits, before it advises a retail client to transfer out of a defined benefits pension scheme or other pension scheme with safeguarded benefits;

- (2) ensure that that comparison includes enough information for the client to be able to make an informed decision;
- (3) give the client a copy of the comparison, drawing the client's attention to the factors that do and do not support the firm's advice, in good time, and in any case no later than when the key features document is provided; and
- (4) take reasonable steps to ensure that the client understands the firm's comparison and its advice.

2.19. COBS 19.1.3G explained the information that should be contained within a comparison. In particular, the comparison should:

- (1) take into account all of the retail client's relevant circumstances;
- (2) have regard to the benefits and options available under the ceding scheme and the effect of replacing them with the benefits and options under the proposed scheme;
- (3) explain the assumptions on which it is based and the rates of return that would have to be achieved to replicate the benefits being given up;
- (4) be illustrated on rates of return which take into account the likely expected returns of the assets in which the retail client's funds will be invested; and
- (5) where an immediate crystallisation of benefits is sought by the retail client prior to the ceding scheme's normal retirement age, compare the benefits available from crystallisation at normal retirement age under that scheme.

2.20. COBS 19.1.6G stated that when advising a client who is, or is eligible to be, a member of a defined benefit pension scheme (as defined in the Handbook) or other scheme with safeguarded benefits whether to transfer, convert or opt-out, a firm should start by assuming that a transfer, conversion or opt-out will not be suitable.

A firm should only consider a transfer, conversion or opt out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the client's best interests.

- 2.21. COBS 19.1.7G stated that when a firm advises a retail client on a pension transfer, pension conversion or pension opt-out, it should consider the client's attitude to risk including, where relevant, in relation to the rate of investment growth that would have to be achieved to replicate the benefits being given up.

The Fit and Proper Test for Approved Persons

- 2.22. 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.
- 2.23. 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.

Enforcement Guide

- 2.24. The Authority's policy in relation to prohibition orders is set out in Chapter 9 of the Enforcement Guide ("EG").
- 2.25. EG 9.1 states that the Authority may exercise this power where it considers that, to achieve any of its regulatory objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities or to restrict the functions which he may perform.
- 2.26. EG 9.3.1 provides that when the FCA has concerns about the fitness and propriety of an approved person, it may consider whether it should prohibit that person from performing functions in relation to regulated activities, withdraw its approval, or both.
- 2.27. EG 9.3.2 provides that when the Authority decides whether to make a prohibition order against an approved person and/or withdraw their approval 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.

2.28. The Authority's approach to financial penalties is set out in Chapter 7 of EG, which can be accessed here:

<https://www.handbook.fca.org.uk/handbook/EG/7/?view=chapter>

Decision Procedures and Penalties Manual

2.29. Chapter 6 of Decision Procedures and Penalties Manual ("DEPP") which forms part of the Authority's Handbook, sets out the Authority's policy for imposing a financial penalty. 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 to financial penalties imposed on individuals in non-market abuse cases, which can be accessed here:

<https://www.handbook.fca.org.uk/handbook/DEPP/6/5B.html>

ANNEX B

Liam Martin's Representations

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

Limitation

2. The limitation period for the Authority being able to take disciplinary action against Mr Martin, pursuant to section 66 of the 2000 Act, is six years from the point at which the Authority either had knowledge of Mr Martin's misconduct or had information from which the misconduct can reasonably be inferred³. Proceedings against a person are to be treated as begun when a warning notice is given to him; the Warning Notice was issued to Mr Martin on 13 July 2023. Mr Martin's disciplinary case, in its entirety (namely, both the "design"⁴ and "operation"⁵ of the Pension Transfer Model), is time-barred, as the Authority had information from which all of his alleged misconduct could be reasonably inferred before 13 July 2017, and accordingly a financial penalty cannot now be imposed by the Authority on any part of the alleged misconduct. The Authority has accepted that the "operation" of the Pension Transfer Model is time barred from the imposition of a financial penalty.
3. Mr Martin considers that it is fanciful and artificial for the Authority to seek to split its knowledge of Mr Martin's alleged misconduct within the Notice between the design and the implementation (or operation) of the Pension Transfer Model. The Authority should not be permitted to creatively argue that there is a distinction between the design and operation of the Pension Transfer Model to surmount the statutory time limit which it missed due to its own delay. One cannot logically be held responsible for the operation of this model without also being held responsible for its design. The Pension Transfer Model operated as it was designed to.
4. The Authority became aware of all of the alleged misconduct within the Notice (or had information from which all of the alleged misconduct can reasonably be inferred), at some point in 2016 (and therefore well before 13 July 2017); the Authority started corresponding with the Firm in March 2016 and began to make enquiries of the Firm about the Pension Transfer Model. The Authority received information about the Pension Transfer Model from SMP, and on 26 July 2016 the Authority wrote to SMP setting out the Authority's concerns about the Pension Transfer Model, requesting further information from the Firm. SMP provided such further information about the Pension Transfer Model to the Authority, to enable it to have a better understanding of the Pension Transfer Model.
5. This was then followed by the Authority's meeting with Mr Cuthbert, Mr Oxberry and Mr Douglas on 3 October 2016 ("the October 2016 Meeting"). At this meeting, the Pension Transfer Model and its operation were explained in detail to the Authority, and the Firm was asked by the Authority to vary its permissions. Mr Martin considers that the Authority would only have made this request at this point, if it had a sufficient understanding as to the Pension Transfer Model and serious concerns about it. This is because a refusal of the request was likely to have

³ Section 66(5) of the 2000 Act.

⁴ See paragraph 5.2 of this Notice.

⁵ See paragraph 5.4 of this Notice.

resulted in the Authority using its statutory powers⁶ to impose requirements, so as to achieve the same result. Accordingly, Mr Martin considers that the Authority was aware of the design and operation of the Pension Transfer Model as at the October 2016 Meeting and must have identified the involvement of all the relevant individuals in the Pension Transfer Model by this date.

6. SMP subsequently agreed to vary its permissions on 2 November 2016, and this prevented SMP from utilising the Pension Transfer Model. The Firm was fully co-operative with the Authority. The Authority followed this up issuing a requirement notice on 24 November 2017, pursuant to section 166 of the 2000 Act, for the appointment of a skilled person ("the Skilled Person's Notice"). The Authority would not have issued the Skilled Person's Notice, unless it had a detailed understanding of the Pension Transfer Model and had knowledge of the Firm's alleged misconduct or had information from which the alleged misconduct could reasonably be inferred, including all of the alleged misconduct of Mr Martin.
7. The skilled person issued its interim report to the Authority on 8 August 2017 ("the Skilled Person's Report"). This is the date the Authority has adopted for when it first had knowledge of the "design" of the Pension Transfer Model and Mr Martin's alleged misconduct in respect thereof and is based on the Authority's view that it was not aware that Mr Martin (and Mr Douglas) were the "principal architects" of the advice process in the Pension Transfer Model before then. The Skilled Person's Report states that Mr Martin (and Mr Douglas) presented the process to SMP and that the Firm took the decision to streamline the process (as referenced in paragraph 4.16 of this Notice).
8. The skilled person's work included interviewing five members of staff, notably Mr Martin and Mr Douglas, on 17/18 January 2017, and Mr Martin considers that the Authority must have discussed progress with the skilled person between the date of the Skilled Person's Notice on 24 November 2017 and the issue of the Skilled Person's Report on 8 August 2017. The Skilled Person's Report refers to: "*the Production of the draft interim report as defined in the Requirement Notice and, following feedback from both St Martin's Partners and the FCA, issuing of the interim report*". Communications between the Authority and the skilled person have not been disclosed.
9. Accordingly, Mr Martin considers that the Authority must have realised the nature of the entirety of his alleged misconduct before 13 July 2017 and that the Authority is therefore time barred from issuing a financial penalty in relation to the design aspect of the alleged misconduct.
10. **In *Andrew Jeffery v Financial Conduct Authority*⁷ ⁸ the Tribunal held⁹ that: *"It is not sufficient that the Authority has information in its hands that would give rise to a mere suspicion. Nor is it enough that the information might suggest that there was misconduct, but that the person in question has not been identified as the apparently guilty party. The Authority must either know or be treated, by reasonable inference, as knowing of the misconduct by a particular person. The reference in s[ection] 66(4) to "the***

⁶ Section 55L, imposition of requirements by the Authority, of the 2000 Act.

⁷ FS/2010/0039.

⁸ https://assets.publishing.service.gov.uk/media/5752d271ed915d3c89000024/Andrew_Jeffery.pdf

⁹ paragraph 334: *Andrew Jeffery v FCA*.

misconduct” (our emphasis) clearly refers to the particular misconduct in respect of which action is to be taken against a particular person, and not to conduct of a similar nature in respect of which information may have been obtained earlier.”

11. The Tribunal also held that:¹⁰ *“The Authority must, however, have sufficient knowledge of the particular misconduct, or such knowledge must be capable of being reasonably inferred, to justify an investigation. Mere suspicion is not enough, nor is any general impression that misconduct may have taken place”*. The Tribunal further stated that: *“where the Authority becomes aware of more than one act of misconduct of which a particular person appears to be guilty, the time limit operates separately in respect of each”*¹¹.
12. In relation to the culpability of individuals, DEPP 6.2.7G states that: *“[...] disciplinary action will not be taken against an approved person performing a significant influence function or a senior conduct rules staff member simply because a regulatory failure has occurred in an area of business for which he is responsible.”* Regarding a breach of the Statements of Principle, APER 3.1.4G provides that: *“An approved person will only be in breach of a Statement of Principle where he is personally culpable”*.
13. The Authority’s view is that Mr Martin’s conduct relating to (i) the design and (ii) the operation of the Pension Transfer Model represents in each case separate acts of misconduct with separate time limit dates for the purpose of section 66 of the 2000 Act. The Authority considers that it was reasonable to proceed initially on the basis that the design and operational aspects could have been, and more typically would have been, carried out by different individuals in an advice firm, whereby the design of a new advice model would typically be conducted by one or more senior managers rather than by customer advisers, who would have been responsible for operating the model.
14. The Authority has accepted that before 13 July 2017¹² it had sufficient knowledge of Mr Martin’s personal culpability¹³ in relation to the “particular misconduct” of his operation of the Pension Transfer Model. Accordingly, the Authority accepts that it cannot impose a financial penalty with respect to this misconduct. However, the Authority does not accept that it is fanciful or artificial to separate the “operation” from the “design” of the Pension Transfer Model, and to assess personal culpability for each individually.
15. It is necessary to determine when the Authority first had sufficient knowledge of Mr Martin’s “particular misconduct” with respect to the design of the Pension Transfer Model at SMP. Mr Martin’s references to the Authority receiving information about the Pension Transfer Model prior to 8 August 2017 all relate to the operation of the Pension Transfer Model

¹⁰ paragraph 337: Andrew Jeffery v FCA [FS/2010/0039].

¹¹ paragraph 337: Andrew Jeffery v FCA.

¹² Six years before the issue of the Warning Notice on 13 July 2023.

¹³ For the purpose of section 66(5) of the 2000 Act.

by SMP and not to its design. In addition, this information did not identify the individuals (including Mr Martin) who played a key role in designing the Pension Transfer Model. The focus of the October 2016 Meeting was how the Pension Transfer Model operated and did not cover who had responsibility for, or played a key role in, designing it. There is no evidence of any discussion at this meeting of the role of Mr Martin (and Mr Douglas) in designing the Pension Transfer Model.

- 16. The Authority relies on evidence from a staff member who attended the October 2016 Meeting and who recalls no discussion of the background to the Pension Transfer Model with SMP either: (i) at that meeting, other than connections to other adviser firms and introducers brought in by Mr Martin (and Mr Douglas); or (ii) following that meeting. Further, the staff member does not recall any discussion with the skilled person about Mr Martin's role or who had responsibility for designing the Pension Transfer Model, before the Authority received the Skilled Person's Report on 8 August 2017. Furthermore, the RDC is not aware of any other documents which should have been disclosed to Mr Martin pursuant to the Authority's statutory obligations but which have not. Accordingly, the Authority considers that there is no evidence which indicates that it knew (by reasonable inference or otherwise) of Mr Martin's role in designing the Pension Transfer Model.**
- 17. The requirements agreed to by SMP varying its permissions are not evidence of the Authority's date of knowledge of Mr Martin's role in designing the Pension Transfer Model; they relate to measures imposed on SMP as a firm, arising out of the Authority's concerns about the operation of the Pension Transfer Model, following the October 2016 Meeting.**

The Pension Transfer Model and the regulatory environment

18. The Pension Transfer Model was, during the Relevant Period, permissible. The Authority's case is based on the premise that all clients referred to SMP should have received full advice on their proposed Pension Transfer. The Pension Transfer Model was not the only model being run in the same way in the market during the Relevant Period. SMP provided advice as part of a two-adviser model, based on the critical yield derived from the TVAS. The Pension Transfer Model was not initially designed by Mr Martin (and Mr Douglas); it was copied from another firm, and this other firm's model was known to the Authority in 2016. The Pension Transfer Model was not designed to take into account the full circumstances of the underlying clients, as this was designed to be carried out by the second, regulated financial adviser. The Pension Transfer Model was intended to be limited to one element of the Pension Transfer process. The remainder was intended to be carried out by firms other than SMP.
19. The purpose of the Pension Transfer Model was to filter out patently unsuitable cases and highlight cases where a transfer could potentially be justified. During the Relevant Period it was not unusual for firms to undertake such a preliminary assessment. This practice became so widespread that in June 2017 the Authority issued a Consultation Paper¹⁴ ("CP 17/16"). The statements set out in CP 17/16 suggested that the rules in place, during the Relevant Period, were not clear

¹⁴ <https://www.fca.org.uk/publication/consultation/cp17-16.pdf>

enough¹⁵. In March 2018¹⁶ ("PS 18/06") the Authority brought in new financial guidance effectively ending this model. Mr Martin's conduct is being assessed on the standards following the introduction of PS 18/06, rather than the rules and guidance in place during the Relevant Period.

20. It was permissible for a firm to operate a two-adviser advice model when providing Pension Transfer advice, and this was also possible if the second firm advising on the investments was based overseas in the EEA, and passported into the United Kingdom (which the Overseas Firm was). This was confirmed in PS 18/06 which confirmed that "*a model involving two advisers can be adopted for overseas transfers while recognising that there are additional complexities*"¹⁷. Mr Martin had a genuinely held belief that the Pension Transfer Model sat within the two-adviser model, and that SMP could operate it within the Authority's rules. The Pension Transfer Model was not intended to be a full advice model – it did not seek to overlay the full advice model with a simplified format. It is noteworthy that SMP, with Mr Martin as one of the Pension Transfer advisers, was running a full advice service and there has been no criticism by the Authority of this. After the TVAS had been completed, the involvement of Mr Martin and SMP ended; they had no role in the provision of the investment advice from the Overseas Firm.
21. The Authority has not sufficiently evidenced the alleged consumer harm apparently caused by Mr Martin and SMP; it has not reviewed any of the client files from the Overseas Firm which provided the investment advice to the clients. If the Authority seeks to assert that Mr Martin was reckless, in being aware of the risk of investments being unsuitable and it being unreasonable to have exposed clients to this risk, then it needs to have carried out file checks with the Overseas Firm.
22. It appears to Mr Martin that the Authority's real complaint relates to the investment advice provided by the Overseas Firm, rather than the work carried out by Mr Martin and SMP, since it was this investment advice which led to the clients investing into TRG. There was no requirement on SMP, or Mr Martin, to review the client's investment advice from the Overseas Firm.
23. Mr Martin understood, that at the time, a nominal amount of a customer's investment was to be invested into TRG, and during the Relevant Period SMP had not received any warnings about TRG. Whilst Mr Martin acknowledges it was a high-risk investment, TRG did not miss making an income payment to its investors until after the Relevant Period in 2019. Following the BBC Panorama programme (referred to in paragraph 4.12 of this Notice) SMP immediately ceased the operation of the Pension Transfer Model without an intervention or a request from the Authority. It did the right thing. The Firm's pro activity was not the action of a reckless firm towards its clients.
24. There is, therefore, insufficient evidence for a finding of recklessness to be made against Mr Martin.

¹⁵ Paragraph 2.2 of CP 17/16: "we are aware that advice has become focused on the transfer value analysis (TVA) output rather than making a rounded assessment of suitability".

¹⁶ <https://www.fca.org.uk/publication/policy/ps18-06.pdf>

¹⁷ Paragraph 4.12 *ibid*.

25. **The Pension Transfer Model, which involved focussing on the TVAS outcome and included a Personal Recommendation, was not a model widespread within the industry.**
26. **The Authority considers that the relevant rules and guidance in place during the Relevant Period relating to Pension Transfers were clear in their requirements, and that the departures from those requirements by Mr Martin (and Mr Douglas) in the design of the Pension Transfer Model were significant. The TVAS Report produced under the Pension Transfer Model did not comply with the requirement in COBS 19.1.2R (see paragraph 4.39 of this Notice) to compare the benefits of the ceding scheme with the benefits afforded by the onward scheme, and instead was based on the assumption that clients would be investing into a generic pension scheme. Mr Martin (and Mr Douglas) gave no consideration to the likely expected returns of the assets into which the client's funds would be invested, and so the TVAS Report was entirely unreliable. As a result, the Pension Transfer Model was flawed. The Authority considers that subsequent rule changes, following PS 18/06 in March 2018, are not relevant when assessing Mr Martin's misconduct during the Relevant Period, as this conduct has been assessed by the standards in place at the time.**
27. **It is not the case that the Authority's real complaint relates to the investment advice provided by the Overseas Firm, rather than the work carried out by Mr Martin and SMP. The Pension Transfer Model exposed SMP's clients to a high risk of consumer harm because it involved issuing confirmation of advice letters which provided the statutory basis, under section 48 of the 2015 Act, upon which the trustees of the ceding pension schemes authorised the release of members from their schemes and lead to the surrender of their defined benefits, at a time when suitable Pension Transfer advice had not been given. The harm to consumers occurred before the investment advice was given by the Overseas Firm. In order to take into account the risk of harm to consumers, and its seriousness, it is not necessary for the Authority to have reviewed the client files and the investment advice from the Overseas Firm. SMP's decision to cease the operation of the Pension Transfer Model after the BBC Panorama programme does not impact Mr Martin's culpability prior to that date.**
28. **The failure by an individual to act on serious risks of which the individual was aware may constitute reckless conduct. In determining whether an individual's conduct was reckless, it is necessary to take into account the individual's level of experience and their position in determining how obvious the risks were. In this regard Mr Martin was an experienced Pension Transfer Specialist with 25 years of industry experience.**
29. **The Authority considers that Mr Martin was aware that SMP's clients would be giving up their defined benefits without receipt of the advice required by COBS because of the deficiencies in the Pension Transfer Model (as set out in paragraphs 5.2 – 5.4 of this Notice). The risk of detriment to SMP's clients must have been clear to him in the light of his experience, and he designed a process by which they crystallised. This was reckless.**

Sanctions and financial penalty

30. Mr Martin considers that, for the reasons set out at paragraphs 2-9 above, the Authority is time barred from imposing any financial penalty in relation to the alleged misconduct set out in this Notice.
31. Mr Martin understands that the financial penalty is based upon the "added value" gained by operating the Pension Transfer Model over SMP's standard business model. This "added value" calculation is entirely artificial and is not an official calculation by the Authority. In any event, Mr Martin considers that there was no "added value" in the design of the Pension Transfer Model. Accordingly, the disgorgement figure at Step 1 should be zero.
32. Mr Martin has continued to be approved by the Authority to provide advice to clients including Pension Transfers and is highly rated by clients on a number of websites for financial professionals. Furthermore, Mr Martin has not had any upheld complaints for advice provided since the Pension Transfer Model, nor has he been subject to any complaints. The imposition of a prohibition order is not merited; it would be disproportionate and an overreaction by the Authority.
33. Mr Martin's co-operation with the Authority, his good conduct since the end of the Relevant Period, and the length of time this investigation has taken should be mitigating factors at Step 3 of the penalty calculation and with respect to the proposed prohibition.
34. **As the Authority has concluded that it is not time barred with respect to Mr Martin's misconduct concerning the design of the Pension Transfer Model, it is permitted to impose a financial penalty in relation to this misconduct. The Authority has considered with respect to Mr Martin and for the purposes of disgorgement the amount of the financial benefit derived directly from his misconduct. In so doing the Authority has considered what would be a reasonable and proportionate division of the revenue received by Audley Asset Management and paid to Mr Martin as between: (i) the design element; and (ii) the operation element of the Pension Transfer Model. Audley Asset Management's bank transactions record that it received £562,963 from SMP. The Authority considers that Audley Asset Management received £238,327 in respect of full pension advice given by Mr Martin and Mr Douglas and £324,636 in respect of advice given by them under the Pension Transfer Model. The Authority considers that Mr Martin received the benefit of half of this latter sum, namely £162,318, by virtue of his 50% ownership of that company. Of this sum of £162,318, the Authority considers that £21,577 is directly attributable to Mr Martin's reckless actions in relation to his role in designing the Pension Transfer Model during the Relevant Period, and therefore derives directly from his breach of Statement of Principle 1.**
35. **Co-operation with an investigation is the minimum the Authority expects from investigation subjects, and whilst the Authority has taken into account Mr Martin's co-operation, together with his conduct since the end of the Relevant Period, it does not consider they constitute mitigating factors at Step 3. In addition, the Authority does not consider that the length of time the investigation took in this case constitutes a mitigating factor at Step 3.**

36. **As indicated in this Notice, the Authority considers that Mr Martin is not fit and proper to perform functions in relation to any regulated activity, since he acted recklessly and with a lack of integrity as to the design and operation of the Pension Transfer Model. The Authority considers that a prohibition, in the form as set out in this Notice, is appropriate and proportionate in all the circumstances.**

Enforcement's unfair approach to the case

37. Mr Martin has a number of concerns with the conduct and the approach to the investigation of the Authority's Enforcement case team. The Authority has, amongst other things, failed to pursue the investigation with appropriate speed. Accordingly, this has been unfair to Mr Martin.
38. **The decision to give Mr Martin this Notice was made on behalf of the Authority by the RDC. As is explained in paragraph 8.3 of this Notice, the RDC is a committee of the Authority which takes certain decisions on behalf of the Authority, and its members are separate from the Authority's staff involved in conducting investigations and recommending action against firms and individuals. The RDC has decided to give this Notice on the basis of the materials before it regarding the conduct of Mr Martin.**
39. **The submissions made by Mr Martin, as to the nature and conduct of the investigation, have been duly considered by the RDC but it considers that they do not undermine the evidence on which the decision is based.**

The Resort Group Plc's Representations

1. A summary of the key representations made by TRG and of the Authority's conclusions in respect of them (in bold type) is set out below.
2. The starting point should be for the Authority to seek to avoid causing prejudice to TRG, save to the extent that it considers any matters within the Notice which are prejudicial to TRG are necessary to support the reasons for its action against Mr Martin. It is not necessary for the Authority's findings against Mr Martin to identify TRG by name rather than anonymising it, consistent with its usual practice.
3. The Notice contains certain passages that refer to TRG in terms that are highly prejudicial to TRG, repeating allegations of potential criminality made more than seven years ago that are denied and have not been proven. These references are unnecessary to support the action against Mr Martin and should be removed. The effect of the allegations set out in paragraph 4.12 insinuate that TRG's activities and investments are potentially fraudulent. This is denied. It repeats a reference by The Pensions Regulator to what appears to be a previous statement made by Action Fraud. Public repetition of a damaging allegation will inevitably increase the harm caused by the initial allegation.
4. None of Mr Martin's failings set out in the Notice rely on the allegations of fraud against TRG. The factual background for these findings is established without any need to reference the allegations of fraud against TRG. The high-risk nature of the TRG investments, as both unregulated and illiquid, is very clearly articulated in the Notice. It is inaccurate to conflate the separate and distinct concepts of an investment being high-risk with an investment being fraudulent.
5. There is no evidence that Mr Martin was aware of the determination by the Pensions Regulator. Accordingly, it is unnecessary to refer to it, as there is no evidence this would have had any bearing on Mr Martin's judgement and decision-making in respect of the Pension Transfer Model or how Mr Martin should have assessed Mr Welsh and/or TRG's investments.
6. There is, therefore, no need to include prejudicial allegations of fraud against TRG and these should be removed in the interests of fairness.
7. The reference in paragraph 4.12 to the BBC Panorama documentary in July 2016, two weeks before the end of the Relevant Period, is also irrelevant to the findings against Mr Martin and should be removed. The statement refers to matters that are prejudicial to TRG but have not been tested by the Authority. The Authority should not reference unsubstantiated reports of journalists in circumstances where the fact of publication of those reports is not relevant to the facts or circumstances of the breach. By including reference to the Panorama documentary, the Notice suggests that the matters presented in that documentary form part of the background and circumstances of the Authority's case.
8. **Prejudice alone is not a proper basis upon which to decide to anonymise and/or remove reference to TRG's involvement. The appropriate basis, for anonymising and/or removing reference to TRG's involvement arises**

where including such references would amount to unfairness to TRG¹⁸. No such unfairness arises as, whilst the matters within this Notice may be prejudicial to TRG, they are nevertheless relevant, qualified (for example “*potentially fraudulent*”), proportionate and accurate.

9. **The Authority considers that the nature of the relationship between TRG, FRPS, SMP and Mr Martin is accurately described in this Notice.**
10. **The information in paragraph 4.12 is consistent with information that is already in the public domain and attributed to two highly reputable sources, namely a statutory notice of another regulator and Action Fraud (which is run by the City of London Police), and the Authority considers that it is appropriate for this information to be included in this Notice.**
11. **There was publicly available material during the Relevant Period which ought to have raised concerns with SMP, and Mr Martin, in respect of it partnering with ACER and TRG, had it conducted sufficient due diligence on ACER/TRG. The Notice draws a link between Mr Martin’s failures of due diligence with respect to matters in the public domain and the investments which TRG promoted to clients.**
12. **The Authority considers that any prejudice caused to TRG by paragraph 4.12 of this Notice is outweighed by the fact that these passages demonstrate that this business relationship may have been prevented or curtailed, if appropriate due diligence had been undertaken by Mr Martin.**
13. **With regard to the reference to the Panorama documentary, the Notice contains a brief, factual description of publicly available material. The Panorama documentary forms part of the background and circumstances of the Authority’s case, as regards SMP’s stated reasons for bringing its relationship with FRPS to an end. The Authority notes that Mr Oxberry stated in interview with the Authority: “*when we all see [sic] ... Panorama about [the Pension Transfer Model] and we all went 'No, we've got to stop it'*”. Accordingly, the Authority considers that it is appropriate to refer to the Panorama documentary in the Notice.**

¹⁸ Section 393 of the Act envisages that a “third party” could be identified in a statutory notice even if, in the opinion of the Authority, the third party is prejudiced; and the third party will then receive a copy of the notice.

Matthew Welsh's Representations

1. A summary of the key representations made by Mr Welsh and of the Authority's conclusions in respect of them (in bold type) is set out below.
2. ACER acted as the proposer to SMP of potential third-party introducers (not individual investors), such as FRPS. Mr Welsh had no part to play in the advice given by SMP to its clients nor indeed had any direct involvement in relation to the matters complained of in the Notice. The Notice suggests Mr Welsh, and ACER, were extensively involved in Mr Martin's dealings with investors and invites criticism and adverse inferences to be drawn against Mr Welsh in a manner that suggests that Mr Welsh and ACER were involved in wrongful acts. In addition, the reference to Mr Welsh being subject to a Determination and Final Notice by The Pensions Regulator (paragraphs 4.12 and 4.19) should be removed, as Mr Welsh merely acted as a proposer and performed no other function.
3. ACER should not be named in the Notice and instead referred to as "the Introducer"; this will be consistent in the Notice with the reference to the "Overseas Adviser Firm".
4. Mr Welsh should not be referenced in the Notice; all business conducted with Mr Martin by Mr Welsh was on behalf of ACER. The Notice incorrectly implies that he was conducting personal business with SMP.
5. **Prejudice alone is not a basis upon which to decide to remove reference to the involvement of Mr Welsh and/or to anonymise ACER. The appropriate basis for removing reference to Mr Welsh's involvement arises where including such reference would amount to unfairness to him¹⁹. No such unfairness arises as, whilst the matters within the Notice may be prejudicial to Mr Welsh, they are nevertheless relevant, qualified, proportionate and accurate. In addition, no such unfairness arises from naming ACER; it was dissolved on 29 January 2019.**
6. **Mr Welsh's role, as set out in the Notice, is limited to his involvement (acting on behalf of ACER) in proposing introducers such as FRPS to SMP. Mr Welsh is not attributed with a role in the advice provided by SMP or in the operation of the Pension Transfer Model; his role is explained in the section of the Notice entitled "Design of the Pension Transfer Model" (paragraphs 4.15 to 4.19).**
7. **The Authority considers that the information set out in relation to Mr Welsh's involvement with the Occupational Pension Scheme (paragraph 4.19) is relevant to the Authority's case in respect of Mr Martin. At the time of his introduction to SMP in October 2015, Mr Welsh was aware that he was the subject of a Determination Notice given by The Pensions Regulator in June 2015 which might have become known to SMP, if it had undertaken appropriate due diligence by questioning Mr Welsh as to whether he had been subject to any regulatory investigation/action, before embarking upon a business relationship with ACER.**

¹⁹ Section 393 of the Act envisages that a "third party" could be identified in a statutory notice even if, in the opinion of the Authority, the third party is prejudiced; and the third party will then receive a copy of the notice.

8. **In addition, the Final Notice, dated 8 February 2016, was published on The Pensions Regulator’s website and would have been publicly available during the Relevant Period. The Final Notice sets out the Panel’s findings that, inter alia, the investments in the Occupational Pension Scheme, which included TRG, were all high-risk and highly illiquid and described in the Final Notice in submissions made by the new trustee to the scheme as “*in a class of investments which had been recently been highlighted by Action Fraud as potentially fraudulent*”. Accordingly, there was publicly available material during the Relevant Period which would have raised concerns with a reasonable and prudent individual in Mr Martin’s position in respect of SMP partnering with ACER and TRG/FRPS, had SMP conducted appropriate due diligence on Mr Welsh and TRG. The Notice, at paragraph 4.19, links Mr Martin’s failures in due diligence to the matters of concern expressed by The Pension Regulator and accordingly, the Authority considers that the inclusion of the information contained in this paragraph is relevant in order to set out the key facts and matters in Mr Martin’s case.**