NOTE:

The decision notice given by the Financial Conduct Authority to Stephen Joseph Burdett on 19 August 2022 has been referred to the Upper Tribunal to determine:

- **in the case of the decision to impose a disciplinary sanction, what (if any) the appropriate action is for the Authority to take, and remit the matter to the Authority with such directions as the Tribunal considers appropriate; and**

- **in relation to the prohibition order, whether to dismiss the reference or remit it to the Authority with a direction to reconsider and reach a decision in accordance with the findings of the Tribunal.**

Therefore, subject to what is said below, the findings outlined in this decision notice reflect the FCA's belief as to what occurred and how it considers the behaviour of Mr Burdett 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.

Before the Tribunal, the FCA is no longer asserting against Mr Burdett certain allegations which are contained in the decision notice. These withdrawn allegations are that Mr Burdett:

- **misled others who had responsibility for compliance about the assets in which pension holders' funds would be invested (paragraphs 2.11, 4.80-4.95, 5.4(3));**

- **managed and trained an individual who advised pension holders to switch their pensions into the Westbury SIPP (although the Authority continues to allege that Mr Burdett was responsible for and controlled the structure through which this advice was provided) (paragraphs 2.4, 4.9, 4.14); and**

- **instructed this adviser to consider only the suitability of SIPPs for pension holders without considering the suitability of the investments held in the SIPPs (paragraphs 2.12, and 5.4(4));**

- **signed the Westbury/Synergy Terms of Business on 12 January 2016, before he was appointed as a director of Synergy Wealth Limited (paragraph 4.12). The Authority now asserts that he signed this on or around 10 February 2016;**

- **based on an email dated 26 February 2016, expected 50% of the model portfolios would be invested in investments connected with a single offshore property developer (paragraphs 4.61(5), 4.62, 4.81 and 4.87). But the FCA continues to rely on other documents for a similar allegation.**

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DECISION NOTICE

To: **Stephen Joseph Burdett**

Individual Reference Number: **SJB01626**

Date: **19 August 2022**

1. ACTION

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

(1) impose on Stephen Joseph Burdett a financial penalty of £311,762 under section 63A(1) of the Act; and

(2) make an order, pursuant to section 56 of the Act, prohibiting Mr Burdett 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. Between 10 February 2016 and 1 December 2016 ("the Relevant Period"), Mr Burdett performed the role of director at Synergy Wealth Limited ("Synergy") whilst Synergy was an Appointed Representative of Strategic Wealth UK Limited ("SWUK"), a firm authorised by the Authority. He performed the CF1 (Director AR) controlled function ("the Director Function") at Synergy without having been approved to perform this role by the Authority. Mr Burdett signed application documentation submitted to the Authority for him to be approved to perform the Director Function at Synergy. The Authority never gave the approval sought. Mr Burdett knew that he was performing a controlled function for which he required approval that he did not have.

2.2. Mr Burdett had been appointed a director of Synergy on 29 January 2016 and controlled (inter alia) Synergy's investment advice to pension holders and its pension holder referral relationships with other parties. In April and May 2016, Mr Burdett was forwarded emails from the Authority with queries about the controlled function application on seven occasions. All these emails from the Authority included the warning: "We [the Authority] would remind you that until this application has been determined the individual is unable to carry out any regulated activities related to this role or any other role they are not currently authorised to perform." By knowingly acting as a director of Synergy without the Authority's approval over an extended period of time, Mr Burdett acted without integrity.

2.3. In addition, Mr Burdett recklessly, and thus acting without integrity, caused Synergy to give pension holders unsuitable financial advice, leading pension holders to be exposed to the significant and unacceptable risk of loss. Synergy advised retail pension holders to switch their pensions into a scheme called the Westbury SIPP, which was created and managed by a discretionary fund manager called Westbury Private Clients LLP ("Westbury"). The Westbury SIPP used self-invested personal pensions to invest retail pension holders' funds based on one of three model portfolios of assets created and managed by Westbury ("the Model Portfolios"). Mr Burdett was aware of the obvious risk that the Model Portfolios were high risk and unsuitable for the pension holders whose pensions Westbury would allocate to them. Despite knowing of this risk, he unreasonably caused Synergy to recommend the Westbury SIPP to most of the pension holders. His conduct was reckless.

2.4. Mr Burdett was responsible for, and controlled, the advice provided by Synergy. He owned 50% of Synergy and during the Relevant Period performed the Director Function. Mr Burdett was also Synergy's business development manager. He established the business arrangements between Synergy and other companies involved in the process of switching pension holders' funds into the Westbury SIPP. He was Synergy's pensions expert, oversaw Synergy's day-to-day activities, and managed the person in whose name Synergy's pension switch advice was issued ("the Adviser"). He trained the Adviser and monitored their advice.

2.5. Mr Burdett's misconduct resulted in Synergy advising pension holders to switch 232 pension funds, worth over £10 million, into the Westbury SIPP. As a result, 39% of the aggregate of pension holders' funds were allocated to high risk investments relating to a single offshore property development company ("the Developer" and "the Developer Investments"). For 89% of these pension funds switched, the Model Portfolios were unacceptably risky for the pension holders. Loss to pension holders resulted in the Financial Services Compensation Scheme ("FSCS") having to date paid over £1.4m in compensation to over 100 pension holders advised by Synergy.

2.6. Pensions are a traditional way of saving and investing money in a tax-efficient way for retirement. The value of someone's pension can have a significant impact on their quality of life during retirement and, in some circumstances, may affect whether they can afford to retire at all. Pension holders place a significant amount of trust in the firms they rely on to advise them on their pensions. Where a firm or an individual fails to act with integrity, and puts their interests above those of pension holders, it exposes pension holders to a significant risk of loss.

2.7. The Model Portfolios were called "Global Cautious", "Global Balanced" and "Global Growth". All three Model Portfolios were high risk because they were all designed by Westbury to invest 40% of pension holders' funds in the Developer Investments. These investments were high risk from investment type and concentration risk perspectives. As noted above, Westbury went on to invest an aggregate of 39% of pension holders' funds in the Developer Investments. Mr Burdett knew that Synergy was advising pension holders with a low and medium appetite for risk to switch their pensions into the Model Portfolios and that the Model Portfolios were designed to invest 40% of pension funds in the Developer Investments. He was an experienced investment adviser. Given the information held by, or available to, Mr Burdett there was an obvious risk, which he must have recognised, that the Developer Investments and the Model Portfolios were unsuitable for most pension holders except perhaps those with a high attitude to risk. Despite this, Mr Burdett caused pension holders to switch their pension funds into portfolios with a 40% weighting in the Developer Investments (i.e. the Model Portfolios). In doing so, he acted unreasonably, recklessly and without integrity.

2.8. Further, Mr Burdett produced Synergy-branded templates for documents which were sent to pension holders, under his control, and which misled or risked misleading pension holders about the investments in the Model Portfolios and the risk of the Model Portfolios. Mr Burdett controlled the issuance of Risk Profile Reports to pension holders, and many were issued in his name. Synergy's Risk

Profile Reports contained pie charts and lists of target asset allocations with the text: "Your target asset mix"; "Based on your attitude towards risk however, we recommend the asset allocation below"; and "We believe that a portfolio of investments consisting of the target asset mix may be more appropriate for you." The clear meaning or implication was that the Model Portfolios, which Synergy was recommending at the same time, would be materially similar to, or at least would not differ materially from, the recommended asset mixes explained by (inter alia) the pie charts. In fact, the Model Portfolios differed materially from the recommended target asset mixes, as Mr Burdett knew, and were obviously higher-risk. Synergy's Retirement Planning Reports, which were given to pension holders, and in many cases were signed by pension holders on the same day as they signed their Risk Profile Reports, recommended that pension holders switch their pension funds into the Westbury SIPP, which, as Mr Burdett knew, invested funds based on the Model Portfolios. Synergy's documents failed to disclose the 40% allocation to the Developer Investments for each of the Model Portfolios and made no reference to the Developer. The risk that pension holders would be misled by Synergy's advice documents about the nature of the Model Portfolios and their level of risk was obvious and must have been known to Mr Burdett. He unreasonably disregarded this risk and thereby acted recklessly and without integrity.

2.9. The Retirement Planning Reports sent to pension holders by Synergy stated that Westbury would manage investments in line with a pension holder's risk profile and that Westbury had three core investment strategies: Global Cautious, Global Balanced and Global Growth. It was obvious, and Mr Burdett must have appreciated the risk, that the "Cautious", "Balanced" and "Growth" Model Portfolios were all high risk.

2.10. Some pension holders stated that they felt they had been misled by Synergy about the investments in the Model Portfolios and the risk of the Model Portfolios. They also said that they would not have switched their pensions to the Westbury SIPP if they had been aware of the investments and the risk.

2.11. As Synergy was an Appointed Representative of SWUK from 10 February 2016, SWUK took regulatory responsibility for Synergy and was required to ensure that Synergy met its regulatory requirements. Mr Burdett sent individuals with responsibility for ensuring SWUK and Synergy complied with their regulatory requirements misleading information about the investments in the Model Portfolios. These documents did not refer to the Developer Investments and indicated that pension holders' funds would be invested in other investments.

2.12. Where a financial adviser recommends a SIPP knowing that the pension holder will switch from a current pension arrangement to invest through a SIPP, the suitability of the underlying investment must form part of the advice given to the pension holder. If the underlying investment is not suitable for the pension holder, then the overall advice is not suitable. Mr Burdett knew that pension funds switched into the Westbury SIPP were invested in one of the Model Portfolios, each designed to contain 40% Developer Investments. However, Mr Burdett instructed the Adviser to consider only the suitability of a SIPP for pension holders, without considering the suitability of the Model Portfolios and their 40% Developer Investment allocation. The Adviser told the Authority he was unaware the Model Portfolios allocated funds to the Developer Investments. It was obvious, and Mr Burdett must have appreciated the risk, that his instructions to the Adviser could cause pension holders to receive unsuitable advice from Synergy.

2.13. Mr Burdett knew that the marketing of the Westbury SIPP and referral of pension holders to Synergy by another company ("the Introducer"), was conditional on the inclusion of the Developer Investments within the Model Portfolios. The Introducer was wholly owned by the Developer. Mr Burdett received dividend income of £150,000 from Synergy as a result of pension switches to the Westbury SIPP. The Authority considers that the financial benefits available to Mr Burdett by causing pension holders to switch to the Westbury SIPP influenced the advice he caused Synergy to give them.

2.14. Section 63A(1) of the Act gives the Authority the power to impose a penalty on a person who knowingly performs, or could reasonably be expected to have known that they were performing, a controlled function without approval. For the reasons set out above, the Authority considers that, during the Relevant Period, Mr Burdett performed the Director Function and that he knew that he was doing so without the required approval from the Authority.

2.15. The Authority considers that it is appropriate to impose a significant financial penalty on Mr Burdett. This will send a clear deterrent message to those who disregard regulatory requirements. Whilst acting as a director of Synergy without the Authority's approval, Mr Burdett recklessly exposed pension holders to the significant and unacceptable risk of financial loss.

2.16. The Authority considers Mr Burdett's failings to be serious because:

(1) he acted as a director of Synergy without the Authority's approval for the duration of the Relevant Period, knowing he should not do so;

(2) his actions as a director of Synergy related to the pension funds of a large number of pension holders;

(3) Mr Burdett was responsible for Synergy advising pension holders to switch their pension funds to Model Portfolios that were unsuitable for them and exposed them to the significant and unacceptable risk of loss;

(4) Mr Burdett gained significant financial benefit as a result of the pension switches; and

(5) Mr Burdett's breaches were committed recklessly, repeatedly and over an extended period of time.

2.17. The Authority has decided to impose a financial penalty on Mr Burdett in the amount of £311,762.

2.18. Further, the Authority considers that Mr Burdett's conduct during the Relevant Period demonstrates that he lacks integrity and is therefore not a fit and proper person. He poses a significant risk to consumers and the integrity of the United Kingdom financial system. Accordingly, the Authority has decided to impose a prohibition order on him, as described at paragraph 1.1(2) of this Notice. This proposed action supports the Authority's operational objectives of securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.

3. DEFINITIONS

3.1. The definitions below are used in this Notice:

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

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

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

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

“the Bonds” means corporate bonds relating to the Developer.

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

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

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

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

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

“the Director Function” means the CF1(AR) Director controlled function, which was defined in SUP 10A and stated to be applicable to Appointed Representatives.

“EG” means the Enforcement Guide part of the Authority’s Handbook.

“the Fund” means an investment fund relating to the Developer.

“FIT” means the Fit and Proper test for Employees and Senior Personnel part of the Authority’s Handbook.

“FSCS” means the Financial Services Compensation Scheme.

“Handbook” means the Authority’s Handbook of Rules and Guidance.

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

“the Notes” means investment notes relating to the Developer.

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

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

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

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

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

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

“the Relevant Period” means 10 February 2016 to 1 December 2016.

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

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

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

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

“SUP” means the Supervision part of the Authority’s Handbook.

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

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

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

“the Warning Notice” means the Warning Notice given to Mr Burdett dated 4 March 2022.

“Westbury” means Westbury Private Clients LLP.

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

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

4. FACTS AND MATTERS

Background

4.1. SWUK was a financial advisory firm based in Deeside, Wales. On 5 November 2008, it was authorised by the Authority with permission to conduct regulated activities, including advising on investments (excluding Pension Transfers) and arranging deals in investments.

4.2. SWUK appointed Synergy as its Appointed Representative on 10 February 2016, being the start of the Relevant Period. Synergy was set up by SWUK to advise pension holders on whether to switch their pensions into SIPPs. Although SWUK and Synergy did not have a written Appointed Representative agreement, as required pursuant to section 39 of the Act, SWUK as the Principal firm had regulatory responsibility for Synergy's conduct in respect of its pension advisory activities.

4.3. By 2016, Mr Burdett had worked as a financial adviser for 11 years and had held the CF30 (Customer) controlled function at SWUK since 8 April 2013. He had held Financial Planning Certificates 1, 2 and 3 from the Chartered Insurance Institute (CII) since November 2004. Mr Burdett obtained a Level 4 diploma from IFS (the Institute of Financial Services) in January 2011. He was also a member of the CII and IFS.

4.4. Mr Burdett was responsible for, and controlled, advice Synergy gave to pension holders on whether to switch their pension funds into the Westbury SIPP. Westbury invested pension holders' funds held in the Westbury SIPPs based on the Model Portfolios. The Model Portfolios were all obviously unsuitable for most pension holders because they were all designed by Westbury to invest 40% of pension holders' funds in the Developer Investments. This exposed customers to the significant and unacceptable risk of loss.

4.5. The FSCS has to date paid over £1.4m compensation to over 100 pension holders because they had received unsuitable pension switch advice from Synergy.

4.6. In November 2016, following intervention by the Authority, SWUK voluntarily signed a requirement to cease all pension related business. This meant that Synergy no longer had permission to conduct pensions business as SWUK's

Appointed Representative. On 21 December 2017, SWUK entered liquidation. On 21 August 2018, Synergy was dissolved.

Mr Burdett's role at Synergy

4.7. Mr Burdett was appointed a director of Synergy on 29 January 2016 and registered at Companies House as a director on 2 February 2016. This occurred before Synergy became SWUK's Appointed Representative, on 10 February 2016, and before SWUK applied to the Authority for approval for him to perform the Director Function at Synergy. The Authority never approved SWUK's application.

4.8. During the Relevant Period, Mr Burdett owned 50% of Synergy. Synergy's business plan noted that Mr Burdett performed the role of director and financial advisor at Synergy.

4.9. During the Relevant Period, another Synergy employee, the Adviser, advised the majority of the pension holders referred to in this Notice on behalf of Synergy. Mr Burdett was the pensions expert at Synergy and the Adviser's manager. Mr Burdett trained the Adviser and monitored their advice. SWUK stated that Mr Burdett's professional qualifications and "vast experience gives our firm confidence that he is the person to take control" of Synergy and that, with assistance from SWUK, Mr Burdett would "administrate and supervise" all Synergy staff. SWUK stated that Mr Burdett "had overseen the day to day activities" of Synergy over a six month period. Mr Burdett produced the Synergy branded templates for documents sent to pension holders, and his name and signature are on a number of the documents.

4.10. Mr Burdett was responsible for ensuring Synergy complied with its regulatory obligations with support from other employees of SWUK and Synergy. Mr Burdett instructed the Adviser that Synergy was responsible for advising pension holders whether to switch to a SIPP and did not consider the suitability of the investments in the SIPP.

4.11. Mr Burdett was also Synergy's business development manager. He was responsible for establishing Synergy's business arrangements with the other entities involved in the process of switching pension holders' funds into the Westbury SIPP, including Westbury; the Developer; the SIPP Administrator; and the Introducer.

4.12. On 12 January 2016, and before his appointment as a director of Synergy, Mr Burdett signed as "director" the Terms of Business between Synergy and Westbury, which provided that Westbury was responsible for allocating the funds of pension holders advised by Synergy to investments managed by Westbury based on pension holders' Risk Profile Scores.

4.13. On 11 February 2016, Mr Burdett completed the paperwork required for Synergy to be on-boarded with the SIPP Administrator, and Synergy was on-boarded on 23 February 2016.

4.14. The Authority considers that Mr Burdett was responsible for and controlled the advice provided by Synergy because of his senior position and his role in: instructing, managing, training, and monitoring the Adviser; the production and signing of documents given to pension holders; establishing Synergy's business arrangements with the other entities involved in the process; and ensuring Synergy met its regulatory obligations. During a telephone call in which Mr Burdett participated on 27 July 2016 relating to a similar investment scheme and with reference made to the Westbury SIPP, Mr Goodchild noted that "Steve [Burdett] and I have our own process" and proceeded to describe the process of allocating money to the Developer Investments via the Model Portfolios based on pension holders' Risk Profile Scores. This call highlights Mr Burdett's important role in Synergy's business.

4.15. Mr Burdett was closely involved in the business model which resulted in pension holders' funds being switched to the Westbury SIPP. Mr Burdett established Synergy's relationships with individuals and corporate entities involved in each stage of the process; was aware that the Introducer's marketing of the Westbury SIPP was conditional on allocation of pension holders' funds to the Developer Investments; and was responsible for and controlled the advice provided by Synergy.

Mr Burdett's awareness that he was performing the Director Function without the required approval

4.16. Synergy was the Appointed Representative of SWUK under section 39 of the Act. Section 59 of the Act and SUP 10A required that Mr Burdett be approved by the Authority to perform the Director Function at Synergy.

4.17. Mr Burdett was one of two directors of Synergy and, as stated above, was registered with Companies House as a director on 2 February 2016. He performed this Director Function without the required approval of the Authority. He was aware that he was a director of Synergy. As well as being registered with Companies House, he signed correspondence and Synergy's Terms of Business with Westbury (in about January 2016, before his appointment) on behalf of Synergy as "director".

4.18. On 23 March 2016, Mr Burdett signed application documentation, which was submitted to the Authority by SWUK, for him to be approved to perform the Director Function at Synergy. He therefore knew that he was performing a role which required the Authority's approval. The application was not approved by the Authority, and Mr Burdett was aware of this. On the application form he signed on 23 March 2016, Mr Burdett did not disclose that he had already been appointed as a director of Synergy on 29 January 2016.

4.19. In April and May 2016, the head of SWUK forwarded to Mr Burdett emails from the Authority with queries about the application on seven occasions. All these emails from the Authority included the warning: "We [the Authority] would remind you that until this application has been determined the individual is unable to carry out any regulated activities related to this role or any other role they are not currently authorised to perform."

4.20. On 28 November 2016, Mr Burdett signed a form withdrawing the application for him to be approved to perform the Director Function at Synergy.

4.21. The Authority considers that pension holders would not have been exposed to the significant and unacceptable risk of loss detailed in this Notice if Mr Burdett had not performed the Director Function. In addition, the Authority considers that Mr Burdett would not have received the £150,000 dividend income from Synergy had he not taken the lead role in Synergy's business, including his role as director.

Risks associated with the Developer Investments and Model Portfolios

The Developer

4.22. The Developer is an offshore property developer incorporated in a small jurisdiction outside the OECD, with support offices in the UK and offshore. Westbury designed the Model Portfolios to invest 40% of pension holders' funds in the Developer

Investments and went on to invest an aggregate of 39% of pension holders' funds in them. It was obvious, and Mr Burdett must have known, that all three of the Developer Investments were high risk for reasons detailed in paragraphs 4.24 to 4.46.

4.23. At the end of the Relevant Period, 232 pension funds with a total value of £10,492,857.27 had been switched into Westbury SIPPs following pension switch recommendation advice to pension holders from Synergy. Of this, £4,065,146.01 (39%) was invested in the Developer Investments. Across all pension holders £2,431,437.01 (23%) was invested in the Fund; £1,623,709.00 (15%) in the Notes; and £10,000 (0.1%) in the Bonds. £2,788,653.68 (27%) was in cash.

The Bonds

4.24. An undated draft offer document for the Bonds noted that the bonds were issued by a 100% owned subsidiary of the Developer which would lend all of the funds it received from issuing the bonds to the Developer. The Developer was (i) a property development company with (ii) a weak balance sheet in its financial statements dated 31 December 2015 which (iii) operated in a single non-OECD jurisdiction. OECD jurisdictions are generally considered to be mature, developed economies, and lower risk than non-OECD jurisdictions. Each of these factors should be considered as high risk factors for credit exposure. The Bonds therefore exposed investors to the credit risks associated with the Developer itself.

4.25. The statement of financial position in the Developer's consolidated financial statements dated 31 December 2015 shows that the Developer had:

(1) negative total equity. Its liabilities were greater than its assets;
(2) negative current balance. Its current assets were less than its current liabilities, indicating a high risk of failing through lack of liquidity; and
(3) included tens of millions of euros of deferred revenue in the balance sheet, which was not yet recognised for accounting purposes. The Authority notes that recognition of the deferred revenue would do little to improve the weak liquidity position of the Developer.

4.26. The Developer accounts present a picture of a company short of liquidity and with a weak balance sheet. Should there be any adverse developments with regard to the individual project developments, the political stability of the region or the global tourism market, then there would be clear risks to the viability of the Developer.

4.27. All of the points in paragraphs 4.24, 4.25 and 4.26 together mean an investment into the Bonds could only be regarded as high risk. This should have been obvious to Mr Burdett, given his professional experience and qualifications, if he reviewed the draft offer document and the consolidated financial statements referred to in this section, as would have been expected given his role within Synergy.

4.28. Note 2 in the financial statements under the heading "Going concern" indicates that the business is only a going concern on the assumption that the deferred revenue from a specified property development becomes fully recognised in the accounts in the following financial year. Any due diligence would need to establish a high degree of comfort on this point before recommending any investment into the Bonds.

4.29. The draft offer document states that the offer can only be made to, or directed at, fewer than 150 persons, or to persons who have professional experience in matters relating to investments. Restricting an offer to fewer than 150 investors avoided the requirements of issuing a full prospectus. The draft offer document also states that: investment in a security of this nature is speculative, involving a degree of risk; it may not be possible to obtain reliable information about the risks to which investors are exposed; and investors will not have any recourse to the FSCS for compensation. The Risk Factors section highlights that there are construction and development risks; and cost overruns and delays will impact the ability of the company to make repayments. Such overruns and delays are common in the construction industry. Existing debt of £31 million is disclosed as well as the Developer's intention to raise further debt, and some of the same assets used as security will be used as security for future debt issues, which severely undermines the value of such security. Further, it is noted that the security interests will be governed by the law of the non-OECD jurisdiction.

4.30. All of the disclosures referred to above in paragraphs 4.28 and 4.29 together mean an investment into the Bonds could only be regarded as high risk. This should have been obvious to Mr Burdett, given his professional experience and qualifications, if he reviewed the draft offer document for the Bonds and the consolidated financial statements for the Developer referred to in paragraphs 4.24 and 4.25, as would have been expected given his role within Synergy.

The Fund

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

4.32. The Fund was listed on an exchange in a non-OECD jurisdiction in 2015 and delisted in 2020. During this period there was no trading in the Fund on the exchange.

4.33. A brochure for the Fund contained extensive references to the Developer and investments connected with the Developer, identified the Developer as the "promoter" of the Fund, and stated that the Fund focuses on the development of property development projects and has secured deal flow for a number of projects by association with the Developer.

4.34. The front cover of the offering memorandum relating to the Fund dated 2015 stated that: [it] "is a Professional Investor Fund which is available to investors qualifying as experienced and qualifying investors. Professional Investor Funds are non-retail schemes". This meant that protections and requirements for retail schemes did not apply and investors in professional adviser funds were not protected by any statutory compensation arrangements in the event of the Fund's failure.

4.35. The offering memorandum also states that the investment company to which the Fund relates is an unregulated collective scheme for the purposes of UK law and FSCS protections are not applicable. The lack of regulatory protections alone is a high risk factor for the investment for a retail client.

4.36. The Investment Risk section states that "Investment in the [investment] Company and its sub-funds [which would include the Fund] carries substantial risk".

4.37. The front page of one of the offering supplements relating to the Fund which Mr Burdett emailed to Mr Goodchild also highlights the Professional Investor Fund status and lack of investor protections. The Investment Policies definition states that the assets of the Fund would primarily seek opportunities linked with property development and infrastructure projects related to tourist resorts. The offering supplement noted that there were few investment restrictions that the directors were required to adhere to, other than a 30% restriction on immovable property.

There was no restriction on exposure to a single firm like the Developer. The terms of all the underlying investments would need to be individually negotiated with the Developer (or other firms if there were any) and would not be visible to investors at the point of investment.

4.38. The Dividend Policy section notes that the directors do not intend to pay dividends or make any other distributions during the (indefinite) term of the Fund. An investor's return is thus limited to potential capital gain when they choose to redeem their holding.

4.39. The Risk Factors section highlights:

(1) the lack of operating history for the Fund;

(2) the potential credit risks involved in the Fund's investments;

(3) some general risks of real estate development as an activity; and

(4) the illiquidity of the assets held by the Fund and the potential impact on its ability to meet redemptions.

4.40. The brochure relating to the Fund makes clear that the Fund intends to invest in mezzanine debt securities of the Developer, so that it should have been obvious that the risks of investing in the Fund were likely to be similar to the risks associated with investing in the Bonds. Taken together, the factors set out in 4.33 to 4.39 make the Fund a high risk investment. This should have been obvious to Mr Burdett, given his professional experience and qualifications, if he reviewed the documents referred to in these paragraphs, as would have been expected given his role within Synergy.

The Notes

4.41. The Notes were listed on two exchanges in OECD jurisdictions between 2016 and 2021. During this period there was no trading in the Notes on either exchange. Although there was no trading, the price of the Notes listed on one of the exchanges fell by almost 30% between July 2016 and February 2021.

4.42. A brochure relating to the Notes dated May 2016 stated that all investments would be linked to the development and operation of tourist resorts and related commercial property and infrastructure projects created by the Developer. The brochure also noted the assets would primarily be in a single non-OECD jurisdiction.

4.43. Drawdown Particulars relating to the Notes dated 2016 provide for the Developer as "Sponsor" to make recommendations as to how funds raised from the Notes would be invested. The drawdown particulars also highlight risk factors relating to the Developer which are similar to those for the Bonds, as described above. These are:

(1) exposure to external events, in particular to events in the non-OECD jurisdiction in which the assets would primarily be based;

(2) the potential for cost overruns or delays in the construction phase of the project;

(3) the fact that enforcement of security will take place in an external jurisdiction;

(4) the limited liquidity of the investment; and

(5) the expectation that further debt will be raised based on the same security.

4.44. The points in paragraph 4.43 mean an investment into the Notes could only be regarded as high risk. This should have been obvious to Mr Burdett, given his professional experience and qualifications.

Model Portfolios

4.45. Each of the Model Portfolios was designed by Westbury to invest 40% of pension holders' funds in the Developer Investments, while 60% of assets were to be allocated to a range of assets unrelated to the Developer. For the reasons set out above, each of the Developer Investments was high risk.

4.46. All three Model Portfolios were obviously high risk because of the risks (including concentration risks) arising from the 40% allocation to the Developer Investments. The concentration risk created by allocating 40% of a pension holder's funds to investments in a single non-OECD jurisdiction and related to a single company and operating in a single industry sector, is extremely high.

Customer Journey

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

Call centre firm

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

The Introducer

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

(1) it obtained information from pension providers and gave the pension holder a summary of their pension holdings including information such as fund values and projected income at retirement;

(2) it gave pension holders information about the possibility of holding their pensions in alternative structures and the possibility of those structures holding commercial property and other investments;

(3) it referred pension holders that showed an interest to Synergy, to receive advice on whether to switch their pensions funds to new investments; and

(4) it met with the pension holder to complete documentation which would be sent to Synergy.

4.50. All the pension holders advised to switch their pension funds into the Westbury SIPP and agreed to switch were introduced to Synergy by the Introducer. The Introducer's marketing of the Westbury SIPP was conditional on the inclusion of the Developer Investments within the Model Portfolios, and Mr Burdett knew this.

Synergy

4.51. Synergy obtained documents from the Introducer including: a signed client agreement between Synergy and the pension holder detailing the terms of their relationship ("Client Agreement") and a completed questionnaire containing 20 questions designed to measure a pension holder's Risk Profile Score ("Risk Profile Questionnaire"). As noted above, the Risk Profile Score was between 1-10, with 1 being the most risk averse and 10 demonstrating the greatest willingness to accept risk. A document entitled "DT Risk Profiling", dated 28 October 2013, described the appetite for risk which particular Risk Profile Scores represented and the types of investment appropriate for pension holders with a particular Risk Profile Score.

These are summarised in Annex B. Westbury confirmed that they used this document when designing the Model Portfolios in the Westbury SIPP.

4.52. The Westbury SIPP was the only product Synergy advised pension holders on whether to switch their pensions into. When advising a pension holder whether to switch their pension into the Westbury SIPP, the Adviser considered only whether the SIPP structure was suitable and did not consider whether the Model Portfolios were suitable for the pension holder.

4.53. Mr Burdett produced the Synergy branded templates for the following documents, which were sent to pension holders as part of the pension switch process: the Retirement Planning Report; the Risk Profile Report; and the Client Agreement. Mr Burdett also controlled the issuance of these reports to pension holders and many were issued in his name. The Authority obtained 30 Synergy client files which contained a number of these documents and also Westbury SIPP Application forms, which are described below:

(1) The Retirement Planning Report (sometimes called a Pension Switching Report) sent to pension holders contained a summary of pension holders' current financial position and objectives; detail on a pension holder's appetite for risk; details of the Westbury SIPP; and a recommendation as to whether the pension holder should switch their pension to the Westbury SIPP.

(2) The Risk Profile Report (sometimes called a Risk Profiler Report) contained pension holders' responses to the Risk Profile Questionnaire, their Risk Profile Score and a pie-chart titled: "Your target asset mix", with an explanation of the asset mix recommended.

(3) The Client Agreement between Synergy and the pension holder detailing the terms of their relationship. As set out above, Mr Burdett created the template Client Agreement. All 30 Synergy client files obtained by the Authority contained Client Agreements which bore Mr Burdett's signature and pension holders' signatures. Both sets of signatures were dated between 16 February 2016 and 27 May 2016.

(4) A Westbury SIPP Application Form appointing Synergy to arrange the switch to the Westbury SIPP and provide ongoing advice.

4.54. If a pension holder stated that they wanted to proceed with the pension switch, Synergy referred the pension holder to the SIPP Administrator which set up their Westbury SIPP account.

Synergy's advice

4.55. Synergy advised that 339 pension funds worth in excess of £16 million be switched into the Westbury SIPP. For the reasons detailed above all three Model Portfolios were obviously unsuitable for most of these pension holders.

4.56. Between March and August 2016, only 232 pension funds were actually allocated to a Model Portfolio. This is because SWUK instructed Synergy to stop processing switches after a pension holder file review identified some concerns about the advice being provided by Synergy, in particular that the advice appeared to be very similar for a number of pension holders. The impact of Mr Burdett's breaches would have been significantly greater had SWUK not intervened. Synergy advised 39 pension holders not to switch their pension funds to the Westbury SIPP.

Westbury

4.57. Westbury created the Westbury SIPP and created and managed the Model Portfolios based on which the Westbury SIPP invested pension holders' funds. Westbury designed the Model Portfolios to invest 40% of assets in the Developer Investments, which Westbury subsequently told the Authority it considered to be low risk, with the remaining 60% of the Model Portfolios higher risk.

4.58. Westbury's contract with Synergy states that Westbury was responsible for ensuring pension holders' funds were invested in investments consistent with pension holders' Risk Profile Scores. Westbury told the Authority that it allocated pension holders' funds in the Westbury SIPP to a Model Portfolio as follows: funds of a pension holder with Risk Profile Scores 3-4 would be allocated to Global Cautious; scores 5-7 to Global Balanced; and scores 8-9 to Global Growth ("Westbury Allocation Parameters").

4.59. The table in Annex B details the number of pension funds associated with different Risk Profile Scores switched to the Model Portfolios.

Synergy's advice to pension holders

4.60. As noted in paragraph 4.14, the Authority considers that Mr Burdett was responsible for and controlled the advice provided by Synergy.

4.61. The following points summarise the dates by which Mr Burdett was aware of certain information relating to Synergy's pension switching process and the Developer Investments:

(1) On 12 November 2015, the Developer emailed Mr Burdett material relating to the Fund, including a brochure and offering supplements with details of the Developer and the Fund, identifying the risks referred to in paragraphs 4.37 to 4.39.

(2) By 7 January 2016 at the latest, Mr Burdett knew that the Westbury SIPP was being designed to invest in investments relating to the Developer.

(3) On 5 February 2016, Mr Burdett sent Westbury an email which stated that he had met with the Developer that day and "they [the Developer] are ready to go with the UK SIPP business as soon as we are in the UK. I reckon this will be in the coming days".

(4) By 22 February 2016 at the latest, Mr Burdett was familiar with the descriptions of Risk Profile Scores detailed in Annex B.

(5) On 26 February 2016, Mr Burdett forwarded the email he had received from the Developer on 12 November 2015 attaching documents relating to the Fund to Westbury so that Westbury could conduct due diligence. Mr Burdett's email stated that 50% of the Model Portfolios would be invested in the Fund. Accordingly, by 26 February 2016 at the latest, Mr Burdett expected that all pension holders switching their pensions into the Westbury SIPP would have a very significant percentage of their funds allocated to the Developer Investments.

(6) On 4 April 2016, Mr Burdett responded to a question in an email from the SIPP Administrator referring to up to 40% of the Model Portfolios being allocated to the Developer Investments. Accordingly, by 4 April 2016 at the latest, Mr Burdett knew that all pension holders switching their pensions into the Westbury SIPP would have up to 40% of their funds allocated to the Developer Investments.

(7) On 18 May 2016, Mr Burdett sent an email to SWUK stating that pension holders' funds would be allocated to each Model Portfolio as follows: Risk Profile Scores 1-3 to Global Cautious; scores 4-6 to Global Balanced; and

scores 7-9 to Global Growth. This is inconsistent with the Westbury Allocation Parameters and, if followed, would have resulted in pension holders with lower Risk Profile Scores being allocated to a Model Portfolio.

(8) On 25 July 2016, Westbury emailed Mr Burdett a document containing the Westbury Allocation Parameters (i.e. funds of pension holders with Risk Profile Scores 3-4 would be allocated to Global Cautious; scores 5-7 to Global Balanced; and scores 8-9 to Global Growth).

(9) On 27 July 2016, during a telephone conference call involving Mr Burdett, Mr Goodchild and other parties, Messrs Burdett and Goodchild commented on the Westbury SIPP and a separate pension switch scheme also involving the Developer Investments. The Model Portfolios investing 40% of their assets in the Developer Investments was discussed. With reference to the separate scheme, Mr Goodchild was asked whether there was a limit on the proportion of a model portfolio's funds that Westbury would allocate to the Developer Investments. Mr Goodchild said 40% was Westbury's limit. Mr Burdett said that "if somebody who's high risk and they've got a reasonable way until retirement they could go up to 60 percent but not everybody has been allocated 60 percent. You know there's a lot of people that are getting closer to retirement.". Mr Goodchild added: "Oh God yeah, no." Mr Burdett said that "if you look at sort of where the medium mark is most of them are probably round about that 30 to 40 percent anyway". Mr Goodchild said that: "anything kind of 50 percent or above is seen as concentration risk". These comments by Messrs Burdett and Goodchild reveal that they recognised the significant risks associated with the Developer Investments. They did not describe the Developer Investments as safe or low risk investments but rather as investments to which only clients with a high risk appetite and greater ability to recover from financial losses should consider allocating 60% of their portfolio.

4.62. As noted above, the offering supplement relating to the Fund detailing the risks referred to in paragraphs 4.37 to 4.39 was attached to the email Mr Burdett received on 22 November 2015 and forwarded to Westbury on 26 February 2016.

4.63. Mr Burdett should have obtained, if he did not obtain, the documents detailing the risks associated with the Fund, the Notes and the Bonds referred to in paragraphs 4.24 to 4.46 from Westbury or the Developer. The risk factors detailed in these documents and referred to in these paragraphs indicate that all the Developer Investments were high risk investments. Given his professional qualifications and experience, this should have been obvious to Mr Burdett if he reviewed these materials, as would have been expected given his role within Synergy.

4.64. In addition, the portfolio concentration risk due to holding 40% of a client's pension in investments exposed to a single company, a single industry sector, and a single non-OECD jurisdiction is extremely high.

4.65. It was or should have been obvious to someone with Mr Burdett's professional experience and qualifications that Model Portfolios investing 40% of funds in any mixture of the Developer Investments were too high risk for pension holders with a Risk Profile Score below 8 regardless of whether the remaining 60% of funds was invested in low risk investments.

4.66. Mr Burdett knew, or must have realised, that the Model Portfolios diverged significantly in composition and risk from the asset mixes recommended (and illustrated by pie charts) in Synergy's Risk Profile Reports.

4.67. The following points in particular evidence that Mr Burdett must have been aware of the obvious risk that the Model Portfolios investing 40% of assets in the Developer Investments meant they were high risk and unsuitable for pension holders with Risk Profile Scores below 8:

(1) It should have been obvious to Mr Burdett that all three of the Developer Investments and the Model Portfolios were high risk for reasons detailed in paragraphs 4.63 to 4.65.

(2) On 4 April 2016, Westbury forwarded Mr Burdett an email from the SIPP Administrator which highlighted the Administrator's concerns about 40% of pension holders' funds being invested in assets related to the Developer.

4.68. Despite this, Mr Burdett established the business arrangements between Synergy and other companies involved in the process of advising pension holders to switch their pension funds to the Westbury SIPP. He knowingly caused the Adviser to advise pension holders with Risk Profile Scores 3-9 to switch their pensions into the Westbury SIPP and permitted these switches to proceed. This pension switch advice was given between March and August 2016. As well as supervising the Adviser's advice, Mr Burdett gave advice, for example, on 1 March 2016, Mr Burdett advised a pension holder with a Risk Profile Score of 6 to switch their pension fund to the Westbury SIPP. Mr Burdett ignored the obvious risk that the pension switches exposed pension holders without a high tolerance to risk to unsuitable investments. This was reckless and he therefore acted without integrity.

4.69. Mr Burdett should have carefully reviewed the available offer documents detailing the risks associated with the Developer Investments. He knew that Synergy, under his control, was recommending to pension holders the Model Portfolios with their 40% allocation to the Developer Investments. Any failure to do so was reckless.

Responsibility for the provision of misleading information

4.70. Mr Burdett was responsible for pension holders receiving misleading information about the investments in the Model Portfolios and the diversification and risk of the Model Portfolios. In particular, as detailed below, Mr Burdett caused Synergy to send pension holders' documents (many of which were issued in Mr Burdett's name) between March and August 2016 indicating the Model Portfolios were highly diversified and (implicitly) that the Westbury SIPP would contain a mixture of assets which was materially different from the Model Portfolios and lower risk. The documents also referred to the "Global Cautious" and "Global Balanced" portfolios, implying that these portfolios were low or medium risk, which was false. On 1 March 2016, Mr Burdett advised a pension holder to switch into the Westbury SIPP and sent them a document which indicated the Model Portfolio was highly diversified and referred to Global Cautious and Global Balanced investment strategies.

4.71. By 26 February 2016 at the latest, Mr Burdett believed that all pension holders switching their pensions into the Westbury SIPP would have 50% of their funds allocated to the Developer Investments. By 4 April 2016 at the latest, Mr Burdett knew that any pension switch to the Westbury SIPP would result in up to 40% of every pension holder's funds being invested in the Developer Investments. It was obvious and must have been known to Mr Burdett that the Model Portfolios were high risk, that the mixture of assets described in the Risk Profile Reports sent to pension holders was lower risk and materially different from the Model Portfolios, and that the Model Portfolios were not highly diversified.

4.72. Mr Burdett proceeded, despite the obvious risk that Synergy was sending pension holders documents (the Risk Profile Reports and Retirement Planning Reports) containing misleading information about the asset composition, risk and diversification of the Model Portfolios; and the risk that, as a result, pension holders would switch their pensions into investments which were high risk and unsuitable.

4.73. Some pension holders have stated that Synergy misled them about, or failed to inform them of, the investments in the Model Portfolios and/or the risk of the Model Portfolios before they switched their pensions; they would not have switched their pensions into the Westbury SIPP if they had been aware of the risk of the Model Portfolios; and they would not have switched their pensions into the Westbury SIPP if Synergy had not advised them to.

Misleading information in the Retirement Planning Reports

4.74. As noted in paragraph 4.53(1) above, Mr Burdett produced the Synergy-branded template for the Retirement Planning Reports (sometimes called Pension Switching Reports) sent to pension holders. These contained a summary of a pension holder's current financial position and objectives; detail of the pension holder's appetite for risk; details of the Westbury SIPP; and a recommendation as to whether the pension holder should switch their pension to the Westbury SIPP.

4.75. All the 30 Synergy client files obtained by the Authority contained reports falsely describing the Model Portfolios as highly diversified and referring to the misleadingly named Global Cautious and Global Balanced investment strategies. The Retirement Planning Reports did not disclose the Developer Investments or the 40% allocation to them. Mr Burdett knew that Synergy was issuing the misleading Retirement Planning Reports: he emailed Westbury a copy of a Retirement Planning Report on 27 June 2016 when asked for one; one Retirement Planning Report amongst the sample obtained by the Authority stated that it was prepared by Mr Burdett and contained Mr Burdett's signature dated 1 March 2016; and he created the template, controlled Synergy's business and the Adviser's work. 27 Retirement Planning Reports containing misleading statements and bore pension holders' signatures were dated between 2 March 2016 and 21 June 2016.

Misleading information in Risk Profile Reports

4.76. Mr Burdett produced the Synergy-branded template for the Risk Profile Reports (sometimes called Risk Profiler Reports) sent to pension holders. These contained details of pension holders' responses to the Risk Profile Questionnaire, their Risk Profile Scores and a pie-chart and list of asset classes with the heading: "Your target asset mix". The pie-chart was alongside the text: "Based on your attitude towards risk however, we recommend the asset allocation below"; and "We believe that a portfolio of investments consisting of the target asset mix may be more appropriate for you." The pie-chart detailed the percentage of funds to be invested in different asset classes (for example Cash, UK Corporate Bonds, UK Equities etc). Annex B to this Notice summarises the names and target asset mixes for Risk Profile Scores 3-9 in the Risk Profile Reports.

4.77. 28 of the 30 Synergy client files obtained by the Authority contained Risk Profile Reports with this information. The front page of 30 Risk Profile Reports stated they were prepared by Mr Burdett. 27 Risk Profile Reports contained the pension holder's signature. Pension holders' signatures were dated between 2 March 2016 and 21 June 2016.

4.78. Although the Risk Profile Reports did not explicitly state that the asset mix in the pie-charts represented the investments in the Model Portfolios, they did state "We recommend the asset allocation below…". In 25 of the 30 Synergy client files obtained by the Authority, the Risk Profile Reports were signed by pension holders on the same date as they signed the Retirement Planning Reports (recommending a pension switch to the Westbury SIPP) and also the Westbury SIPP Application Forms giving consent to a pension switch. In one client file, the documents were signed within a week of each other. Synergy's documents meant or strongly implied that the pie-charts showing the recommended asset mix represented asset mixes available through the Westbury SIPP Model Portfolios or at least that the pie-chart and recommended asset mix did not differ materially from the Westbury SIPP and Model Portfolios which Synergy was simultaneously recommending. The Authority considers that Mr Burdett knew or must have been aware of the information contained in Synergy's advice documents given: that Mr Burdett created the template for the Risk Profile Reports; that his name was on these documents; and his role as a director and the leader of Synergy's business.

4.79. The mixture of assets recommended in the Risk Profile Reports was inconsistent with 40% of pension holders' funds being invested in the Developer Investments for every Model Portfolio. The Risk Profile Reports did not refer to the Developer Investments.

Misleading information provided to others at SWUK and Synergy

4.80. SWUK had regulatory responsibility for Synergy's conduct in respect of its pension advisory activities. The Authority would have expected SWUK, on a continuing basis, to establish on reasonable grounds that it had, inter alia, adequate controls over Synergy's pension advisory activities and adequate resources to monitor and enforce compliance by Synergy with the relevant regulatory requirements.

4.81. By 26 February 2016 at the latest, Mr Burdett believed that all pension holders switching their pensions into the Westbury SIPP would have 50% of their funds allocated to the Developer Investments. By 4 April 2016 at the latest, Mr Burdett knew that any pension switch to the Westbury SIPP would result in up to 40% of every pension holder's funds being invested in the Developer Investments.

4.82. Mr Burdett sent others at SWUK and Synergy with responsibility for ensuring both companies complied with their regulatory requirements misleading information about the investments in the Model Portfolios (as detailed below). These individuals stated that they were not aware the Model Portfolios were designed to invest 40% of pension holders' funds in the Developer Investments and felt they had been misled by Mr Burdett and Westbury about the proposed investments in the Model Portfolios.

4.83. Sending misleading information to others at SWUK and Synergy with responsibility for compliance meant that they could not effectively check that Synergy was complying with the relevant regulatory requirements. Mr Burdett ignored the risk that the information was misleading. This was reckless. This also exposed pension holders to the risk of being advised to switch their pensions to unsuitable high risk investments.

Information in Westbury Factsheets

4.84. On 8 April 2016, Mr Burdett forwarded to an individual with responsibility for compliance at Synergy an email from Westbury dated 2 December 2015. Mr Burdett's email stated: "This is the email I had from Westbury to confirm the products they provide" and attached Westbury Factsheets dated October 2015 for Model Portfolios called Diamond, Marble and Granite ("the October 2015 Westbury Factsheets"). The Granite Factsheet stated: "Granite provides a strategy that focuses strictly on active wealth preservation. It is designed with a 2.5%

benchmark and a highly diversified, low volatility approach. Designed for those investors who are ultra-cautious." The Marble Factsheet stated "This strategy is best suited to those who prefer moderate risk and moderate volatility." Each Factsheet had a section titled "Portfolio construction" which listed the proportion of the Model Portfolio that would be invested in different asset classes (e.g. cash, equities, bonds etc). These Factsheets did not refer to the 40% allocation to the Developer Investments. Those with responsibility for compliance at SWUK and Synergy told the Authority they believed the October 2015 Westbury Factsheets related to the Model Portfolios.

4.85. By 4 April 2016 at the latest, Mr Burdett knew that any pension switch to the Westbury SIPP would result in up to 40% of every pension holder's funds being invested in the Developer Investments. When Mr Burdett sent the email on 8 April 2016 it was obvious and must have been known to him that the statements in two of the October 2015 Westbury Factsheets about the portfolios being "highly diversified … Designed for those investors who are ultra-cautious" (Granite) and "best suited to those who prefer moderate risk" (Marble) were materially inaccurate. The Model Portfolios were obviously high risk (not cautious or moderate risk) and not highly diversified.

Misleading information in Worksheets of Investments

4.86. Mr Burdett also gave an individual with responsibility for compliance at Synergy an Excel Workbook containing worksheets entitled "Diamond", "Marble" and "Granite" containing lists of investments ("Worksheets of Investments"). This individual said they believed the Worksheets of Investments listed the investments in the Model Portfolios. There was no reference to the Developer or the Developer Investments in the Worksheets of Investments.

4.87. By 26 February 2016 at the latest, Mr Burdett believed that all pension holders switching their pensions into the Westbury SIPP would have 50% of their funds allocated to the Developer Investments. By 4 April 2016 at the latest, Mr Burdett was aware that any pension switch to the Westbury SIPP would result in up to 40% of every pension holder's funds being invested in the Developer Investments.

4.88. It was obvious and must have been known to Mr Burdett that the asset mixes in, and risk of, the portfolios described in the Worksheets of Investments were materially different from the asset mix and risk of the Model Portfolios. The risk of the portfolios described in the Worksheets of Investments was lower. Mr Burdett should have told those responsible for compliance at Synergy that the Worksheets of Investments no longer represented the investments in the Model Portfolios.

4.89. The head of SWUK and Synergy, who also had overall responsibility for ensuring SWUK's compliance, said they would have been alarmed if they had been made aware that the Model Portfolios were designed to invest 40% in investments relating to the Developer. The decision to appoint Westbury as the DFM was based on portfolio structure in the factsheets and they would have expected to have been informed of this restructure by Mr Burdett or Westbury.

Mr Burdett's instructions to the Adviser

4.90. When a financial adviser is advising on an investment wrapper product, such as a SIPP, that financial adviser must consider the suitability of the overall proposition (i.e. the suitability of both the SIPP wrapper and the underlying investments – in this case the Westbury SIPP and Model Portfolios) to be able to advise pension holders properly. Where the customer is selling existing investments (including transferring or switching their existing pension) to invest in financial instruments via a SIPP, the financial adviser must assess the suitability of that underlying investment for the customer prior to recommending a SIPP.

4.91. In January 2013, the Authority published an alert relating to advising on pension transfers or switches with a view to investing pension money into unregulated products through a SIPP (the Authority's Alert: 'Advising on pension transfers with a view to investing pension monies into unregulated products through a SIPP' dated 18 January 2013). The Authority stated that financial advisers recommending investments into investment vehicles in other products, such as a SIPP, were expected to consider the suitability of the entire proposition, i.e. the wrapper and the underlying product. The suitability of the underlying product had to be assessed in the context of customer's individual circumstances and any wider investment strategy, where appropriate.

4.92. In April 2014, the Authority issued a further alert in which it reminded regulated firms that *"if the underlying investment is not suitable for the customer, then the overall advice is not suitable"* (the Authority's Alert: "Pension transfers or switches with a view to investing pension monies into unregulated products through SIPPs – Further alert"). The Authority warned *"switches to SIPPs intended to hold non-*

mainstream propositions are unlikely to be suitable options for the vast majority of retail customers", referred to the findings of its supervisory work, and noted that examples of underlying investments seen included overseas property developments, store pods and forestry. This alert also included links to notices published by the Authority in April 2014 relating to partners of a firm which failed to comply with regulatory requirements in this area.

4.93. In March 2015, the Authority published further notices relating to directors of a firm which failed to comply with regulatory requirements in this area (the Authority's Final Notices issued to Peter Legerton and Lloyd Pope, first published 20 March 2015 and subsequently amended).

4.94. The Westbury SIPP was designed to invest in the Model Portfolios. Therefore, it was not possible for Synergy to make a compliant recommendation on the Westbury SIPP without considering the suitability of the Model Portfolios.

4.95. Mr Burdett was or should have been aware that considering the suitability of the Model Portfolios was Synergy's responsibility, but he told the Adviser that Synergy's business model was only to consider the suitability of the SIPP. Following the Authority's issue of the above notices and alerts, it was obvious and Mr Burdett would have known that the regulatory requirements required the Adviser to consider the suitability of the underlying investments. This failure was reckless.

Mr Burdett's Remuneration

4.96. Mr Burdett received dividend income of £150,000 from Synergy. He did not receive any other remuneration for his work at Synergy during the Relevant Period. As Synergy's sole business was advising pension holders whether to switch their pensions into the Westbury SIPP, the Authority considers that this payment relates solely to the matters that are the subject of this Notice.

Lack of co-operation with the Authority's investigation

4.97. Mr Burdett was an approved person throughout the Relevant Period, being a CF30 (customer function) at SWUK. Mr Burdett was thereafter aware that he was the subject of an investigation by the Authority. After initially engaging with the Authority in relation to the investigation Mr Burdett failed to co-operate fully and did not respond to attempts by the Authority to contact him between November 2017 and November 2021.

5. FAILINGS

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

Performance of a controlled function without approval

5.2. On the basis of the facts above the Authority considers that, during the Relevant Period, Mr Burdett knew that he was performing the Director Function without the required approval for the purposes of section 63A(1) of the Act.

Lack of fitness and propriety

5.3. An individual may lack integrity where they act recklessly. A person acts recklessly when they act with respect to: (i) a circumstance when they are aware of a risk that exists or will exist; and (ii) a result when they are aware of a risk that will occur; and it is in the circumstances known to them, unreasonable to take that risk.

5.4. As a result of the matters described above, the Authority considers that Mr Burdett is not a fit and proper person. In particular, Mr Burdett:

(1) was responsible for and controlled the investment advice provided by Synergy. Mr Burdett knew that Synergy was advising pension holders (most of which did not want high risk investments) to switch their pensions into the Model Portfolios and that 40% of their pension funds would be invested in the Developer Investments. The Developer Investments were obviously high risk, which risk was compounded by the risks arising from a 40% allocation to them. The provision of the investment advice was reckless;

(2) recklessly caused the Adviser to issue to pension holders the misleading Risk Profile and Retirement Planning Reports;

(3) recklessly gave others at SWUK and Synergy with compliance responsibilities misleading information about the investments that pension holders would be making;

(4) recklessly instructed the Adviser to consider only whether a SIPP was suitable for a pension holder, without considering the suitability of the underlying assets within the Model Portfolios; and

(5) performed the Director Function at Synergy knowing that the Authority's approval was required but had not been given.

6. SANCTION

Financial Penalty

6.1. The Authority considers it is appropriate to impose a penalty on Mr Burdett under section 63A(1) of the Act because he performed the Director Function and knew that he was doing so without the required approval from the Authority.

6.2. The penalty assessment set out below has been performed with regard to section 63A of the Act and Mr Burdett's knowing performance of a controlled function without approval.

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

Step 1: disgorgement

6.4. 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.

6.5. Mr Burdett derived direct financial benefit from performing the Director Function without approval in the form of three £50,000 dividend payments from Synergy in September and October 2016 i.e. a total of £150,000. Mr Burdett did not receive any other remuneration for his work at Synergy during this period. The Authority considers that Mr Burdett would not have received these dividends if he had not performed the Director Function, which included controlling Synergy's advice recommending pension switches into the Westbury SIPP with its 40% allocation to the Developer Investments.[37] The Westbury SIPP was the only product Synergy advised pension holders to switch their pensions into.[107]

6.6. In accordance with DEPP 6.5B.1G, the Authority has decided to charge interest on Mr Burdett's benefit at the Bank of England's monthly interest rate for UK financial institutions for instant access sterling deposits between October 2016 and July 2022 amounting to £22,662.56.

6.7. Step 1 is therefore £172,662 (rounded down to the nearest £1).

Step 2: the seriousness of the breach

6.8. 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.

6.9. Pursuant to DEPP 6.5B.2G(2), where the breach lasted less than 12 months, the relevant income will be that earned by the individual in the 12 months preceding the end of the breach.

6.10. The period of Mr Burdett's performance of the Director Function without approval was from 10 February 2016 (when Synergy became SWUK's Appointed Representative) to 1 December 2016. The Authority therefore considers the relevant income to be that earned by Mr Burdett in the 12 months preceding 1 December 2016. The Authority considers the £150,000 in dividend income to Mr Burdett to be relevant income. As noted in paragraph 6.5 the Authority considers that Mr Burdett would not have received these dividends if he had not performed the Director Function. He received no other remuneration from Synergy for performing the Director Function.

6.11. Mr Burdett was appointed as a director of Synergy on 29 January 2016. Consistent with DEPP 6.5B.2G(2), as Mr Burdett was a director for less than 12 months prior to 1 December 2016, his relevant income has been calculated on a pro rata basis to the equivalent of 12 months' relevant income. The Authority therefore considers Mr Burdett's relevant income under step 2 to be £178,338.76.

6.12. In deciding on the percentage of the relevant income that forms the basis of the Step 2 figure, the Authority considers the seriousness of the breach and 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%

6.13. In assessing the seriousness level, the Authority takes into account various factors which reflect the nature and impact of the breach, and whether it was committed deliberately or recklessly. The Authority considers that pension holders would not have been exposed to the significant and unacceptable risk of loss detailed in this Notice if Mr Burdett had not performed the Director Function at Synergy. The Authority considers the following factors to be relevant:

<u>Impact of the breach</u>

6.14. DEPP 6.5B.2.2G(8) lists factors relating to the impact of a breach committed by an individual.

6.15. Mr Burdett gained significant financial benefit from the breach (DEPP 6.5B.2G(8)(a).

6.16. Mr Burdett's breaches caused a significant and unacceptable risk of loss to a large number of pension holders who switched in excess of £10 million to the Westbury SIPP. As a result of Mr Burdett's breaches, the FSCS has paid over £1.4m compensation to over 100 pension holders advised by Synergy. Synergy advised that 339 pension funds, worth in excess of £16 million, be switched into the Model Portfolios. The reason only 232 were allocated to a Model Portfolio was because SWUK instructed Synergy to stop processing pension switches. The impact of Mr Burdett's breaches would have been significantly greater if SWUK had not intervened. The value of someone's pension can have a significant impact on their quality of life during retirement and, in some circumstances, may affect whether they can afford to retire at all (DEPP 6.5B.2G(8)(c)).

6.17. Mr Burdett's breaches caused inconvenience and potentially distress to pension holders who switched to the Westbury SIPP (DEPP 6.5B.2G(8)(e)).

Nature of the breach

6.18. DEPP 6.5B.2.2G(9) lists factors relating to the nature of a breach committed by an individual.

6.19. Mr Burdett's breaches occurred continually and over an extended period of time (DEPP 6.5B.2G(9)(a) and (b)).

6.20. Mr Burdett failed to act with integrity (DEPP 6.5B.2G(9)(e)).

6.21. Mr Burdett was an experienced industry professional (DEPP 6.5B.2G(9)(j)).

6.22. Mr Burdett held a senior position at Synergy as one of its two directors (DEPP 6.5B.2G(9)(k)).

6.23. Mr Burdett's misconduct was not only to perform a controlled function without approval. Mr Burdett also demonstrated that he is not a fit and proper person for the reasons set out in paragraph 5.4 above (DEPP 6.5B.2G(9)(p)).

6.24. Mr Burdett committed misconduct in respect of which, if he had been approved to perform the Director Function at Synergy, the Authority would have been empowered to take action pursuant to section 66 of the Act (DEPP 6.5B.2G(9)(q)).

6.25. Mr Burdett knew that he was performing a controlled function without approval for the reasons detailed in paragraph 4.16 above (DEPP 6.5B.2G(9)(r)).

Deliberate and reckless misconduct

6.26. DEPP 6.5B.2G(10) and (11) list factors tending to show whether the breach was deliberate or reckless. The Authority considers that the factors tending to show the breach was deliberate are present in this case (DEPP 6.5B.2G(10)) and reckless (DEPP 6.5B.2G(11)).

Level of seriousness

6.27. 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 Burdett's breach of acting as a director without the Authority's approval, knowing he should not do so, was committed deliberately (DEPP 6.5B.2G(12)(g);

(2) Mr Burdett's breaches (with regard to the matters set out in paragraphs 5.5(1) to (4)) caused a significant risk of loss to a large number of pension holders (DEPP 6.5B.2G(12)(a));

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

(4) Mr Burdett's breaches (with regard to the matters set out in paragraphs 5.5(1) to (4)) were committed recklessly (DEPP 6.5B.2G(12)(g)).

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

6.29. 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 £178,338.76.

6.30. Step 2 is therefore £53,501.62.

Step 3: mitigating and aggravating factors

6.31. 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.

6.32. There are no mitigating factors.

6.33. The Authority considers that pension holders would not have been exposed to the significant and unacceptable risk of loss detailed in this Notice if Mr Burdett had not performed the Director Function at Synergy and that the following factors aggravate the breach:

(1) He had been an approved person as he was a CF30 (customer function) at SWUK. Mr Burdett was subsequently aware that he was the subject of an investigation by the Authority. After initially engaging with the Authority in relation to the investigation, Mr Burdett failed to co-operate and did not respond to attempts by the Authority to contact him between November 2017 and November 2021 (DEPP 6.5B.3G(2)(b)).

(2) The Authority had previously issued an alert on investing pension monies into unregulated products through a SIPP, in which it specified a model similar to the customer journey in this case as well as naming overseas property developments as an example of a concerning investment. Following this, a second alert was issued after further Supervisory work on the issue which stated that pension switches to SIPPs intended to hold non-mainstream propositions are unlikely to be suitable options for the vast majority of retail customers (DEPP 6.5B.3G(2)(k)).

6.34. Having taken into account these aggravating factors, the Authority considers that the Step 2 figure should be increased by 30%.

6.35. The Step 3 figure is therefore £69,552.11.

Step 4: adjustment for deterrence

6.36. 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.

6.37. The Authority considers that the Step 3 figure of £69,552.11 does not represent a sufficient deterrent to Mr Burdett and others, and so has increased the penalty at Step 4 by a factor of 2.

6.38. The Step 4 figure is therefore £139,104.22. This is rounded down to £139,100.

Step 5: settlement discount

6.39. The Authority and Mr Burdett have not reached agreement to settle and so no discount applies to the Step 4 figure.

6.40. The Step 5 figure, after including disgorgement of £172,662, is therefore £311,762.

Penalty

6.41. The Authority has decided to impose a total financial penalty of £311,762 on Mr Burdett because, during the Relevant Period, he performed the Director Function knowing that he was doing so without approval from the Authority.

Prohibition Order

6.42. The Authority has the power to prohibit individuals under section 56 of the Act. The Authority has had regard to EG 9 and FIT 2, including the criteria at EG 9.3.2 and FIT 2.1.3 of the Handbook, in considering whether to impose a prohibition order on Mr Burdett.

6.43. 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 Burdett's fitness and propriety, his reckless and knowing misconduct displaying a lack of integrity and disregard for customers' interests and the regulatory system, and the severity of the risk which Mr Burdett poses to consumers and to confidence in the financial system. Given the nature and seriousness of the failings outlined above, the Authority considers that Mr Burdett acted deliberately (with regard to his performance of the Director Function at Synergy without the Authority's approval) and recklessly (with regard to the matters set out in paragraphs 5.5(1) to (4)) and thus without integrity.

6.44. The Authority considers that Mr Burdett is not a fit and proper person to perform any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm. The Authority considers that it is therefore appropriate and proportionate in all the circumstances to impose a prohibition order on Mr Burdett under section 56 of the Act in those terms.

7. REPRESENTATIONS AND EXPEDITED REFERENCE

7.1. Through the Warning Notice, the Authority gave notice that it proposed to take the action described above and Mr Burdett was given the opportunity to make representations to the Authority about that proposed action.

7.2. However, following receipt of the Warning Notice, and pursuant to DEPP 5.1.8I G (1), Mr Burdett notified the Authority that, in relation to the substance of the Warning Notice, he wished to use the expedited reference procedure; this procedure enables a person subject to enforcement action to challenge the action proposed in a warning notice before the Tribunal without engaging with the Authority's internal decision-making process. In accordance with DEPP 5.1.8G G(2), Mr Burdett also gave notice that he waived and would not exercise any rights under section 387(2) of the Act in respect of the Warning Notice. Representations were not made by any of the third parties referred to in paragraph 8.9 of this Notice.

7.3. The Authority has therefore decided to take the action set out above,

8. PROCEDURAL MATTERS

8.1. This Notice is given to Mr Burdett under sections 57 and 63B and in accordance with section 388 of the Act.

8.2. The following statutory rights are important.

Decision maker

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

https://www.fca.org.uk/about/committees/regulatory-decisions-committee-rdc

The Tribunal

8.4. Mr Burdett 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 Burdett has 28 days from the date on which this Notice is given to it to refer the matter to the Tribunal. A reference to the Tribunal is made by way of a signed reference notice (Form FTC3) filed with a copy of this Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, Fifth Floor, Rolls Building, Fetter Lane, London EC4A 1NL (tel: 020 7612 9730; email fs@hmcts.gsi.gov.uk). Further information on the Tribunal, including guidance and the relevant forms to complete, can be found on the HM Courts and Tribunal Service website:

http://www.justice.gov.uk/forms/hmcts/tax-and-chancery-upper-tribunal

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

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

Access to evidence

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

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

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

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

There is no such secondary material.

Third party rights

8.9. A copy of this Notice is being given to the following persons 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 reference to the Tribunal and access to material in relation to the matter which identifies them:

(1) Westbury Private Clients LLP;

(2) Strategic Wealth UK Limited;

(3) the Adviser; and

(4) Mr James Paul Goodchild.

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). Section 391 of the Act provides that a person to whom this Notice is given or copied may not publish the Notice or any details concerning it unless the Authority has published the Notice or those details.

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

Authority contact

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

John A Hull
Deputy Chair, Regulatory Decisions Committee

Annex A - RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. Relevant Statutory Provisions

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

1.2. Section 39 of the Act makes provision concerning Appointed Representatives of authorised firms.

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

1.4. Section 59 and Part V of the Act makes provision concerning the performance by individuals of controlled functions at authorised firms.

1.5. Section 63A of the Act provides that if the Authority is satisfied that a person ("P") has at any time performed a controlled function without approval and at that time P knew, or could reasonably be expected to have known, that P was performing a controlled function without approval, it may impose a penalty on P of such amount as it considers appropriate. For the purposes of this section P performs a controlled function without approval at any time if at that time P performs a controlled function under an arrangement entered into by an authorised person ("A"), or by a contractor of A, in relation to the carrying on by A of a regulated activity; and the performance by P of the function was not approved under section 59.

2. Relevant Regulatory Provisions

The Fit and Proper Test for Approved Persons

2.1. The part of the Authority's Handbook entitled "The Fit and Proper Test for Approved Persons" ("**FIT**") sets out the criteria that the Authority will consider when assessing the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an approved person. The Authority has had regard to FIT, including the criteria identified in FIT 2.1.3.

2.2. FIT 2.1.3 provides that the matters to which the Authority will have regard include but are not limited to:

(5) whether the person has contravened any of the requirements and standards of the regulatory system;

(13) whether, in the past, the person has been candid and truthful in all their dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards.

Enforcement Guide

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

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

(2) Whether the individual is fit and proper to perform functions in relation to regulated activities;

(5) The relevance and materiality of any matters indicating unfitness;

(8) The severity of the risk which the individual poses to consumers and to confidence in the financial system.

Decision Procedure and Penalties Manual ("DEPP")

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

Supervision manual ("SUP")

2.6. SUP sets out the relationship between the Authority and authorised persons and includes in SUP 10A rules and guidance in respect of the Director Function.

2.7. SUP 10A.1, 10A.4 and 10A.6 contained rules and guidance (inter alia) in respect of the application of controlled functions to Appointed Representatives, the nature of the controlled functions and the nature of the Director Function.

The Handbook's Glossary

2.8. For the purposes of SUP 10A, a "director" is defined in the Handbook's Glossary as, in relation to (among other things) a body corporate:

(1) Any person appointed to direct its affairs, including a person who is a member of its governing body; and

(2) In accordance with section 417(1) of the Act:

   (a) A person occupying in relation to it the position of a director (by whatever name called); and

   (b) A person in accordance with whose directions or instructions (not being given in a professional capacity) the directors of that body are accustomed to act.

Annex B – TABLE WITH DETAILS OF RISK PROFILE SCORES 3-9

Risk Profile Score	Name	Description in Risk Profile Report	No. pension holders	Asset mix recommended in Risk Profile Reports for this Risk Profile Score
3	Low risk	• Your attitude to accepting risk is 'low'. • While you are likely to be concerned with not getting as much back from your investments as you put in, you may also want to make higher returns on your investments. • Your preferred investments are likely to be mainly lower- or medium-risk investments such as cash, bonds or property, with a few higher-risk investments such as shares.	2	Cash (10%) UK Corporate Bonds (23%) UK Index Linked (7%) International Bonds (7%) UK Gilts (16%) Global High Yield Bonds (5%) UK Equities (15%) North American Equities (9%) UK Commercial Property (8%)
4	Lowest medium risk	• Your attitude to accepting risk is 'lowest medium'. • While you are likely to be concerned with not getting as much back from your investments as you put in, you may also want to make higher returns on your investments. • Your preferred investments are likely to be mainly lower- or medium-risk investments such as cash, bonds or property, with typically fewer higher-risk investments such as shares.	15	Cash (5%) UK corporate bonds (27%) UK index linked (5%) UK gilts (8%) Global high yield bonds (6%) UK equities (22%) Europe ex UK Equities (5%) North American equities (9%) Japan equities (5%) UK commercial property (8%)
5	Medium risk	• Your attitude to accepting risk is 'medium'. • While you are likely to be concerned with not getting as much back from your investments as you put in, you also probably want to make higher returns on your investments. • Your preferred investments are likely to include a balanced mix of lower- and medium-risk investments such as cash, bonds and property, and higher-risk investments such as shares.	48	UK Corporate Bonds (24%) UK Gilts (5%) Global High Yield Bonds (6%) UK Equities (28%) Europe ex UK Equities (5%) North American Equities (14%) Japan Equities (5%) Asia Pacific ex Japan Equities (6%) UK Commercial Property (7%)

6	High medium risk	• "Your attitude to accepting risk is 'high medium'. • While you are likely to be concerned with not getting as much back from your investments as you put in, you also want to make higher returns on your investments. • Your preferred investments are likely to include mainly higher-risk investments such as shares and typically some lower-and medium-risk investments such as cash, bonds and property."	63	UK Corporate Bonds (19%) Global High Yield Bonds (5%) UK Equities (31%) Europe ex UK Equities (5%) North American Equities (9%) Japan Equities (5%) Asia Pacific ex Japan Equities (10%) Emerging Market Equities (11%) UK Commercial Property (5%)
7	Highest medium risk	• Your risk is 'highest medium'. • Your priority is likely to be making higher returns on your investments but you are still probably concerned about losing money due to rises and falls. • Your preferred investments are likely to contain mainly higher-risk investments such as shares with a few lower- and medium-risk investments such as bonds and property.	79	UK Corporate Bonds (5%) Global High Yield Bonds (5%) UK Equities (35%) Europe ex UK Equities (5%) North American Equities (7%) Japan Equities (5%) Asia Pacific ex Japan Equities (16%) Emerging Market Equities (17%) UK Commercial Property (5%)
8	High risk	• Your attitude to accepting risk is 'high'. • Your priority is likely to be making higher returns on your investments but you are still probably concerned about losing money due to rises and falls. • Your preferred investments are likely to contain mainly higher-risk investments such as shares with the occasional lower-and medium-risk investments such as bonds and property.	24	Global high yield bonds (5%) UK equities (23%) Europe ex UK equities (5%) North American equities (5%) Japan equities (5%) Asia Pacific ex Japan equities (22%) Emerging market equities (30%) UK commercial property (5%)
9	Very high risk	• Your attitude to accepting risk is 'very high'. • Your priority is likely to be making higher returns on your investments and so you accept that you may not get as much back from your investments as you put in. • Your preferred investments are likely to contain a large percentage of higher-risk investments such as shares.	1	UK Equities (16%) Europe ex UK Equities (5%) North American Equities (5%) Japan Equities (5%) Asia Pacific ex Japan Equities (26%) Emerging Market Equities (43%)