

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

Therefore, the findings outlined in this Decision Notice reflect the FCA's belief as to what occurred and how it considers the behaviour of Toni Fox 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.



12 Endeavour Square
London
E20 1JN

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

DECISION NOTICE

To: **Toni Fox**

Reference
Number: **TXF00003**

and

To: **CFP Management Ltd (in Liquidation)**

Firm
Reference
Number: **571695**

Date: **3 May 2023**

1. ACTION

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

- (1) impose on Toni Fox a financial penalty of £681,536 pursuant to section 66 of the Act;

- (2) make an order prohibiting Ms Fox from performing any function in relation to any regulated activity carried on by an authorised person, exempt person, or exempt professional firm, pursuant to section 56 of the Act; and
- (3) withdraw the approvals given to Ms Fox to perform the SMF 3 (Executive Director) and SMF 16 (Compliance Oversight) senior management functions at CFP Management Ltd, pursuant to section 63 of the Act.

1.2. The Authority would have proposed to impose a financial penalty of £837,636, consisting of £681,536 disgorgement and £156,100 as the punitive element. However, as Ms Fox has provided verifiable evidence that payment of the full amount of the financial penalty would cause her serious financial hardship, the Authority has decided to reduce the financial penalty to £681,536, being the disgorgement figure of £473,289 plus interest.

2. SUMMARY OF REASONS

2.1. The Authority expects individuals in senior management roles at authorised firms to act with integrity when managing the business for which they are responsible. When individuals in these roles at a financial advice firm fail to act with integrity, the firm's clients are exposed to a significant risk of financial detriment.

2.2. Ms Fox was appointed as a director at CFP Management Ltd ("CFP") on 28 March 2011. By the time of this appointment, she had worked in the pensions industry for over 30 years. During the period from 21 April 2015 to 31 October 2017 (the "Relevant Period"), Ms Fox was approved by the Authority to perform the controlled functions of CF1 (Director), CF10 (Compliance Oversight) and CF30 (Customer) at CFP. Ms Fox was also a Pension Transfer Specialist.

2.3. Ms Fox was a director at both CFP and its Appointed Representative, Company B. During the Relevant Period, CFP and Company B operated a seriously flawed Pension Transfer advice model (the "Pension Transfer Model") designed by Ms Fox. Under the Pension Transfer Model, customers were advised about the transfer of their safeguarded pension benefits from a Defined Benefit Pension Scheme into an alternative pension arrangement. The process was designed without the appropriate safeguards in place to ensure that the advice was suitable. As a result, the Pension Transfer Model put CFP's clients at risk of receiving unsuitable pension transfer advice. This risk crystallised in that a large proportion

of the advice given by CFP was unsuitable. Much of this unsuitable advice was given or signed off by Ms Fox herself.

- 2.4. CFP gave 1497 pieces of advice in relation to Defined Benefit Pension Transfers using the flawed Pension Transfer Model. A recommendation to transfer was given in 1484 instances and in 1470 instances this recommendation was followed. The total value of Defined Benefit Pension Transfers on which CFP advised under the Pension Transfer Model was £395,389,646. The total value that culminated in a transfer was £392,071,572.
- 2.5. On 2 September 2021, CFP entered into liquidation. The FSCS subsequently declared CFP in default and is investigating claims made by CFP's clients who were advised under the Pension Transfer Model.

Background to the Misconduct

- 2.6. Pensions are a traditional and tax-efficient way of saving money for retirement. The benefits someone obtains from their pension can have a significant impact on their quality of life during retirement and, in some circumstances, can affect when an individual can retire. A Defined Benefit Pension Scheme is particularly valuable because it offers a secure, guaranteed income for life to members, which typically increases each year in line with inflation. Given the valuable benefits offered by Defined Benefit Pension Schemes, since 1 November 2007 and throughout the Relevant Period, the Authority's Handbook has contained guidance stating that a firm should only recommend a transfer if it can clearly demonstrate, based on contemporaneous evidence, that the transfer is in the customer's best interests.
- 2.7. Customers who engage advisers and authorised firms to provide them with advice in relation to their pensions place significant trust in them. It is therefore of paramount importance that firms comply with regulatory requirements, ensuring that the advice given to a customer is suitable for them, having regard to all of the relevant circumstances.

Ms Fox's Misconduct

- 2.8. As a regulated firm and as Company B's principal, CFP was ultimately responsible for the management and oversight of Company B and for the suitability of the advice given by Company B. Ms Fox designed the process for the provision of advice from CFP to Company B's customers. In addition to her role as director

(CF1), in her capacity as CF10 (Compliance Oversight), she was responsible for ensuring that this advice complied with the Authority's rules.

2.9. The Authority considers that Ms Fox failed to comply with Statement of Principle 1 during the Relevant Period in that she failed to act with integrity in carrying out her CF1 (Director) and CF10 (Compliance Oversight) controlled functions at CFP.

2.10. Ms Fox's actions in relation to the design and operation of the Pension Transfer Model were reckless. Specifically, Ms Fox recklessly designed, implemented and oversaw an advice process that:

(a) lacked the requisite safeguards to ensure that CFP's Pension Transfer Specialists only provided Defined Benefit Pension Transfer advice when they had gathered sufficient information to do so. The Authority reviewed 21 files, of which 14 contained Material Information Gaps, meaning that it was not possible to assess whether the Firm's advice was suitable for the client. Information collection was not compliant with the Authority's rules in 18 of the 21 files reviewed;

(b) enabled CFP's Pension Transfer Specialists to issue Suitability Reports without having properly considered their clients' financial circumstances and objectives, attitude to risk and capacity for loss. In particular, CFP's Pension Transfer Specialists:

- i. failed to give due consideration to whether clients could financially bear the risks involved in a Pension Transfer;
- ii. placed undue reliance on their clients' stated objectives regardless of whether they were realistic or financially viable. They failed to weigh those objectives against the benefits of remaining in the clients' Defined Benefit Pension Scheme, and failed to investigate or determine whether those objectives could be met by remaining in the current scheme;
- iii. advised clients to transfer even if the transfer analysis did not support the recommendation; and
- iv. advised clients to transfer even when those clients had stated that they wanted the guaranteed income afforded to them within their Defined Benefit Pension Scheme; and

- (c) permitted CFP's Pension Transfer Specialists to issue Suitability Reports that were unclear or misleading. The Authority identified Suitability Reports that:
- i. contained inadequate information about the possible disadvantages of transferring out of a client's Defined Benefit Pension Scheme, when considering the client's specific circumstances and objectives;
 - ii. contained warnings that contradicted the Personal Recommendation to transfer, with no explanation; and
 - iii. contained the prominent and misleading statement: "*It is very important to understand that DB benefits are not guaranteed,*" without sufficient further explanation or context.

2.11. These failures resulted in Pension Transfer Specialists at CFP routinely providing unsuitable or otherwise non-compliant advice to clients. As a qualified Pension Transfer Specialist with 35 years of experience in the pensions industry by the start of the Relevant Period, Ms Fox must have been aware of the unacceptably high risk that the Pension Transfer Model would result in the provision of unsuitable advice. However, Ms Fox recklessly disregarded this risk.

Seriousness

2.12. These flaws in the Pension Transfer Model led to over 99% of clients receiving a recommendation to transfer. This gave rise to a significant risk that many clients transferred out of their Defined Benefit Pension when it was not suitable for them to do so. This was so notwithstanding the Authority's guidance which establishes a general presumption against advising a client to transfer out of their Defined Benefit Pension Scheme (COBS 19.1.6G).

2.13. The Authority considers Ms Fox's failings to be particularly serious because she was responsible for recklessly designing, implementing and overseeing a business model which resulted in 1497 pieces of potentially unsuitable advice on the transfer of safeguarded pension benefits being given. She therefore may have caused detriment to a very large number of clients, some of whom were vulnerable due to their age and financial situation.

2.14. The Pension Transfer Model was lucrative for the parties involved when a recommendation to transfer was followed. Introducers only received a fee when the clients they referred to CFP transferred out of their Defined Benefit Pension Schemes. CFP received at least £1,500 (and up to £20,000) when a

recommendation to transfer was followed, compared with a fee of £500 plus VAT whenever a client decided not to transfer.

- 2.15. Ms Fox's financial benefit from her breach of Statement of Principle 1 was substantial. During the Relevant Period, Ms Fox received £473,289 by way of salary, dividends and pension contributions from CFP.
- 2.16. The Authority considers that Ms Fox's reckless conduct throughout the Relevant Period demonstrates a lack of integrity. For this reason, the Authority considers she is not fit and proper to perform any function in relation to any regulated activity carried on by an authorised person, exempt person, or exempt professional firm. The Authority therefore has decided to make an order prohibiting Ms Fox from performing any such functions at an authorised or exempt firm. The Authority considers that doing so is necessary in order to secure an appropriate degree of protection for consumers. In addition, in light of her lack of integrity and lack of fitness and propriety, the Authority has also decided to withdraw Ms Fox's approval to perform the SMF 3 (Executive Director) and SMF 16 (Compliance Oversight) senior management functions at CFP.
- 2.17. Further, the Authority considers that the nature and seriousness of the breach warrants the imposition of a financial penalty on Ms Fox in the amount of £681,536.

3. DEFINITIONS

- 3.1. The definitions below are used in this Notice:

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

"the 2015 Act" means the Pension Schemes Act 2015;

"APER" means the Statements of Principle and Code of Practice for Approved Persons, part of the Handbook;

"Appointed Representative" is a firm or person who conducts regulated activities and acts as an agent for a firm directly authorised by the Authority;

"the Authority" means the Financial Conduct Authority;

“Ceding Scheme” means the Defined Benefit Pension Scheme from which the member is transferring their benefits;

“CETV” means cash equivalent transfer value, which is the cash value of benefits which have been accrued to, or in respect of, a member of a pension scheme at a particular date. The CETV represents the expected costs of providing the member’s benefits within the scheme and, in the case of a Defined Benefit Pension Scheme, is determined using actuarial assumptions;

“CFP” means CFP Management Limited (in Liquidation);

“COBS” means the Authority’s Conduct of Business Sourcebook, part of the Handbook (as applicable during the Relevant Period);

“Company A” means a company that provides financial planning software to IFAs. Its majority-owned subsidiary, Company B, was CFP’s Appointed Representative.

“Company B” means Company A’s majority-owned subsidiary and CFP’s Appointed Representative.

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

The “Critical Yield” means the rate of return that would have to be achieved in the Defined Contribution Pension Scheme to replicate the benefits of the Defined Benefit Pension Scheme;

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

“Defined Benefit Pension Transfer” means a member of a Defined Benefit Pension Scheme giving up the guaranteed benefits associated with membership

in exchange for a transfer value, which is typically then invested in a Defined Contribution Pension;

“Defined Contribution Pension Scheme” or “Defined Contribution Pension” means a pension where money is paid by an employee or employer into an investment by a pension provider. These investments can also be referred to as a “personal pension”;

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

“EG” means the Authority’s Enforcement Guide;

“Fact Find” is the process of collecting information from a private client to help identify the client’s needs and should include personal and financial circumstances;

“the File Review” means the review carried out by the Authority of 21 of CFP’s Defined Benefit Pension Transfer files;

“FSCS” means the Financial Services Compensation Scheme;

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

“IFA” means independent financial advisers (professional firms or individuals who offer independent financial advice to their clients);

“Introducer” means an authorised financial advice firm that referred its clients to Company B for the purpose of obtaining Defined Benefit Pension Transfer advice;

“Material Information Gaps” refers to the failure to adequately record or collect information regarding a client or the benefits of a proposed scheme;

“Mr Price” means David Brian Price;

“Ms Fox” means Toni Fox;

“Pension Commencement Lump Sum” or “PCLS” means a lump sum of 25% of a pension pot that is withdrawn tax free once pension funds have been crystallised. It is paid after an individual reaches the minimum pension age which is currently 55 years;

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

“Pension Transfer Model” means the Pension Transfer advice model operated by CFP and Company B throughout the Relevant Period;

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

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

“PPF” means Pension Protection Fund, a statutory corporation that protects people with a defined benefit pension when an employer becomes insolvent;

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

“the Relevant Period” means 21 April 2015 to 31 October 2017;

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

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

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

“TVAS” stands for ‘transfer value analysis’ and is the comparison that a firm was required to carry out in accordance with COBS 19 (as in force during the Relevant Period) when it gave advice or a Personal Recommendation about, amongst other things, a Pension Transfer;

“TVAS Report” means a document that reports to the client in respect of the comparison firms were required to carry out in accordance with COBS 19.1.2R (as in force during the Relevant Period);

“VREQ” means a voluntary requirement which is imposed by the Authority on a firm following an application by the firm under section 55L(5) of the Act; and

“the Warning Notice” means the Warning Notice given by the Authority to Ms Fox dated 20 January 2023.

4. FACTS AND MATTERS

Pensions

- 4.1. Pensions are a traditional and tax-efficient way of saving money for retirement. The benefits someone obtains from their pension can have a significant impact on their quality of life during retirement and, in some circumstances, can affect when an individual is able to retire. A Defined Benefit Pension Scheme is particularly valuable because it offers a secure, guaranteed income for life to members, which typically increases each year in line with inflation.
- 4.2. It is possible to “transfer out” of a Defined Benefit Pension. This involves the scheme member giving up the guaranteed benefits associated with membership in exchange for a transfer value, which is typically then invested in a Defined Contribution Pension. Unlike a Defined Benefit Pension, a Defined Contribution Pension does not provide a guaranteed income for its members but sets the payments that are required to be paid into the fund to provide a pension benefit and is itself highly dependent on the performance of the underlying investment. Given the valuable benefits offered by a Defined Benefit Pension Scheme, the Authority’s guidance states that a firm should only recommend a transfer if it can clearly demonstrate on

contemporary evidence that a transfer is in the customer's best interests (COBS 19.1.6G).

- 4.3. Pursuant to section 48 of the 2015 Act, where the value of an individual member's assets in a Defined Benefit Pension Scheme exceeds £30,000, pension providers must ensure members take "appropriate independent advice" before allowing a transfer to proceed. Pension Transfer Specialists are suitably qualified individuals with permission to advise on such Pension Transfers in accordance with the Authority's rules.
- 4.4. Clients who engage advisers and authorised firms to provide them with advice in relation to their pensions place significant trust in them. It is therefore of paramount importance that advisers understand their clients' needs and account for all the relevant individual circumstances and how this might affect the advice provided when advising on the suitability of any Pension Transfer. Where advisers fail to do this, it exposes clients to a significant risk of harm.

Background

Toni Fox

- 4.5. Ms Fox has worked in the financial services industry since 1979. She was appointed director of CFP on 28 March 2011.
- 4.6. Ms Fox is an associate of the Chartered Insurance Institute and a Chartered Financial Planner. She is a qualified Pension Transfer Specialist, with a diploma from the Pensions Management Institute, and holds an Investment Management Certificate, alongside other relevant pension transfer advice qualifications.
- 4.7. Throughout the Relevant Period, Ms Fox was approved by the Authority to perform the controlled functions of CF1 (Director), CF10 (Compliance Oversight) and CF30 (Customer) at CFP. Following the introduction of the Senior Managers and Certification Regime for all firms authorised by the Authority, the controlled functions that Ms Fox was approved to perform were replaced by Senior Management Functions. As a result, from 9 December 2019 Ms Fox has been approved to perform the SMF3 (Executive Director) and SMF16 (Compliance Oversight) senior management functions.

CFP, Company A and Company B

- 4.8. CFP was a firm of insurance brokers and financial advisers. It was first authorised on 1 August 2012 to carry on the regulated activities of, amongst other things, advising on Pension Transfers, advising on investments and arranging (bringing about) deals in investments. Ms Fox held a 50% share in CFP, together with one other shareholder, David Brian Price. Ms Fox and Mr Price were the only directors at CFP. During the Relevant Period, CFP employed between three and six Pension Transfer Specialists.
- 4.9. Company A is a company that provides financial planning software to IFAs. Its majority-owned subsidiary, Company B, was incorporated on 23 August 2012. Company B was established to provide a Defined Benefit Pension Transfer advice service to the clients of financial advice firms that used Company A's software but did not have the necessary permission to provide this service themselves. According to Ms Fox, Company A approached CFP with a proposal to set up a joint venture in which CFP would advise Company B's clients, because Company B's staff were not qualified to do so. Clients would be introduced to Company B by the Introducers which used Company A's software. In this arrangement, CFP held the critical role of providing the advice that allowed the trustees of Defined Benefit Pension Schemes to release Company B's clients' funds.
- 4.10. As part of the joint venture with Company A, CFP became a minority shareholder of Company B. Ms Fox became a director of Company B on 25 June 2014, and on the same date Company B became an Appointed Representative of CFP. Mr Price became a director of Company B on 15 July 2016.
- 4.11. Company B advised on Pension Transfers from Defined Benefit Pension Schemes from April 2015 until 31 October 2017. Company B is now dissolved. CFP commenced insolvency proceedings on 13 April 2021 and is now in liquidation.
- 4.12. During the Relevant Period, through Company B as its Appointed Representative, CFP gave 1497 pieces of advice to clients on the transfer of their safeguarded pension benefits from a Defined Benefit Pension Scheme into an alternative pension arrangement. A recommendation to transfer was given in 1484 instances and in 1470 instances this recommendation was followed.

4.13. The total value of Defined Benefit Pension Transfers on which CFP advised during the Relevant Period was £395,389,646. The total value of Defined Benefit Pension Transfers on which CFP advised in this period that culminated in a transfer was £392,071,572. The average transfer value of transfers that were made following a recommendation was approximately £266,715. Funds were transferred from hundreds of different schemes.

The Pension Transfer Model

4.14. Ms Fox designed the Pension Transfer Model, an advice process through which CFP and Company B provided advice to clients. All advice was given by Pension Transfer Specialists at CFP via Company B as its Appointed Representative.

4.15. In each case Company B would provide an introducer pack to the referring financial advice firm. This contained copies of the introducing adviser agreement (which set out the terms of the relationship between Company B and the Introducer); the client agreement (which contained terms of business, a client services agreement, the fee agreement, and a letter of authority), data gathering forms (which included questions concerning the client's attitude to risk and financial objectives) and an advised case timeline. The Introducer was responsible for providing these documents to the client and returning the completed forms to Company B. It is unclear whether the Introducer was present with the client when they were being completed; however, it was the Introducer who made all initial client contact.

4.16. Each client file would be passed to a senior pensions administrator at CFP who would check to ensure that all the relevant forms and information required by CFP had been provided and that any missing information would be sought, either from the Introducer or the client. An initial letter was then sent by Company B to the client requesting confirmation of the information submitted in the client data gathering form, risk profile and client objectives documents. Once confirmed, this information was used to ascertain the client's risk profile rating using risk profiling software tools.

4.17. A senior pensions administrator at CFP would review the details of the Ceding Scheme arrangement and send a letter requesting any missing information required to complete a TVAS to the trustees of the Ceding Scheme, enclosing the client's signed authority.

4.18. Company B would then produce a TVAS Report using Company A's software. This would be checked by a Pension Transfer Specialist at CFP to determine whether a

transfer was suitable. A draft Suitability Report would then be prepared by one of the Pension Transfer Specialists at CFP, which was then checked by a second Pension Transfer Specialist to ensure agreement with the proposed recommendation.

- 4.19. Where a recommendation was made to transfer, the client would be sent a letter attaching a full Suitability Report, a checklist of documents to be returned, a letter confirming fees, and a confirmation letter listing the client's objectives, which they were requested to sign and return.
- 4.20. Company B offered clients a restricted advice model without ongoing advice. Once advice in relation to the Pension Transfer had been provided and the transfer had been completed, clients were directed back to the relevant Introducer in respect of their ongoing advice needs.

The Charging Model

- 4.21. Company B charged a flat fee of £500 plus VAT for each scheme or policy to be reviewed in order to assess whether it would be in the client's best interests to transfer into a new policy. The client could choose to pay this to Company B directly, or through a product provider via an "adviser charge" if a new policy was set up. If the client decided not to transfer, no further fee was payable. Introducers would not receive a fee where Company B did not recommend a transfer.
- 4.22. If the client decided to proceed with the transfer a further fee would be payable, the exact amount depending on the size of the transfer. For transfer values of less than £50,000 a fee of 5% of the transferred pension would be charged. For transfer values between £50,000 and £100,000 the fee was 4%, and for transfers with a value over £100,000 the fee was 3% and was subject to a maximum fee of £15,000 per scheme and £20,000 per client. Introducer and network fees were deducted from this income, with the remainder split equally between CFP and Company A.
- 4.23. During the Relevant Period, CFP generated £8,890,859 in revenue from the Pension Transfer Model. Once payments to the Introducers, networks and Company A had been made, CFP received £2,528,067.

Supervisory Involvement

- 4.24. On 31 October 2017, following intervention by the Authority, CFP applied to the Authority to request the imposition of a VREQ. This required CFP to cease providing

advice in relation to the transfer or conversion of safeguarded benefits under a pension scheme to flexible benefits. The VREQ was removed on 25 October 2018 on the basis that CFP revised its business model and processes, and limited processing Defined Benefit Transfers to a maximum of six cases per month.

Monitoring and Oversight

- 4.25. Throughout the Relevant Period, Ms Fox held the CF1 (Director) and CF10 (Compliance Oversight) controlled functions and, together with Mr Price was responsible for the oversight of CFP's and Company B's compliance with regulatory requirements. Ms Fox was responsible for ensuring she designed a process that would comply with regulatory requirements. She was also responsible, together with Mr Price, for monitoring that process once it was operational to ensure that it complied with regulatory requirements.
- 4.26. Ms Fox did not implement safeguards to ensure that Pension Transfer Specialists had consulted properly with their clients in the course of making a Personal Recommendation. She did not adequately review management information or Company B's adviser due diligence records, and she did not arrange for the advice to be formally reviewed until over 800 clients had been advised. When Ms Fox did engage a compliance consultant, the file reviews did not address the suitability of the advice.

Design of the Pension Transfer Model

- 4.27. Ms Fox designed the Pension Transfer Model. This included "*setting out how the process might work; how introductions might come in; who dealt with them initially and who dealt with what stage of the process and putting the process together.*"
- 4.28. The Pension Transfer Model did not require Pension Transfer Specialists at CFP to consult or meet with Company B's clients about the information that had been gathered by Introducers unless there appeared to be an issue with it. Ms Fox informed the Authority in interview that Company B's clients were sent a copy of the information gathering forms and asked to confirm that their contents were correct, but she was unable to confirm what proportion of clients would have interacted directly with CFP's Pension Transfer Specialists. This meant that the Pension Transfer Specialists at CFP were reliant upon the information in the client information gathering forms that had been submitted by the Introducers. Due to the flaws in the Pension Transfer Model designed by Ms Fox, CFP did not do comprehensive due

diligence on the Introducers, including reviewing how the Introducers used the questionnaires to obtain information from clients, or whether or not the Introducers actually met directly with the clients. According to Ms Fox, beyond what was contained in the questionnaires completed by the client, she did not know what the Introducer would speak to the client about and she simply assumed that the Introducers were doing a "proper job". The questionnaires themselves contained scant information on the personal circumstances of the client. Even in those cases where there was a free text box for the client to explain their objectives, these were usually restricted to a few short statements referring to "flexibility" or "death benefits" but without there being any meaningful discussion of how these objectives compared with other expectations and in particular with the expectation for the client to have a livelihood in retirement.

- 4.29. Throughout the Relevant Period, COBS rules required CFP to take reasonable steps to ensure that its clients understood its advice (COBS 19.1.2R(4)). However, the Pension Transfer Model did not require Pension Transfer Specialists at CFP to consult with Company B's clients about the proposed Personal Recommendation. Instead, clients would be sent a letter with an enclosed Suitability Report and asked to confirm their objectives by way of a written response. This was no more than a tick box exercise. The confirmation letter was prewritten by Company B and only required the client to sign "on the dotted line". Based on this, the Pension Transfer Specialist had no way of making sure that the client understood the implications of the advice and that with a view to those implications, the transfer was in the client's best interest. In some instances, this meant that the clients would become considerably worse off financially in exchange for being able to achieve vague and/or very short-term objectives.
- 4.30. When asked in interview how Pension Transfer Specialists at CFP would identify vulnerable customers, or customers with a very low level of financial knowledge or investment experience, Ms Fox stated that this would be established using the data gathering forms submitted by the Introducer and that the client's investments and pensions give "a good indication" of their level of knowledge. CFP was therefore heavily reliant on Introducers to identify those clients who might struggle to understand CFP's advice.
- 4.31. Throughout the Relevant Period, Ms Fox was aware that the Authority's guidance (COBS 19.1.6G) stated that a firm advising on Defined Benefit Pension Transfers should start by assuming a transfer will not be suitable for its client and should only

consider a transfer to be suitable if it can be clearly demonstrated, on contemporary evidence, that a transfer is in the client's best interest. Ms Fox's explanation in interview for why the overwhelming majority of CFP's clients were advised to transfer was that they had already been through a "free screening triage process" with their financial adviser before obtaining advice from CFP. However, Ms Fox knew that these financial advisers were referring their clients to Company B because they were not authorised to advise clients on Defined Benefit Pension Transfers. CFP's duty to ascertain whether a Defined Benefit Pension Transfer would be suitable for individual clients could not be delegated to Introducers. It must have been obvious to Ms Fox that referrals in themselves were not an indication that a recommendation to transfer would be suitable for the clients concerned and that, amongst other things, the Material Information Gaps in the information collected by the Introducers (see paragraph 4.64 below) meant that the Pension Transfer Model presented a risk that clients would receive unsuitable Pension Transfer advice as a result.

- 4.32. By August 2017, Company B had received referrals from 770 Introducers. Whenever a client referred by an Introducer decided not to transfer, that Introducer would not receive a fee. Similarly, CFP received a fee of £500 plus VAT whenever a client decided not to transfer, compared with at least £1,500 (and up to £20,000) when a recommendation to transfer was followed. There was therefore a risk that both the Introducers and CFP would recommend a transfer due to the potential financial rewards if that recommendation was followed. In these circumstances, the lack of safeguards requiring CFP's Pension Transfer Specialists to consult with Company B's clients meant those clients were exposed to an unreasonable risk that they would be advised to transfer when a transfer was not in their best interests.
- 4.33. By creating and implementing a system whereby CFP's Pension Transfer Specialists were not required to consult with the recipients of their advice, Ms Fox oversaw an accelerated advice process which maximised profits for CFP and the Introducers, at the expense of having adequate safeguards in place to ensure that the advice given to clients was suitable. This allowed Company B to process a large number of transfers and resulted in CFP putting clients at risk of receiving unsuitable Pension Transfer advice. This risk crystallised in a large proportion of the pieces of advice given by CFP.

Compliance Reviews

- 4.34. By May 2017, CFP's target was to sign off 50 suitability reports per week. Given the very high volume of Defined Benefit Pension Transfer advice provided by a limited

number of staff at CFP during the Relevant Period, it was important that CFP took appropriate steps to check the quality of its advice. It was also important for CFP to take appropriate action where the required standards were not being met. Despite this, monitoring within the firm was very informal. Ms Fox told the Authority that she, Mr Price and another Pension Transfer Specialist completed checks on each other's files, but the Authority has seen no evidence to suggest that any issues had been identified in this manner. The third Pension Transfer Specialist told the Authority that he only checked his colleagues' cases when his workload permitted it, and that he rarely received feedback on his own advice.

- 4.35. CFP employed three more Pension Transfer Specialists during the Relevant Period (bringing the total number of Pension Transfer Specialists to six), who were responsible for checking all TVAS Reports, and preparing and checking all Suitability Reports. Given the volume of business undertaken during the Relevant Period, the Authority considers that this could only be achieved by the process minimising the time a Pension Transfer Specialist spent on each case rather than ensuring that they acted in the clients' best interest.
- 4.36. Ms Fox told the Authority, in interview, that every file underwent a compliance check in the form of a checklist that was retained on client files.
- 4.37. An external compliance consultant was appointed by CFP in January 2017, by which point over 840 Suitability Reports had been issued. Ms Fox claimed that this compliance consultant was engaged to conduct file reviews on a quarterly basis. However, there is no evidence that any such reviews were conducted in the Relevant Period after February 2017.
- 4.38. Ms Fox stated to the Authority that the reviews completed by the compliance consultant, engaged in January 2017, were conducted over half a day across a sample of around eight or nine files.
- 4.39. The compliance consultant reviewed the processes adopted by Company B and the documentation issued to clients. They also assessed initial disclosure and checked the Introducer and client agreements. Their reports do not explicitly consider the suitability of the advice.

- 4.40. Given the short period of time within which these reviews were conducted, the Authority considers it unlikely that they were robust enough to test compliance with the Authority's requirements regarding suitability and disclosure.
- 4.41. Each of the consultant's file reviews stated that the file "*was consistent with the process adopted by the firm*" and that the client had been provided with "*comprehensive Pension Transfer Reports... which detailed the benefits which will be lost by transferring and, thus, the transfers would not be advisable but to meet [the client's] overall objectives a transfer would be in [the client's] best interest.*"
- 4.42. One of the files selected for review by the Authority had also been reviewed by the compliance consultant (Client A, described at paragraph 4.63 below). The compliance consultant's review included the paragraph quoted above, with a recommendation that no further action was required. This was contrary to the Authority's own findings in respect of that file, which was assessed as non-compliant due to Material Information Gaps.
- 4.43. The Authority's review established that one of the client's objectives was to pay off their mortgage and carry out home improvements, yet no information was obtained regarding the mortgage repayments, the outstanding mortgage term and the cost of home improvements. Despite these concerns, the compliance consultant's review for this file concluded that "*the file was consistent with the process adopted by the firm*" and recommended that no further action was required.
- 4.44. The consultants did, however, identify the following key concerns:
- (a) the risk profile questionnaire and risk assessment process were not considered to be sufficiently robust: reliance was placed on the risk profiling tool rather than a detailed discussion with the client about their understanding of risk and capacity for loss; and
 - (b) Suitability Reports omitted important information: for example, they neglected to include the potential for loss of income or growth in the event of a rise in the markets while the Pension Transfer remained pending. Where a recommendation was made to invest in a property fund, there were no warnings that the client may not have immediate access to their benefits.
- 4.45. The Authority noted that there was little evidence that the compliance consultant's recommendations to address these concerns were followed.

The File Review

- 4.46. The Authority reviewed a representative sample of 21 pieces of advice provided by CFP to clients during the Relevant Period. The Authority undertook the File Review to assess whether:
- (a) CFP had collected the necessary information to assess whether a Pension Transfer was suitable for the client;
 - (b) CFP's advice to transfer was suitable;
 - (c) The investment recommended by CFP was suitable; and
 - (d) CFP had provided adequate disclosure to the client such that they could make an informed decision on whether to proceed with CFP's recommendation.
- 4.47. The File Review found that, across all 21 files, suitable advice was given in just two instances (9%). Unsuitable Pension Transfer advice was given in 5 files (24%) and the remaining 14 files (67%) could not be assessed due to material information collection failings. Information collection was not compliant with the Authority's rules in 18 of the 21 files reviewed. The File Review therefore found that 19 files (approximately 90%) contained either unsuitable Pension Transfer advice or Material Information Gaps rendering an assessment of suitability impossible.
- 4.48. These results, coupled with the fact that over 99% of clients received a recommendation to transfer, lead the Authority to conclude that there is a significant risk that a substantial number of Company B's clients transferred out of their Defined Benefit Pension when it was not suitable for them to do so.

Information Collection Failings

- 4.49. The overarching suitability requirement is for a firm to take reasonable steps to ensure that a Personal Recommendation, which in this context includes a recommendation to transfer or not transfer out of a Defined Benefit Pension Scheme, is suitable for its client (COBS 9.2.1(R)).
- 4.50. A firm must obtain the necessary information regarding the client's knowledge and experience in the investment field relevant to the Pension Transfer, the client's financial situation and the client's investment objectives (COBS 9.2.2R(1)). If a firm does not obtain the necessary information to assess suitability, then it must not

make a Personal Recommendation (COBS 9.2.6R). Making a Personal Recommendation without the necessary information increases the risk of providing unsuitable advice.

4.51. The File Review established that there were Material Information Gaps in 14 of the 21 files reviewed, which prevented an assessment of suitability from being made.

4.52. Where Material Information Gaps were identified, these included failures to:

- (a) collect sufficient detail regarding the client's income and expenditure, both at the time the advice was provided and in relation to projected needs in the future;
- (b) collect personalised investment and retirement objectives;
- (c) obtain financial circumstances regarding the client's spouse;
- (d) obtain state pension income forecasts;
- (e) collect the level of other pension entitlements;
- (f) confirm the clients' retirement age and instead proceeding on an assumption; and
- (g) obtain sufficient detail regarding clients' health, where this was connected to their objectives.

4.53. This information is essential to ensure that a recommendation meets a client's investment objectives and is appropriate for the client's level of knowledge and experience of investments. It is also essential to ensure the client is able to financially bear any risks associated with the proposed investment (COBS 9.2.2R(1)).

4.54. The Pension Transfer Specialists at CFP were reliant on the information provided to them in the client information gathering forms and attitude to risk questionnaires obtained by the Introducers. These documents failed to capture all the information required to enable Company B to provide a suitable Personal Recommendation. The client information, as evidenced in the majority of files, was basic in nature, with very little by way of detailed information relating to the clients' needs, circumstances and financial arrangements.

4.55. According to Ms Fox, Pension Transfer Specialists at CFP would not routinely make explicit requests to clients regarding important matters, such as the reason(s) behind the clients' objectives, their likely expenditure in retirement or their spouses' provisions for retirement. It is essential for a Pension Transfer Specialist to obtain this information before making a Personal Recommendation (COBS 9.2.1R(2)). Ms Fox failed to ensure this information was collected, with the result that the clients' capacity for loss was insufficiently assessed.

Unsuitable Advice to Transfer

4.56. Of the 21 files reviewed as part of the File Review, 14 could not be assessed for suitability of advice due to Material Information Gaps (67%). Of the remaining seven files, the File Review found that five contained unsuitable advice to transfer (71%).

4.57. The File Review found the following instances of unsuitability:

- (a) clients being advised to transfer out of their Defined Benefit Pension Schemes despite being reliant on that income and not having the capacity for loss;
- (b) clients being advised to transfer even if the transfer analysis did not support the recommendation;
- (c) clients being advised to transfer despite wanting the guaranteed income afforded to them within their Defined Benefit Pension Scheme; and
- (d) failure to explore alternative options to a transfer, which may have been sufficient to meet the client's objectives. For example, a life insurance policy may have been appropriate where a client identified lump sum death benefits as being one of their objectives, but instead Ms Fox recommended that the client transfer out of their Defined Benefit Pension Scheme.

4.58. There is little evidence that Pension Transfer Specialists at CFP made their recommendations based on an overall assessment of the advantages and disadvantages of transferring, or that they provided clients with adequate comparisons between the benefits likely to be paid under a safeguarded Defined Benefit Scheme and the benefits afforded by the proposed personal pension scheme. They placed undue reliance on their clients' stated desire to transfer and meet their objectives, even where their objectives were either vague or not realisable and the transfer would be to their detriment.

Failure to provide advice that was fair, clear and not misleading (COBS 4.2.1R)

- 4.59. In addition, the File Review established that in 17 of the 21 files, CFP did not provide Company B's clients with sufficient information to enable them to understand the risks of transferring out of their Defined Benefit Pension Scheme in a way that was fair, clear and not misleading. This was the case even in the two files in which the advice to transfer was assessed as suitable.
- 4.60. In particular, some of the Suitability Reports stated: "*it is very important to understand that DB benefits are not guaranteed.*" Without further explanation and appropriate context this was potentially misleading. This sentence appeared in six Suitability Reports and evidenced the largely templated nature of those reports.
- 4.61. The Authority also identified Suitability Reports that initially appeared to recommend against a transfer, based on an analysis of the existing benefits from the Defined Benefit Pension Scheme compared to proposed pension plans, yet within the same report made a recommendation to transfer.
- 4.62. As a result of these failures, Pension Transfer Specialists at CFP failed to take reasonable steps to ensure their Personal Recommendations in respect of Pension Transfers were suitable for their clients.

Examples From Client Files

Client A

- 4.63. Client A was 56 years old and married with three children. He worked as a bus driver for a city council. He earned around £21,000 per year, had £2,000 in savings and a £7,000 mortgage. Client A had no or very little investment experience and low capacity for loss. His objectives stated that he wished to: obtain a lump sum to clear his mortgage and pay for home improvements; maximise death benefits; and have flexibility of income.
- 4.64. Ms Fox advised Client A to transfer out of his Defined Benefit Pension Scheme into a flexible benefits arrangement. The file contained significant Material Information Gaps such that Ms Fox would have been unable to reasonably provide compliant advice. Specifically:

- (a) Ms Fox failed to gather adequate information regarding Client A's financial situation. The file contained no information on the client's mortgage repayments or the outstanding term remaining on the mortgage, despite one of the client's objectives being to clear his mortgage;
 - (b) Although the client had sought a lump sum of money from the transfer to enable him to make home improvements, the amount required for these improvements was not recorded on the file;
 - (c) State pension forecasts had not been obtained, nor had details of Client A's spouse's income, employment or assets; and
 - (d) Ms Fox failed to gather adequate information regarding Client A's estimated expenditure throughout retirement.
- 4.65. In addition, the Suitability Report did not make clear the risks associated with a transfer, including the fact that the client would be giving up guaranteed income under the scheme.

Client B

- 4.66. Client B was 53 years old, married and earning a salary of £14,000 per year. She had worked for the NHS for 12 years and at a bank for 24 years before that. The client had no prior knowledge or experience of investments. Her objectives stated that she wished to have flexibility and improve death benefits. The Fact Find also stated that she wanted options to access the capital.
- 4.67. Client B was advised to transfer out of her Defined Benefit Pension Scheme and into a personal pension. According to Ms Fox, she read the draft Suitability Report prepared for Client B by another member of staff and checked it before sending it. The Authority has assessed this advice as unsuitable for the following reasons:
- (a) Client B was likely to be reliant on the income from the Defined Benefit Pension Scheme;
 - (b) Ms Fox did not obtain details of the client's income in retirement needs; nor did she ascertain the client's current expenditure. It was therefore impossible to determine whether the client's income needs in retirement could be met by reference to the existing pension and any additional state pension;

- (c) The file contained generic client objectives, such as maximising death benefits, accessing flexible benefits and early withdrawal of the pension commencement lump sum. There was no evidence that these objectives had been discussed with the client, nor was there anything to demonstrate why the fulfilment of these objectives, when balanced with the benefits of remaining in the scheme, was in the client's best interests;
- (d) The client stated that she would prefer a guaranteed income, and specifically asked for consideration of a future guaranteed income option. This guaranteed income would have been afforded by the Defined Benefit Pension Scheme she had, but not by the personal pension into which she was advised to transfer;
- (e) Despite Client B's stated preference for guaranteed income rather than investment uncertainty, the Suitability Report stated that Client B had an "average" attitude to risk. Based on the responses given by Client B, the Authority considers that the client was categorised as having a higher attitude to risk than she would have been comfortable with;
- (f) The transfer analysis on file did not support a recommendation to transfer out of the Defined Benefit Pension Scheme, noting a required Critical Yield of 8.77%, which would be difficult to achieve even for a high-risk investor;
- (g) In the Fact Find, Client B indicated that she was looking for an option to access the capital. Despite this, there was no evidence on the file that details regarding the available Pension Commencement Lump Sum were obtained. Similarly, there was no evidence on file that the client was informed of the possibility of accessing a lump sum while taking benefits under the scheme;
- (h) The TVAS did not calculate any potential Critical Yields based on Client B taking a PCLS and a reduced income from the Ceding Scheme, nor were any estimated figures obtained from the Ceding Scheme;
- (i) Client B did not have the necessary knowledge or experience of investments to understand the risks involved in transferring out of her Defined Benefit Pension.

4.68. In Client B's Suitability Report Ms Fox advised that on the basis of the financial analysis of pension benefits alone, she was hesitant to recommend a transfer; however, she nonetheless concluded that the only way to meet the client's objectives

would be to transfer, and accordingly advised Client B to transfer out of her Defined Benefit Pension.

- 4.69. The advice to Client B stated: *"To sum up, your objective was to have greater control over your fund and flexibility as to how in time you draw upon it and for it to be possible in the event of your death for the fund to be passed on. This objective can only be met by transferring your retained pension benefits in [the Defined Benefit Pension] to a personal pension plan"*. There was no discussion of these objectives, or why the client felt they were sufficiently important to warrant a transfer and the relinquishing of the guaranteed income afforded by the Defined Benefit Pension. Nor was there any consideration of alternative means of meeting these objectives, such as life insurance.
- 4.70. Client B's Suitability Reports stated: *"it is very important to understand that DB benefits are not guaranteed."* Without further explanation and appropriate context this was potentially misleading, particularly as Client B had already stated a preference for guaranteed income.

Client C

- 4.71. Client C was 59 years old, divorced with one child dependant, and earning £24,000 per year at a supermarket. Her objectives were to release tax free cash for home improvements and reduce her mortgage. She also wanted the balance of her pension to go to her children upon her death and to consolidate her pension with her existing employer's Defined Contribution Pension. Client C had no or little investment experience and no capacity for loss.
- 4.72. Client C was advised to transfer out of her Defined Benefit Pension Scheme and into a Defined Contribution Pension Scheme. The Authority assessed this advice as unsuitable for the following reasons:
- (a) Client C was reliant upon an income from her Defined Benefit Pension Scheme and the Pension Transfer Specialist had assessed the client as having no capacity to lose the guaranteed income. The Authority assessed that there was a high risk that if Client C transferred out of her Defined Benefit Pension Scheme, she may run out of income in retirement;

- (b) The TVAS did not support the recommendation to transfer, and the critical yield necessary to match Client C's Defined Benefit Pension Scheme benefits in her circumstances was unattainable;
 - (c) Whilst Client C's objectives included access to a lump sum and death benefits, the Pension Transfer Specialist did not demonstrate that Client C was able or willing to compromise her retirement income to access these options in a Defined Contribution Pension Scheme. The Pension Transfer Specialist also did not demonstrate that they had considered alternatives that could have met the client's objectives without having to transfer out of the scheme;
 - (d) Client C would ultimately be unable to make the income she wanted in a flexible scheme without taking high risks with her investments. No alternative pension arrangement was guaranteed or even likely to produce comparable or better returns than Client C's Defined Benefit Pension Scheme.
- 4.73. In addition, the Suitability Report did not make clear the risks associated with a transfer, including the fact that the client would be giving up guaranteed income under the scheme.

Benefit Derived by Ms Fox

- 4.74. During the Relevant Period, Ms Fox received £473,289 by way of salary, dividends, and pension contributions from CFP.

5. FAILINGS

- 5.1. The statutory and regulatory provisions relevant to this Notice are referred to in Annex A.
- 5.2. By reason of the facts and matters set out above, Ms Fox breached Statement of Principle 1.

Statement of Principle 1

- 5.3. The Authority considers that Ms Fox failed to comply with Statement of Principle 1 during the Relevant Period in that she failed to act with integrity in carrying out her

controlled functions as CF1 (Director) and CF10 (Compliance Oversight) at CFP. Ms Fox's actions in relation to the design and operation of the Pension Transfer Model were reckless. Specifically, Ms Fox recklessly designed, implemented and oversaw an advice process that:

- (a) lacked the requisite safeguards to ensure that CFP's Pension Transfer Specialists only provided Defined Benefit Pension Transfer advice when they had gathered sufficient information to do so;
- (b) enabled CFP's Pension Transfer Specialists, including Ms Fox, to issue Suitability Reports without having properly considered their clients' financial circumstances and objectives, attitude to risk and capacity for loss. In particular, CFP's Pension Transfer Specialists:
 - i. failed to give due consideration to whether clients could financially bear the risks involved in a Pension Transfer;
 - ii. placed undue reliance on their clients' stated objectives regardless of whether they were realistic or financially viable. They failed to weigh those objectives against the benefits of remaining in the clients' Defined Benefit Pension Scheme, and failed to investigate or determine whether those objectives could be met by remaining in the current scheme;
 - iii. advised clients to transfer even if the transfer analysis did not support the recommendation; and
 - iv. advised clients to transfer even when those clients had stated that they wanted the guaranteed income afforded to them within their Defined Benefit Pension Scheme; and
- (c) permitted CFP's Pension Transfer Specialists, including Ms Fox, to issue Suitability Reports that were unclear or misleading. The Authority identified Suitability Reports that:
 - i. contained inadequate information about the possible disadvantages of transferring out of a client's Defined Benefit Pension Scheme, when considering the client's specific circumstances and objectives;
 - ii. contained warnings that contradicted the Personal Recommendation to transfer, with no explanation; and

- iii. contained the prominent and misleading statement: "*It is very important to understand that DB benefits are not guaranteed,*" without sufficient further explanation or context.

5.4. These failures resulted in Pension Transfer Specialists at CFP, including Ms Fox, routinely providing unsuitable or otherwise non-compliant advice to clients. As a qualified Pension Transfer Specialist with 35 years of experience in the pensions industry by the start of the Relevant Period, Ms Fox must have been aware of the unacceptably high risk that the Pension Transfer Model would result in the provision of unsuitable advice. However, Ms Fox recklessly disregarded this risk. She did not implement safeguards to ensure that Pension Transfer Specialists had consulted properly with their clients in the course of making a Personal Recommendation. She did not adequately review management information or due diligence records.

6. SANCTION

Financial Penalty

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

Step 1: Disgorgement

6.2. Pursuant to DEPP 6.5B.1G, at Step 1 the Authority seeks to deprive an individual of the financial benefit derived directly from the breach where it is practicable to quantify this. Where the success of a firm's entire business model is dependent on breaching the Authority's rules or other requirements of the regulatory system and the individual's breach is at the core of the firm's regulated activities, the Authority will seek to deprive the individual of all the financial benefit he has derived from such activities.

6.3. Ms Fox was paid £473,289 by way of salary, dividends, pension contributions and other benefits which the Authority considers Ms Fox derived from her employment at CFP during the Relevant Period.

- 6.4. CFP generated revenue of £9,047,430 during the Relevant Period. This revenue was almost entirely derived from the flawed Pension Transfer Model that Ms Fox recklessly designed, implemented and oversaw (see paragraph 4.23 above).
- 6.5. The Authority considers that the success of CFP's business model during the Relevant Period was dependent on breaching regulatory requirements. The Authority further considers that Ms Fox's breach of Statement of Principle 1 was at the core of CFP's regulated activities. As a result, the Authority considers it appropriate to deprive Ms Fox of all the financial benefit she derived from her employment at CFP during the Relevant Period, amounting to £473,289.
- 6.6. The Authority will ordinarily also charge interest on the financial benefit that an individual derives directly from the breach. The Authority considers it appropriate to apply interest at 8% per annum on Ms Fox's financial benefit of £473,289, from the end of the Relevant Period to the date of this Notice, amounting to £208,247.
- 6.7. Step 1 is therefore £681,536.

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. The period of Ms Fox's breach of Statement of Principle 1 was from 21 April 2015 to 31 October 2017. The Authority considers Ms Fox's relevant income for this period to be £473,289.
- 6.10. In deciding on the percentage of the relevant income that forms the basis of the Step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 40%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach; the more serious the breach, the higher the level. For penalties imposed on individuals in non-market abuse cases there are the following five levels:

Level 1 – 0%

Level 2 – 10%

Level 3 – 20%

Level 4 – 30%

Level 5 – 40%

- 6.11. In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly. DEPP 6.5B.2G(12) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the Authority considers the following factors to be relevant.

Impact of the Breach

- 6.12. By creating and implementing a system whereby CFP's Pension Transfer Specialists were not required to consult in a meaningful way with the recipients of their advice, Ms Fox oversaw an accelerated advice process at CFP which, in the Authority's view, resulted in CFP putting its clients at risk of receiving unsuitable pension transfer advice. This risk crystallised in that a large proportion of the advice given by CFP was unsuitable. CFP (and therefore Ms Fox) benefited from the fees gained from the increased number of customers which CFP could accommodate as a result of her breach of Statement of Principle 1 (DEPP 6.5B.2G(8)(a)).
- 6.13. Ms Fox's breaches of Statement of Principle 1 caused a risk of loss to a large number of clients who transferred out of their Defined Benefit Pension Schemes as a result of CFP's, and in many cases Ms Fox's, advice (DEPP 6.5B.2G(8)(b) and (c)).

Nature of the breach

- 6.14. Ms Fox's failings occurred over a sustained period (over 2.5 years) and resulted in a significant risk of loss for a large number of clients (DEPP 6.5B.2G(9)(b)).
- 6.15. Ms Fox failed to act with integrity because she acted recklessly throughout the Relevant Period (6.5B.2G(9)(e)).
- 6.16. Ms Fox was responsible for the matters that gave rise to CFP's non-compliance with the COBS rules (DEPP 6.5B.2G(9)(l)) because as CF10 she had overall responsibility

to ensure that adequate systems and controls were in place to monitor the advice being provided. She held a senior position within CFP as a director (DEPP 6.5B.2G(9)(k) and was also an experienced Pension Transfer Specialist who had worked in the pensions industry for 35 years by the start of the Relevant Period (DEPP 6.5B.2G(9)(j)).

Whether the breach was deliberate and/or reckless

6.17. Ms Fox's breach of Statement of Principle 1 was as a result of her reckless acts (DEPP 6.5B.2G(11)).

Level of seriousness

6.18. 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:

- (a) Ms Fox's breaches caused a significant risk of loss to individual consumers, investors or other market users (DEPP 6.5B.2G(12)(a));
- (b) Ms Fox failed to act with integrity (DEPP 6.5B.2G(12)(d)); and
- (c) Ms Fox committed the breach recklessly (DEPP 6.5B.2G(12)(e)).

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

6.20. 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 £473,289.

6.21. Step 2 is therefore £141,987.

Step 3: Mitigating and Aggravating Factors

6.22. 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.

6.23. The Authority considers that the following factors aggravate the breach:

- (a) On 18 and 24 February 2016, the Authority issued alerts to firms advising on Pension Transfers and provided examples of good and poor practice when

dealing with insistent clients. The alert on 24 February 2016 gave the following example of poor practice: *"The language used to describe the recommendation left the client to decide between various options. For example, the suitability report recommended that the client stay in the scheme but that the client should transfer if any other objectives were more important to them than maximising their income at retirement."*

- (b) Notwithstanding that the Authority had publicly called for an improvement in standards in relation to ambiguous Suitability Reports, CFP routinely issued Suitability Reports that initially appeared to recommend against a transfer and subsequently made a recommendation to transfer within the same report.

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

6.25. Having taken into account the aggravating factors, the Authority considers that the Step 2 figure should be increased by 10%.

6.26. Step 3 is therefore £156,185.

Step 4: Adjustment for Deterrence

6.27. 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.

6.28. The Authority considers that the Step 3 figure of £156,185 represents a sufficient deterrent to Ms Fox and others, and so has not increased the penalty at Step 4.

6.29. Step 4 is therefore £156,185.

Step 5: Settlement Discount

6.30. Pursuant to DEPP 6.5B.5G, if the Authority and the individual on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the individual reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1. No settlement discount applies.

6.31. Step 5 is therefore £156,100 (rounded down to the nearest £100 in accordance with the Authority's usual practice).

Serious Financial Hardship

6.32. Pursuant to DEPP 6.5D.1G, the Authority will consider reducing the amount of a penalty if an individual produces verifiable evidence that payment of the penalty would cause them serious financial hardship. Ms Fox has produced verifiable evidence to the Authority that payment of a penalty of £837,636 (i.e. the total of the Step 1 figure of £681,536 plus the Step 5 figure of £156,100) would cause her serious financial hardship. The Authority considers it appropriate to reduce the Step 5 figure to £0 for serious financial hardship but does not consider it appropriate to allow Ms Fox to retain the financial benefit that she derived directly from her breach (DEPP 6.5D.2G(7)(a)). Therefore, the Authority does not consider it appropriate to reduce the Step 1 figure of £681,536.

Penalty

6.33. The Authority therefore has decided to impose a total financial penalty of £681,536 on Ms Fox for breaching Statement of Principle 1.

Prohibition Order

6.34. The Authority has had regard to the guidance in Chapter 9 of EG in considering whether to impose a prohibition order on Ms Fox. The Authority has the power to prohibit individuals under section 56 of the Act.

6.35. The Authority considers that Ms Fox's reckless conduct throughout the Relevant Period demonstrates a lack of integrity. As a result, the Authority considers that Ms Fox is not a fit and proper person and that it is appropriate and proportionate in all the circumstances to prohibit Ms Fox from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm.

Withdrawal of Approval

6.36. In light of Ms Fox's lack of integrity and her lack of fitness and propriety, the Authority also considers that it is appropriate and proportionate in all the circumstances to withdraw Ms Fox's SMF 3 (Executive Director) and SMF 16 (Compliance Oversight) senior management functions at CFP.

7. REPRESENTATIONS

- 7.1 Annex B contains a brief summary of the key representations made by Ms Fox in response to the Warning Notice and how they have been dealt with. In making the decision which gave rise to the obligation to give this Notice, the Authority has taken into account all of the representations made by Ms Fox, whether or not set out in Annex B.

8. PROCEDURAL MATTERS

- 8.1. This Notice is given to Ms Fox under sections 57(3) and 67(4) and in accordance with section 388 of the Act.
- 8.2. The following statutory rights are important.

Decision Maker

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

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

The Tribunal

- 8.4. Ms Fox 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, Ms Fox has 28 days from the date on which this Notice is given to her 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 Kingsley Moore at the Financial Conduct Authority, 12 Endeavour Square, London, E20 1JN.
- 8.6. Once any such referral is determined by the Tribunal and subject to that determination, or if the matter has not been referred to the Tribunal, the Authority will issue a Final Notice about the implementation of that decision.

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:
- (a) the material upon which the Authority has relied in deciding to give this Notice; and
 - (b) the secondary material which, in the opinion of the Authority, might undermine that decision.

Interested Party Rights

- 8.9. This Notice is being given to CFP as an interested party in the withdrawal of Ms Fox's approval under section 63(4) of the Act. CFP has the right to:
- (a) have access to evidence pursuant to section 394 of the Act, as described above; and
 - (b) refer to the Tribunal the decision to withdraw Ms Fox's approval, pursuant to section 63(5) of the Act.

Confidentiality and publicity

- 8.10. This Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). In accordance with section 391 of the Act, a person to whom this Notice is given or copied may not publish the Notice or any details concerning it unless the Authority has published the Notice or those details.
- 8.11. However, the Authority must publish such information about the matter to which a Decision Notice or Final Notice relates as it considers appropriate. The persons to whom this Notice is given or copied should therefore be aware that the facts and matters contained in this Notice may be made public.

Authority contact

- 8.12. For more information concerning this matter generally, contact Kingsley Moore (direct line: 020 7066 0401/email: kingsley.moore2@fca.org.uk).

Elizabeth France
Deputy Chair, Regulatory Decisions Committee

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. RELEVANT STATUTORY PROVISIONS

- 1.1. The Authority's statutory objectives, set out in section 1B(3) of the Act, include the operational objective of securing an appropriate degree of protection for consumers (section 1C).
- 1.2. Section 56 of the Act provides that the Authority may make an order prohibiting an individual from performing a specified function, any function falling within a specified description or any function, if it appears to the Authority that that individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, exempt person or a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities.
- 1.3. Section 63 of the Act provides that the Authority may withdraw an approval issued under section 59 if it considers that the person in respect of whom it was given is not a fit and proper person to perform the function to which the approval relates.
- 1.4. Section 66 of the Act provides that the Authority may take action against a person if it appears to the Authority that he is guilty of misconduct and the Authority is satisfied that it is appropriate in all the circumstances to take action against him. A person is guilty of misconduct if, while an approved person, he has failed to comply with a statement of principle issued under section 64A of the Act, or has been knowingly concerned in a contravention by a relevant authorised person of a relevant requirement imposed on that authorised person.

2. RELEVANT REGULATORY PROVISIONS

Statements of Principle and Code of Practice for Approval Persons

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

2.2. Throughout the Relevant Period, Statement of Principle 1 stated:

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

2.3. 'Accountable functions' include controlled functions and any other functions performed by an approved person in relation the carrying on of a regulated activity by the authorised person to which the approval relates.

2.4. The Code of Practice for Approved Persons sets out descriptions of conduct which, in the opinion of the Authority, do not comply with a Statement of Principle. It also sets out factors which, in the Authority's opinion, are to be taken into account in determining whether an approved person's conduct complies with a Statement of Principle.

Conduct of Business sourcebook

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

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

2.7. COBS 9.2.1R states that:

(1) A firm must take reasonable steps to ensure that a personal recommendation, or a decision to trade, is suitable for its client.

(2) When making the personal recommendation or managing his investments, the firm must obtain the necessary information regarding the client's:

(a) knowledge and experience in the investment field relevant to the specific type of designated investment or service;

(b) financial situation; and

(c) investment objectives;

so as to enable the firm to make the recommendation, or take the decision, which is suitable for him.

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

- (a) meets his investment objectives;
- (b) is such that he is able financially to bear any related investment risks consistent with his investment objectives; and
- (c) is such that he has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.

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

2.10. COBS 9.2.6R states:

If a firm does not obtain the necessary information to assess suitability, it must not make a personal recommendation to the client or take a decision to trade for him.

2.11. COBS 19.1.2R (as in force during the Relevant Period) stated that a firm must:

- (1) compare the benefits likely (on reasonable assumptions) to be paid under a Defined Benefit Pension Scheme or other pension scheme with safeguarded benefits with the benefits afforded by a personal pension, stakeholder pension scheme or other pension scheme with flexible benefits, before it advises a retail client to transfer out of a Defined Benefit Pension Scheme or other pension scheme with safeguarded benefits;

- (2) ensure that that comparison includes enough information for the client to be able to make an informed decision;
 - (3) gives the client a copy of the comparison, drawing the client's attention to the factors that do and do not support the firm's advice, in good time, and in any case no later than when the key features document is provided; and
 - (4) take reasonable steps to ensure that the client understands the firm's comparison and its advice.
- 2.12. COBS 19.1.6G states that when advising a client who is, or is eligible to be, a member of a Defined Benefit Pension Scheme or other scheme with safeguarded benefits whether to transfer, convert or opt-out, a firm should start by assuming that a transfer, conversion or opt-out will not be suitable. A firm should only consider a transfer, conversion or opt out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the client's best interests.

The Fit and Proper Test for Approved Persons

- 2.13. The part of the Authority's Handbook entitled "The Fit and Proper Test for Approved Persons" ("FIT") sets out the criteria that the Authority will consider when assessing the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an approved person.
- 2.14. FIT 1.3.1G states that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person. The most important considerations will be the person's honesty, integrity and reputation, competence and capability and financial soundness.

The Enforcement Guide

- 2.15. The Enforcement Guide ("EG") sets out the Authority's approach to exercising its main enforcement powers under the 2000 Act.
- 2.16. Chapter 7 of the Enforcement Guide sets out the Authority's approach to exercising its power to impose a financial a penalty.

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

- 2.17. The Authority's policy in relation to prohibition orders is set out in Chapter 9.
- 2.18. EG 9.1 states that the Authority may exercise this power where it considers that, to achieve any of its regulatory objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities or to restrict the functions which he may perform.

DEPP

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

ANNEX B

REPRESENTATIONS

1. A summary of the key representations made by Ms Fox, and the Authority's conclusions in respect of them (in **bold**), is set out below.
2. Ms Fox's representations in respect of the Warning Notice were made solely in relation to the level of financial penalty which the Authority proposed to impose upon her. No representations were made to the Authority by Ms Fox regarding the misconduct described within this Notice.

Serious Financial Hardship and disgorgement

3. Ms Fox does not dispute the principle of disgorgement, nor that there should be some form of penalty imposed. However, she cannot afford to pay the disgorgement figure. A penalty of that amount would push her into poverty and bankruptcy.
4. Ms Fox does not believe that it is the intention of the Authority to make her destitute. She therefore submits that the penalty should be reduced to £20,000, which is the amount she can afford to pay.
5. Ms Fox does not consider that either of the precedent cases referred to by the Authority in the course of these proceedings in support of its view that the disgorgement figure should not be reduced are sufficiently similar to justify adopting such an approach in this case. In the case of *Ford*¹, Mr Ford, unlike Ms Fox, did not cooperate with the Authority and did not raise a serious financial hardship claim. In respect of *Sapient*², the case relates to a company, not an individual.
6. **The Authority acknowledges that Ms Fox has produced verifiable evidence that payment of a financial penalty of £837,636 (i.e. the total of the Step 1 figure of £681,536 plus the Step 5 figure of £156,100) would cause her serious financial hardship, and so has reduced the Step 5 figure to £0. The verifiable evidence produced by Ms Fox also demonstrates that payment of the Step 1 figure of £681,536 would cause her serious financial hardship. However, for the reasons set out below, the Authority has decided that it is not appropriate to reduce the Step 1 figure.**
7. **As a matter of principle, the Authority considers that the disgorgement element of the penalty should not be reduced even if it would cause Ms Fox serious financial hardship. The disgorgement element of the financial penalty is distinct from the punitive element. The Authority considers that the principle of disgorgement (that an individual should not benefit from any breach – DEPP 6.5.2G) applies regardless of whether those funds are still available to use to pay the penalty. The Authority also considers that to allow an individual to not pay the disgorgement sum on the basis that the money has already been spent, runs contrary to this principle. This approach has been endorsed by the Upper Tribunal in the case of *Stewart Ford*.**

¹ *Stewart Owen Ford and Mark John Owen v The Financial Conduct Authority* [2018] UKUT 0358 (TCC)

² <https://www.fca.org.uk/publication/final-notices/sapient-capital-limited-2021.pdf>

8. **The Authority considers that it is reasonable to have regard to the approach taken to disgorgement in previous cases, and that the cases of *Ford* and *Sapien* are particularly relevant. The Authority acknowledges that in the case of *Ford*, no evidence was provided by Mr Ford that the penalty would cause him serious financial hardship. However, in this case the Authority has not ignored the evidence provided by Ms Fox, as it has decided to reduce the Step 5 figure to £0. Further, the Upper Tribunal stated that even if Mr Ford had produced evidence of serious financial hardship, it would not be appropriate to reduce the disgorgement figure. In respect of the case of *Sapien*, although it relates to a company, it is another example of the Authority applying the principle that the disgorgement element of the penalty should not be reduced because it would result in serious financial hardship.**