

Tristan Freer has referred this Decision Notice to the Upper Tribunal where the parties will present their respective cases. Any findings in this Decision Notice are therefore provisional and reflect the Authority's belief as to what occurred and how it considers the behaviour of Tristan Freer should be characterised. The Tribunal will determine what (if any) is the appropriate action for the FCA to take, and will remit the matter to the FCA with such directions as the Tribunal considers appropriate to give effect to its determination. The Tribunal's decision will be made public on its website. No allegation of wrongdoing is made against Hennessy Jones Limited, Mark Stephen, James King or City Administration Limited in this Decision Notice.



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DECISION NOTICE

To: **William Mark Tristan Freer** (Tristan Freer)

Individual
Reference
Number:

WMF01010

and

To: **Bank House Investment Management Limited**
(as an interested party pursuant to section 63(3) of the Act)

Firm
Reference
Number:

451839

Address: **Kings House
125 Promenade
Cheltenham
Gloucestershire
GL50 1NW**

Date: **6 December 2018**

1. ACTION

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

- (1) impose on Tristan Freer a financial penalty of £52,725, pursuant to section 66 of the Act;
- (2) withdraw the approval given to Mr Freer to perform the controlled functions of CF1 (Director), CF10 (Compliance Oversight), CF11 (Money Laundering Reporting) and CF30 (Customer), pursuant to section 63 of the Act; and

- (3) make an order, pursuant to section 56 of the Act, prohibiting Mr Freer 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. The Authority has determined that, between 9 September 2014 and 12 December 2016 (the "Relevant Period"), Mr Freer breached Statement of Principle 1 (Integrity) of the Authority's Statements of Principle for Approved Persons by acting dishonestly and recklessly when performing his controlled functions in relation to Bank House Investment Management's ("BHIM") pension advice business.
- 2.2. Pensions are a traditional and tax-efficient way of saving money 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. Customers who engage authorised firms to provide them with advice in relation to their pensions place significant trust in those providing the advice. Where a firm fails to act with integrity and puts its interests above those of its customers, it exposes its customers to a significant risk of harm.
- 2.3. Further, where elements of a pension advice process are outsourced to a third party service provider, the authorised firm remains responsible for the advice given and all decisions and actions in relation to regulated activities provided in its name. It is therefore essential that, in such circumstances, the authorised firm maintains control of the advice process and provides effective oversight of the activities carried out by the service provider on its behalf.
- 2.4. During the Relevant Period Mr Freer was approved to perform the CF1 (Director), CF10 (Compliance Oversight), CF11 (Money Laundering Reporting) and CF30 (Customer) controlled functions at BHIM, a small firm authorised by the Authority with permission to conduct regulated activities, including advising on investments (excluding Pension Transfers) and arranging (bringing about) deals in investments. As a director of BHIM, Mr Freer had active management and day-to-day responsibility for the business of the Firm. He was responsible for oversight of the Firm's compliance arrangements and was also an experienced and qualified financial adviser.
- 2.5. During the Relevant Period Mr Freer (together with Robert Ward, a director and the

chief executive of BHIM) was responsible for BHIM adopting and using the Pension Review and Advice Process. This process was based on a pension switching advice model, the development of which was initiated and influenced by a third party, HJL. The Pension Review and Advice Process:

- (1) involved HJL sourcing leads from lead generation companies and introducing customers to BHIM;
- (2) involved HJL and CAL (a third party service provider which was closely connected to HJL) being provided with BHIM's logo and Mr Freer's electronic signature so that they could perform functions (the Outsourced Functions) on BHIM's behalf. HJL was responsible for performing the Outsourced Functions prior to 13 October 2014, and from that date they were performed by CAL. The Outsourced Functions included:
 - a) contacting customers that had been introduced to BHIM by HJL;
 - b) conducting fact-finds with these customers;
 - c) inputting the results of those fact-finds into the Software (an automated client management system designed to produce Suitability Reports);
 - d) sending the Suitability Reports to the customers; and
 - e) calling the customers to ask whether they wished to proceed in accordance with BHIM's advice;
- (3) was structured to result in customers who met certain pre-set criteria approved by Mr Freer being advised to switch their pensions to SIPPs investing in high risk, illiquid assets not regulated by the Authority (the Bonds). HJL had a material financial interest in a number of the Bonds, which was not disclosed to customers; and
- (4) involved little meaningful oversight by BHIM of HJL's activities as an introducer or of HJL and CAL's performance of the Outsourced Functions.

2.6. Mr Freer was aware of what the Pension Review and Advice Process involved and how it was structured. Nevertheless, he caused BHIM to hold itself out to customers

as providing bespoke, independent investment advice based on a comprehensive and fair analysis of the whole market. Mr Freer knew this was misleading to customers as it did not reflect the reality of the service that BHIM would provide using the Pension Review and Advice Process. In causing BHIM to hold itself out in this way, Mr Freer acted dishonestly. The Authority considers this to be particularly serious because customers were not made aware of the true nature of the service being provided, including the fact that HJL's involvement in the process and financial interest in a number of the Bonds created a conflict of interest. Customers were therefore denied the opportunity to make an informed decision on whether to use the Firm's services and on whether to invest in the products recommended to them by the Firm.

- 2.7. Mr Freer's actions in relation to BHIM's adoption and use of the Pension Review and Advice Process, summarised in paragraphs 2.8 to 2.15 below, were reckless. The Pension Review and Advice Process put BHIM's customers at serious risk of receiving unsuitable advice and therefore at serious risk of investing in products that were not suitable for them, but Mr Freer closed his mind to these risks and unreasonably exposed BHIM's customers to them by allowing BHIM to adopt and use the Pension Review and Advice Process.
- 2.8. Mr Freer failed to carry out adequate due diligence on the Bonds to ensure that he had a proper understanding of them, including their risks and benefits, before agreeing that they should be recommended to customers. He relied solely on documents provided to BHIM by HJL, despite knowing that HJL had a material financial interest in a number of the Bonds, and did not take any actions to address the risk that the information provided by HJL could be misleading or incomplete.
- 2.9. In any event, it should have been obvious to Mr Freer from the limited information that he considered that the Bonds were high risk investments that were unlikely to be suitable for BHIM's customers, except in very limited circumstances. However, Mr Freer failed to give due consideration to the risk that the Bonds were unsuitable.
- 2.10. Mr Freer knew of HJL's involvement in the Pension Review and Advice Process, that the process was structured to result in customers switching their pensions to SIPP investing in the Bonds, and that HJL had a material financial interest in a number of the Bonds. Further, Mr Freer knew that two of the directors of HJL during the Relevant Period (Mark Stephen and James King) were directors of each of the

companies issuing the Bonds. There was therefore an obvious risk that HJL might seek to influence inappropriately the advice provided to customers. However, Mr Freer took no steps to ensure that the common directorships and how HJL was remunerated were disclosed to customers.

- 2.11. As Mr Freer was an experienced and qualified financial adviser, it should have been obvious to him that he needed to give due consideration to the documents to be used in the Pension Review and Advice Process, and to how the process would operate in practice, before deciding that BHIM should adopt the process. However, he failed to do so and therefore failed to identify significant obvious deficiencies in the Pension Review and Advice Process, including that: the fact-find contained leading questions intended to steer customers towards the features of the products that would be recommended; the Suitability Reports did not include sufficient information to provide customers with a compliant personal recommendation; and information provided to customers about the Bonds did not adequately inform them of their costs, benefits and risks.
- 2.12. In any event, it should have been obvious to Mr Freer from the information available to him that the Pension Review and Advice Process did not comply with the Authority's rules. Mr Freer was aware that BHIM would have no meaningful involvement in the advice to be given and that the documents to be used in the process would mislead customers about the service that would be provided. However, Mr Freer failed to give any meaningful consideration to whether or not the Pension Review and Advice Process was compliant.
- 2.13. Mr Freer failed to take reasonable steps to ensure that BHIM maintained control of the Pension Review and Advice Process, and allowed important parts of the process, such as the conduct of fact-finds, to be performed in a way that failed to obtain and/or take into account relevant information about BHIM's customers. Further, he failed to take reasonable steps to ensure that BHIM reviewed in a meaningful way advice given through the Pension Review and Advice Process, for which it was responsible, whether before recommendations were sent to customers or at all.
- 2.14. Mr Freer failed to take reasonable steps to ensure that BHIM put in place appropriate systems and controls and compliance arrangements to oversee and monitor the Pension Review and Advice Process. As a result, BHIM did not have adequate management information on HJL's and CAL's activities, and there were

no independent compliance reviews of the advice given through the Pension Review and Advice Process.

- 2.15. Mr Freer agreed (together with Mr Ward) that BHIM would work with HJL and CAL without giving any proper consideration to whether they were suitable to perform services on behalf of the Firm. Mr Freer carried out no due diligence on HJL other than in connection with its role in relation to the companies issuing the Bonds, and the Firm's due diligence on CAL consisted simply of checking the company's details on the Companies House website and Mr Freer and Mr Ward visiting CAL's office to satisfy themselves that the company existed and was operating.
- 2.16. Mr Freer's reckless actions in relation to BHIM's adoption and use of the Pension Review and Advice Process, in particular the fact that he allowed HJL and CAL to perform the Outsourced Functions on BHIM's behalf without adequate supervision, failed to review in a meaningful way advice given through the Pension Review and Advice Process, and failed to ensure BHIM put in place and operated appropriate systems and controls in relation to the process, exposed BHIM to the risk of breaching section 20 of the Act by carrying on a regulated activity without the relevant permission, as in fact happened. The Pension Review and Advice Process failed to distinguish properly between Pension Transfers (which include the transfer of deferred benefits from an occupational pension scheme into a SIPP) and Pension Switches (which involve the movement of funds from one personal pension scheme to another where no safeguarded benefits are involved). As a result, despite BHIM not having the necessary permission to provide advice on Pension Transfers, in at least five cases advice about Pension Transfers was given to customers by BHIM in breach of section 20 of the Act.
- 2.17. In addition to the clear deficiencies in the Pension Review and Advice Process, the Authority has identified that unsuitable advice was provided to BHIM's customers in all 20 BHIM customer files it has reviewed. Further, each of the 20 customer files failed to comply with applicable Handbook rules. As the same advice process was used for all customers who were advised to invest in the Bonds, the Authority considers it is likely that the advice provided to most, if not all, of BHIM's customers through the Pension Review and Advice Process was unsuitable.
- 2.18. During the Relevant Period, 265 customers switched or transferred pension funds totalling approximately £8.5 million to SIPPs investing in high risk, illiquid assets

that were unlikely to be suitable for them, thereby exposing them to a significant risk of loss.

- 2.19. Mr Freer caused BHIM to adopt the Pension Review and Advice Process in order to generate fees for the Firm and to increase the number of customers that the Firm could advise about other investments, and thereby generate further fees. In doing so, Mr Freer put his and the Firm's own interests before those of the Firm's customers.
- 2.20. Mr Freer also acted dishonestly or recklessly in several other ways during the Relevant Period, as described in paragraphs 2.21 to 2.24 below.
- 2.21. Mr Freer recklessly allowed BHIM to breach a term of a requirement which, on its application, had been imposed on it on 17 September 2015 (the Voluntary Requirement). The Voluntary Requirement included a term requiring BHIM not to carry on any activities in relation to Pension Switches and/or Pension Transfers to any SIPP until independent verification was provided to the Authority confirming that a robust and compliant advisory process was in place for pension switching advice. However, in breach of this term, between 5 October 2015 and 10 November 2016, BHIM advised 77 customers to switch pension funds totalling £2.9 million to SIPPs. Mr Freer, who was aware of the terms of the Voluntary Requirement, was personally responsible for advising some of those customers and he was aware that the rest were advised by other individuals at BHIM. Mr Freer was aware of the risk that BHIM might breach the terms of the Voluntary Requirement but, by closing his mind to that risk, recklessly failed to take reasonable steps to ensure that these transactions were permitted. In particular, he relied on assurances from Mr Ward that the relevant transactions were permitted but took no other steps to confirm this.
- 2.22. Mr Freer provided the Authority with false and misleading information about BHIM's business arrangements with HJL and CAL. Mr Freer did so to try to prevent the Authority from identifying misconduct by himself, Mr Ward and the Firm, and thereby acted dishonestly.
- 2.23. Mr Freer dishonestly told the Authority that the Firm did not have minutes of board meetings when, in fact, the Firm kept formal minutes of meetings which he (and others) approved.

2.24. Mr Freer recklessly allowed the Firm to provide the Authority with a copy of the Firm's new business register which was materially incomplete. Mr Freer closed his mind to the risk that the new business register might be incomplete or inaccurate and failed to take reasonable steps to ensure the information provided to the Authority was complete and accurate. Had Mr Freer done so, he would have identified the obvious errors that were contained in the new business register.

2.25. The Authority considers Mr Freer's failings to be serious because:

- (1) they related to a large number of customers (including some who were vulnerable due to their age, their inability to replace capital, their medical conditions or other personal circumstances);
- (2) it should have been obvious to Mr Freer that the involvement in the Pension Review and Advice Process of HJL, which had a material financial interest in a number of the Bonds into which customers' funds were being invested, created a clear conflict of interest, yet he took no steps to ensure that HJL's financial interest was disclosed to customers;
- (3) as an experienced and qualified financial adviser, it should have been obvious to Mr Freer that the Bonds were unlikely to be suitable for retail customers, except in very limited circumstances; and
- (4) on 4 July 2014, the Authority wrote to Mr Freer and drew his attention to alerts released by the Authority relating to firms advising on Pension Switches or Pension Transfers into unregulated products through SIPPs, the risks of non-mainstream products being unsuitable and the need to protect customers. Despite this Mr Freer did not take steps to protect the Firm's customers.

2.26. BHIM's provision of pension advice was subject to examination by the Authority in July 2015. The Authority had serious concerns about the suitability of BHIM's pension advice and, at the request of the Authority, BHIM applied to have requirements imposed on it. Accordingly, the Voluntary Requirement was imposed on BHIM by the Authority on 17 September 2015.

2.27. Following BHIM's contravention of a term of the Voluntary Requirement, the Authority exercised its own-initiative powers to impose further requirements on the

Firm including that, with effect from 12 December 2016, it was not permitted to carry on any regulated activity.

- 2.28. The FSCS declared BHIM in default on 27 April 2017 and is investigating claims made by BHIM's customers. At as 25 June 2018, the FSCS had determined that compensation in excess of £500,000 should be paid to BHIM's customers.
- 2.29. The Authority considers that Mr Freer's dishonest and reckless conduct during the Relevant Period demonstrates that he lacks integrity and is not a fit and proper person. Accordingly, the Authority has decided that it is appropriate to withdraw his approval to perform controlled functions and to impose a prohibition order on him, as described in paragraph 1.1(2) and (3) of this Notice. Further, the Authority has decided to impose a financial penalty on Mr Freer in the amount of £52,725 for his breach of Statement of Principle 1.

3. DEFINITIONS

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

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

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

"BHIM" or the "Firm" means Bank House Investment Management Limited

the "Bonds" means bonds, each of 10 years, issued by four unquoted UK companies incorporated between July and November 2014 into which BHIM's customers' pensions were invested

"CAL" means City Administration Limited, the third party service provider that performed the Outsourced Functions on behalf of BHIM between 13 October 2014 and 27 July 2015

"COBS" means the Conduct of Business Sourcebook, part of the Handbook

"DEPP" means the Authority's Decision Procedure and Penalties Manual

"EG" means the Authority's Enforcement Guide

"FOS" means the Financial Ombudsman Service

"FSCS" means the Financial Services Compensation Scheme

the "Handbook" means the Authority's Handbook of rules and guidance

"HJL" means Hennessy Jones Limited, now known as Reditum Capital Limited. HJL introduced customers to BHIM under the Pension Review and Advice Process and also performed certain of the Outsourced Functions on behalf of BHIM prior to 13 October 2014

"IFA" means independent financial adviser

"Mr Freer" means Tristan Freer

"Mr Ward" means Robert Ward

"Outsourced Functions" means the functions outsourced by BHIM, initially to HJL, and from 13 October 2014, to CAL, under the Pension Review and Advice Process, including the functions described in paragraph 2.5(2) of this Notice (but not including the functions carried out by HJL in its role as introducer)

"Pension Review and Advice Process" means the process described in paragraph 2.5 of this Notice that BHIM adopted on 11 September 2014 and used until 27 July 2015

"Pension Summary Report" means the report given to BHIM's customers indicating whether and by how much the customer could potentially benefit from a Pension Switch

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

"Pension Transfer" has the meaning given in the Handbook and includes the movement of funds from an occupational pension scheme to a personal pension scheme (in this case a SIPP)

"Relevant Period" means 9 September 2014 to 12 December 2016 inclusive

"SIPP" means self-invested personal pension

“SIPP Providers” means the firms providing the SIPP accounts under the Pension Review and Advice Process

“Software” means the automated client management system that was used by CAL during the Pension Review and Advice Process to manage customer information and generate Suitability Reports for customers

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

“SYSC” means the Senior Management Arrangements, Systems and Controls Sourcebook, part of the Handbook

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

the “Voluntary Requirement” means the requirement imposed on BHIM on 17 September 2015

“the Warning Notice” means the warning notice given to Mr Freer dated 5 March 2018

4. FACTS AND MATTERS

Background

- 4.1. Mr Freer is an experienced and qualified financial adviser who has been approved by the Authority to perform the CF1 (Director), CF10 (Compliance Oversight) and CF11 (Money Laundering Reporting) controlled functions at BHIM since 29 June 2006, and to perform the CF30 (Customer) controlled function at BHIM since 1 November 2007.
- 4.2. BHIM is a small firm based in Cheltenham, Gloucestershire which, since 29 June 2006, has been authorised by the Authority with permission to conduct regulated activities, including advising on investments (excluding Pension Transfers) and arranging (bringing about) deals in investments.
- 4.3. As a director of BHIM, Mr Freer had active management and day-to-day responsibility for the business of the Firm together with Mr Ward. Mr Ward was approved to perform the CF1 (Director) and CF3 (Chief Executive) controlled

functions on 16 October 2014 but assumed management responsibility for the business during the summer of 2014. Mr Freer also had responsibility for compliance matters at the Firm during the Relevant Period.

4.4. Mr Freer was responsible (together with Mr Ward) for the Firm using, from around 11 September 2014 until 27 July 2015, the Pension Review and Advice Process, which involved:

- (1) HJL sourcing leads from lead generation companies and introducing customers to the Firm;
- (2) certain of the Outsourced Functions being performed on behalf of BHIM by HJL prior to 13 October 2014;
- (3) the Outsourced Functions being performed on behalf of BHIM by CAL, a third party service provider closely connected to HJL, from 13 October 2014; and
- (4) little meaningful oversight by BHIM of HJL's activities as an introducer or of HJL and CAL's performance of the Outsourced Functions.

4.5. The Pension Review and Advice Process was structured to result in customers who met certain pre-set criteria approved by Mr Freer being advised to switch their pensions to SIPPs investing in high risk, illiquid assets not regulated by the Authority (the Bonds). Mr Freer was aware that HJL had a material financial interest in a number of the Bonds, and that HJL's financial interest was not disclosed to customers.

The business proposition

4.6. On 9 September 2014, Mr Ward sent Mr Freer an email about a meeting he had had earlier that day with someone who Mr Freer subsequently learnt was a representative of HJL. Mr Freer was told that:

- (1) HJL had '*large numbers of people wanting to invest in [its] normal bond type of funds*';
- (2) HJL was not authorised by the Authority and did not wish to become so because it would have a conflict of interest;

- (3) HJL had a pension switching advice model which involved 'a suite of compliant documents' and the outsourcing of functions in the pension advice process to HJL's staff 'who see the clients and complete the paperwork', and which was intended to result in customers being advised to switch their pensions to SIPPs investing in HJL's 'bond type of funds'; and
- (4) HJL was seeking an authorised IFA to put its name to the advice given to customers through this process.
- 4.7. Mr Ward's email informed Mr Freer that HJL would 'actually do everything including the reports and suitability paperwork in [BHIM's] name' and that all BHIM needed to do was provide compliance sign-off and allow HJL to use Mr Freer's signature (as a qualified financial adviser) to append to the documents used in the process. Mr Ward suggested that Mr Freer would be paid '£10 per signature which is electronic anyway'. Mr Freer was also told that he would be required to do regular compliance visits to HJL to check the customer files.
- 4.8. Mr Ward's email also stated that the pension switching advice model had the potential to generate 'significant earnings' because it was low paying but high volume work. Mr Freer was told to expect 100 cases per month, moving quickly to 100 cases per week.
- 4.9. Mr Ward also arranged for copies of documents which the HJL representative provided at the meeting to be sent to Mr Freer, including fact sheets for a number of the Bonds and specimen documents which HJL proposed to use in the Pension Review and Advice Process.

Decision to work with HJL and adopt the Pension Review and Advice Process

- 4.10. Within 24 hours Mr Freer confirmed to Mr Ward that he was willing for the Firm to adopt the Pension Review and Advice Process and approved the specimen documents to be used in the process by HJL, on behalf of BHIM. Mr Ward confirmed Mr Freer's consent in an email to HJL.
- 4.11. Later on 10 September 2014, the Firm provided HJL with a copy of its company logo and team biographies to enable the specimen documents to be finalised.
- 4.12. On 11 September 2014, two days after the initial meeting with the HJL representative, Mr Freer allowed Mr Ward to provide HJL with an electronic copy of

his signature to use as the qualified signatory in the reports and paperwork to be produced by HJL on behalf of the Firm.

- 4.13. At 11:40 on 12 September 2014, HJL provided Mr Freer (and Mr Ward) with a number of the finalised documents to be used in the Pension Review and Advice Process. Mr Freer approved the documents within four hours. He told HJL that he was *'happy with all of the documentation'* although he thought some of the wording in the brochure for the Firm *'could be better [...] but this is not a compliance issue'*. In fact, the Firm's brochure held out the Firm as providing customers with independent advice from qualified financial advisers and stated that *"Independent advice means taking advice from an expert who is not tied to offering the products of one particular pension provider and does not receive payments in the form of commission for recommending that you move your pension. This means they can act entirely in your best interests to advise a pension portfolio that best matches your needs."* As Mr Freer was aware, these statements were highly misleading as they did not reflect the reality of the service that the Firm would provide using the Pension Review and Advice Process. Mr Freer told HJL that no amendments were necessary because he understood that other IFAs were already using the same documents and *'if it aint broke don't fix it!'*
- 4.14. Also on 12 September 2014, the HJL representative provided Mr Freer (and Mr Ward) with a service agreement to sign. The services which were intended to be performed by HJL on behalf of the Firm included:
- (1) sourcing leads from lead generation companies;
 - (2) gathering information from customers' current pension providers;
 - (3) visiting and/or contacting customers to conduct the fact-find in the name of the Firm; and
 - (4) producing reports in the name of the Firm, including Suitability Reports.
- 4.15. The Firm did not sign this agreement, but HJL began contacting customers on behalf of the Firm at the latest from 25 September 2014 and, throughout the period that BHIM used the Pension Review and Advice Process, HJL was responsible for sourcing leads and acting as an introducer for the Firm in connection with the process.

Work with CAL

- 4.16. On 13 October 2014, with Mr Freer's knowledge and agreement, the Firm entered into an agreement with CAL, for CAL to provide substantively the same services as those detailed in the unsigned agreement with HJL, with the exception of sourcing leads and introducing customers to the Firm (which HJL continued to do).
- 4.17. CAL was closely connected to HJL. The two firms initially shared the same address. HJL's representative at the 9 September 2014 meeting with Mr Ward moved to CAL but continued to email the Firm from an HJL email address until 13 November 2014 at the earliest.
- 4.18. CAL performed the Outsourced Functions on behalf of the Firm until 27 July 2015, when the Firm ceased using the Pension Review and Advice Process and terminated its business relationship with CAL as a result of intervention by the Authority. BHIM also took over the employment of a number of staff previously employed by CAL.

The Bonds

- 4.19. The Pension Review and Advice Process resulted in customers' pensions being switched or transferred to SIPPs with a portfolio of underlying assets which took the form of bonds, each of 10 years, issued by four unquoted UK companies incorporated between July and November 2014 by HJL.
- 4.20. Customers' SIPPs were invested in three portfolios which were misleadingly described as being 'cautious', 'moderate' and 'adventurous', and which were made up of differing proportions of the Bonds and, in some cases, a small percentage of cash. The portfolios were meant to align to a customer's attitude to risk, but in practice there was little difference between the risks and returns of the 'cautious' portfolio when compared to the 'adventurous' portfolio. As such, the terms used to describe the three portfolios failed to reflect the reality that a customer would be exposed to high levels of risk whichever portfolio their SIPP was invested in.
- 4.21. Customers were told that the portfolios offered fixed returns and capital protection. In fact, the Bonds within the portfolios are high risk, illiquid and unlikely to be suitable for retail investors except in very limited circumstances due to:

- (1) the investment strategies of the issuing companies, which include investing in distressed residential and commercial property and other speculative investments, including unlisted equities; and
 - (2) the limited regulatory oversight of the issuing companies, which are not subject to the Authority's rules governing, for instance, investment and borrowing powers, disclosure of fees and charges, management of conflicts of interest, a prudent spread of risk and other investor safeguards.
- 4.22. The information memorandums for the Bonds state that capital protection is meant to be provided by way of floating charges on the assets of the issuing companies and by way of a cash amount, to be held in a separate segregated account and invested in cash instruments. For the Bonds issued by three of the four issuing companies, the cash amount is limited to a maximum of 20% of the aggregate principal amount of the Bonds plus accrued interest (no limit is specified for the Bond issued by the fourth issuing company).
- 4.23. The Bonds are listed on an overseas exchange and the value of the Bonds is dependent on whether there is a market for them. As such, customers may realise less than their original investments if they sell them prior to the redemption date. Repayment of the principal sum and interest is also dependent upon the four issuing companies generating sufficient income and returns. Further, the Bonds are not regulated by the Authority and are not covered by FOS or FSCS protection.

Failures in the Firm's due diligence on the Bonds

- 4.24. A firm is required to take reasonable steps to ensure that the investments that are recommended to its customers are suitable for those customers (COBS 9.2.1R). In order to determine whether an investment is suitable for a customer, a firm needs to undertake due diligence on the investment to understand how it works. This is the process a firm carries out to assess, among other things, the nature of the investment and its risks and benefits.
- 4.25. Mr Freer knew that the only products available for recommendation to BHIM's customers through the Pension Review and Advice Process were the Bonds. As a financial adviser, director and compliance officer of the Firm, he had a responsibility to take reasonable steps to ensure that the Firm undertook adequate due diligence

on the Bonds to ensure that they were suitable for the Firm's customers. However, Mr Freer failed to carry out adequate due diligence on them. For example:

- (1) Mr Freer relied solely on documents provided to BHIM by HJL. Despite the fact that he knew that HJL had a material financial interest in the Bonds (issued by three of the four issuing companies), Mr Freer did not take any actions to address the risk that the information provided by HJL could be misleading or incomplete.
- (2) Mr Freer failed to obtain information about the assets that the issuing companies intended to invest in, which would be relevant to assessing the risk of investing in the Bonds. For example, one of the Bonds was issued by a company intending to invest in commercial property. Mr Freer took no steps to find out in which types of commercial property investments would be made, where the property would be based and what industries it would support. It should have been obvious to Mr Freer, as an experienced and qualified financial adviser, that this information was needed in order to assess properly the suitability of the Bonds for customers.

4.26. Had Mr Freer carried out adequate due diligence on the Bonds, he could have assessed on an informed basis whether the composition of the portfolios of Bonds (which had been designed by HJL) was suitable for customers with particular risk profiles (for example, whether the 'cautious' portfolio was suitable for customers with a cautious attitude to risk). Mr Freer said his assessment was based on his 'experience' and was limited to reading through the fact sheets for each portfolio. If he had carried out a proper assessment, he should have concluded that the various portfolios of Bonds would not be suitable for the majority of retail customers except in very limited circumstances.

4.27. Mr Freer also failed to assess properly the information of which he was aware. For example, it was apparent from the information memorandums for the Bonds (which Mr Freer claimed he reviewed) that:

- (1) the companies issuing the Bonds were all recently incorporated with no track record, all operated from the same registered address and had two common directors; and

(2) the Bonds were unregulated and, at the time that the Firm began advising customers to invest in them, unlisted (the fact the Bonds might not achieve a listing was noted as a risk factor).

4.28. As an experienced and qualified financial adviser, it should have been obvious to Mr Freer on the basis of this information that the Bonds were high risk investments which were unlikely to be suitable for retail customers except in very limited circumstances (for example, in some circumstances they may be suitable for high net worth investors or sophisticated investors looking for some exposure to less traditional investments). However, Mr Freer failed to give due consideration to the risk that the Bonds were unsuitable.

The Pension Review and Advice Process

4.29. As Mr Freer was aware, the Pension Review and Advice Process was based on a pension switching advice model that had previously been adopted by other IFAs. HJL had initiated and influenced the development of this model, as it had been seeking an efficient process, to be adopted by an authorised IFA, for advising customers who met certain criteria to switch their pensions to SIPP's investing in underlying assets in which HJL had a material financial interest. When BHIM adopted the Pension Review and Advice Process in September 2014, the underlying assets in which customers' SIPP's were to be invested were the Bonds (issued by three of the four issuing companies).

4.30. BHIM was responsible for the advice given to customers through the Pension Review and Advice Process. However, a number of important functions were outsourced to third parties. At the outset, it was intended that these functions would be outsourced to HJL, and initially certain of the functions (in particular those in the early stages of the process, such as obtaining information about the customer's existing pension arrangements) were performed by HJL. However, from 13 October 2014, these functions, with the exception of lead generation, were performed by CAL. The decision that the Outsourced Functions should be performed by CAL rather than HJL appears to have been agreed between them without the involvement of, or any consultation with, BHIM.

4.31. The description of the Pension Review and Advice Process in the following paragraphs describes the process that was in place from 13 October 2014.

- 4.32. Under the Pension Review and Advice Process, leads were sourced by HJL from a number of lead generation companies. Customers were invited to request a free pension review. If a customer made such a request, they would be contacted by CAL, which would obtain information about the customer's existing pension arrangements. CAL would input the information into the Software, which would generate a Pension Summary Report. The Pension Summary Report would give the customer an indication of whether they might save costs if they changed their pension arrangements. CAL would call or attend a face-to-face meeting with the customer to present the Pension Summary Report and promote BHIM's advice service.
- 4.33. If the customer signed a service proposition confirming that they wished to receive advice from BHIM, CAL would collect relevant documents from the customer and conduct a scripted fact-finding exercise. CAL would input the results of the fact-find into the Software, which would determine, based on pre-set criteria approved by Mr Freer, whether the customer should be advised to invest in the Bonds and produce a Suitability Report containing a personal recommendation. CAL would send the Suitability Report to the customer and call the customer to ask them whether they wished to proceed in accordance with the advice they had received. Customers were not always told they were being contacted by a third party, so some customers may have been under the impression that they were dealing with staff from BHIM itself.
- 4.34. Mr Freer allowed CAL (and initially HJL) to perform the Outsourced Functions with little or no oversight. Although the Suitability Reports were issued on behalf of BHIM and in Mr Freer's name as the qualified financial adviser, Mr Freer had no involvement in the assessment of suitability for individual customers or in the production of the Suitability Reports. Mr Freer's electronic signature and the Firm's logo were simply added to documents provided by CAL to customers, including the Suitability Reports. As such, Mr Freer did not have control over the advice given in his name.
- 4.35. Between 3 November 2014 and 15 July 2015, BHIM advised 265 customers to switch or transfer their pensions to a SIPP investing in the Bonds through the Pension Review and Advice Process. This amounted to customer funds totalling approximately £8.5 million.

- 4.36. BHIM received an advice fee of 3% of a customer's pension assets when a Pension Switch or Pension Transfer to the SIPP was completed. For any customer who opted to have ongoing servicing, BHIM would also receive an annual fee of 0.5% of the customer's pension assets paid by the SIPP Provider from the customer's pension assets. Between 2 January 2015 and 16 June 2016, BHIM received £350,425 in advice or ongoing servicing fees. BHIM paid over £163,240 to CAL for its role in the Pension Review and Advice Process.

Failures relating to BHIM's adoption and use of the Pension Review and Advice Process

- 4.37. Mr Freer allowed BHIM to adopt the Pension Review and Advice Process despite knowing that customers would be given misleading information about the service they would receive. For example, Mr Freer reviewed and approved the service proposition which customers had to sign to confirm they wished to receive advice from BHIM and that they agreed with the terms of the service offered. The service proposition stated, *"...we offer an Independent advice service. We will recommend investments based on a comprehensive and fair analysis of the market. We will place no restrictions on the Investment Markets we will consider before providing investment recommendations, unless you instruct us otherwise. We will however only make a recommendation when we know it is suitable for you...We operate independently and therefore provide investment services from the whole market"*.
- 4.38. Mr Freer knew these statements were untrue. He knew that advice would be given through an automated process without any meaningful assessment of individual customers' needs and that the only products that would be recommended to customers through the Pension Review and Advice Process were the Bonds. Further, Mr Freer was aware when he allowed BHIM to adopt the Pension Review and Advice Process that the Outsourced Functions were intended to be performed on BHIM's behalf by HJL, which had a material financial interest in the Bonds issued by three of the issuing companies, and he was later aware that, from 13 October 2014, they would be performed by CAL, which was closely connected to HJL.
- 4.39. Mr Freer reviewed and approved various documents to be used in the Pension Review and Advice Process, including fact-find scripts and template Suitability Reports. He also approved the pre-set criteria which would be the basis for the Software's determination of whether a customer should be advised to invest in the

Bonds. However, he spent very little time scrutinising the documents to be used in the Pension Review and Advice Process before agreeing that BHIM should adopt the process only two days after Mr Ward's initial meeting with the HJL representative.

4.40. There were other significant obvious deficiencies in the Pension Review and Advice Process which Mr Freer, as an experienced and qualified financial adviser, should have identified had he given due consideration to the documents to be used in the Pension Review and Advice Process, and to how the process would operate in practice, including:

- (1) The fact-find script contained leading questions which were intended to steer the customer towards the features of the Bonds that would be recommended.

For example, customers were read a statement which included the following: *'Pension money can be held in a range of different investments offering different features. Some will experience highs and lows while others may perform in a much less volatile manner.'* They were then asked if they would prefer their pension fund to *'Grow at a fixed and known rate each year?'* or to *'Go up and down in value depending on the underlying investments' performance?'*

Customers were also asked *'If it could be guaranteed that the value of your pension fund at the end of an agreed term could not fall below the amount invested – would you want to incorporate this feature?'* and given the option of answering 'yes' or 'no'.

These questions were likely to lead customers to say they would prefer fixed returns and a capital guarantee. Where customers stated either or both of these preferences, they were advised to invest in the Bonds. The customers' stated preferences for fixed returns and/or a capital guarantee were used to justify recommending the Bonds, which customers were told offered fixed returns and *'an element of capital protection'* (see paragraph 4.21 above). Customers were not asked any other questions about their investment objectives.

- (2) The fact-find only allowed for certain specified information to be gathered from the customer, which was insufficient to establish the suitability of

recommendations. The fact-find was conducted by CAL staff, working from a script, who were not permitted to depart from the script and probe for further information. Even when a customer did disclose additional relevant information, it was not taken into account as a result of the way in which the Suitability Reports were prepared. Further, a suitably qualified financial adviser should oversee the fact-find process. However, neither Mr Freer nor any other qualified financial adviser at BHIM supervised the conduct of fact-finds, or routinely had any meaningful involvement in the individual assessment of customers' circumstances.

- (3) Customers were not given a compliant personal recommendation as the Suitability Report did not explain why the Bonds were suitable for a customer's demands and needs. The Suitability Report also did not include an analysis of the advantages and disadvantages of the recommended products compared to the customer's existing pension.
- (4) The information provided to customers about the Bonds did not fully inform customers of their costs, benefits and risks. In particular:
 - a) important information about the risks of the Bonds was either not disclosed to the customer or, where it was disclosed, was contradictory or unclear;
 - b) the three portfolios that customers invested in were described as 'cautious', 'moderate', and 'adventurous'. However, these terms failed to reflect the reality that customers would be exposed to high levels of risk whichever portfolio their SIPP was invested in;
 - c) customers were told that the Bonds provided a fixed return and capital protection. However, it was never explained or disclosed to customers that there was a risk that they would not get all their capital investment back. If the issuers of the Bonds performed poorly, they might not be able to make interest payments to customers and/or repay capital. It was particularly important that customers were made aware of this risk given the bond issuers had no track record and the bond issuers' assets included both illiquid and high risk assets; and

- d) whilst the advice provided would be covered by the FOS and the FSCS, customers were not told that, if the Bonds failed, they would be unable to make a complaint or claim to the FOS and/or the FSCS, as the bond issuers and the Bonds were not regulated by the Authority.
- (5) HJL's involvement in the Pension Review and Advice Process created an obvious conflict of interest because the process was structured to result in customers being recommended to invest in the Bonds, in a number of which HJL had a material financial interest. In addition, as Mr Freer knew, two of the directors of HJL during the Relevant Period (Mark Stephen and James King) were directors of each of the companies issuing the Bonds. However, customers were not made aware of these common directorships or of how HJL was remunerated. When questioned by the Authority, Mr Freer accepted that HJL's conflict of interest could have influenced the advice process and created a risk of customers receiving unsuitable recommendations to invest in the Bonds. Mr Freer also accepted that HJL's financial interest should have been disclosed to customers and was not.
- 4.41. Mr Freer also failed to identify obvious inaccuracies in the documents used in the Pension Review and Advice Process. For example:
- (1) Mr Freer approved the specimen Suitability Report which stated that, should customers wish to disinvest, it could take up to 12 months to access the funds, despite the fact this statement related to an entirely different product to those that the Firm agreed should be recommended to customers.
 - (2) Mr Freer also approved fact sheets about the Bonds to be provided to customers which stated that the Bonds were listed, when this was not yet the case (the issuers of the Bonds had applied for them to be listed).
- 4.42. The Authority considers that the Pension Review and Advice Process was wholly and, to an experienced and qualified financial adviser, obviously inadequate and exposed customers to a significant risk of loss from investments that were unlikely to be suitable for them. It should have been obvious to Mr Freer from the information available to him, that the Pension Review and Advice Process was not compliant with the Authority's rules. However, as a result of his inadequate consideration of the documents to be used in the Pension Review and Advice

Process, and of how the process would operate in practice (as well as his inadequate due diligence on the Bonds and, as detailed below, HJL and CAL), Mr Freer (together with Mr Ward) allowed BHIM to adopt and use a non-compliant process without giving any meaningful consideration to the interests of customers.

- 4.43. Mr Freer told the Authority that the Pension Review and Advice Process was fit for purpose largely on the basis that it was structured to result in only the Bonds being recommended to customers wishing to invest in a fixed return product and that *'If ever at any point they said no to any of the particular questions then they [would] be thrown out the side'*. However, it should have been obvious to Mr Freer, as an experienced and qualified financial adviser, that suitability cannot be assessed simply by reference to whether a customer wishes to invest in a fixed return product or not. In addition, the Authority considers the Bonds to be high risk investments which would be unlikely to be suitable for retail investors except in very limited circumstances (see paragraph 4.28 above) and that this should have been obvious to Mr Freer.

Mr Freer's limited role in the Pension Review and Advice Process

- 4.44. As the person at BHIM approved to perform the CF30 (Customer) controlled function, Mr Freer was responsible for the advice given to all of BHIM's customers through the Pension Review and Advice Process and should have exercised control of and supervision over the process. However, he, and therefore BHIM, had negligible involvement in it. For example:

- (1) He had no involvement in conducting the fact-find with the customer and had no oversight of that process.
- (2) He had no involvement in preparing the Suitability Report for the customer. Mr Freer told the Authority that he reviewed each Suitability Report before it was sent to the customer, but this claim is not supported by the evidence provided to the Authority. To the extent he did review Suitability Reports, on the account Mr Freer gave to the Authority, his review was limited to checking that the details recorded in the fact-find had been correctly included in the report. He did not give any meaningful consideration to whether the personal recommendation was suitable for the customer. There was also no mechanism for Mr Freer to confirm that he had reviewed and approved a Suitability Report before it was sent to the customer.

- (3) He had no involvement in any further work done for customers once the Suitability Report had been sent to them, including follow up calls or meetings with the customer and completing the paperwork to process the Pension Switch or Pension Transfer if the customer chose to invest in the Bonds. As a result, he did not know which customers completed Pension Switches or Pension Transfers.
- (4) He had no contact with customers during the Pension Review and Advice Process unless specifically requested.

4.45. Mr Freer failed to ensure that the Firm put in place appropriate systems and controls to address the obvious risks associated with the Pension Review and Advice Process. For example, he failed to take reasonable steps to ensure that:

- (1) the Firm adequately monitored HJL's lead generation activities. In fact, the Firm did not monitor HJL at all and did not know if leads were obtained by unlawful cold calling;
- (2) the Firm had access to information about activities conducted by HJL and CAL on behalf of BHIM. For example, the Firm failed to ensure that its agreement with CAL required CAL to provide it with management information. While using the Pension Review and Advice Process, the Firm had no access to management information about the work undertaken on its behalf and, as a result, it had no idea of the number of leads generated, the number of customers at each stage of the process or the number of customers who did not switch or transfer to the Bonds and their reasons for exiting the process; and
- (3) the Firm adequately monitored CAL. The only method the Firm used to monitor CAL's performance of the Outsourced Functions was through the compliance file checks that Mr Freer conducted (see paragraph 4.46(2) below), which were perfunctory and did not include listening to calls conducted with customers.

4.46. Mr Freer should have realised that the Firm's compliance arrangements for this business were wholly inadequate.

- (1) Mr Freer was responsible for both the advice provided to customers through the Pension Review and Advice Process and compliance checks on the same files. There was a clear risk of errors going undetected and of customers receiving unsuitable advice as a result. Mr Freer did not consider this risk and did not take steps to mitigate it, for instance by engaging the services of an independent compliance firm. Instead the Firm relied on the internal compliance checks conducted by CAL, despite having no oversight of its work.
- (2) To the extent that Mr Freer conducted compliance checks on customer files, the process consisted of checking a sample of customer files for accuracy and completeness rather than checking the suitability of the advice.
- (3) The Pension Review and Advice Process had been operating for over four months before Mr Freer conducted his first compliance check. By then, 112 customers had already switched or transferred their pension to SIPP's with the underlying investment in the Bonds.

Failures in BHIM's due diligence on HJL and CAL

4.47. Principle 3 of the Authority's Principles for Businesses provides that a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems. Further detailed guidance is set out in SYSC. In particular, firms such as BHIM, which are not common platform firms (as defined in the Handbook):

- (1) should take reasonable steps to identify risks relating to the firm's activities, processes and systems (SYSC 7.1.2R and SYSC 7.1.2AG);
- (2) when relying on a third party for the performance of operational functions which are critical for the performance of regulated activities, should ensure they take reasonable steps to avoid additional operational risk (SYSC 8.1.1R and SYSC 8.1.1AG);
- (3) should exercise due skill, care and diligence when entering into, managing or terminating any arrangement for the outsourcing to a service provider of critical or important operational functions or of any relevant services and activities (SYSC 8.1.7R and SYSC 8.1.11AG); and

- (4) should take the necessary steps to ensure that any service providers have the ability, capacity and any authorisation required by law to perform the outsourced functions, services or activities reliably and professionally (SYSC 8.1.8R(1) and SYSC 8.1.11AG).
- 4.48. Mr Freer agreed to HJL acting as introducer and to HJL and CAL performing the Outsourced Functions on BHIM's behalf without giving any proper consideration to whether they were suitable to perform those activities.
- 4.49. Mr Freer agreed to BHIM working with HJL two days after Mr Ward's initial meeting with a representative of the company, having carried out no due diligence on HJL other than in connection with its role in relation to the companies issuing the Bonds.
- 4.50. Mr Freer was aware that the Firm's due diligence on CAL comprised checking the company's details on the Companies House website. He and Mr Ward also attended meetings at CAL's offices, but this was to satisfy themselves that the company actually existed and was operating, rather than to assess whether it was fit to perform the Outsourced Functions.

Motivation

- 4.51. In deciding that BHIM should adopt the Pension Review and Advice Process, Mr Freer focused on the potential for the Firm to earn fees and the opportunity to generate customer referrals for the Firm. He put the Firm's interests before those of its customers and, in doing so, put customers at a significant risk of harm.
- 4.52. Mr Freer was told by Mr Ward at the outset that '*We actually do nothing but get paid plus trail*' and that Mr Ward expected the Pension Review and Advice Process to generate fees of £10,000 or more a week.
- 4.53. Mr Freer was also motivated by the expectation that customers who did not wish to invest in the Bonds would be referred by HJL and/or CAL to the Firm for '*bespoke*' advice. Mr Freer told the Authority that this did not happen in practice which meant that the Firm was not getting its '*part of the bargain*' that it had agreed with HJL and CAL.

The Authority's review of 20 customer files

- 4.54. Given that all of BHIM's customers were told they were receiving a personal

recommendation based on a comprehensive and fair analysis of the whole market when in fact they were not, and given HJL's material financial interest in a number of the Bonds which was undisclosed to customers, the process clearly put BHIM's customers at serious risk of receiving unsuitable advice and therefore at serious risk of investing in products that were not suitable for them.

- 4.55. Nevertheless, the Authority has reviewed the advice given to 20 of BHIM's customers during the period from 2 December 2014 to 5 June 2015 using recordings of calls and meetings, where they were available, and copies of the customer files maintained by CAL.
- 4.56. The advice given to the customer was unsuitable in all 20 files. As the same process was used for all advice relating to the Bonds, the Authority considers it likely that the advice provided to most, if not all, of BHIM's 265 customers was unsuitable.
- 4.57. In all 20 files the Authority considers that the gathering of information from the customer, the product recommendation, the Suitability Report and the disclosure of information about the product breached the Authority's requirements, including because:
 - (1) insufficient information was gathered from customers in order to ensure a suitable recommendation was given to them. For example, the fact-finding script was limited and key information was not requested from customers, including about their investment objectives (other than with respect to fixed returns and a capital guarantee) and their knowledge, experience, understanding and ability to accept the risks of speculative investments (COBS 2.1.1R, 9.2.1R and 9.2.6R);
 - (2) the Bonds were not suitable due to the illiquid and high risk nature of the investments made by the companies issuing the Bonds, and the limited regulatory oversight of those companies (COBS 2.1.1R, 9.2.1R and 9.3.1G);
 - (3) the Suitability Reports failed to give customers a compliant personal recommendation as they did not explain why the SIPP and the Bonds were suitable for a customer's demands and needs and also did not adequately explain the possible disadvantages of the recommendation to customers (COBS 2.1.1R and 9.2.1R); and

- (4) fact sheets provided to customers about the Bonds did not adequately explain the risks and possible disadvantages of investing in the Bonds and did not disclose to customers that HJL would receive an initial fee of up to 5% of the funds raised from a number of the Bonds (COBS 2.1.1R and 9.2.1R).

4.58. In addition, the Authority identified:

- (1) two cases where investment advice had been given about a Pension Transfer outside of BHIM's permission;
- (2) one case where the recommendation was not suitable as the customer lost existing benefits (a guaranteed interest rate) (COBS 2.1.1R and 9.2.1R(1));
- (3) five cases where the recommendation was unsuitable for the customer's personal circumstances, financial circumstances and/or investment objectives (COBS 2.1.1R and 9.2.1R(1)). For example, one customer confirmed he was disabled and 'retired' on medical grounds and his only source of income was disability welfare benefits. Despite this, he was recommended to transfer all of his existing pension to the SIPP and to invest in the 'moderate' portfolio of Bonds;
- (4) four cases where the recommendation was unsuitable as the SIPP was more expensive than one or more of the customer's existing pensions and there was no justification for the additional cost (COBS 2.1.1R and 9.2.1R(1)). For example, a customer was recommended to switch to a SIPP and invest in the Bonds even though this would be £2,000 more expensive at the medium return level than remaining in their existing pension scheme;
- (5) 17 cases, where audio recordings of the advice process were available for review by the Authority, where oral statements were made to the customer during the advice process that were factually inaccurate, unclear, unfair or misleading (COBS 4.2.1R). Those statements included that:
 - a) after the fact-find an IFA would spend two days reviewing the customer's circumstances to make a recommendation, when in fact the advice process was automated with typically no involvement from a qualified financial adviser;

- b) an adviser would search the market for a recommendation tailored to the customer's circumstances, when in fact the Bonds were the only products that were available for recommendation to the customer;
 - c) the customer's capital would be guaranteed and the returns were fixed, without explaining that income and/or capital might be lost if the investments made by the issuing companies did not perform adequately; and
 - d) the advice was covered by the FSCS, without making it clear that any losses incurred through the failure of the Bonds would not be covered by the FSCS; and
- (6) 18 cases where the information suggests customers waived their right to cancel within 30 days (COBS 4.2.1R). There is no evidence that customers were informed of the implications of waiving their rights and they may not have been given sufficient time to reflect on the suitability of the investment.

Acting outside the Firm's permission and breaches of the Voluntary Requirement

Advising on Pension Transfers

- 4.59. The Firm was not authorised to advise on Pension Transfers. However, in allowing HJL and CAL to perform the Outsourced Functions on BHIM's behalf, failing to review in a meaningful way advice given through the Pension Review and Advice Process, and failing to ensure BHIM put in place and operated appropriate systems and controls in relation to the Pension Review and Advice Process, Mr Freer exposed the Firm to the risk of breaching section 20 of the Act by carrying on a regulated activity without the relevant permission. This in fact happened when, between 24 November 2014 and 27 July 2015, the Firm gave advice in relation to five Pension Transfers, and at least four customers transferred as a result.
- 4.60. On 9 February 2015, CAL emailed Mr Freer an internet link to a publication by the Authority which made clear that pension funds moved from any type of occupational pension scheme (including defined benefit schemes) to a SIPP fall within the Handbook definition of a Pension Transfer. Mr Freer noted that he had not

understood this before and confirmed to CAL that the Firm did not have permission to perform Pension Transfers. Mr Freer took steps to identify if advice had been given to customers about Pension Transfers, but failed to identify that advice had been given in his name on at least four Pension Transfers through the Pension Review and Advice Process prior to 9 February 2015 (when he received the email) and did not prevent the completion of two Pension Transfers after this date.

Breaches of the Voluntary Requirement

4.61. On 17 September 2015, at the request of the Authority, the Firm applied for the imposition of requirements on it. Accordingly, the Voluntary Requirement was imposed on the Firm. As a result, BHIM was required:

- (1) to terminate any and all business relationships with HJL and CAL and another third party such that they could not perform any activities on behalf of the Firm;
- (2) not to carry on any activities in relation to Pension Switches and/or Pension Transfers to any SIPP, including completing any business then being processed which had not been completed, until independent verification was provided to the Authority confirming that a robust and compliant advisory process was in place for pension switching advice. The person appointed to provide independent advice had to be a person appointed with prior agreement from the Authority; and
- (3) to implement a process of ongoing independent checks on all new pension SIPP switching advice until such time as the Authority was satisfied the new advisory process referred to above was embedded into the Firm's processes.

4.62. Mr Freer was aware of the terms of the Voluntary Requirement. Despite this, between 5 October 2015 and 10 November 2016, Mr Freer and other advisers at the Firm advised (with Mr Freer's knowledge) a total of 77 customers to switch their pensions to SIPPs.

4.63. Mr Freer thought that the account in which the majority of the 77 customers were advised to invest was a type of personal pension not subject to the restrictions in the Voluntary Requirement. Had he taken reasonable steps to check the type of pension account, Mr Freer would have discovered that it was in fact a SIPP and that

it did fall within the terms of the Voluntary Requirement. Mr Freer also told the Authority he relied on information from Mr Ward that the Firm had permission from the Authority to advise customers to switch their pensions to certain SIPP accounts. Despite knowing that this contradicted the written terms of the Voluntary Requirement, Mr Freer took no other steps to confirm this, such as contacting the Authority himself or asking to see written confirmation from the Authority.

- 4.64. Mr Freer thereby recklessly allowed the Firm to contravene the terms of the Voluntary Requirement. In total approximately £2.9 million of customer funds was switched to SIPPs despite the Voluntary Requirement.
- 4.65. When the Authority became aware of this, it used its own-initiative powers to impose further requirements on the Firm such that, with effect from 12 December 2016, it was not permitted to carry on any regulated activity.

Misleading the Authority

- 4.66. Mr Freer repeatedly provided the Authority with information about the Firm's business which was false, incomplete or misleading. Mr Freer claimed that he had not intended to mislead the Authority. However, he provided information which he must have known at the time was not true. The Authority considers that Mr Freer did so to try to prevent the Authority from identifying misconduct by himself, Mr Ward and the Firm in relation to the Pension Review and Advice Process and the Firm's business arrangements with HJL and CAL.
- 4.67. Mr Freer provided various false and misleading accounts to the Authority about the Firm's business and its business arrangements with HJL and CAL. In particular:
- (1) Mr Freer repeatedly told the Authority he had no idea that HJL had any involvement in the Pension Review and Advice Process despite approving documents which clearly showed HJL's involvement and receiving an agreement for HJL to generate leads and perform the Outsourced Functions on behalf of the Firm (see paragraphs 4.10 to 4.14 above).
 - (2) Mr Freer also told the Authority that the Firm started working with CAL in December 2014, that he quickly identified concerns with CAL and the Pension Review and Advice Process, and that the Firm took steps to terminate its agreement with CAL in February or March 2015 as a result.

This was not true because the Firm started working with CAL in October 2014 and continued to work with it until 27 July 2015 (see paragraphs 4.16 and 4.18 above) and Mr Freer must have known this because he continued to communicate with CAL during this time.

- 4.68. The Authority considers that Mr Freer deliberately sought to mislead the Authority on these points. Mr Ward emailed Mr Freer on 4 August 2014, following receipt of a letter from the Authority explaining its concerns about the Pension Review and Advice Process and the Firm's relationships with HJL and CAL. Mr Ward wrote that the Authority had, among other things, '*restricted the whole thing to the work we were doing with [CAL]*' and '*said that we were being put into a process led by [HJL]*'. In his email Mr Ward suggested that he and Mr Freer could counter those concerns by telling the Authority that the Firm had identified concerns with the Pension Review and Advice Process '*in the preceding feb and stopped the work process*' and that it had '*no connection legally or actually*' with HJL. These statements are not supported by the contemporaneous documentary evidence with which the Authority has been provided and which would have been available to Mr Freer at the time.
- 4.69. Mr Freer also told the Authority that the Firm did not have minutes of board meetings when, in fact, the Firm kept formal minutes of meetings from 14 July 2014 at the latest. The minutes were approved by the board (which included Mr Freer) at the beginning of the following board meeting. Mr Freer must have known this. The minutes contained important information about BHIM's arrangements with CAL. When copies of the minutes were finally provided to the Authority they included minutes of a meeting in February 2015 which stated that '*work with [CAL] has come to fruition and is to be continued*'. None of the minutes provided to the Authority contained any evidence that the Firm terminated its agreement with CAL prior to July 2015.
- 4.70. Mr Freer allowed the Firm to provide the Authority with a copy of the Firm's new business register on 21 September 2016 which was materially incomplete. The Firm's new business register recorded a total of 30 transactions involving pensions after the date of the Voluntary Requirement. It did not indicate that any of those transactions involved customers switching to a SIPP account. However, the Authority obtained information which showed that, in the period covered by the new business register, the Firm had in fact advised customers on 76 transactions involving Pension Switches to a SIPP account with a single SIPP Provider. The new

business register provided to the Authority recorded only 29% of those transactions. Mr Freer failed to check the new business register before Mr Ward provided it to the Authority. If he had checked it, it would have been obvious to him that it was incomplete and omitted relevant material.

5. FAILINGS

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

Statement of Principle 1

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

5.3. During the Relevant Period, Mr Freer breached this requirement in that:

(1) He acted dishonestly by causing BHIM to hold out the Pension Review and Advice Process to customers as the Firm providing bespoke, independent investment advice based on a comprehensive and fair analysis of the whole market. This was dishonest because Mr Freer knew that this was misleading to customers as it did not reflect the reality of the service that BHIM would provide using the Pension Review and Advice Process.

(2) His actions in relation to BHIM's adoption and use of the Pension Review and Advice Process to provide advice to BHIM's customers were reckless. The Pension Review and Advice Process put BHIM's customers at serious risk of receiving unsuitable advice and therefore at serious risk of investing in products that were not suitable for them (which in fact happened), but Mr Freer closed his mind to these risks and unreasonably exposed BHIM's customers to them by allowing BHIM to adopt and use the Pension Review and Advice Process. In particular:

a) Mr Freer failed to carry out adequate due diligence on the Bonds before agreeing that they should be recommended to customers. He relied solely on documents provided to BHIM by HJL, despite knowing that HJL had a material financial interest in a number of the Bonds, and did not take any actions to address the risk that the information

provided by HJL could be misleading or incomplete. In any event, it should have been obvious to Mr Freer from the limited information that he considered that the Bonds were high risk investments that were unlikely to be suitable for BHIM's customers, except in very limited circumstances. However, Mr Freer failed to give due consideration to the risk that the Bonds were unsuitable.

- b) Mr Freer knew of HJL's involvement in the Pension Review and Advice Process and that the process was structured to result in customers switching their pensions to SIPPs investing in assets in a number of which HJL had a material financial interest. He also knew that two of HJL's directors were directors of each of the companies issuing the Bonds. However, Mr Freer took no steps to ensure that the common directorships and how HJL was remunerated were disclosed to customers.
- c) Mr Freer failed to give due consideration to the documents to be used in the Pension Review and Advice Process, and to how the process would operate in practice, and therefore failed to identify significant obvious deficiencies in the process. In any event, it should have been obvious to Mr Freer from the information available to him that the Pension Review and Advice Process did not comply with the Authority's rules. However, Mr Freer failed to give any meaningful consideration to whether or not it was compliant.
- d) Mr Freer failed to take reasonable steps to ensure that BHIM maintained control of the Pension Review and Advice Process and allowed important parts of the process (for example, the conduct of fact-finds) to be performed in a way that failed to obtain and/or take into account relevant information about BHIM's customers. Further, he failed to take reasonable steps to ensure that BHIM reviewed in a meaningful way the advice given through the Pension Review and Advice Process, whether before recommendations were sent to customers or at all.
- e) Mr Freer failed to take reasonable steps to ensure that BHIM put in place and operated appropriate systems and controls and compliance

arrangements to oversee and monitor the Pension Review and Advice Process.

- f) Mr Freer (together with Mr Ward) agreed that the Firm would work with HJL and CAL without giving any proper consideration to whether they were suitable to perform services on behalf of the Firm. Mr Freer failed to carry out adequate due diligence on HJL and CAL before agreeing that BHIM would work with them.
- (3) He recklessly allowed the Firm to breach a term of the Voluntary Requirement by advising and permitting other financial advisers to advise (with his knowledge) a total of 77 customers to switch their pension to a SIPP after the Voluntary Requirement had been imposed. Mr Freer was aware of the risk that BHIM might breach the terms of the Voluntary Requirement but, by closing his mind to that risk, recklessly failed to take reasonable steps to ensure that these transactions were permitted.
- (4) He told the Authority that:
- a) HJL had no involvement in the Pension Review and Advice Process, when Mr Freer knew that it did, in particular by introducing customers to the Firm; and
 - b) the Firm started working with CAL in December 2014 and sought to terminate its agreement with CAL in February 2015, when Mr Freer knew that the Firm in fact started working with CAL in October 2014 and did not seek to terminate its agreement until July 2015.

The Authority considers that Mr Freer made these false and misleading statements deliberately in order to try to prevent the Authority from identifying misconduct by himself, Mr Ward and the Firm, and thereby acted dishonestly.

- (5) He acted dishonestly by deliberately telling the Authority that the Firm did not have minutes of board meetings when, in fact, the Firm kept formal minutes of meetings which he (and others) had approved.
- (6) He recklessly allowed the Firm to provide the Authority with a copy of the Firm's new business register on 21 September 2016 which was materially

incomplete. Mr Freer closed his mind to the risk that the new business register might be incomplete or inaccurate and failed to take reasonable steps to ensure the information provided to the Authority was complete and accurate. Had Mr Freer done so, he would have identified the obvious errors that were contained in the new business register.

Lack of fitness and propriety

- 5.4. The Authority has concluded, based on the matters set out above, that Mr Freer lacks integrity and is not fit and proper.

6. SANCTION

Financial penalty

- 6.1. The Authority considers it is appropriate to impose a financial penalty on Mr Freer under section 66 of the Act in respect of his breach of Statement of Principle 1.
- 6.2. 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

- 6.3. 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.
- 6.4. Mr Freer directly financially benefitted from his misconduct because he received £1,400 for compliance checking files of customers who received advice from BHIM through the Pension Review and Advice Process.
- 6.5. In accordance with DEPP 6.5B.1G, the Authority has charged interest on Mr Freer's benefit, at 8% per year from receipt, amounting to £425.
- 6.6. Step 1 is therefore £1,825.

Step 2: the seriousness of the breach

- 6.7. 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.
- 6.8. The period of Mr Freer's breach of Statement of Principle 1 was from 9 September 2014 to 12 December 2016. The Authority considers Mr Freer's relevant income for this period to be £25,460. This figure comprises salary payments which Mr Freer received from the Firm. The Authority has not included salary payments which remain unpaid by the Firm.
- 6.9. 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%
- 6.10. 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.

Impact of the breach

- 6.11. Mr Freer agreed that the Firm should adopt and use the Pension Review and Advice Process motivated by the prospect of making significant financial gain for doing very little (DEPP 6.5B.2G(8)(a)).
- 6.12. Mr Freer's breach of Statement of Principle 1 caused a significant risk of loss to a

large number of customers who switched or transferred their pensions to SIPPs investing in the Bonds (DEPP 6.5B.2G(8)(c)).

- 6.13. A large number of customers were given advice by the Firm through the Pension Review and Advice Process, including some who were vulnerable due to their age, their inability to replace capital, medical conditions or other personal circumstances (DEPP 6.5B.2G(8)(d)).

Nature of the breach

- 6.14. Mr Freer breached Statement of Principle 1 over an extended period of time (DEPP 6.5B.2G(9)(b)).
- 6.15. Mr Freer failed to act with integrity because he acted dishonestly and/or recklessly throughout the Relevant Period (6.5B.2G(9)(e)).
- 6.16. Mr Freer, as the individual approved to perform the CF1 (Director) and CF10 (Compliance Oversight) controlled functions, held a senior position at the Firm (DEPP 6.5B.2G(9)(k)).

Reckless misconduct

- 6.17. Mr Freer acted recklessly in respect of the Pension Review and Advice Process, as described in paragraph 5.3(2) of this Notice (DEPP 6.5B.2G(11)(a)).
- 6.18. Mr Freer recklessly allowed the Firm to provide a copy of the Firm's new business register to the Authority without taking reasonable steps to ensure the information was complete and not misleading (DEPP 6.5B.2G(11)(a)).
- 6.19. Mr Freer recklessly allowed the Firm to contravene the Voluntary Requirement when he advised, and permitted other advisers to advise (with his knowledge), customers to switch their pensions to a SIPP (DEPP 6.5B.2G(11)(a)).

Deliberate misconduct

- 6.20. Mr Freer knew that the Firm deliberately misled customers by holding out its pension advice service to customers as offering bespoke, independent investment advice based on a comprehensive and fair analysis of the whole market when, as he knew, this did not reflect the reality of the service that BHIM would provide using the Pension Review and Advice Process (DEPP 6.5B.2G(10)(c)).

6.21. Mr Freer deliberately provided false and misleading information to the Authority about the Firm's business arrangements with HJL and CAL in order to conceal his and the Firm's misconduct. Mr Freer also deliberately told the Authority that the Firm did not have minutes of board meetings when, in fact, the Firm kept formal minutes of meetings which he (and others) approved (DEPP 6.5B.2G(10)(d)).

Level of seriousness

6.22. 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 Freer's breach of Statement of Principle 1 caused a significant risk of loss to a large number of customers (DEPP 6.5B.2(12)(a));
- (2) Mr Freer failed to act with integrity (DEPP 6.5B.2(12)(d)); and
- (3) Mr Freer's breach of Statement of Principle 1 was committed deliberately and recklessly (DEPP 6.5B.2(12)(g)).

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

6.24. Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 5 and so the Step 2 figure is 40% of £25,460.

6.25. Step 2 is therefore £10,184.

Step 3: mitigating and aggravating factors

6.26. 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.

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

- (1) Mr Freer was previously involved in BHIM's acting for customers who invested their pensions in carbon credits (another high risk unregulated investment). The Authority had concerns with this business and, on 16 June 2014, on the application by Mr Freer on behalf of the Firm, the Authority

imposed a restriction on the type of investments that BHIM could offer customers. Mr Freer was therefore aware of the Authority's concerns with customers investing their pensions in high risk unregulated investments (DEPP 6.5B.3G(2)(f));

- (2) on 18 January 2013 and 28 April 2014 the Authority issued alerts to firms advising on Pension Transfers with a view to investing pension monies into unregulated products through SIPPs (DEPP 6.5B.3G(2)(k)); and
- (3) in June 2014 the Authority specifically sent copies of the alerts referred to above to Mr Freer and highlighted the Authority's concerns. Despite this correspondence with the Authority, about three months later Mr Freer agreed for the Firm to adopt the Pension Review and Advice Process (DEPP 6.5B.3G(2)(f)).

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

6.29. Having taken into account these aggravating factors, the Authority considers that the Step 2 figure should be increased by 25%.

6.30. Step 3 is therefore £12,730.

Step 4: adjustment for deterrence

6.31. 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.

6.32. The Authority considers that the Step 3 figure of £12,730 does not represent a sufficient deterrent, and so has increased the penalty at Step 4 by a multiple of 4.

6.33. Step 4 is therefore £50,920.

Step 5: settlement discount

6.34. Pursuant to DEPP 6.5B.5G, if the Authority and the individual on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the individual

reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.

6.35. No settlement discount applies.

6.36. The Step 5 figure is therefore £50,900 (rounded down to the nearest £100). The total financial penalty (including the Step 1 disgorgement figure of £1,825) is £52,725.

Serious financial hardship

6.37. Pursuant to DEPP 6.5D.1G, the Authority will consider whether it is appropriate to reduce the amount of a financial penalty if an individual would suffer serious financial hardship as a result of having to pay the full amount of the financial penalty. The Authority accepts that the payment of a financial penalty of £52,725 would cause Mr Freer serious financial hardship.

6.38. DEPP 6.5D.2G(7) provides that there may be cases where, even though the individual has satisfied the Authority that payment of the financial penalty would cause him/her serious financial hardship, the Authority considers the breach to be so serious that it is not appropriate to reduce the financial penalty. The Authority will consider all the circumstances of the case in determining whether this course of action is appropriate, including whether the individual acted dishonestly with a view to personal gain.

6.39. The Authority considers that Mr Freer acted dishonestly with a view to personal gain and his misconduct is considered to be at level 5 on the scale of seriousness. Therefore, having regard to all the circumstances of the case, the Authority considers Mr Freer's breach to be so serious that it is not appropriate to reduce the financial penalty.

Penalty

6.40. The Authority therefore has decided to impose a total financial penalty of £52,725 on Mr Freer for breaching Statement of Principle 1.

Prohibition Order and Withdrawal of Approval

6.41. The Authority has had regard to the guidance in Chapter 9 of EG in considering whether to withdraw Mr Freer's approval to perform controlled functions and

whether to impose a prohibition order on him. The Authority has the power to prohibit individuals under section 56 of the Act.

- 6.42. The Authority considers that Mr Freer is not a fit and proper person to perform any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm. The Authority considers that it is therefore appropriate and proportionate in all the circumstances to withdraw the approval given to Mr Freer to perform the CF1 (Director), CF10 (Compliance Oversight), CF11 (Money Laundering Reporting) and CF30 (Customer) controlled functions at BHIM and to impose a prohibition order on him under section 56 of the Act in those terms. This follows from the Authority's findings that Mr Freer breached Statement of Principle 1 by acting dishonestly and recklessly during the Relevant Period and lacks integrity.

7. REPRESENTATIONS

- 7.1. Annex B contains a brief summary of the key representations made by Mr Freer, and by HJL as a person given third party rights in respect of the Warning Notice under section 393 of the Act, and how they have been dealt with. In making the decision which gave rise to the obligation to give this Notice, the Authority has taken into account all of the representations made by Mr Freer and HJL, whether or not set out in Annex B.

8. PROCEDURAL MATTERS

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

Decision maker

- 8.2. The decision which gave rise to the obligation to give this Notice was made by the Regulatory Decisions Committee.

The Tribunal

- 8.3. Mr Freer 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 Freer has 28 days from the date on which this Notice is given to him to refer the matter to the Tribunal. A reference to the Tribunal is

made by way of a signed reference notice (Form FTC3) filed with a copy of this Notice. The Tribunal's contact details are: Upper Tribunal, Tax and Chancery Chamber, Fifth Floor, Rolls Building, Fetter Lane, London EC4A 1NL (tel: 020 7612 9730; email: fs@hmcts.gsi.gov.uk).

- 8.4. 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 Form FTC3 must also be sent to the Authority at the same time as filing a reference with the Tribunal. A copy should be sent to Helen Tibbetts 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:
- (1) the material upon which the Authority has relied in deciding to give this Notice; and
 - (2) the secondary material which, in the opinion of the Authority, might undermine that decision.

Third party rights and interested party rights

- 8.9. A copy of this Notice is being given to each of HJL, CAL, Mark Stephen and James King as third parties identified in the reasons above and to whom in the opinion of the Authority the matter is prejudicial. Each of those parties has similar rights to those mentioned in paragraphs 8.3 and 8.8 above, in relation to the matters which identify him/it.
- 8.10. This Notice is also being given to BHIM as an interested party in the withdrawal of Mr Freer's approval, pursuant to section 63(4) of the Act. BHIM has the right to:

- (1) access evidence pursuant to section 394 of the Act, as described above; and
- (2) refer to the Tribunal any decision to withdraw Mr Freer's approval, pursuant to section 63(5) of the Act.

Confidentiality and publicity

- 8.11. 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.
- 8.12. However, the Authority must publish such information about the matter to which a decision notice or final notice relates as it considers appropriate. The persons to whom this Notice is given or copied should therefore be aware that the facts and matters contained in this Notice may be made public.

Authority contacts

- 8.13. For more information concerning this matter generally, contact Helen Tibbetts (direct line: 020 7066 0656) at the Authority.

Tim Parkes
Chair, Regulatory Decisions Committee

ANNEX A

1. RELEVANT STATUTORY PROVISIONS

- 1.1. The Authority's objectives are set out in Part 1A of the Act, and include the operational objective of securing an appropriate degree of protection for consumers (section 1C).
- 1.2. Section 56(1) of the Act provides that the Authority may make a prohibition order if it appears to it that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by (a) an authorised person, (b) a person who is an exempt person in relation to that activity, or (c) a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity.
- 1.3. Section 56(2) of the Act provides that a 'prohibition order' is an order prohibiting the individual from performing a specified function, any function falling within a specified description or any function. Section 56(3)(a) provides that a prohibition order may relate to a specified regulated activity, any regulated activity falling within a specified description or all regulated activities.
- 1.4. Section 63 of the Act provides that the Authority may withdraw an approval given 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.
- 1.5. 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, whilst an approved person, he has failed to comply with a statement of principle issued under section 64 or section 64A of the Act.

2. RELEVANT REGULATORY PROVISIONS

Statements of Principle and Code of Practice for Approved Persons

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

Enforcement Guide

- 2.5. EG sets out the Authority's approach to exercising its main enforcement powers under the Act.
- 2.6. Chapter 7 of EG sets out the Authority's approach to exercising its power to impose financial penalties and other disciplinary sanctions.

Decision Procedure and Penalties Manual

- 2.7. The Authority's policy for imposing penalties is set out in Chapter 6 of DEPP.

Conduct of Business Sourcebook

- 2.8. The Authority's rules and guidance for Conduct of Business are set out in COBS. The rules and guidance in COBS relevant to this Notice are 2.1.1R, 4.2.1R, 9.2.1R, 9.2.6R, 9.3.1G and the rules in 9.4.

Senior Management Arrangements, Systems and Controls Sourcebook

- 2.9. The Authority's rules and guidance for senior management arrangements, systems and controls are set out in SYSC. The rules and guidance in SYSC relevant to this Notice are 7.1.2R, 7.1.2AG, 8.1.1R, 8.1.1AG, 8.1.7R, 8.1.8R(1) and 8.1.11AG.

ANNEX B

REPRESENTATIONS

Representations received from Mr Freer

1. Mr Freer's representations (in italics), and the Authority's conclusions in respect of them, are set out below:

The Authority's investigation was inadequate

2. *The Authority's investigation into Mr Freer was inadequate and biased. The Authority has not interviewed or obtained statements from any individual at CAL. Further, the Authority decided the case before it was put to Mr Freer.*
3. The Authority is satisfied that a thorough investigation was carried out. The Authority's investigation was into the conduct of BHIM, Mr Freer and Mr Ward. It has therefore focussed predominately on the accounts and documents provided by those parties. In addition, the Authority obtained material from other parties where it reasonably considered that the material would be relevant to the purpose of its investigation.
4. The Authority has determined this matter in accordance with its usual procedures set out in DEPP. In particular, the decision to give the Notice was taken by members of the Regulatory Decisions Committee (the "RDC"), a committee of the Authority which is independent of the case team in the Authority's Enforcement and Market Oversight Division that carried out the investigation, and none of these RDC members was directly involved in establishing the evidence on which the decision was based. Prior to the RDC reaching the decision that gave rise to the obligation to give this Notice, Mr Freer was given the opportunity to make both written and oral representations to the RDC, which he did. The Authority is therefore satisfied that the decision to give this Notice was not made until after Mr Freer commented on the Authority's proposed action.

HJL was not involved in the Pension Review and Advice Process

5. *BHIM did not have a business relationship with HJL. When the HJL representative met Mr Ward for the first time on 9 September 2014, he did so as a representative from CAL, not HJL. Mr Ward did not notice that the HJL representative used an HJL email address.*

6. *HJL did not provide BHIM with leads. Leads were provided by CAL, although Mr Freer did not know who at CAL provided the leads. BHIM only had a services agreement with CAL, they did not have a signed agreement with HJL.*
7. Mr Freer's representation that BHIM did not have a business relationship with HJL is not consistent with the documentary evidence.
8. Mr Ward's email to Mr Freer on 9 September 2014, summarising his meeting with the HJL representative, can only be understood if Mr Ward believed the individual he was meeting attended on behalf of HJL. For example, Mr Ward refers to the individual:
 - a. having various "*bond type of funds*" and that there were a substantial number of people who wanted to invest in "*his*" funds – only HJL had bonds to offer, not CAL; and
 - b. being potentially conflicted – HJL, which had a material financial interest, would have had a direct conflict if it was advising customers to invest in the Bonds.
9. Following the meeting on 9 September 2014, the HJL representative emailed Mr Ward and Mr Freer a service agreement between BHIM and HJL. The email was sent from an HJL email address, and the Authority considers this would have alerted Mr Freer to the fact that the individual was corresponding on behalf of HJL.
10. Even if Mr Freer did not notice the HJL email address, he must have been aware that HJL had been involved in the development of the pension switching advice model that BHIM adopted. The description of the pension switching advice model in Mr Ward's email of 9 September 2014 strongly suggests that it was influenced by HJL. According to the email, the HJL representative said that he had a suite of compliant documents and that "*they*" (referring to HJL) would do everything including the production of reports and suitability paperwork in BHIM's name.
11. In relation to lead generation, it is clear from the contemporaneous evidence that Mr Freer was aware that HJL was introducing customers to BHIM. In particular:
 - a. the unsigned service agreement between HJL and BHIM shows that HJL would be generating leads. The agreement subsequently entered into with CAL contains broadly the same services, but with the exception of lead

generation. It therefore appears that HJL continued to generate leads, even after CAL started performing the Outsourced Functions;

- b. a number of the documents in BHIM's client files describe HJL as the introducer;
- c. internal emails between Mr Freer and BHIM staff demonstrate that Mr Freer was aware that HJL was introducing customers to BHIM; and
- d. Mr King emailed Mr Freer from an HJL email address attaching an "up to date list of all the marketing companies we [HJL] are working with from a lead generation front". Mr King stated his understanding that BHIM had received calls from customers asking whether the lead generation companies "are legitimately working on [BHIM's] behalf". This demonstrates that HJL was using lead generation companies to generate leads for BHIM.

The length of CAL's involvement in the Pension Review and Advice Process

- 12. *The Pension Review and Advice Process began in December 2014 and was terminated by BHIM in March 2015, although BHIM had to allow CAL to work through the 3 months' notice period in the service agreement.*
- 13. Mr Freer's assertion that the Pension Review and Advice Process began in December 2014 is not supported by the contemporaneous evidence, which suggests that CAL began performing the Outsourced Functions from at least the middle of October 2014 onwards. For example, the service agreement between BHIM and CAL is dated 13 October 2014, and on 27 October 2014, CAL explained in an email to Mr Freer that there were already seven cases for BHIM.
- 14. Mr Freer has not provided the Authority with any evidence to support his claim that BHIM terminated its agreement with CAL in March 2015. The Authority has not identified any reference to such notice being provided in correspondence or in any of BHIM's board minutes.
- 15. Neither Mr Freer nor Mr Ward have been able to provide a clear explanation of the effect of terminating the agreement between BHIM and CAL. It appears from the documentary evidence that CAL continued to perform the Outsourced Functions until the Authority intervened to stop all of BHIM's SIPP business in late July 2015.

Due diligence on the Bonds

16. *BHIM did not just rely on information from HJL when conducting due diligence on the Bonds. BHIM was provided with advice from a significant London law firm. This law firm informed BHIM that the Bonds were not illiquid. There was no risk that the Bonds would not be listed, as the SIPP Provider would not be able to buy the Bonds until they were listed. In any event, Mr Freer believed that, at the time the Bonds were recommended to customers, there was a market-maker in place for them.*
17. *There was a significant difference between the various portfolios and Mr Ward was involved in the process of deciding the percentages for the portfolios. Further, the floating charge and cash held by the issuing companies was standard protection for bonds of this nature, and better than some regulated bonds.*
18. The Authority accepts that BHIM had sight of advice from a London law firm. However, the law firm was HJL's legal adviser and the advice was given to HJL, which later gave a copy of the advice to BHIM. As such, the advice was not independent of HJL, nor was it independently corroborated. As the advice was obtained for HJL's purposes, there was a risk that it may have been based on incomplete or inaccurate instructions, or given without proper consideration of BHIM's circumstances. In any event, the legal opinion did not consider or address the risk profile of the Bonds, or their suitability for BHIM's customers.
19. Mr Freer's representations do not address key areas of the Authority's case. Not only did Mr Freer fail to obtain adequate information to conduct due diligence on the Bonds, but he failed to adequately assess the information that was available to him. Had he done so, he would have realised that the Bonds were high risk (due to the factors described in paragraph 4.21 of the Notice).
20. Mr Freer has not provided, and the Authority has not identified, any evidence that a market maker was in place for the Bonds. The Authority notes that BHIM's customers' pension funds do not appear to have been invested in the Bonds until 5 February 2015 (the day before the Bonds were admitted to trading), which might support Mr Freer's assertion that the SIPP Providers would not purchase the Bonds unless they were listed. However, it does not follow that, at the time BHIM started advising customers through the Pension Review and Advice Process (and customers started acting on that advice), the Bonds would be listed. Therefore, this remained a risk that customers were not made aware of. Further, listing the Bonds did not guarantee that there would

be a market for them, and in practice, it appears that the Bonds have not been traded through an exchange.

21. There may have been a difference in the risk profile of the portfolios; some may have been riskier than others. However, given that all the Bonds were high risk, and the portfolios contained only the Bonds and a small percentage of cash, the Authority considers that the portfolios containing the Bonds were all high risk, and that it was misleading to describe the portfolios as "cautious", "moderate" and "adventurous".

The service proposition was not misleading

22. *Mr Freer considered the products available in the whole of the market. Having done so, he formed the view that the Bonds (and the portfolios of the Bonds) gave better returns in respect of their risk profile than other funds available at that time.*
23. *The advice process was not intended to have 100% of customers invested in the Bonds. It was designed to filter out those customers that BHIM felt would be appropriate for the Bonds. BHIM's intention was that all other customers would receive holistic advice. Therefore, it was not a 'one size fits all' approach, and this can be seen from the fact that only 18% of customers were advised to invest in the Bonds.*
24. *Mr Freer accepts that he may have agreed to template documents (including the service proposition) with a fairly flippant response. However, BHIM had been assured by CAL that the service proposition had been assessed as compliant by other firms, and Mr Freer agreed with that assessment given what he had seen at the time.*
25. The Authority accepts that the Pension Review and Advice Process was structured to filter out certain customers. However, in practice, there was no assessment of customers' options; the process simply led to the Bonds being recommended on the basis of whether the client expressed a preference for fixed returns or capital protection. If a customer answered 'yes' to either of those triggers, the Bonds were recommended. These filters were too high level to effectively identify those customers for whom the Bonds would be suitable.
26. The Bonds were the only product available for recommendation through the Pension Review and Advice Process. HJL had a material financial interest in a number of the Bonds and two of its directors were directors of the companies issuing the Bonds. Further, HJL influenced the design of the pension switching advice model on which the

Pension Review and Advice Process was based, acted as an introducer in that process, and performed certain of the Outsourced Functions.

27. In the circumstances described in paragraphs 25 and 26 above, it was clearly misleading for BHIM to describe its services as independent and based on a comprehensive analysis of the whole market.
28. Mr Freer's assertion that only 18% of customers were advised to invest in the Bonds appears to be incorrect and misleading. The statistics provided by CAL to Mr Freer on 15 July 2015 show that of a total of 2,142 cases received by BHIM, 1,967 were "in progress". Of these, only 540 cases (27.5%) are listed as "not proceeding". Of those cases that did not proceed, 70% did not do so because of actions taken by the customers rather than as a result of any specific recommendation by BHIM to the customer. Only 4.1% of cases that did not proceed (1% of total cases referred to BHIM) did not do so because the customer was advised against doing so by BHIM.
29. In relation to Mr Freer's view that other IFAs had assessed the documents, including the service proposition, as compliant, the Authority considers that it was not appropriate for Mr Freer to rely on other IFAs, especially without seeking to understand how they reached their view. Further, while Mr Freer claims to have agreed with the assessment conducted by other IFAs, it appears he reached this view only three days after becoming aware of the proposed business model, and after having taken only four hours to review the specimen documents provided by HJL.

It was not unreasonable for Mr Freer to agree for BHIM to adopt the Pension Review and Advice Process within 24 hours

30. *It was not unreasonable for Mr Freer to have agreed that BHIM should adopt the Pension Review and Advice Process within 24 hours of being introduced to it by Mr Ward, given: (i) the documentation that had been provided; (ii) the process was already in place; and (iii) adequate due diligence had already been done on CAL.*
31. The Authority does not consider Mr Freer's recollection of the circumstances to be accurate. On 10 September 2014, Mr Freer agreed with Mr Ward that BHIM should adopt the Pension Review and Advice Process. At that time, Mr Freer had only seen specimen documents to be used (or being used) by other IFAs. He had not yet seen the final paperwork. The process was not yet in place and Mr Freer had not yet met anyone from HJL or CAL.

The Pension Review and Advice Process was a form of robo-advice

32. *The Pension Review and Advice Process was no different to a robo-advice model or the use of decision trees.*
33. BHIM did not hold itself out as providing robo-advice, so it is not an appropriate comparison. If a firm adopts a robo-advice model, they should clearly explain to customers that a level of automation is being used, so that the customer is able to understand the nature and risks of the service being offered and take investment decisions on an informed basis. BHIM gave customers the opposite impression. The Authority has found a number of examples where customers were told that:
 - a. after the fact-find, an IFA would take a number of days to review the customer's circumstances and make a recommendation; and
 - b. an adviser would search the market so that the recommendation was tailored to the customer's circumstances.

Mr Freer maintained adequate oversight of the process

34. *Mr Freer took reasonable steps to maintain control of the Pension Review and Advice Process. This was done through an online sign-off process, as well as onsite monitoring and file reviews. Every file was reviewed by Mr Freer before it was sent to the customer, and he had the ability to reject a file. This was almost a full-time job.*
35. *The compliance checks were carried out using a form created by a well-known and respected compliance firm.*
36. Mr Freer did not conduct a file review until approximately four months after CAL had begun to perform the Outsourced Functions. During that period, 112 of BHIM's customers had already switched or transferred their pensions to SIPPs with the underlying investment in the Bonds. The Authority considers that it was inappropriate to allow a third party to conduct important operational functions on behalf of BHIM for such a lengthy period without appropriate oversight.
37. When Mr Freer did conduct file reviews, they were superficial and did not consider the suitability of advice given to BHIM's customers. In particular, the file review sheets obtained by the Authority focus on the accuracy and completeness of the data in the customer files rather than the suitability of advice. It does not appear that Mr Freer

reviewed every Suitability Report. In January 2015 Mr Freer was surprised by the large payment BHIM received from one of the SIPP Providers. If he had reviewed every file, he should have been aware of the likely number of cases referred to the SIPP Provider, and therefore should have had a better understanding of the payment that would be received. Further, Mr Freer's explanations to the Authority as to how he carried out his reviews were inconsistent. On one occasion Mr Freer said that it took around two hours to review a Suitability Report. However, on a later occasion, he explained that the review would take 5-10 minutes.

38. The accounts Mr Freer has provided to the Authority about the process he adopted in carrying out his reviews, and the mechanism he used to reject a file, are unclear. Mr Freer only had access to the Software for part of the period in which BHIM used the Pension Review and Advice Process. Furthermore, the Software did not contain a mechanism for Mr Freer to approve or reject a Suitability Report before it was sent to a customer.

BHIM conducted adequate due diligence on CAL

39. *BHIM simply purchased leads and basic administration services from CAL and it was wholly legitimate to do so. In these circumstances, it is not clear what more due diligence should have been done on CAL.*
40. *Due diligence was carried out by Mr Ward and another individual at BHIM. BHIM checked Companies House records and the Authority's website, and visited the firm to ensure that it was a real company. The Authority has given no indication of what other due diligence should have been carried out.*
41. The Authority does not accept that BHIM simply purchased leads and basic administration services from CAL. The services provided by CAL under the Pension Review and Advice Process (and described in the service agreement between CAL and BHIM) were both important and necessary for the giving of advice, and included, for example, the conduct of fact-finds. Further, leads were provided by HJL, not CAL.
42. While the Authority has not prescribed, in specific detail, the due diligence that should have been carried out, given the extent that BHIM outsourced important functions under the Pension Review and Advice Process, it should have been clear that more due diligence needed to be done before entering into the service agreement with CAL.

43. In any event, the due diligence that BHIM carried out, and that was described by Mr Freer, both in interview with the Authority, and in his representations on the Warning Notice, would not have assisted BHIM in understanding whether CAL was suitable to perform all of the Outsourced Functions.

The Authority's characterisation of Mr Freer's motivation

44. *Mr Freer accepts that BHIM adopted the Pension Review and Advice Process for financial gain through increased fees and in order to increase the number of customers that the Firm could advise. This is how any business makes money. However, it was not to the detriment of consumers.*

45. *In any event, Mr Freer did not believe that BHIM could expect 100 cases per month, rising to 100 cases per week (as Mr Ward had been told). Mr Freer was correct in this belief, as these levels of new business never materialised.*

46. The Authority accepts that it is normal for a business to seek to make a profit. However, it was not appropriate for BHIM to do so by disregarding the interests of its customers. Even if Mr Freer did not believe that BHIM would receive 100 cases per week, the Authority considers that he was motivated by the prospect of himself and the Firm financially benefitting, without properly considering whether customers would receive suitable advice. Accordingly, in allowing BHIM to adopt and use the Pension Review and Advice Process for financial gain, Mr Freer closed his mind to the risk that BHIM's customers would receive unsuitable advice and were therefore at risk of investing in unsuitable products.

BHIM did not give unsuitable advice

47. *Mr Freer is not clear what inadequate advice had been given. All clients that wanted more than just a pension review were referred to BHIM's Cheltenham office for follow up work.*

48. *Mr Freer disputes the findings in the Authority's file review. In particular:*

- a. *BHIM did not advise two customers in relation to Pension Transfers (contrary to paragraph 4.58(1) of the Notice);*
- b. *in the case where the customer lost existing benefits, the customer was advised of the loss of benefits, but wished to proceed;*

- c. *the 'retired' customer referred to at paragraph 4.58(3) of the Notice was aware of the timescales involved, and had taken a drawdown from his fund; and*
 - d. *the customer in paragraph 4.58(4) of the Notice was aware of the additional cost as it was set out in the Suitability Report.*
49. For the reasons described at paragraph 4.54 to 4.58 of the Notice all of the 20 files reviewed by the Authority contained unsuitable advice and failed to comply with Handbook rules.
50. Mr Freer has not provided any explanation as to why the advice given in the files referred to in paragraph 48(a) above did not relate to Pension Transfers. Both cases appear to involve the transfer of benefits within the Pension Transfer definition.
51. The representations in paragraph 48(b), (c) and (d) relate to customers' decisions, rather than the suitability of advice given to those customers. Accordingly, they do not address the Authority's concerns that the advice was unsuitable. In any event, the Authority considers that the explanations given to customers in the Suitability Reports and in any subsequent meetings and calls were inadequate. As a result, customers were not in a position to make an informed decision as to whether to act on the advice given to them by BHIM.

There were appropriate measures to monitor Pension Transfers

52. *BHIM had appropriate measures in place to monitor Pension Transfers. There were six cases that could be construed as Pension Transfers. However, five of these did not take place and one of them was not an occupational pension scheme.*
53. Mr Freer has not specified the 'appropriate measures' that he refers to in his representation. As such, it is not clear what measures he is referring to. Contrary to Mr Freer's assertion, there were not appropriate measures in place. In particular, the Software had been developed to allow advice on both Pension Switches and Pension Transfers. As a result, information about occupational pension schemes (with the exception of final salary pension schemes) could be added to the system without generating a warning that advice should not be given because BHIM did not have the relevant permission.

54. In relation to the five transfers that Mr Freer claims did not take place, BHIM acted outside its permissions by giving advice, regardless of whether a Pension Transfer took place. In any event, it appears from the SIPP Providers' records that four of the five cases mentioned by Mr Freer did result in Pension Transfers.
55. Mr Freer has not explained why he considers that one of the transactions did not relate to an occupational pension scheme and, if it does not, why it does not relate to a Pension Transfer (as Pension Transfers do not relate solely to transfers from occupational schemes). Accordingly, the Authority is not persuaded by this representation.

The Authority told BHIM that it could do SIPP business

56. *The Voluntary Requirement entered into by BHIM on 17 September 2015 was amended following agreement with the Authority. This amendment permitted BHIM to advise on pension switches to platforms. The amendment was agreed at a meeting attended by Mr Ward and BHIM's lawyer. Mr Ward later informed Mr Freer of the amendment. Mr Freer was entitled to rely on Mr Ward's account of the meeting.*
57. The Authority understands that Mr Freer is referring to a meeting that took place on 14 August 2015. The note of that meeting records that there was a discussion in relation to a proposed requirement to be imposed on BHIM so that it would prevent "SIPP pension switching advice" rather than "all pension switching advice". However, there is no mention of platform switches or of the Authority agreeing that switches to platform would be permitted. These discussions ultimately led to the imposition of the Voluntary Requirement.
58. In the email correspondence between the Authority and BHIM's lawyers prior to the meeting on 14 August 2015, there is no confirmation from the Authority that BHIM would be allowed to conduct switches to platform, or any indication from the Authority that any such switches would be considered outside the terms of the proposed requirement.
59. Following the meeting on 14 August 2015, the Authority agreed to vary the scope of the proposed requirement so that the Firm would be restricted from providing advice in relation to pension switches to SIPPs (rather than all pension switching advice). There was no amendment after the Voluntary Requirement was imposed by the Authority to allow switching to platforms as Mr Freer suggests.

60. It was not appropriate for Mr Freer to rely on Mr Ward's account of what had been agreed with the Authority. As the person at BHIM approved to perform the CF10 (Compliance Oversight) controlled function, he should have taken steps to confirm that these types of transactions were permitted, such as contacting the Authority himself or asking to see written confirmation from the Authority, especially as he knew that, if these transactions were not permitted, BHIM would be in breach of the terms of the Voluntary Requirement.

Mr Freer did not intend to mislead the Authority

61. *Mr Freer did not act with any malicious intent when providing the new business register to the Authority. Mr Freer had taken time off work for health reasons. He did not travel to the office very often and therefore relied on administrative staff to provide the data he required. The information he was given (and which he provided to the Authority) turned out to be inaccurate, but was rectified once he found out.*

62. *Mr Freer did not remember when board minutes were introduced, although he thought that it would have been after much of the Relevant Period had elapsed. It is not something that he paid attention to and he did not have copies of the minutes.*

63. There were significant discrepancies between the new business register that Mr Freer was given by a BHIM employee and the new business the Firm had in fact carried out. The new business register contained only 29% of transactions which had taken place during the period in question. Accordingly, approximately £60,000 of the remuneration received by BHIM from a SIPP Provider was excluded from the information provided to the Authority.

64. In interview with the Authority, Mr Freer said that he did not think the new business register looked "*quite right*", so he queried the information contained in the register, but did not check it himself. Had Mr Freer taken even basic steps to check the information provided in the new business register, he would have realised that the information was substantially incomplete and contained only a fraction of the business conducted by BHIM.

65. In relation to the board minutes, it is not clear why Mr Freer failed to give the explanation in his representations when previously interviewed by the Authority. Instead, Mr Freer told the Authority that he was not involved with the response to the Authority's information request for board minutes. Further, contrary to Mr Freer's

contention that board minutes were introduced after much of the Relevant Period, the Authority has obtained BHIM's board minutes dating back to 14 July 2014.

Representations received from HJL

66. HJL's representations (in italics), and the Authority's conclusions in respect of them, are set out below:

There is no reason to mention HJL, Mr King or Mr Stephen

67. *HJL did not provide any administrative or equivalent services to BHIM. Such services were provided exclusively by CAL. There is therefore no reason to mention HJL, Mr King or Mr Stephen in the Notice.*

68. The Authority considers that when BHIM adopted the Pension Review and Advice Process, it was intended that, initially at least, HJL would perform the Outsourced Functions. Accordingly, a draft service agreement between HJL and BHIM was sent to Mr Ward on 12 September 2014. It appears that HJL and CAL later agreed that CAL would perform the Outsourced Functions, and on 13 October 2014, CAL entered into an agreement with BHIM to do so. There is documentary evidence prior to 13 October 2014 showing that certain of the Outsourced Functions were being performed at that time. For example, letters were sent seeking authority from customers to contact their existing pension provider. Given that the agreement with CAL was not in place until 13 October 2014, it appears that HJL was carrying out these functions before that agreement was in place. As such, the Authority considers that it is appropriate to refer to HJL performing certain of the Outsourced Functions prior to 13 October 2014.

69. The Authority also considers it appropriate to refer to HJL as it generated leads for BHIM under the Pension Review and Advice Process and it had a material financial interest in the products recommended through that process.

70. For the reasons given in paragraphs 77 and 82 below, the Authority considers it appropriate to mention Mr Stephen and Mr King, and their common directorships.

HJL did not develop the Software

71. *HJL did not develop the Software or the pension switching advice model. They were instead designed by two individuals at another company independent of HJL ("Company A").*

72. The Authority accepts that HJL did not create the Software, and that it was instead created by two individuals at Company A. However, the Software was developed at the request of HJL. HJL initially sought an efficient way to provide customers with a pension comparison, to see whether the customer's existing pension charges were reasonable. A system was developed by Company A in around 2011/2012 in line with this request. This system was an early version of the Software.
73. In 2013, HJL asked Company A whether an advice model could be 'bolted on'. HJL staff assisted Company A to understand the products that would be recommended through the Software so that Company A could develop the triggers for the advice. HJL also led the creation of the templates of the documents which were used in the Pension Review and Advice Process and which enabled a complete, fully advised pension switch. The Authority therefore considers that HJL initiated and influenced the development of both the Software and the pension switching advice model.

HJL did not process leads obtained through unlawful cold calling

74. *HJL was at no time involved in cold calling activities itself. All clients introduced to the Firm were obtained by lead generation businesses through a generic financial promotion process, which did not involve the lead generator in identifying any specific investment or a specific provider of investment services. To the extent the activities of the lead generators involved unsolicited real-time financial promotions, those promotions were exempt from the financial promotion restriction in section 21(1) of the Act by virtue of Article 17 of the Financial Service and Markets Act 2000 (Financial Promotion) Order 2005.*
75. The Authority has not found that HJL cold called customers. Instead, the Authority has found that Mr Freer and BHIM failed to take any steps to establish that the lead generators used by HJL generated their customer introductions in an appropriate manner and did not use unlawful cold calling. As such, Mr Freer (and BHIM) did not know whether leads were generated by unlawful cold calling. In fact, the Authority was contacted by three customers complaining that they had been cold called by one of the lead generation companies used by HJL.

Mr Stephen properly managed any conflict of interest

76. *Mr Stephen took careful steps to manage any potential conflicts of interest, including taking legal advice on issues surrounding potential conflicts. From his and HJL's position, relevant potential conflicts were properly managed.*

77. This Notice relates to the conduct of Mr Freer and the steps he took to mitigate the risks posed by Mr Stephen's common directorships. The Authority has made no finding as to whether Mr Stephen adequately managed any actual or potential conflicts that he had. However, it is necessary to describe Mr Stephen's common directorships in the Notice in order to explain Mr Freer's misconduct.

HJL was not inherently unsuitable for the purposes for which it was retained by BHIM

78. *HJL's qualification to operate the Software was its having staffing and organisational capacity to do so. Moreover, the Authority has failed to explain on what basis it implicitly contends that HJL was unsuitable.*

79. When outsourcing functions to a third party, authorised firms must comply with Principle 3 of the Authority's Principles for Businesses. They should also have regard to applicable rules and guidance in SYSC. In relation to BHIM, the relevant guidance is set out in paragraph 4.47 of the Notice. In the light of Principle 3 and this guidance, Mr Freer should have taken reasonable steps, such as conducting adequate due diligence, to ensure that HJL was suitable to perform the functions that were outsourced to it.

80. Mr Freer did not take reasonable steps, or conduct adequate due diligence, even though it was intended that HJL would correspond with customers on behalf of the Firm, and would perform functions that were both necessary and important for the giving of advice (such as the conduct of fact-finds). As part of Mr Freer's due diligence he could have considered, for example, the suitability of HJL's management and the quality of its staff.

Reference to Mr King's common directorship

81. *Mr King was a director of HJL for part of the Relevant Period and was also a director of the entities that issued the Bonds. However, the corporate governance of those entities was structured in such a way that he was able to recuse himself from directors' decisions in case of conflict. The nature of the investments of the companies issuing*

the Bonds was such that there were few, if any, circumstances in which Mr King needed to recuse himself.

82. For the reasons set out in paragraph 77 in relation to Mr Stephen, it is necessary to describe Mr King's common directorships in the Notice in order to explain Mr Freer's misconduct and the Authority has made no finding as to whether Mr King adequately managed any actual or potential conflicts that he had.

Anonymisation of HJL, Mr Stephen and Mr King

83. *The Notice would achieve what it is intended to achieve even if HJL, Mr Stephen and Mr King are not identified by name. HJL's commercial interests will be significantly harmed if it is named in the Notice.*

84. The Authority has decided to refer to HJL by its name for two reasons: First, because of HJL's central role in the Pension Review and Advice Process. In particular, HJL initiated and influenced the development of the pension switching advice model, brought the model to the attention of the Firm, performed certain of the Outsourced Functions and had a material financial interest in a number of the Bonds. In these circumstances, the Authority considers it appropriate to mention HJL by name so that its findings, and the factual background (including the key parties involved), can be easily ascertained by the recipient of the Notice, as well as by any other reader of the Notice. Secondly, the Authority considers it possible that HJL could be identified from the description of the matters contained in the Notice even if anonymised as the Voluntary Requirement is published on the Authority's Financial Services Register and names HJL as one of three companies that BHIM must cease business relationships with. As such, the Authority considers it unlikely that HJL will be materially prejudiced as a result of being referred to by its name in the Notice.

85. The Authority has decided to name Mr Stephen and Mr King for similar reasons. As Companies House records show they were the only two directors of HJL during the period that BHIM was using the Pension Review and Advice Process, the Authority considers they could be identified even if anonymised. Further, as directors, they were responsible for the day-to-day operation of HJL during the Relevant Period.