
FINAL NOTICE

To: **Robin Bradford (Life and Pension Consultants) Limited**
Address: 66b Royal Mint Street
London E1 8LG
FRN: 118170
Date: 29 March 2010

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives Robin Bradford (Life and Pension Consultants) Limited (“the Firm”) final notice about a requirement to pay a financial penalty:

1. THE PENALTY

- 1.1. The FSA gave the Firm a Decision Notice on 29 March 2010 notifying that pursuant to section 206 of the Financial Services and Markets Act 2000 (“the Act”), the FSA had decided to impose a financial penalty of £24,500 on the Firm, in respect of its failure to comply with Principles 9 and 7 of the FSA’s Principles for Businesses (“the Principles”) between 6 April 2006 and 21 April 2008 (“the relevant period”).
- 1.2. The Firm agreed to settle at an early stage of the FSA’s investigation. It therefore qualified for a 30% (stage 1) discount under the FSA’s executive settlement procedures. Were it not for this discount the FSA would have imposed a financial penalty of £35,000 on the Firm.
- 1.3. The Firm confirmed by written agreement on 23 March 2010 that it will not be referring the matter to the Financial Services and Markets Tribunal.

2. REASONS FOR THE ACTION

2.1. The FSA has decided to impose a financial penalty on the Firm for breaches of the Principles within the relevant period. In summary, the FSA has made the following findings.

- (a) The Firm failed to take reasonable steps to ensure the suitability of its advice, in breach of Principle 9 (Customers: relationships of trust), by failing to demonstrate the suitability of its advice on pension transfers. This created a risk that its customers received unsuitable advice. In particular the Firm failed to:
 - (i) obtain and record relevant information about customers in order to assess suitability of advice and support the recommendation to switch;
 - (ii) monitor adequately the quality of its pension switching advice; and
 - (iii) record management information on pension switching business.
- (b) The Firm failed to communicate information to its clients in a way which is clear, fair and not misleading in contravention of Principle 7 (Communications with clients). The Firm's suitability letters omitted relevant information that would have enabled the clients to make properly informed decisions.
- (c) The Firm also contravened Principle 7 by its failure to communicate information to its clients in a way which is clear, fair and not misleading. The Firm provided information to clients about pension switches on a purported non-advised, direct offer basis, when the content of the communication the clients received from the Firm actually contained a recommendation and therefore constituted advice. The Firm's failure in this regard put customers at risk of receiving unsuitable advice as the advisers had not assessed the suitability of the recommendation for individual customers.

2.2. The Firm's failings are viewed as being serious because:

- (a) its failure to take reasonable care to ensure the suitability of its advice exposed customers to the risk of receiving unsuitable advice and/or advice which did not allow them to make informed decisions about their pensions;

- (b) the failure to obtain and record relevant KYC information meant that the Firm's management team was unable to ascertain whether or demonstrate that its advice was suitable and also meant that the Firm was unable to identify any trends arising from the switches and the failings discussed above; and
- (c) the failure to communicate information to its clients in a way which is clear, fair and not misleading by communicating to the clients that the Firm was undertaking certain pension switching business on a direct offer basis when the content of that communication actually contained a recommendation meant that the Firm put the customers at risk of receiving unsuitable advice.

2.3. In the FSA's opinion, the Firm's failure merits the imposition of a financial penalty. In determining the level of penalty, the FSA has had regard to the following mitigating factors:

- (a) the Firm has cooperated fully with the FSA's investigation;
- (b) the Firm has acknowledged its record keeping failings for pension switches during the relevant period and is committed to implement new systems and controls to address the FSA's concerns. It has now moved to an electronic system for compliance and monitoring and has in place the relevant software and staff with technological know how. Further the Firm is currently in the process of reviewing the pension switches conducted during the relevant period as part of its Pension Switching Review Project Plan to see whether any redress is required;
- (c) the Firm conducted only 124 pension switches during the relevant period;
- (d) there is no evidence of consumer detriment; and
- (d) there is no evidence that the Firm deliberately breached regulatory requirements.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS AND FSA GUIDANCE

3.1. The relevant statutory provisions, regulatory requirements and FSA guidance are set

out at Annex 1.

4. FACTS AND MATTERS RELIED ON

Background

- 4.1. On 6 April 2006 (“A-Day”), the government introduced changes to simplify the tax rules for personal and occupational pensions in the UK. In particular, limits to the amount that could be paid into a personal pension were removed, although restrictions on the amount of tax-free cash that could be taken from personal pensions remained. Additionally, from A-Day alternatives to drawing a pension as an annuity became available. Following these changes many advisers reviewed their clients’ existing pension arrangement. These reviews led to a significant increase in advice given to customers to transfer their existing pension arrangements into Personal Pension Plans (“PPPs”) or Self Invested Personal Pensions (“SIPPs”).
- 4.2. In light of the significant increase in pension switches the FSA became concerned that consumers may have been switched into pension products which carried high charges and had features or additional flexibility that customers did not need. The FSA was also concerned about whether firms’ controls were robust enough to detect and prevent unsuitable advice and ensure fair outcomes for customers.
- 4.3. In the summer of 2008, the FSA commenced Phase 1 of a thematic review of pension switching advice, looking at pension switches¹ made since A-Day. The review also looked at firms’ management and oversight and compliance monitoring of this type of advice.
- 4.4. In December 2008, the FSA published a report on the findings of phase 1 of the thematic review. The report noted that the FSA had visited 30 firms and assessed 500 customer files. A quarter of the firms visited were assessed as providing unsuitable advice in a third or more of the cases sampled.

¹ For the purposes of the FSA thematic review a pension switch is defined as advice given post April 2006 on switching from any occupational or individual pension scheme to an individual PPP or SIPP. The thematic review excluded switches to group personal pensions, group SIPPs and stakeholder pensions. SIPP transfers from occupational schemes arranged prior to April 2007 were also excluded where the investment held by the SIPP was unregulated (e.g. direct holdings in commercial property).

- 4.5. Overall unsuitable advice had been found in 16% of cases reviewed. The main reasons the files were assessed as unsuitable were as follows:
- (a) the switch involved extra product costs without good reason;
 - (b) the fund(s) recommended were not suitable for the customer's attitude to risk and personal circumstances;
 - (c) the adviser failed to explain the need for, or put in place, ongoing reviews when these were necessary; and
 - (d) the switch involved loss of benefits from the ceding scheme without good reason.
- 4.6. In February 2009, the FSA published guidance on assessing the suitability of pension switches, setting out the standards the FSA expects in relation to pension switches and the action firms should take to ensure that customers receive suitable advice.
- 4.7. The FSA wrote to over 4,500 firms to summarise our findings, to ask those firms to consider past and future sales in light of the findings and to take remedial action where necessary. Phase 2 of the thematic review began in the third quarter of 2009 and involved further assessments of firms to review the action they have taken. Any firms that have not taken appropriate action may face further action.

The Firm

- 4.8. The Firm is a small IFA firm which is based in London. The Firm became authorised and regulated by the FSA on 1 December 2001 to carry on the following regulated activities:
- (a) advising on Pension Transfers and Pension Opt Outs;
 - (b) advising on investments (except on Pension Transfers and Pension Opt Outs);
 - (c) agreeing to carry on a regulated activity;
 - (d) arranging (bringing about) deals in investments; and

- (e) making arrangements with a view to transactions in investments.
- 4.9. With effect from 31 October 2004, the Firm was additionally granted permission to carry out the following activities in relation to regulated mortgage contracts:
- (a) advising on regulated mortgage contracts;
 - (b) arranging (bringing about) deals in regulated mortgage contracts; and
 - (c) making arrangements with a view to regulated mortgage contracts.
- 4.10. The Firm has two directors. During the relevant period there were five individuals at the Firm who advised on pension switches. The Firm offered two levels of service in relation to pensions switching, advised and non-advised (“direct offer”).
- 4.11. The Firm conducted 124 pension switches in the two years since A-Day and 93 of those were switches into SIPPs. The pension switching business accounted for approximately 15% of the Firm’s business during the relevant period.
- 4.12. For the reporting period ending 31 March 2008 the Firm’s total revenue was £700,000 with a pre-tax profit of £3,863.

Advised sales - obtaining and recording sufficient KYC information to demonstrate suitability of advice

- 4.13. The FSA reviewed ten client files selected at random. However on further investigation by the Firm it was discovered that no pension switch had actually taken place in relation to a particular client. Therefore the failures in relation to the Firm’s record keeping identified in the nine client files were as follows.
- (a) 88% of files did not contain a fact find document. The only fact find found in a file was not updated and did not relate to the switch in question. The advisers may have known relevant information about the clients but a comprehensive check was not done to ensure the relevant information was obtained or recorded.

- (b) In 22% of cases there was no assessment of the client's attitude to risk ("ATR") and in 44% of the cases where there was a record of ATR it is not clear how it was ascertained or what scale was used.
- (c) In 44% of cases there was no illustration comparing the ceding and receiving scheme and in 33% of cases there was no explanation of the advantages and disadvantages for the switch.
- (d) In 22% of cases there was no suitability letter on file.
- (e) The Firm was unable to locate two client files requested by the investigation team, although it was able to provide copy documentation. However in one of those cases the copy documentation consisted of only three pages, but on further investigation by the Firm, it was discovered that no pension switch had actually taken place for that client.

4.14. The FSA believes that the above failures are particularly serious because without necessary, relevant and up-to-date Know Your Customer ("KYC") information, such as the fact find information and ATR, it is hard to establish whether the needs and circumstances of the client had been identified by the Firm and taken into account in recommending the switch. Further the absence of illustrations within the suitability letters setting out a comparison between the ceding and receiving schemes in terms of costs and other advantages and disadvantages make it difficult to determine how the client was able to take an informed decision about the switch. Such significant omissions in the files make it unclear whether the advice given was suitable or not.

4.15. In relation to record keeping the Firm has acknowledged that during the relevant period it did not have an adequate procedure in place for recording KYC information, collecting and recording fact find information and assessing and recording ATR.

Suitability letters

4.16. The Firm failed to produce adequate suitability letters. The main points to highlight in this regard are as follows.

- (a) There were no suitability letters in 22% of the files reviewed by the investigation team. The majority of the suitability letters in rest of the files were either confusing or lacked relevant information with limited tailoring to individual clients. These are discussed in detail below.
- (b) In 11% of the files reviewed the suitability letters failed to record the client's objectives for switching. In one file the client's objectives in the suitability letter did not match with the ones stated in the ATR questionnaire.
- (c) In 44% of the files reviewed the suitability letters failed to include any illustrations at retirement for the ceding and receiving schemes.
- (d) In 66% of the files reviewed, the suitability letter did not indicate that the adviser has considered whether a stakeholder pension would have met the customer's needs or if they had been given the reason for discounting a stakeholder pension.
- (e) In 33% of files reviewed the suitability letter failed to discuss the possible advantages and disadvantages of the switch for the client, and in two of these nine files the information given in this regard was highly inadequate.
- (f) The suitability letter in 66% of the files reviewed did not contain any information on the penalties for switching out and none of the letters referred to the obligations or penalties of the receiving scheme.
- (g) None of the suitability letters explained the different charges in sufficient detail.

4.17. The FSA therefore considers that the suitability letters reviewed by the investigation team are inadequate and do not contain enough relevant information in order to assess or ensure the suitability of advice given to the clients in question. The Firm has acknowledged its failure in this regard and has stated that the suitability letters concentrated mainly on what met the customer's needs rather than ensuring

comprehensive information was given to allow the client to make him an informed decision. The clients were therefore put at risk of unsuitable advice being given.

Advised sales – monitoring the suitability of advice

- 4.18. The FSA identified a number of other failings in relation to the Firm's systems and controls for pension switching business.

Monitoring and compliance

- 4.19. The Firm admitted that prior to and throughout 2006 there were no specific procedures in place for monitoring pension switching business, but that it was monitored within the usual file checking and compliance procedures. It has further confirmed that during the relevant period it did not have formal procedures for monitoring and supervising the pension switching work undertaken by the advisers and that there were no statistical data available to them to be able to monitor the pension transfers. The Firm further admitted that it did not produce any compliance reports for pension switching cases during the relevant period.

- 4.20. During the relevant period the Firm employed the services of an external compliance consultant who reviewed 10% of files (overall business). However, there was no procedure in place to check whether remedial steps were taken by the advisers to rectify matters of concern arising from these external reviews. The external reviews also did not cover the suitability of the Firm's recommendations to its customers or information contained in the file but were simply a tick-check exercise to ensure that the files contained the relevant documentation.

Management information

- 4.21. The Firm had very limited management information during the relevant period and had no formal procedures in place for recording and reviewing such information. The Firm also confirmed that it did not undertake any trend analysis of its pension switching business, although management monitored all business with reference to new business records.

4.22. The FSA therefore considers that the Firm failed to take reasonable steps to ensure the suitability of the advice given in relation to its pension switching business conducted during the relevant period. Further the failure to have an appropriate system of management oversight and management information makes it difficult to establish how management was able adequately and robustly to track pension transfer business, monitor any trends arising and act upon them.

Direct offer promotion

4.23. The Firm also purported on the wind-up of a particular group pension scheme (the “Group Scheme”) to carry out certain pension switches on a direct offer basis. The documentation however given to approximately 300 clients contained elements of advice and recommendation. 25 of the clients who received the direct offer material transferred to a Lifetime SIPP or PPP with another provider on the basis of the material received.

4.24. The Firm jointly administered the Group Scheme with another entity and on wind-up of the scheme the Firm sent out standard form letters, together with a generic discussion document to approximately 300 scheme members listing the options available to them on wind up. Although the letter included a disclaimer paragraph *“this letter and the attached discussion document is not intended to provide a member with personal advice but to describe the options available in a generic way”* there are elements of a recommendation and advice being given in the letter and the discussion document as follows:

(a) The letter and discussion document is given to each member in his capacity as an investor and is given by the Firm’s advisers in their capacity as fully qualified IFAs.

(b) The information given is in relation to particular investments, for example, the GPP and SIPP which were being brought to the attention of scheme members.

(c) The discussion document gives advice on the merits of buying any one of the three options available (including explaining the advantages of the particular

investments and highlighting disadvantages e.g. that for the vast majority of members the section 32 scheme does not compare favourably).

- (d) The material contains statements as to suitability. For example: “*The [entity] Group Personal Pension Plan is **suit**ed to those members who wish to retain a low cost-simple investment philosophy-without the benefit and additional cost of advice*” (emphasis added). In addition, the presentation of the material in the discussion document in particular seems to favour the SIPP above the other options and seems to have the effect of a recommendation.
- (e) The discussion document also includes a section entitled “*Summary of the **Recommended Investments and Strategy***” (emphasis added), which sets out the appropriate investment strategies if the investor were to agree that a transfer to a SIPP is preferable. Again this type of statement suggests a recommendation has been provided.

4.25. The FSA is of the view that the Firm was essentially making a recommendation to the relevant members of the scheme (and in fact the documentation was originally drafted as a recommendation), which is advice on investments and presented as suitable. The disclaimer to the effect that no advice has been given becomes ineffective if advice is in fact being given. The use of judgmental language such as “better” and “preferable” also tends to support the argument that it is advised.

4.26. The FSA believes that, despite ostensibly being drafted as a direct offer financial promotion, the documentation contained both advice and a personal recommendation. The regulatory requirements as to suitability therefore apply and, given that the Firm did not assess suitability or tailor its advice to the specific client’s needs and circumstances, the FSA is concerned that the Firm put its customers at risk of receiving unsuitable advice.

4.27. Further by providing the clients with a disclaimer that no advice has been given when in fact the documentation contained elements of advice, the Firm has misled customers and has therefore failed to communicate with its clients in a clear, fair and not misleading way. The Firm accepts that the documentation provided to the

customers was confusing and that they could have used better wording. The FSA accepts however that (a) the Firm's intention was not to mislead clients but provide helpful information and (b) it attempted to act with the best ethical and professional intent.

5. ANALYSIS OF BREACHES

Breaches in relation to advised sales

Breach of Principle 9 (Customers: Relationships of Trust)

- 5.1. By reason of the facts and matters referred to in paragraphs 4.13 - 4.22 the FSA considers that the Firm failed to take reasonable steps to ensure the suitability of its advice and it therefore breached Principle 9.
- 5.2. The Firm could not demonstrate the suitability of its advice to customers on pensions switching because it failed to record sufficient KYC information on files including relevant fact find information and assessment of ATR. The Firm failed to ensure that it obtained and recorded sufficient information on its customer files to support the recommendation to switch, such as information about the ceding and receiving schemes and illustrations setting out a comparison between the two schemes in relation to costs, advantages and disadvantages.
- 5.3. The Firm also failed to implement adequate procedures for reviewing the suitability of advice given in relation to its pension switching business. As a consequence the Firm lacked the appropriate management information to assess the suitability of its recommendations to customers.

Breach of Principle 7 (Communications with clients)

- 5.4. By reason of the facts and matters referred to in paragraphs 4.16 and 4.17 the FSA considers that the Firm failed to communicate information to them in a way which is clear, fair and not misleading, in breach of Principle 7. The suitability letters that it issued were either confusing or lacked relevant information.

- 5.5. In particular, the Firm's suitability letters were largely generic, containing limited tailoring to the clients' circumstances. The majority of the suitability letters failed to discuss crucial information in relation to the recommended pension transfer, including comparison of costs of the ceding and receiving schemes, the advantages and disadvantages of transfer, penalties for switching out and projected returns, without which a client is not capable of making an informed decision.

Breaches in relation to direct offer

Breach of Principle 7

- 5.6. By reason of the facts and matters referred to in paragraphs 4.23 - 4.27 the FSA considers that the Firm failed to communicate information to its clients in a way which is clear, fair and not misleading, and that it therefore breached Principle 7. The Firm misled customers by sending them information that it was switching pensions on a non-advised direct offer basis when the content of the communication the customers received in fact contained a recommendation and therefore constituted advice. The FSA further considers that the Firm's failure in this regard has exposed customers to the risk of receiving unsuitable advice as the Firm would not have assessed suitability of the recommendation for individual clients.

6. ANALYSIS OF THE SANCTION

- 6.1. The FSA's policy on whether to issue a financial penalty is set out in Chapter 6 of the Decision Procedures and Penalties Manual ("DEPP"), which forms part of the FSA's Handbook. In determining the appropriate level of financial penalty the FSA has also had regard to Chapter 13 of the Enforcement Manual ("ENF"), the part of the FSA's Handbook setting out the FSA's policy on the imposition of financial penalties in force until 27 August 2007, and therefore part of the relevant period. The relevant sections of DEPP and ENF are set out at Annex 1.
- 6.2. The principal purpose of imposing a financial penalty is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches, and demonstrating generally the benefits of compliant behaviour.

- 6.3. The FSA will consider all the relevant circumstances of the case when deciding whether or not to impose a financial penalty. In light of the systemic weaknesses identified above the FSA considers it appropriate to impose a financial penalty on the Firm.
- 6.4. The FSA will also consider all the relevant circumstances of the case when deciding on the level of financial penalty.
- 6.5. The FSA considers the following factors to be particularly relevant in this case:

Deterrence

- 6.6. A financial penalty will deter the Firm from further breaches of regulatory rules and Principles. In addition, other firms will be deterred from allowing similar failings to occur and it will therefore promote the message to the industry that the FSA expects firms to maintain high standards of regulatory conduct.

The nature, seriousness and impact of the breach in question

- 6.7. In determining the appropriate sanction, the FSA has had regard to the seriousness of the breaches, including the nature of the requirements breached, the duration and frequency of the breaches, whether the breaches revealed serious failings in the Firm's systems and controls and the number of customers who were affected and/or placed at risk of loss. The FSA has concluded that there was a significant risk to customers of unsuitable advice arising from the significant deficiencies in the monitoring of the quality of advice by the Firm's advisors in respect of pension switching recommendations.

The extent to which the contravention or misconduct was deliberate or reckless

- 6.8. The FSA has not determined that the Firm deliberately or recklessly contravened regulatory requirements.

The size and financial resources of the Firm

- 6.9. The FSA has not sought information regarding the Firm's financial circumstances as there is no indication at present that it would be unable to pay a penalty of the level imposed.

The loss or risk of loss caused to consumers

- 6.10. Despite the problems encountered, the FSA is not aware of any consumer that has actually suffered any loss as a result of the breaches of the Principles.

The Firm's conduct following the breach

- 6.11. The Firm has acknowledged the majority of its failings in relation to pension switches during the relevant period and is committed to implement new systems and controls to address the FSA's concerns. It has now moved to an electronic based system for compliance and monitoring and has in place the relevant software and staff with technological know how. Further the Firm is currently in the process of reviewing the pension switches conducted during the relevant period as part of its Pension Switching Review Project Plan.
- 6.12. Following its referral to Enforcement, the Firm has co-operated fully with the Enforcement action. The Firm agreed the facts quickly ensuring efficient resolution of the matter and has received full credit for settlement at an early stage. Without this level of co-operation the financial penalty would have been higher.

Disciplinary record and compliance history

- 6.13. The Firm has not been the subject of any previous disciplinary action.

The FSA's approach in similar previous cases

- 6.14. In determining that a financial penalty is appropriate, the FSA has taken account of sanctions against other authorised persons for similar conduct. In the circumstances, the FSA considers that a financial penalty is a proportionate and appropriate outcome to the case.
- 6.15. Having considered all the circumstances above, the FSA has determined that £35,000 (before any discount for early settlement) is the appropriate financial penalty to impose on the Firm.

7. DECISION MAKERS

7.1. The decision which gave rise to the obligation to give this Final Notice was made on behalf of the FSA by members of the FSA Executive, being Settlement Decision Makers for the purposes of DEPP.

8. IMPORTANT

8.1. This Final Notice is given to the Firm in accordance with section 390 of the Act.

Publicity

8.2. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the FSA must publish such information about the matter to which this notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to you or prejudicial to the interests of consumers.

8.3. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

8.4. For more information concerning this matter generally, the Firm should contact Paul Howick (direct line: 020 7066 7954 or fax: 020 7066 7955) of the Enforcement and Financial Crime Division of the FSA.

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Tom Spender

Head of Department

FSA Enforcement and Financial Crime Division

Annex 1

1. Statutory Provisions

- 1.1. The FSA's statutory objectives set out in section 2(2) of the Act are maintaining market confidence, ensuring/raising public awareness, the protection of consumers and the reduction of financial crime. In taking action against the Firm, the FSA is working towards its objectives of protecting consumers, maintaining market confidence and reducing financial crime.
- 1.2. The FSA is authorised by section 206 of the Act to impose a financial penalty of such amount as it considers appropriate where the FSA considers an authorised person has contravened a requirement imposed upon it by or under the Act.

2. Relevant Handbook provisions

2.1. In exercising its power to impose a financial penalty, the FSA must have regard to relevant provisions in the FSA Handbook of rules and guidance (“the FSA Handbook”). The main provisions relevant to the action specified above are set out below.

Principles for Businesses

2.2. Under the FSA’s rule-making powers as referred to above, the FSA has published in the Handbook the Principles for Business (“Principles”) which apply either in whole, or in part, to all authorised persons.

2.3. The Principles are a general statement of the fundamental obligations of firms under the regulatory system and reflect the FSA’s regulatory objectives. A firm may be liable to disciplinary sanction where it is in breach of the Principles.

2.4. The Principles relevant to this matter are set out below:

(a) Principle 3 (Management and Control): *A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.*

(b) Principle 7 (Communications with clients): *A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*

(c) Principle 9 (Customers: relationships of trust): *A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.*

Conduct of Business Rules

2.5. Guidance on the Conduct of Business Rules is set out in the Conduct of Business manuals of the FSA handbook.

2.6. The FSA’s Conduct of Business Sourcebook (“COB”) was in force for part of the relevant period (until 31 October 2007).

- 2.7. COB 2.1.3R requires a firm to take reasonable steps to communicate with its customers in a way which is clear, fair and not misleading.
- 2.8. COB 5.4.3R requires a firm to ensure that it takes reasonable steps to ensure that a private customer understands the nature of the risks inherent in certain transactions.
- 2.9. COB 5.2.5R and 5.2.9R requires a firm to take reasonable steps to ensure that it is in possession of sufficient personal and financial information about a customer relevant to the services that the firm has agreed to provide and requires a firm to make and retain a record of such information.
- 2.10. COB 5.3.14R requires that the firm must, in the stipulated circumstances, provide the customer with a suitability letter.
- 2.11. COB 5.3.16R requires that a suitability letter must explain why the firm has concluded the transaction is suitable and contain a summary of the main consequences and any possible disadvantages of the transaction.
- 2.12. The FSA's Conduct of Business Sourcebook ("COBS") applied to firms for part of the relevant period (with effect from 1 November 2007). The most relevant COBS rules are as follows.
- 2.13. COBS 2.1.1R A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).
- 2.14. COBS 4.2.1R A firm must ensure that a communication or a financial promotion is fair, clear and not misleading.
- 2.15. COBS 9.2.1R A firm must take reasonable steps to ensure that a personal recommendation, or a decision to trade, is suitable for its client.
- 2.16. COBS 9.2.2R A firm must obtain from the client such information as is necessary for the firm to understand the essential facts about him and have a reasonable basis for believing, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended, or entered into in the course of managing, meets his investment objectives.
- 2.17. COBS 9.4.1R A firm must provide a suitability report to a retail client if the firm

makes a personal recommendation to the client.

2.18. COBS 9.4.7R The suitability report must, at least:

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

2.19. COBS 19.2.2R When a firm prepares a suitability report, it must in the case of a personal pension scheme, explain why it considers the personal pension scheme to be at least as suitable as a stakeholder pension scheme.

2.20. COBS 19.1.2R: A firm must:

- (1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme with the benefits afforded by a personal pension scheme or stakeholder pension scheme, before it advises a retail client to transfer out of a defined benefits pension scheme;
- (2) ensure that that comparison includes enough information for the client to be able to make an informed decision;
- (3) give the client a copy of the comparison, drawing the client's attention to the factors that do and do not support the firm's advice, no later than when the key features document is provided; and
- (4) take reasonable steps to ensure that the client understands the firm's comparison and its advice

Senior Management Arrangements, Systems and Controls

2.21. SYSC 3.1.1R provides that a firm must take reasonable care to establish and maintain such systems and controls as are appropriate to its business.

2.22. SYSC Rule 3.2.6R provides that a firm must take reasonable care to establish and

maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system.

Financial Penalties

- 2.23. The FSA's approach to taking disciplinary action is set out in Chapter 2 of EG. In deciding to take this action the FSA has also had regard to the appropriate provisions of ENF which was in force until 27 August 2007 and therefore during part of the Relevant Period. Imposing financial penalties and public censures shows that the FSA is upholding regulatory standards and helps to maintain market confidence, promote public awareness of regulatory standards and deter financial crime. An increased public awareness of regulatory standards also contributes to the protection of consumers.
- 2.24. The FSA's policy on the imposition of financial penalties is set out in chapter 6 of DEPP (which came into force on 28 August 2007) which is a module of the FSA's Handbook of rules and guidance (and, previously, ENF). The principal purpose of imposing a financial penalty is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour (DEPP 6.1.2G and previously ENF 13.1.2).
- 2.25. The FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty. DEPP 6.2.1G (and previously ENF 12.3.3) sets out guidance on a non-exhaustive list of factors that may be of relevance in determining whether to take action for a financial penalty, which include the following:
- a) DEPP 6.2.1G(1) and previously EG 12.3.3(2): The nature, seriousness and impact of the suspected breach;
 - b) DEPP 6.2.1G(2) and previously 12.3.3(3): The conduct of the person after the breach;

- c) DEPP 6.2.1G(3) and previously ENF 12.3.3(4): The previous disciplinary record and compliance history of the person;
- d) DEPP 6.2.1G(4): FSA guidance and other published materials; and
- e) DEPP 6.2.1G(5) and previously ENF 12.3.3(5): Action taken by the FSA in previous similar cases.

2.26. The FSA will consider all the relevant circumstances of a case when it determines the level of financial penalty. DEPP 6.5.2G sets out guidance on a non-exhaustive list of factors that may be of relevance when determining the amount of a financial penalty, which include:

- (a) DEPP 6.5.2G(1): Deterrence;
- (b) DEPP 6.5.2G(2) and previously ENF 13.3.3(1): The nature, seriousness and impact of the breach in question;
- (c) DEPP 6.5.2G(5) and previously ENF 13.3.3(3): The size, financial resources and other circumstances of the person on whom the penalty is to be imposed;
- (d) DEPP 6.5.2G(8) and previously ENF 13.3.3(5): Conduct following the breach;
- (e) DEPP 6.5.2G(9) and previously ENF 13.3.3(6): Disciplinary record and compliance history; and
- (f) DEPP 6.5.2.G(10) and previously ENF 13.3.3(7): Other action taken by the FSA.

