
FINAL NOTICE

To: **Braemar Financial Planning Limited**

Of: **Hadlow House
9 High Street
Green Street Green
Orpington
Kent BR6 6BG**

Date **4 September 2006**

TAKE NOTICE: The Financial Services Authority ("the FSA") of 25 The North Colonnade, Canary Wharf, London E14 5HS gives you final notice about a requirement to pay a financial penalty:

1. THE PENALTY

1.1. The FSA gave Braemar Financial Planning Limited ("Braemar"/"the firm") a Decision Notice on 17 August 2006 which notified Braemar 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 £182,000 in respect of breaches of the FSA's Principles for Businesses ("the Principles") between November 2002 and November 2005, in

particular, Principle 3 (Management and control), Principle 6 (Customers' interests) and Principle 7 (Communications with clients).

- 1.2. For the reasons set out below, and having agreed with Braemar the facts and matters relied upon below, the FSA imposes a financial penalty of £182,000. The firm has received the maximum discount afforded under the FSA's Executive Settlement Process, being 30%, reflecting the fact that the firm agreed to settle at the earliest opportunity. The fine based on the facts and matters described in this Final Notice would have been £260,000 had the 30% discount not been applied.

2. SUMMARY OF THE REASONS FOR ACTION

- 2.1. The FSA has concluded on the basis of the detailed facts and matters set out in Section 5 below that, in the period from November 2002 to November 2005, the firm was in breach of the Principles as demonstrated by breaches of the FSA's Rules. In particular its persistent failure to:

- (1) take reasonable care to establish and maintain systems and controls appropriate to its business ("SYSC"); and
- (2) comply with the Conduct of Business Rules ("COB Rules") by failing to:
 - (a) take reasonable steps to communicate information to its customers in a way which was clear, fair and not misleading;
 - (b) take reasonable steps to ensure that it was in possession of sufficient personal and financial information about its customers;
 - (c) take reasonable steps to ensure that recommendations were suitable for the clients;
 - (d) issue adequate suitability letters; and
 - (e) ensure it had an adequate compliance function.

- 2.2. In so doing, Braemar demonstrated failings which demand a significant financial penalty. These failings are viewed by the FSA as particularly serious in light of the following factors:

- (1) Pensions unlocking is a high risk business as it affects the pension assets of its customers for whom pensions unlocking is considered appropriate. Early vesting can have seriously detrimental effects to over 50's as their retirement income can be substantially reduced because underlying investment funds have less time to grow, with the risk that resultant annuity rates may be materially lower than they could be at normal retirement;
- (2) There were systemic failures running through the sales processes as insufficient Know Your Customer information was obtained and alternative options were not adequately explored to enable a suitable recommendation to be made;
- (3) The firm is one of the largest players in the pensions unlocking industry and therefore a large number of consumers were exposed to potential loss; and
- (4) The failings occurred notwithstanding the fact that the firm had been visited by Supervision in 2002 when similar failings were identified.

2.3. This conduct, when considered by reference to the FSA's prescribed regulatory standards, in particular the Principles referred to in paragraph 1.1 is such that it appears to the FSA that it should take the action described in this Final Notice.

2.4. Whilst the failings in this case merit a significant financial penalty, the FSA considers that these failings have been mitigated to a considerable extent by the particularly pro-active co-operation demonstrated by the Braemar once the failings had been drawn to its attention by the FSA, including:

- (1) The speed with which it acted to address the issues raised by the FSA, including:
 - (a) The immediate suspension of its business for an extended period; and
 - (b) Instructing a pensions consultant to review its systems and controls and sales processes.
- (2) The appointment of a skilled person to:

- (a) Review the effectiveness of its revised systems and controls and sales processes; and
 - (b) Monitor the greater of 45 transactions or 60% of new business for a three month period commencing 24 April 2006, being the date the Firm lifted its voluntary suspension of business; and
- (3) The responsible attitude of senior management in their dealings with the FSA.
- 2.5. The FSA considers that Braemar's conduct following the contravention by the FSA is the type of co-operation and acceptance by senior management which is desired by the FSA, and which consumers deserve.
- 2.6. Accordingly, Braemar has received considerable credit for this in the amount of financial penalty the FSA has decided to impose. Without this level of co-operation, the financial penalty would have been substantially higher.
- 2.7. Additionally, the firm has received the maximum discount of 30% for agreeing to settle at the earliest opportunity.

3. RELEVANT STATUTORY PROVISIONS AND REGULATORY RULES

- 3.1. The FSA's statutory objectives are set out in Section 2(2) of the Financial Services and Markets Act (2000) ("the Act"). The relevant objectives for the purpose of this case are public awareness and the protection of consumers.
- 3.2. Section 138 of the Act provides that the FSA may make such rules applying to authorised persons as appear to it to be necessary or expedient for the purpose of protecting the interests of consumers.
- 3.3. This provides that if the FSA considers an authorised person has contravened a requirement imposed by or under the Act, it may impose a financial penalty in respect of that contravention of such amount as it considers appropriate.

Principles for Businesses

- 3.4. Under the FSA's rule-making powers, the FSA has published in the FSA Handbook the "Principles for Businesses" which apply either in whole, or in part, to all authorised persons. The relevant Principles in this case are as follows:
- (1) 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;
 - (2) Principle 6 (Customers' interests): A firm must pay due regard to the interests of its customers and treat them fairly; and
 - (3) 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.
- 3.5. These Principles are a general statement of the fundamental obligations of firms under the regulatory system and reflect the FSA's regulatory objectives.
- 3.6. In substance, the Principles express the main dimensions of the "fit and proper" standard, set for firms in Threshold Condition 5 (Suitability), although they do not derive their authority from that standard or exhaust its implications.
- 3.7. Breaching a Principle makes a firm liable to disciplinary sanctions. In determining whether a Principle has been breached it is necessary to look to the standard of conduct required by the Principle in question, and the onus is on the FSA to show that a firm has been at fault in some way. What constitutes "fault" varies between different Principles. For example, under Principle 3 (Management and control) a firm would not be in breach simply because it failed to control or prevent unforeseeable risks, but a breach would occur if the firm had failed to take reasonable care to organise and control its affairs responsibly or effectively.

Senior Management Arrangements, Systems and Controls (SYSC)

- 3.8. These set out the responsibilities of Directors and senior management.

- 3.9. The purpose of SYSC is to encourage firm's directors and senior managers to take appropriate practical responsibility for their firm's arrangements on matters likely to be of interest to the FSA because they impinge on the FSA's functions under the Act. They are intended to increase certainty by amplifying Principle 3 referred to above, and to encourage firms to vest responsibility for effective and responsible organisation in specific directors and senior managers.
- 3.10. The SYSC section of the FSA Handbook provides further detail as to what is required of firms. SYSC requires firms (amongst other things) to take reasonable care to establish and maintain such systems and controls as are appropriate to its business (SYSC 3.1.1). The nature and extent of the systems and controls that a firm will need to maintain will depend on a variety of factors including:
- (1) the nature, scale and complexity of its business;
 - (2) the volume and size of its transactions; and
 - (3) the degree of risk associated with its operations.

Conduct of Business Rules (COB)

- 3.11. These are the requirements which apply to firms with investment business customers.
- 3.12. **COB Rule 2** applies to all firms conducting designated investment business. Rule 2.1.3 provides that a firm must take reasonable steps to communicate information to its customers in a way which is clear, fair and not misleading. When considering the requirements of this Rule, a firm should have regard to the customer's knowledge of the particular investment to which the information relates. The purpose of Rule 2 is to restate, in slightly amended form, and as a separate Rule, the part of Principle 7 (Communications with clients) that relates to communication of information.
- 3.13. **COB Rule 5** sets out the detailed Rules relating to a firm's conduct when advising and selling. The detailed provisions of Rule 5 give support to Principle 6 (Customers' interests) and Principle 7 (Communications with clients) which require firms to have due regard to the information needs of their customers and treat them fairly. Their

purpose is to ensure that private customers are adequately informed about the nature of the advice on investments which they may receive from a firm.

3.14. The detailed provisions of COB Rule 5 which it is relevant to consider in this case are:

3.15. **Rule 5.2** (know your customer): A firm should obtain sufficient information about its private customers to enable it to meet its responsibility to give suitable advice, and this requires that a firm must take reasonable steps to ensure it is in possession of sufficient personal and financial information about its customers;

3.16. **Rule 5.3** (suitability): A firm must take reasonable steps to ensure that recommendations are suitable for the client and this requires that a firm:

(1) must issue suitability letters that explain why the firm has concluded that transactions are suitable for customers, having regard to their personal and financial circumstances;

(2) must have procedures to check its advisors' compliance with the firm's procedures, the merits of the proposed transaction and the suitability of the recommendation; and

(3) must make and retain clear records of the firm's advice not to proceed with a pension transfer, and provide further confirmation and explanation in writing when the customer acts contrary to the advice of the firm.

4. BACKGROUND

4.1. Braemar was authorised with effect from 1 December 2001. Its principal area of business is advising on what is commonly referred to as "pensions unlocking", which includes pension transfers, and it is one of the larger firms involved in this area of regulated activity.

4.2. Pensions unlocking is a process whereby individuals aged 50 or over can take some or all of the benefits of their pension in the form of a lump sum and/or income before they retire. It is well recognised that releasing pension assets early is a potentially high risk activity. Generally, these risks include:

- (1) reduced benefits (i.e. cash and pension) as benefits are actuarially reduced and/or investment funds may not grow sufficiently to provide the benefits that would be expected at the client's normal retirement date;
- (2) by maximising the amount of cash taken, any resultant pension will be reduced;
- (3) discretionary increases from final salary occupational schemes may be lost; and
- (4) annuity rates may be significantly different when clients come to retirement.

2002 Supervision Visit

- 4.3. The firm was visited in November 2002 as part of a thematic project investigating firms involved in pensions unlocking. At that date serious concerns were raised regarding its systems and controls and sales procedures which involved several breaches of the COB Rules.
- 4.4. Of particular significance was a finding that the firm's sales process was fundamentally flawed in that it proceeded on the basis of customers having already considered other alternatives to pensions unlocking before seeking advice.
- 4.5. The firm was asked to come up with proposals to address these issues. In addition, a Skilled Person was appointed to review a sample of 47 transactions from 42 files to determine the suitability of advice, and recommend appropriate remedial action. All client files were found to contain compliance shortcomings, with a particular failure to meet and document the Know Your Customer requirements. In 26 of the 42 cases, the transactions were found to be suitable. In three of the cases, the transactions were deemed unsuitable. The remaining 13 cases could not be assessed. The Skilled Person also concluded that a further review of past business would not identify significant numbers of clients for whom the pension transfers were unsuitable, resulting in financial loss. The FSA accepted the findings of the Skilled Person.
- 4.6. The firm did make some changes to its documentation (fact finds and suitability letters) and sales procedures, and these were discussed at a meeting with the FSA in

May 2003. No referral to Enforcement was made at this time. It was considered that, if the firm properly implemented its proposed changes to its sales processes and documentation, then the FSA's concerns would be adequately addressed. However, the firm was specifically advised that the onus was on it to ensure that it did so and, in particular, that the onus was on it, and not the customer, to ensure that alternatives to pensions unlocking were properly considered and the customer was advised accordingly regarding the recommended option, after considering the various alternatives available.

2005 Supervision Visit

- 4.7. As part of a follow up project on pensions unlocking, the firm was visited a second time in November 2005. A sample of 30 client files were reviewed during the visit, 9 where the transaction had not proceeded on the firm's advice, and 21 where the transactions had proceeded, some of which were against the firm's advice.
- 4.8. Again, serious concerns were raised relating to a failure to take reasonable care to establish and maintain systems and controls appropriate to its business, and numerous breaches of the COB Rules, more particularly referred to in Section 5 below. In summary, it was apparent that insufficient steps had been taken to address the fundamental flaw in the sales process identified during the 2002 visit, and the breaches of the COB Rules described to in Section 5 below.
- 4.9. The firm was invited to consider voluntarily suspending business, to submit proposals for carrying out a review of its systems and controls and sales processes, and to appoint an independent person to assess the suitability of advice given in respect of business transacted since 1 January 2004.

Pensions Consultant Report

- 4.10. The firm appointed a pensions consultant to review the systems and controls and sales process, and also to review past business.
- 4.11. On 15 March 2006, the consultant, on behalf of the firm, submitted to the FSA a Review of the firm's systems and controls and sales processes ("the Report"). In the

section of the Report entitled "Executive Summary", the consultant stated they were of the opinion that:

- (1) the firm's current business process was inadequate and resulted in risk both to the customer and the business;
- (2) the firm must take urgent steps to enhance its management control and improve its systems and controls;
- (3) in particular, the firm must alter its sales process to ensure that it treats its customers fairly and complies with COB Rules; and
- (4) the firm's senior management recognised that the changes to systems and the sales process made after the 2002 visit were inadequate, and that they were now committed to ensuring the business operated in accordance with FSA Rules and Principles.

4.12. The Report specifically identified no less than 10 examples of deficiencies in the sales process which left customers open to the risk that transactions might not be suitable.

4.13. The Report also set out proposals for changes to the firm's systems and controls and sales process, including changes to relevant documentation.

4.14. Following its voluntary suspension of business, Braemar also instructed the pensions consultant to conduct a review of all 116 pipeline cases, where a transaction had been advised but had not been completed, so that any unsuitable transactions could be stopped prior to any money transfer. The pensions consultant identified no unsuitable transactions from this population. Taking into account these findings, and the findings of the Skilled Person referred to in paragraph 4.5, the FSA decided that it was not proportionate to require Braemar to conduct a further review of past business.

Skilled Persons Report

4.15. In conjunction with the investigation, the firm have agreed with Supervision (the FSA's Small Firms Division) that a Skilled Person is to be appointed under section 166 of the Act to:

- (1) review the effectiveness of the revised systems and controls and sales process;
and
- (2) monitor the greater of either 45 transactions or 60% of new business for a period of 3 months commencing from 24 April 2006.

5. CONTRAVENTION OF RELEVANT STATUTORY PROVISIONS AND REGULATORY REQUIREMENTS

- 5.1. The financial penalty of £182,000 is to be imposed under section 206 of the Act in respect of breaches of the FSA Rules and Principles, details of which are set out below.

Principle 3 (Management and control)

"A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk and management systems."

- 5.2. The FSA considers that Braemar failed to comply with this Principle. Breach of this Principle is demonstrated by breach of SYSC Rule 3.1.1 in that the firm failed to take reasonable care to establish and maintain such systems and controls as are appropriate to its business.
- 5.3. The evidence obtained in the both the 2002 and 2005 Supervision visits, and the conclusions in the pensions consultant's Report, established a failure in the firm's systems and controls.

Facts and Matters relied upon

Systems and Controls

- 5.4. The firm was in breach of its obligation to take reasonable care to establish and maintain systems and controls appropriate to its business.
- 5.5. The Report concluded that the senior management had failed to carry out a proper risk assessment of the business which would have identified the risks to consumers and enabled it to establish adequate systems and controls.

- 5.6. The Compliance Oversight function was not a Board appointment and consequently it is unclear to what extent senior management were able to ensure that the firm complied with its regulatory obligations, and how the competence of the compliance function was monitored. There was no formal structure to check that transactions complied with the firm's procedures and the regulatory requirements. Consequently this led to the risk that the management would not be aware of incidences of non-compliance.
- 5.7. The Report also stated that the firm's senior management recognised that it had failed to maintain adequate systems and controls over both the business and the sales process, and recommended specific action be taken to remedy this state of affairs.
- 5.8. The firm failed to have procedures to check:
- (1) its advisors' compliance with the firm's procedures; and
 - (2) the merits of the proposed transaction and the suitability of the recommendation.
- 5.9. The Report concluded that the monitoring undertaken by the firm's Compliance Officer did not adequately check the suitability of the advice given. He does not have the G60 qualification to demonstrate that he is competent to assess the merits and the suitability of the transactions. Essentially, the checking process was little more than a tick-box approach using a checklist, that did not operate to properly assess the suitability of the transaction.
- 5.10. In addition, the firm voluntarily instructed an independent pensions consultant who conducted a review of three cases per month.
- 5.11. During the 2005 visit, Supervision also found that the firm was not addressing, and often questioning and debating the issues arising from checks carried out by the pensions consultant. Following the 2002 visit, the firm indicated that a 6 monthly meeting with the pensions consultant would take place, in addition to the regular review of sample files. The FSA has not seen any evidence that these meetings ever took place.

The firm's failures were particularly serious when viewed in light of:

- (1) the nature, scale and complexity of its business. Pensions unlocking involves complex transactions and it is essential that advice given to customers is clear and not misleading, and that recommendations are suitable;
- (2) the volume and size of its transactions. The firm is one of the larger firms involved in this area of business and its turnover for the year ended October 2005 was approximately £3.5 million; and
- (3) the degree of risk associated with its operations. It is not in dispute that pensions unlocking is a high risk activity as far as customers are concerned.

Principle 6 (Customers' interests)

"A firm must pay due regard to the interests of its customers and treat them fairly."

5.12. Braemar failed to comply with this Principle. Breach of this Principle is demonstrated by breaches of the following COB Rules:

- (1) failing to take reasonable steps to ensure that it is in possession of sufficient personal and financial information about its customers (COB 5.2.5R); and
- (2) failing to take reasonable steps to ensure that recommendations are suitable for the client (COB 5.3.5R (1) (a)).

Failing to take reasonable steps to ensure that it is in possession of sufficient personal and financial information about its customers (COB 5.2.5R);

Facts and matters relied on

5.13. On the client files reviewed, there was a lack of detail on individual circumstances. For instance, on a number of occasions, Braemar failed to record customers' attitude to risk and whether the customer was receiving any state benefit. Customer's existing pension plans were not analysed and compared against income required in retirement. Undue emphasis was given to the telephone interview without all facts being properly documented on fact find and suitability letters.

Failing to take reasonable steps to ensure that recommendations are suitable for the client (COB 5.3.5R (1) (a));

Facts and matters relied on

- 5.14. On all of the client files reviewed, there was insufficient information on file to demonstrate whether a particular recommendation was suitable for the client. For instance, in certain cases other alternatives or a review of the customer's expenditure appeared likely to have been more suitable than early pension vesting. There was also insufficient consideration given to benefits the customer would lose in comparison to the lump sum that would be available.

Failure to carry out a comparison of the options available to customers

- 5.15. Although the firm would identify alternatives to early pension vesting in the suitability letters, on many occasions they failed to carry out a comparison of the wider, non pension options available to customers. The firm placed the onus on the customer to take responsibility themselves to discount other methods of raising a lump sum and to determine which course of action was appropriate.

Failure to assess attitude to risk

- 5.16. In the Report, it was concluded that the firm's advisers appeared to operate on the basis that because the business was "high risk", all customers had an attitude to risk that was higher than average. However, it found that customers were not always asked the specific questions from the fact find, information was obtained during the telephone advising process (in which conversations were not recorded) and the conclusion was that customers generally had lower risk profiles than demonstrated on file.

Failure to have regard to customer's particular circumstances

On a number of occasions, the customer was directed toward unlocking their pension in order to release a lump sum without having regard to whether or not it would meet the customer's needs. Where a lump sum is released which is less than the amount required by the customer, the suitability of the transaction is not evident without

further information, and there was no information on file in these cases to demonstrate how the customer would meet the shortfall.

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"

5.17. Braemar failed to comply with this Principle. Breach of this Principle is demonstrated by breaches of the following COB Rules:

- (1) Failing to take reasonable steps to communicate information to its customers in a way which is clear, fair and not misleading (COB 2.1.3R);
- (2) Failing to issue adequate suitability letters that explain why the firm has concluded that transactions are suitable for customers, having regard to their personal and financial circumstances (COB 5.3.16R); and
- (3) Failing to make and retain clear records of the firm's advice not to proceed with a pension transfer and provide further confirmation and explanation in writing, when the customer acts contrary to the advice of the firm. (COB 5.3.25R).

Failing to take reasonable steps to communicate information to its customers in a way which is clear, fair and not misleading (COB 2.1.3R);

Facts and Matters Relied On

5.18. The firm did not provide sufficient information on the options available to customers other than early vesting.

5.19. Whilst available benefits were being detailed in the suitability letter, there was not sufficient emphasis put on the reasons not to proceed which was required particularly in the case of insistent clients (those clients who insisted on proceeding with the transaction after being advised not to). This was misleading and resulted in a failure to give a balanced view on the risk of proceeding with the transaction, a view which would impact the decision made by the customer.

Failing to issue adequate suitability letters that explain why the firm has concluded that transactions are suitable for customers, having regard to their personal and financial circumstances (COB 5.3.16R);

Facts and Matters relied on

5.20. The Report concluded that the suitability letter was not clear and fair to customers and that there were a number of unsatisfactory features, in particular:

- (1) It was insufficiently personalised in that it addressed issues that were clearly irrelevant to some customers;
- (2) It was misleading in cases where the firm's recommendation was not to proceed. This was because the letter included details of the amount available under the transfer whilst at the same time recommending against the transfer, thereby reducing/negating the recommendation not to proceed, with the consequent risk that the customer might be enticed into proceeding even though the transaction was unsuitable; and
- (3) The letter was produced by an administrator and automatically signed without being checked by an adviser before being sent.

5.21. In addition, in a review of the files during the 2005 visit, in every case (except where the transaction had not proceeded) it was not evident from the suitability letter that the transaction was suitable. This was mainly due to the lack of details on the client's individual circumstances in the letter, and insufficient consideration being given to other alternatives to raising a cash lump sum.

Failing to make and retain clear records of the firm's advice not to proceed with a pension transfer and provide further confirmation and explanation in writing, when the customer acts contrary to the advice of the firm. (COB 5.3.25R);

Facts and Matters Relied On

5.22. The firm was considered to have an unusually high percentage of insistent clients. Whilst the firm kept records and provided explanations in suitability letters, the Report concluded that the letter was inadequate in that:

- (1) the explanation of the recommendation not to proceed typically ran to three lines on the first of 5 pages and was overshadowed by the amount of information provided on the benefits available if the transaction did proceed;
- (2) the explanation of why the transaction should not proceed was often inadequate and failed to point out all the disadvantages. A clear reference to a tax free cash sum was more visible than the recommendation itself which led to the risk that the customer would be encouraged to transfer despite the recommendation; and
- (3) in cases of insistent clients, although a further letter was issued re-iterating the advice not to proceed, again the impact of the advice was lessened by the enclosure of application forms, Key Features Information and the Authority to proceed.

6. RELEVANT GUIDANCE ON SANCTION

6.1. Section 210 of the Act requires the FSA to issue a statement of policy about the imposition of financial penalties on firms, and to have regard to it in exercising, or deciding whether to exercise, its powers under section 206 of the Act.

6.2. The FSA's policy on the imposition of financial penalties is set out in Chapter 13 of the Enforcement Manual, which forms part of the FSA Handbook ("**ENF**"). The principal purpose of a financial penalty is to promote high standards of regulatory conduct by deterring firms who have breached regulatory requirements from committing further contraventions, helping to deter other firms from committing contraventions, and demonstrating generally to firms the benefits of compliant behaviour.

6.3. In determining whether a financial penalty is appropriate and, if so, its level, the FSA is required to consider all the relevant circumstances of the case. ENF 13.3.3 sets out

the factors that may be of particular relevance in determining the level of a financial penalty. They are not exhaustive.

- 6.4. Of these factors, the FSA considers the following to be particularly relevant in this case:

The Seriousness of the Misconduct or Contravention

- 6.5. The level of the financial penalty should be proportionate to the nature and seriousness of the contraventions. The breaches are particularly serious because they generally relate to financially unsophisticated customers and the suitability of the advice given to customers who were approaching retirement, which potentially affected their pension assets.
- 6.6. Such customers are vulnerable because they do not have sufficient time to make up any shortfalls caused by opting out of or transferring pensions. The risks involved in pensions unlocking have been referred to earlier.
- 6.7. The firm's failings were made all the more serious because:
- (1) The same, or very similar, failings had been identified in the course of the 2002 visit;
 - (2) It treated pensions unlocking as being broadly suitable for a large proportion of customers who responded to the firm's targeted advertisements;
 - (3) The sales process was flawed;
 - (4) The majority of its customers were people who were heavily reliant on the advice given by the firm; and
 - (5) Other firms involved in pensions unlocking had been subject to the imposition of financial penalties for similar failings in their systems and controls and sales processes. Accordingly, the firm was, or should have been, aware of the serious view which the FSA was taking of such failures by the relatively small number of firms involved in pensions unlocking.

The size, financial resources and other circumstances of the firm, and the amount of profit or loss avoided.

- 6.8. Braemar's latest financial statements indicate that there is no reason to suggest that it would be unable to pay a financial penalty in the amount proposed.

Conduct Following the Contravention

- 6.9. The breaches of the FSA Principles and Rules set out in this Notice were identified during the 2005 visit. However, following that visit and the post visit letter from Supervision dated 21 February 2006, the firm has co-operated fully with the FSA (Supervision and Enforcement) as set out in paragraph 2.4 above.

Disciplinary Record and Compliance History

- 6.10. The Firm has not been subject to any previous enforcement action, but breaches of Rules were identified in the 2002 visit as outlined above.
- 6.11. In setting the level of penalty in this case, the FSA has had particular regard to the co-operation and conduct of the firm referred to above by way of mitigation.

Previous Action by the FSA in Relation to Similar Failings.

- 6.12. The FSA has in the past taken action against firms for similar Rule and Principle breaches. This action has included the imposition of financial penalties. The FSA has taken these penalties, and the particular circumstances in which they were imposed, into account in deciding the proposed level of financial penalty.

7. CONCLUSION

- 7.1. Having regard to its regulatory objectives, including the need to maintain confidence in the financial system and the severity of risk posed to consumers, the FSA considers it necessary and desirable exercise its power under section 206 of the Act to impose a financial penalty of £182,000.

8. DECISION MAKER

8.1. The decision to give this Notice was made by two Executive Settlement Decision Makers on behalf of the FSA.

9. IMPORTANT NOTICES

9.1. This Final Notice is given to you in accordance with section 390 of the Act. The following statutory rights are important.

Manner of and time for Payment

9.2. The financial penalty must be paid in full by Braemar to the FSA by no later than 18 September 2006, 14 days from the date of the Final Notice.

If the financial penalty is not paid

9.3. If all or any of the financial penalty is outstanding on 19 September 2006, the FSA may recover the outstanding amount as a debt owed by Braemar and due to the FSA.

Publicity

9.4. 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.

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

FSA Contacts

9.6. For more information concerning this matter generally, you should contact Felicity Rowan at the FSA (direct line: 020 7066 1424 /fax: 020 7066 1425).

Jonathan Phelan
**Head of Department – Retail 3
Enforcement Division**