
FINAL NOTICE

To: **David Nigel Lewis**

Individual
Reference
Number: **DNL00001**

and

To: **West Wales Financial Services Limited (in liquidation)**
(as an interested party)

Firm
Reference
Number: **756482**

Date: **24 November 2023**

1. ACTION

1.1. For the reasons given in this Final Notice, the Authority hereby:

- (1) publishes a statement of David Nigel Lewis's ("Mr Lewis") misconduct for failing to comply with Statements of Principle 6 and 7, pursuant to section 66 of the Act;
- (2) withdraws the approvals granted to Mr Lewis to perform the SMF3 (Executive Director), SMF16 (Compliance Oversight) and SMF17 (Money Laundering Reporting Officer) senior management function at West Wales

Financial Services Limited ("WWFS" or "the Firm"), pursuant to section 63 of the Act; and

(3) makes an order, pursuant to section 56 of the Act, prohibiting Mr Lewis from performing:

(a) any senior management function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm, and

(b) any function in relation to the regulated activity of advising on Pension Transfers and Pension Opt Outs carried on by an authorised person, exempt person and exempt professional firm.

1.2. The Authority would have imposed a financial penalty of £38,300 on Mr Lewis (reduced to £26,800 as Mr Lewis agreed to settle at an early stage of the Authority's investigation and therefore qualified for a 30% (stage 1) discount under the Authority's executive settlement procedures). However, the Authority recognises that there is significant liability for redress for WWFS's customers which has fallen to the Financial Services Compensation Scheme ("FSCS"). As at 21 November 2023, the FSCS has paid out £758,725.55 in compensation to customers of WWFS. Had it not been for the compensation limit of £85,000, the total compensation available to customers would have been £972,197.28. In these circumstances, the Authority has agreed with Mr Lewis that in lieu of the imposition of a financial penalty, the sum of £26,800, be paid direct to the FSCS to contribute towards any redress due to WWFS's customers. This is in furtherance of the Authority's consumer protection objective. In light of the above, and taking into account all the exceptional circumstances of the British Steel Pension Scheme ("BSPS"), the Authority hereby publishes a statement of Mr Lewis' misconduct.

2. SUMMARY OF REASONS

Overview

2.1. Mr Lewis, who was responsible for ensuring that WWFS provided advice which met with the Authority's requirements, incompetently oversaw a defined benefit pension advice process which resulted in customers' retirement funds being unnecessarily put at risk.

Mr Lewis

- 2.2. Between 16 March 2017 and 14 December 2017 (the "Relevant Period"), Mr Lewis was approved by the Authority to perform the CF1 (Director), CF10 (Compliance Oversight) and CF11 (Money Laundering Reporting) controlled functions at WWFS.
- 2.3. Following the introduction of the Senior Managers and Certification Regime for all firms authorised by the Authority, the controlled functions Mr Lewis was approved to perform were replaced by senior manager functions. As a result, from 9 December 2019, Mr Lewis was approved to perform the SMF3 (Executive Director), SMF16 (Compliance Oversight) and SMF17 (Money Laundering Reporting Officer) senior manager functions at WWFS. Mr Lewis was not a qualified Pension Transfer Specialist and had no prior experience of advising on defined benefit pension scheme ("DBPS") transfers.

West Wales Financial Services Limited

- 2.4. WWFS was an Independent Financial Adviser firm based in Llanelli, Wales.
- 2.5. During the Relevant Period, WWFS was authorised by the Authority to undertake pension transfers and pension opt outs and to arrange (bring about) deals in investments. It is now in liquidation.
- 2.6. During the Relevant Period, WWFS advised 27 of 28 customers to transfer out of their Defined Benefit Pension Schemes ("DBPS") before WWFS agreed to cease providing Pension Transfer advice following the Authority's intervention. All 27 customers followed this recommendation. Notwithstanding FCA guidance which created a presumption against advising a customer to transfer out of their DBPS, the Firm advised all but one of their customers to complete a Pension Transfer, 25 of whom were members of the BPS.
- 2.7. On 14 December 2017, the Authority took action and stopped the transfer of 141 customers, all of whom were members of the BPS, who had received advice from WWFS to complete a Pension Transfer.
- 2.8. Without the Authority's intervention, it is likely that these customers would have transferred out funds totalling £43,722,771. Absent a material change in approach

to advice in the pipeline cases, the Authority considers it highly likely that many of these customers would also have received unsuitable advice.

- 2.9. Mr Lewis, in the performance of his CF10 (Compliance Oversight) function, was responsible, in all cases, for taking reasonable steps to ensure that the Firm's advice was compliant with the Authority's rules.
- 2.10. The Authority reviewed 19 of WWFS' completed Pension Transfer advice files from the Relevant Period. Their pension fund was, for a significant proportion of these customers, their most valuable asset and many had limited additional resource or other pension provision. The Authority found that a large proportion of files were not compliant with regulatory rules and guidance relating to the suitability of Pension Transfer advice.

FCA's Principles for Businesses and Statements of Principle for Approved Persons

- 2.11. During the Relevant Period:
- Principle 6 of the FCA's Principles for Businesses stated that: "a firm must pay due regard to the interests of its customers and treat them fairly".
 - Principle 9 of the FCA's Principles for Businesses stated that: "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."
 - Statement of Principle 6 stated that: "An approved person performing an accountable higher management function must exercise due skill, care and diligence in managing the business of the firm for which they are responsible in their accountable function".
 - Statement of Principle 7 stated that: "an approved person performing an accountable higher management function must take reasonable steps to ensure that the business of the firm for which they are responsible in their accountable function complies with the relevant requirements and standards of the regulatory system."

Mr Lewis' failings in the performance of his CF10 (Compliance Oversight) function

- 2.12. During the Relevant Period, by reason of the matters described in section 4 of this notice, Mr Lewis breached:
- a) Statement of Principle 6, in that he failed to exercise due skill, care and diligence in managing the business of the firm for which he was responsible in his CF10 (Compliance Oversight) function; and
 - b) Statement of Principle 7, in that he failed to take reasonable steps to ensure, in respect of his performance of the CF10 (Compliance Oversight) function, that WWFS complied with Principles 6 and 9 of the FCA's Principles for Businesses, and COBS 2.1.1R, 9.2.1R, 9.2.2R, 9.2.6R and 19.1.2R, as a result of the deficiencies in the Firm's Pension Transfer recommendations.
- 2.13. In particular, in breach of Statement of Principle 7, Mr Lewis failed to take reasonable steps to ensure that:
- a) Each of the Pension Transfer Specialists working for the Firm obtained the necessary information about the customer;
 - b) Each of the Pension Transfer Specialists working for the Firm properly assessed, on the basis of the information obtained, or gave due consideration to, whether the recommendation was suitable for the customer and in their best interests. In particular, Adviser A, one of WWFS' Pension Transfer Specialists failed properly to assess:
 - i. whether the customer was reliant on the income from their DBPS and whether they could financially bear the risks involved in a Pension Transfer;
 - ii. whether the aims which drove the Pension Transfer recommended were in the best interests of the customer;
 - iii. whether alternatives to a Pension Transfer could meet the customer's needs;

- iv. whether the customer had the appropriate knowledge, experience and attitude to transfer risk;
 - v. whether the transfer analysis supported a recommendation to transfer out of the ceding scheme; and
 - vi. whether the receiving fund was suitable for some customers.
- c) the documentation issued to customers demonstrated the rationale for transfer, was easily comprehensible and error-free.

2.14. The failures set out at paragraph 2.13 (a)-(c) above resulted from Mr Lewis' failure to take the following reasonable steps:

- a) undertake any management information analysis regarding the recommendations produced by WWFS' Pension Transfer Specialists;
- b) challenge the reasons for why almost all customers were recommended to transfer out;
- c) respond with additional resource to the large increase in volume of defined benefit work from September 2017 onwards, a large proportion of which was undertaken by Adviser A, who was relatively inexperienced, particularly in advising on Pension Transfers;
- d) with knowledge of non-compliant Pension Transfer advice given by Adviser A, ensure that Adviser A's advice was routinely reviewed by an appropriately qualified person;
- e) in the knowledge of non-compliant Pension Transfer advice given by Adviser A, restrict the workload placed upon them and provide training/support;
- f) ensure that the Pension Transfer advice provided on behalf of WWFS was assessed not just for file completeness but for its suitability, and
- g) adequately monitor Adviser A, taking into account their inexperience and the large proportion of WWFS's Pension Transfer advice that they gave.

- h) Each of these steps would have been reasonable ones for Mr Lewis to have taken in the performance of his CF10 (Compliance Oversight) function, to ensure that WWFS complied with Principles 6 and 9 of the FCA's Principles for Businesses, and the relevant COBS rules.

2.15. Furthermore, by not taking these steps, and thereby failing to maintain an appropriate level of understanding about WWFS' Pension Transfer business, a large proportion of which was delegated to Adviser A, an inexperienced Pension Transfer Specialist, Mr Lewis failed to exercise due skill, care and diligence in the performance of his CF10 (Compliance Oversight) function, in breach of Statement of Principle 6.

Seriousness

2.16. Mr Lewis' failings are particularly serious because:

- a) They caused a significant risk of loss to customers who transferred out of their DBPS as a result of WWFS' advice. The total value of transferred funds was £9,769,550.32. The average completed transfer value was £361,835.19;
- b) Had it not been for the Authority's intervention, Mr Lewis' conduct would have resulted in large numbers of customers risking their retirement income by transferring out of their DBPS;
- c) Mr Lewis' breach disproportionately affected BSPS members, who made up the majority of WWFS' Pension Transfer advice customers during the Relevant Period, many of whom were in a vulnerable position due to the uncertainty surrounding the future of the BSPS; and
- d) Mr Lewis, from a review conducted by an external compliance consultant, was aware of deficiencies in the Pension Transfer advice given by Adviser A, but allowed WWFS' advice process to continue, absent any enhanced or even routine monitoring, with no material changes in approach.

Sanction

- 2.17. The Authority would have imposed a financial penalty of £38,300 on Mr Lewis (reduced to £26,800 as Mr Lewis agreed to settle at an early stage of the Authority's investigation and therefore qualified for a 30% (stage 1) discount under the Authority's executive settlement procedures). However, the Authority recognises that there is significant liability for redress for WWFS's customers which has fallen to the FSCS. As at 21 November 2023, the FSCS has paid out £758,725.55 in compensation to customers of WWFS. Had it not been for the compensation limit of £85,000, the total compensation available to customers would have been £972,197.28. In these circumstances, the Authority has agreed with Mr Lewis that in lieu of the imposition of a financial penalty, the sum of £26,800, be paid direct to the FSCS to contribute towards any redress due to WWFS's customers. This is in furtherance of the Authority's consumer protection objective. In light of the above, and taking into account all the exceptional circumstances of the BSPS, the Authority has decided to publish a statement of Mr Lewis' misconduct for failing to comply with Statements of Principle 6 and 7.
- 2.18. The Authority has found that Mr Lewis is not fit and proper to perform the SMF3 (Executive Director), SMF16 (Compliance Oversight) and SMF17 (Money Laundering Reporting Officer) senior manager functions, as demonstrated by his lack of competence and capability in performing the controlled functions during the Relevant Period.
- 2.19. The Authority has therefore withdrawn Mr Lewis' approval to perform these senior management functions and hereby prohibits him in respect of the functions set out in this notice at paragraph 1.1(3) above.

3. DEFINITIONS

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

"Accountable function" means an FCA controlled function that is a significant-influence function, as set out in the Handbook at SUP 10A.4.4R;

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

"Authority" means the Financial Conduct Authority;

"Authority's Rules" means the Authority's Conduct of Business Sourcebook as applicable during the Relevant Period;

"British Steel Pension Scheme" or "BSPS" means the British Steel Defined Benefit Pension Scheme that was in place during the period 8 June 2015 to 13 December 2017;

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

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

"Compliance Officer" means Mr Lewis in the performance of his CF10 (Compliance Oversight) controlled function as WWFS;

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

"Defined Contribution" or "DC" means is a common type of pension where contributions are held in investments until the holder reaches their chosen retirement age;

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

"EG" means the Authority's Enforcement Guide;

"FSMA" refers to the Financial Services and Markets Act 2000

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

“Pension Protection Fund” or “PPF” is a statutory public corporation which protects people with a defined benefit pension when an employer becomes insolvent. If the employer doesn't have enough funds to pay you the pension they promised, the PPF will provide compensation instead. However, some reduction may apply;

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

“Pension Transfer Specialist” has the meaning given in the Handbook and includes an individual appointed by a firm to check the suitability of, amongst other things, a Pension Transfer, who has passed the required examinations as specified in the Training and Competence Sourcebook, part of the Handbook (References in this Notice to “Pension Transfer Specialist(s)” do not refer to each and every such specialist at the Firm, and the failings of any such specialist described in this Notice, refer only to Adviser A);

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

“the Principles” means the Authority’s Principles for Businesses and rules (as applicable during the Relevant Period);

“Regulated Apportionment Arrangement” or “RAA” means the statutory mechanism that can be used in corporate restructuring situations where a sponsoring employer of a DBPS stops participating in the pension scheme (thereby freeing the sponsoring employer from its financial obligations to the pension scheme) in order to avoid insolvency, subject to certain conditions being met and the RAA being approved by The Pensions Regulator and the PPF;

“the Relevant Period” means the period of 16 March 2017 to 14 December 2017;

“Statements of Principle” mean the Authority’s Statements of Principle and Code of Practice for Approved Persons issued under section 64A(1)(a) of the Act;

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

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

“TVAS” stands for ‘transfer value analysis’ and is the comparison that a firm must carry out in accordance with COBS 19.1.2R when a firm gives advice or a Personal Recommendation about, amongst other things, a Pension Transfer;

“TVAS Report” means a document that reports to the customer in respect of the comparison firms are required to carry on in accordance with COBS 19.1.2R; and

“WWFS” or “the Firm” means West Wales Financial Services Limited.

4. FACTS AND MATTERS

Background

WWFS

- 4.1. WWFS is an independent financial adviser firm based in Llanelli, Carmarthenshire, authorised since 12 December 2016. WWFS has permission to carry on the regulated activities of, amongst other things, advising on Pension Transfers, advising on investments and arranging (bringing about) deals in investments, which it held throughout the Relevant Period.
- 4.2. On 13 December 2017, the Authority visited WWFS offices. The next day, following feedback from the Authority and at its request, WWFS applied to the Authority to impose a voluntary requirement on WWFS, under which WWFS was required to cease all regulated activities relating to defined benefit pension transfer business.
- 4.3. During the Relevant Period, WWFS advised 27 customers to transfer out of their DBPS, all of whom were advised by Adviser A, who was one of the Firm’s two Pension Transfer Advisers.
- 4.4. WWFS entered Creditors Voluntary Liquidation on 23 July 2021.

Mr Lewis

- 4.5. During the Relevant Period, Mr Lewis, an experienced financial services professional, performed the CF1 (Director), CF10 (Compliance Oversight) and CF11 (Money Laundering Reporting) controlled functions at WWFS. Currently, he performs the SMF3 (Executive Director), SMF16 (Compliance Oversight) and SMF17 (Money Laundering Reporting Officer) senior manager functions at WWFS. He is a 25% shareholder in the Firm.
- 4.6. Whilst Mr Lewis was not a Pension Transfer Specialist and had no previous Pension Transfer experience, in performing his CF10 (Compliance Oversight) function, he was, nevertheless, responsible for ensuring that WWFS complied with the Authority's rules and regulatory requirements applicable to its Pension Transfer business.

Pension Transfers

- 4.7. 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. Pensions are, in most cases, a primary resource for ensuring financial stability in retirement. For some people, they are the only way of funding retirement. 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 financial adviser fails to conduct the affairs of their advice business in a manner that is compliant with the Authority's regulatory requirements, this exposes their customers to a significant risk of harm.
- 4.8. Pensions can be structured in a variety of ways. However, a DBPS is particularly valuable because an employer sponsor carries the financial burden associated with offering a secure, guaranteed income for life to members, which typically increases each year in line with inflation. This is in contrast to, for example, a DC pension scheme where employer and employee capital contributions are invested, but the investment and mortality risk are borne by the member. The Authority expects that for the majority of customers it is in their best interests to remain in their DBPS because of the guarantees and protections it offers.

- 4.9. Customers who engage advisers and authorised firms to provide them with advice in relation to their pensions therefore place significant trust in them. It is important that firms and their advisers exercise due skill, care and diligence when advising customers regarding their pensions, ensuring that the advice given to a customer is suitable for them, having regard to all of their relevant circumstances. This is even more important when customers have no option but to make a decision regarding their pension.
- 4.10. Transfer out of a DBPS involves giving up the guaranteed benefits in exchange for a cash-equivalent transfer value which is typically invested in a DC pension. If a customer leaves a DBPS, they will have to buy an annuity to obtain a guaranteed level of income. Alternatively, they may rely on income from investments, but investments will have to be managed in such a way as to produce ongoing income; and even then, there is no guarantee as to the amount or duration of that income.
- 4.11. The introduction of pensions freedoms (introduced in April 2015) for DC pensions made transferring out of a DBPS an attractive option for some people. However, the Authority considers that, given the nature of the guaranteed benefits provided under a DBPS, advisers' default assumption should be that transferring out and giving up those benefits is unlikely to be suitable for a customer unless they can clearly show, based on a customer's specific circumstances, that it is in their best interests.
- 4.12. During the Relevant Period, WWFS advised 28 customers on potential transfers from a DBPS to an alternative pension arrangement. Notwithstanding FCA guidance which created a presumption against advising a customer to transfer out of their DBPS, 27 customers were advised by WWFS to transfer. The remaining customer who was advised not to transfer proceeded to do so in any event, as an insistent customer.

The British Steel Pension Scheme ("BSPS")

- 4.13. The BSPS was one of the largest DBPS in the UK, with approximately 125,000 members and £15 billion in assets as of 30 June 2017. In March 2017, the BSPS was closed to future accruals, which meant that no new members could join it and existing members could no longer build up their benefits. The BSPS also had an ongoing funding deficit.

- 4.14. In early 2016, various options were being explored in relation to the BSPS as a result of insolvency concerns relating to one of its sponsoring employers. These options included seeking legislative changes which would have allowed pension increases available under the BSPS to be reduced to the statutory minimum levels, and the sale of one of the sponsoring employers. However, it was concluded that the only way to avoid insolvency would be to enter into a Regulated Apportionment Arrangement ("RRA").
- 4.15. On 11 August 2017, the Pensions Regulator gave its clearance for the RAA. Under the RAA, the BSPS would receive £550 million and a 33% equity stake in one of the sponsoring employers and the BSPS would transfer into the PPF. In addition, a new DBPS ("BSPF 2") was proposed by the sponsoring employers in combination with the RAA proposal. The RAA received formal approval on 11 September 2017, which resulted in the BSPS being separated from the sponsoring employers.
- 4.16. The consequences of the RAA were that members of the BSPS were required make a choice between two options offered by the BSPS, namely to either:
- a) remain in the BSPS and therefore move into the PPF; or
 - b) transfer their benefits into BSPS 2.
- 4.17. Alternatively, BSPS members could take a CETV and transfer their pension benefits into an alternative pension arrangement (for example a personal pension scheme or another occupational pension scheme held by the member).
- 4.18. On 11 and 21 September 2017, the BSPS, announced that it would separate from the sponsoring employers. Information about the options available to members was available on the BSPS' website from 11 August 2017 and in October 2017, the BSPS distributed information packs to members about these options. Members were required to choose their preferred option by 22 December 2017. Those who wanted to transfer their pension benefits from the BSPS to a personal pension were required to submit the required paperwork to execute the transfer by 16 February 2018.
- 4.19. The Authority has carried out significant work in response to the harm caused to members of the BSPS from authorised firms. The Authority has taken intervention action in the form of requirements to vary permissions to stop ongoing harm at

relevant firms and has initiated enforcement investigations against culpable firms and individuals, of which the investigation into Mr Lewis is one. On 31 March 2022 the Authority launched a consultation paper for a redress scheme under s404 FSMA for BSPS members who suffered financially as a result of unsuitable transfer advice. The Authority's Policy Statement on the Consumer redress scheme for unsuitable advice, published on 28 November 2022, estimates the average amount lost per consumer to be about £45,000.

- 4.20. The consultation paper made reference to the finding that BPS members experienced, and were influenced by, a set of unique circumstances. This included the following:
- a) BPS members were faced with making decisions critical to their long-term financial security a very important decision on a complex issue with a tight deadline;
 - b) They generally had given little consideration to their pension prior to the 'Time To Choose' period commencing and therefore had little knowledge of their options; and
 - c) The scale of the exercise, and the geographical concentration of members, meant there was difficulty in accessing accurate information and guidance about their options.

WWFS' Pension Transfer advice business and Mr Lewis' role

Increase in DBPS work at WWFS

- 4.21. When WWFS sought permission to provide Pension Transfer advice, it was anticipated that the Firm would advise about one customer per month. Having acquired that permission on 16 March 2017, WWFS advised its first customer to transfer on 30 March 2017. Between March and July 2017, WWFS advised 8 customers in total, all of whom were advised by Adviser A.
- 4.22. Over a relatively short period of time this element of WWFS' business grew rapidly. Between August 2017 and December 2017, WWFS advised 160 Pension Transfer customers. Adviser A advised 104 of these 160 customers.

- 4.23. WWFS was located a short distance from a Tata Steelworks plant, and this significant increase in the volume of Pension Transfer customers was driven by demand from BPS members. Mr Lewis stated that from August 2017, approximately 98% of WWFS business related to Pension Transfer work. WWFS agreed to take on a large number of customers over a short period of time with insufficient resource in place to manage the volume whilst complying with regulatory standards.

The Advice Process

- 4.24. Customers seeking Pension Transfer advice from WWFS met or spoke with their adviser on several occasions. An initial meeting was undertaken at which an introductory discussion took place about the customer's aims and objectives, and the options available. Customers were also provided with terms of engagement and a standard document produced by WWFS about pensions and retirement. Following that initial discussion, 73 customers decided not to proceed further, and therefore did not receive advice.
- 4.25. Where a customer wished to proceed, key information was then sought from the customer to provide a basis for advice. The content of the Suitability Report and the recommendation itself were presented thereafter, either in person or by telephone.
- 4.26. In response to the increased demand for Pension Transfer advice, WWFS' advisers relied increasingly on an administration team of three staff, and a paraplanner who would undertake tasks including the preparation of TVAS documents and Suitability Reports. Advisor A conceded (when interviewed by the Authority) that "there may have been one or two" suitability letters prepared by the paraplanner that they did not review, notwithstanding their responsibility for the suitability of the advice.

Initial and ongoing transfer fees

- 4.27. In most cases, WWFS charged its customers a fee of 1 to 1.5% of the value of the transferred fund along with an ongoing advice charge of 0.5%. However, the Firm set out the typical initial fee range of 1% to 3% for occupational pension transfers depending on the size of the investment and the work involved.

- 4.28. Of the case sample reviewed by the Authority, the total advice fees charged was £83,578.15, with an average of £4398.85. During the Relevant Period, customer payments for initial advice fees for Pension Transfer advice totalled £63,832.33.
- 4.29. WWFS' Terms of Engagement stated that payment would be due from a customer if advice was given which was not followed, or if the advice was not to transfer, albeit in the latter scenario the fee was capped at £1000. However, it was understood in practice that unless the transfer was complete, no fee would be paid by the customer.
- 4.30. WWFS offered three tiers of ongoing advice service with different prices. WWFS set out the precise fees to be charged to the customer for the advice and offered several methods of how payment could be taken. Most customer files reviewed by the Authority showed customers opting to have payment taken from the invested fund.
- 4.31. All 19 files assessed on behalf of the Authority reflected the fact that the customer had opted for an ongoing review service for which the pension holder would be charged. Whilst the ongoing advice charge was an optional service for customers, were it for the Authority's intervention, the sharp rise in WWFS' Pension Transfer customers over this period would have translated into future additional income from this service for WWFS.

Mr Lewis' Responsibilities as WWFS' Compliance Officer

- 4.32. Given the high volumes of Pension Transfer advice being provided by WWFS, in particular from August to December 2017, it was important that WWFS took appropriate steps to verify the quality of advice being provided to customers. This included establishing and maintaining adequate policies and procedures sufficient to ensure the Firm's compliance with its obligations under the regulatory system, including compliance with Pension Transfer rules.
- 4.33. As CF10 (Compliance Oversight), Mr Lewis had responsibility for oversight of the Firm's compliance with the Authority's rules.
- 4.34. WWFS' Compliance Plan recorded Mr Lewis' job title as Compliance Director and listed his controlled functions as including, amongst others, CF10 (Compliance Oversight). Under the heading "The Compliance Plan" it stated that:

“Compliance in general is ensuring quality throughout the business operation. This in particular means concentrating on the quality of the sales process to ensure that investor protection is given the very highest priority and that consistent high standards are set.” [Emphasis added].

4.35. Under the heading “Compliance Officer” it stated that:

“The Compliance Officer is responsible for ensuring the firm meets its Regulatory responsibilities in respect of its regulated activities. This responsibility includes ensuring the Compliance Plan is adopted and adhered to by the firm.”

4.36. Under the heading “Compliance Officer’s Responsibilities” it recorded these as including, amongst others:

- Identifying, interpreting and allocating regulatory responsibilities;
- Designing or approving procedures whereby the requirements of individual obligations are met, and thereafter supervising the implementation and maintenance of such procedures;
- Maintaining the documentation which records the means by which regulatory obligations are to be met;
- Carrying out and reporting upon an ongoing monitoring programme to assess the effectiveness of compliance procedures, including a review of the business written by the firm; ...

4.37. Under the heading “Monitoring: Quality of advice reviews” it observed:

“Details are contained in the T&C Plan. This follows good practice to have regular and ad hoc checks on the quality of advice, which details how this will be carried out.”

4.38. The Compliance Plan also prescribed the gathering of relevant management information relating to the Firm’s advisers to the Compliance Officer in accordance with its Training and Competency Plan.

4.39. In interview, Mr Lewis explained that he saw his duties as CF10 (Compliance Oversight), in relation to his oversight of Pension Transfer advice, as:

“Checking what was in the file corresponded with what was on the checklist and making sure that what was in the [transfer analysis document], or whatever, was also in the suitability report.”

4.40. Mr Lewis confirmed he did not carry out regular reviews of systems and controls, management information reviews, monthly one-to-one meetings or quarterly observed calls, all of which were required of him, as CF10 (Compliance Oversight), under the Training and Competence Plan. Mr Lewis had no hand in designing the advice process itself.

4.41. In interview, Mr Lewis stated, however, that from the end of September 2017, he was reviewing ten DBPS files every week, with each file taking him two to three hours to complete, and that he was working regularly at weekends in order to do so.

Mr Lewis’ responsibilities as a CF1 (Director)

4.42. Mr Lewis also had certain responsibilities in the performance of his CF1 (Director) function. This was also reflected in the Compliance Plan under the heading “Treating Customers Fairly” (“TCF”), which recorded that all those performing senior management functions were responsible for ensuring that WWFS complied with TCF desired outcomes:

“The Principals and any other senior management will be responsible for ensuring that the 6 Principals of treating customers fairly are embedded throughout its practices and procedures.”

4.43. Those TCF desired outcomes included “where consumers receive advice, the advice is suitable and takes account of their circumstances.” To ensure that this, and the other TCF objectives were met, the Compliance Plan stated that “Treating customers fairly will be a discussion and review point at appropriate meetings within the firm. These meetings will be documented to demonstrate an audit trail of TCF driven practices and support the adoption and continued good practice within the firm.”

Mr Lewis' approach to Pension Transfer advice

- 4.44. Although not a Pension Transfer Specialist, Mr Lewis' approach to providing Pension Transfer advice was misguided and placed undue weight on certain factors, this was material to his reviews of DBPS files because he stated that he would look at the files and consider, "would I have done it myself."
- 4.45. In interview, Mr Lewis said that advisers should start from the position that a Pension Transfer would not be suitable for a customer, and that the adviser then had to build up the evidence as to why they would be recommending that it was suitable.
- 4.46. Nevertheless, as every instance of Pension Transfer advice given by WWFS, save one, was to transfer, the case for doing so was almost always made out. This should have led Mr Lewis to challenge the Pension Transfer advice being given on behalf of the Firm.
- 4.47. In interview, Mr Lewis stated, "So you have to weigh up what each client's got different reasons, but most of the Tata Steel guys have the same blinking reason [to transfer out], they just wanted to get out of the industry when they were 60." This wrongly conflated these customers' wish to leave the industry with their need to complete a Pension Transfer. Further, Mr Lewis contrasted the penalties imposed on early retirement under BSPS2 with the absence of reductions under the BSPS. This approach focused on the difference between the terms, rather than assessing whether BSPS 2 could have better provided for the customer, in all the circumstances, in their retirement than the other options.
- 4.48. Mr Lewis' views about the security of the fund affected his approach to Pension Transfer advice which was, he said, also heavily influenced by the views and feelings of an individual BSPS trustee which had been expressed privately to him. Mr Lewis and WWFS more generally should, however, have approached any advice objectively and acted in the best interests of the individual customer. It was also WWFS' responsibility to objectively explain to customers the strength of the BSPS and the protection the PPF offered by way of guarantees.

WWFS' compliance arrangements

Professional Indemnity Insurance

- 4.49. It was the responsibility of Mr Lewis, as Compliance Officer, according to WWFS' policy, to obtain sufficient Professional Indemnity Insurance to cover the Firm's Pension Transfer advice. Mr Lewis has been unable to demonstrate that the Firm had this insurance cover during the Relevant Period.

Small proportion of Pension Transfer files checked by a qualified Pension Transfer Specialist

- 4.50. WWFS' policy was that pension areas such as advice on SIPPs, income drawdown and Pension Transfers were high risk areas of work which required all files to undergo a quality assurance review.
- 4.51. Although he was not a qualified PTS, Mr Lewis reviewed most of the DBPS files prepared by Adviser A, with the others (8 files) reviewed "randomly" by the Firm's other Pension Transfer Specialist. The only record of these reviews having taken place, as well as their outcomes, being the "Notes" column of WWFS' Defined Benefit Spreadsheet. The Authority has not seen any completed sample review.
- 4.52. During the Relevant Period, Mr Lewis undertook 20-30 hours of Pension Transfer file review work each week. At the same time, as Compliance Officer, he retained responsibility for all advice given by WWFS' 18 advisers, across all other areas of their work. The fact that his Pension Transfer file reviews (which did not assess suitability) took up so much time should have raised questions about volume and quality of the work being produced by a single adviser.
- 4.53. None of Pension Transfer Specialist's reviews were of cases forming part of the sample reviewed by the Authority so the quality of the reviews cannot be assessed. Although all these files passed the review, all of them required remedial action. Issues identified in these files included Risk Profile Questionnaire errors, fact find errors and report errors. Mr Lewis was aware of:

- a) the high volume of pipeline work;
- b) the relative inexperience of Adviser A;

- c) large numbers of files requiring remedial work; and
- d) his own limitations on his ability to review files.

There was therefore a heightened risk regulatory standards may not have been met.

Internal Reviews did not assess suitability of advice

- 4.54. As Mr Lewis was not a Pension Transfer Specialist, the reviews he undertook could not assess the suitability of the advice given by the advisers. Adviser A advised on 27 transferred cases, and 85 pipeline cases. Only 8 of these were internally reviewed by the Firm's other Pension Transfer Specialist.
- 4.55. Mr Lewis used a script he obtained from his previous employment at another authorised firm to conduct file reviews. In interview he stated that, "So I just followed the script, they gave us a process to follow. And the process was exactly the same as that [they] followed, so I just followed what it said on the script". He stated that it was designed to ensure that "everything was on that file."
- 4.56. Mr Lewis would complete the script by selecting 'yes, no or not applicable' against the relevant information and notify the adviser if anything was missing. Mr Lewis would also check for consistency as between documents in a file and indicate mistakes within the documentation, such as where an error had been made regarding the customer's date of birth. He did not make corrections or suggestions concerning the recommendation itself.
- 4.57. A second checklist document was later used to guide the Pension Transfer reviews following external compliance feedback. There was no document which assisted with a qualitative assessment of the advice and there were no routine oversight assessments.

Poor Response to External Reviews

- 4.58. Following discussion with the Authority, WWFS engaged external compliance consultants to provide ongoing compliance advice to assist Mr Lewis in discharging his compliance obligations. The consultants were asked, in March, April and August 2017 respectively to undertake reviews on three DBPS files on which

Adviser A advised. In each case, significant failings were identified. These failings included:

- a) failures to capture information around expected expenditure in retirement; for example, one file review stated it was difficult to tell if the client could afford the pension transfer;
- b) unclear customer objectives; one file stated it was unclear why the client had a need to repay their debts;
- c) the risk of the investment not matching the customer's capacity for loss; clarification was needed to address the discrepancy between capacity for loss and attitude to risk;
- d) inaccurate illustrations and models; for example, early retirement and commutation factors were incorrectly stated and the CETV was out of date and therefore should not be used;
- e) numerical errors; and
- f) a failure to explain why the transfer met needs in the Suitability Report. For example, the need of one client to repay the mortgage was not demonstrated given a large monthly income surplus.

4.59. None of these customers were transferred out of their defined benefit scheme before the VREQ was submitted. At the time, Mr Lewis was of the view that sending these files fulfilled his duty as CF10 (Compliance Oversight). The findings of the external compliance consultant's reviews are consistent with the findings of the Authority's customer file review.

4.60. The three reviews by the external consultants were sent to Mr Lewis in the first instance. Mr Lewis stated that he met with Adviser A to discuss the review and what further action was needed. Adviser A then undertook the additional work which was presented to and checked by Mr Lewis. Despite all three cases not demonstrating the suitability of the advice, no further cases were submitted to the external consultant for review and the amended files were not re-submitted.

- 4.61. Mr Lewis instead created the submission checklist in response to the reviews which he used to check the work of the advisers. No other external compliance service was used, and no further measures were put in place at WWFS in response to the consultants' feedback.
- 4.62. Given that Mr Lewis was not qualified to give Pension Transfer advice, devising a checklist, when the Firm failed to demonstrate suitability on all three files submitted, was an insufficient response. It failed to engage with the substance of the analysis. The fact that no further files were submitted for external review after the findings of the three reviews, and after the checklist was implemented, meant that Mr Lewis had no way of reasonably satisfying himself that his advisers' recommendations were now compliant, following these amendments to the checklist.

Inadequate response to increase in Defined Benefit advisory work

- 4.63. Adviser A qualified as a Pension Transfer Specialist in January 2016 and was therefore relatively inexperienced in giving advice on these matters. She had only advised on a small number of Defined Benefit files prior to joining WWFS. Between March and July 2017, WWFS advised 8 customers in total, all of whom were advised by Adviser A. Over a relatively short period of time, this element of WWFS's business grew rapidly as a result of the influx of BSPS customers seeking advice. Between 1 August 2017 and 14 December 2017, WWFS advised 160 Pension Transfer customers. Adviser A advised 104 of these 160 customers.
- 4.64. Mr Lewis acknowledged that he had expected "maybe half a dozen [Pension Transfer matters] a year, if that" but the work, "snowballed" and "got out of control". Mr Lewis did not send any additional files for review during this period, despite Mr Lewis' being aware of the deficiencies in Adviser A's Pension Transfer advice, as identified previously by the external compliance consultants.
- 4.65. Nor did Mr Lewis take any action to reduce the amount of Defined Benefit work being handled by Adviser A, and no additional support was offered by the Firm.
- 4.66. There was no obligation on the Firm to advise all the customers who approached it. But it was left to the Pension Transfer Specialists themselves to take steps to prevent the administrative staff from continuing to book in appointments in such significant numbers. Mr Lewis stated that; 'I should have told [Adviser A and the

other Pension Transfer Specialist] to, 'Hang on, this is not acceptable, the level of business, you know? [...] I should have what you said – 'Come on guys, this is getting out of hand. Limit it to one or two', you know?'

The Authority's Review of Adviser A's advice

Background

- 4.67. The Authority visited and reviewed the processes of firms active in the defined benefit pension transfer advice market. WWFS was visited and assessed and a sample of its advice was reviewed and found to be deficient. In particular:
- a) the rationale for customer objectives of control and flexibility was not demonstrated;
 - b) the customer stated they lost faith in Tata Steel and wanted to retire early without evidence of WWFS exploring BSPS2 or the PPF; and
 - c) the rationale for transfer was heavily replicated between customer reports.
- 4.68. The Authority then requested and assessed a further 19 files against the applicable rules found in the Authority's Conduct of Business Sourcebook ('COBS') relating to suitability. All of these customers were part of the completed defined benefit transfers. All but two customers were former BSPS scheme members. Results of the File Review demonstrated:
- a) a failure to collect the necessary information to give pension transfer advice in **68%** of cases, with the consequence that in **21%** of total cases the Authority was unable to assess whether the firm's advice was suitable (see "*Information collection*" below);
 - b) that the Firm gave unsuitable pension transfer advice in **53%** of cases (giving suitable advice in **26%** of cases) (see "*Unsuitable pension transfer advice*" below); and
 - c) that the Firm gave unsuitable investment advice in **21%** of cases (see "*Unsuitable investment advice*" below).

- 4.69. Nine of the 10 of the customers who received unsuitable advice were members of the BPS. The average transfer value for the customers within the reviewed files who received unsuitable transfer advice is £393,006. The majority of customers in the sample had transfer values similar to this figure, with the range being £86,294 - £600,172.84. Most customers had some small cash savings or investments with limited alternative pension provision. BPS customers had benefited from the replacement DC Aviva scheme which commenced shortly before the advice was provided, and some customers, or their partners, had separate modest pensions. In several files, the customer had informed the adviser that they would have to draw upon the fund if they required unplanned access to cash. In all BPS cases, the transfer value supplied was the most significant asset by some measure. This demonstrates the importance of ensuring the suitability of the advice as the funds were ultimately central to the customer's finances and quality of life in retirement. The customers had limited buffer from financial strain and could not be described as financially resilient.

Information Collection

- 4.70. The overarching suitability requirement, in COBS 9.2.1R, is for a firm to take reasonable steps to ensure that a personal recommendation (which includes, in this context, a recommendation to transfer or not to transfer a pension) is suitable for its customer. To do so, a firm must obtain the necessary information regarding the customer's (a) knowledge and experience in the investment field relevant to the pension transfer; (b) financial situation; and (c) investment objectives (COBS 9.2.1R(2)(b)). Making a personal recommendation without the necessary information increases the risk of actually providing unsuitable advice.
- 4.71. If a firm does not obtain the necessary information to assess suitability, it must not make a personal recommendation (COBS 9.2.6R). The Authority's review of 19 customer files found that in four cases, the file contained insufficient information such that the adviser should not have made a recommendation as a full assessment could not be made. This therefore put the customer at risk of receiving unsuitable advice. In all four cases, there was a failure to capture retirement need and spousal pension or other income entitlement making assessment of reliance on the fund impossible.

Failure to Gather Income and Expenditure in Retirement details

- 4.72. There was a pervasive failure to obtain and discuss the customer's income need and expenditure in retirement including the basic cost of living, lifestyle expenditure and discretionary expenditure; 15 of the files did not include full retirement need/expenditure details. The fact find form used did not have a section inviting this information. Consequently, the adviser was not able to project how the defined benefit pension would be used by each customer in retirement.
- 4.73. Further, there was a common failure to clearly capture customer and spouse state and additional pension details. For example, in the case of Customer A, information about the customer's spouse's Halifax pension were not on file and her entitlement to a state pension had not been established. Without this information, the adviser was not in a position to determine the level of reliance on the Defined Benefit Pension Scheme, or evaluate whether this potential resource could be used to achieve customer objectives.

Failure to Gather Information on the Customer's Financial Situation

- 4.74. Information about a customer's wider financial situation, including their additional resource and current expenditure details, is key to assessing the extent of their reliance on the income provided by their Defined Benefit Pension Scheme, and their capacity for loss. This failure was seen across 6 cases which the Authority was able to assess (plus four cases not capable of assessment) in which information as to the source and extent of the customer's regular income, their assets including liquid assets and their regular financial commitments (COBS 9.2.2R(3)) was missing.
- 4.75. The way the failure to accurately capture detailed financial information can affect the suitability of advice is seen in the case of Customer B, who had the objective of repaying their mortgage by age 55. However, no assessment had been undertaken of the outstanding mortgage at that age and the customer was considering re-mortgaging, potentially making the objective redundant. The adviser was therefore not able to assess whether it might be possible to repay the mortgage by other means, nor how much of the pension scheme might be needed to do so. Proper assessment of the customer's Aviva pension had not been undertaken. No information on the customer's spouse's pension provision, of any

sort, was recorded. Therefore, assessment of how these potential assets could meet the customer's stated objectives has not taken place.

Non-specific Customer Objectives

- 4.76. Customer objectives were often recorded in a generic way suggesting a standardised templated approach. Common examples of non-specific objectives include controlling access to pension benefits, avoiding the funds going into the PPF and to pass benefits to family on death. There was little evidence on files that the stated objectives of the customers were properly explored, scrutinised and challenged by the adviser to ensure they were appropriate and achievable, particularly the desire to retire early. The underlying reason for the customer objectives, was not always recorded meaning the driver for transfer could not be assessed; alternative means of achieving the aim or the appropriate importance to attach to the objective cannot be evaluated.
- 4.77. Adviser A stated in interview that, 'I've looked back at the files, and I can see that even though I had conversations, that I should've documented it far better at that time than when I look back,' The Authority expects that advisers should have kept full and accurate records and should have been able to demonstrate the suitability of the transfer on the content of the file.

Unsuitable Pension Transfer Advice

- 4.78. The overarching suitability requirement (COBS 9.2.1R) is for a firm to take reasonable steps to ensure that a personal recommendation (which includes, in this context, a recommendation to transfer or not to transfer a pension) is suitable for its customer.
- 4.79. The starting point for pension transfer advice is the guidance in COBS 19.1.6G(3) (or, from 8 June 2015 to 1 April 2018, in COBS 19.1.6G) that a firm should only consider a transfer, conversion or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the customer's best interests. These provisions indicate that if the firm cannot clearly demonstrate this, then it should assume the transaction will not be suitable. In the worst scenarios, a loss of guaranteed benefits equates to severe customer harm, surrendering a primary resource for ensuring financial stability in retirement or, alternatively, commencing retirement.

- 4.80. The Authority's File Review of 19 customer files found that 10 customers (53%) received unsuitable transfer advice. Of these, all but one (90%) were former BSPS members. The advice given to transfer was unsuitable for a variety of reasons (see below). Many files failed for multiple reasons.

Reliance on the Defined Benefit Scheme and Inability to Bear Transfer Risk

- 4.81. The customer was assessed as being reliant on the defined benefit scheme in all 10 cases which contained unsuitable transfer advice. These customers did not have significant assets which could be used to supplement any shortfalls in their income needs. The customer is reliant on income from the defined benefit scheme in retirement if it their primary income source with no capacity to bear the risk of losing it; for example, because without it they would be unable to meet non-discretionary expenditure. The firm's advice to transfer out exposed these customers to a risk of not being able to meet their income needs throughout retirement because their income would be dependent on the performance of the recommended investment. The Authority considers that the firm did not have a reasonable basis for believing that these customers could financially bear any investment risks related to the Pension Transfers recommended in their cases.
- 4.82. In 5 cases, the firm recommended transfer away from the defined benefit scheme when there was insufficient evidence to suggest that the customer could bear the transfer risk. There was a pattern of the firm not completing a detailed sustainability analysis to illustrate the potential for customers to run out of money; rather this was dealt with by way of a warning or illustration which lacked context, analysis or adequately reflected how the customer wanted to access the fund.
- 4.83. Customer D was 53 and married at the time of the advice and was due to start a new job. Although the customer had another pension, the fund under consideration was her only defined benefit pension. She wanted to retire at 60 and provide her family with a lump sum on her death. Information concerning the customer's long-term expenditure was not obtained by Adviser A. Customer D had no investments and had £2000 in savings. She had little financial experience, appearing to spend the net household income on living expenses. Customer D's financial situation was such that she could not withstand losses.

- a) although the customer and her spouse had other pension provision, the Suitability Report warned that the customer would deplete the fund in her 70s. Without retirement need captured, it is likely the customer is reliant on the DB income given the level of expenditure;
- b) the firm has not demonstrated the basis for believing that the customer is able financially to bear the risk of transfer consistent with their objectives. The objectives of providing for her family with a lump sum on her death may have come at the expense of giving up guaranteed income; and
- c) the customer's aim of retiring at age 60 has not been assessed for affordability, without the capture of retirement expenditure information. It therefore cannot be demonstrated that transfer out is in the best interests of the customer.

Lack of Evidence to Support Customer Objectives

- 4.84. The firm failed to provide sufficient evidence to demonstrate that specific objectives, for example family benefits on death flexibility maximising tax-free cash and protecting the pension fund from decrease in value which drove the transfer were in the customer's best interests. This was seen in all 10 cases assessed by the Authority as being unsuitable for transfer.
- 4.85. As the primary purpose of a pension is to meet the income needs of an individual in retirement, when maximising the customer's death benefits or the flexibility of alternative arrangements is treated as a high priority, there is an increased risk that this is at the expense of the primary purpose. There may therefore be a trade-off that must be resolved in the best interests of the customer given their circumstances (COBS 9.2.1R(1) and 9.2.2R(1)(b)). The file review uncovered examples of where this tension was resolved in favour of transfer, but where the firm did not demonstrate why this was the case. For example, this may occur where the customer has expressed a desire for flexibility without any need being tested or weighed against countervailing factors. Instead, the adviser set out, in generic terms, the customer's acceptance of the disadvantages of transfer, such as lower pension income and increased risk, and the customer's supposed good level of knowledge of their options, risk and investments. This had the following effects:

- a) it was incorrectly implied that the customer, from an informed and knowledgeable position was responsible for the advice (not the decision) to transfer out; and
- b) there was a failure to analyse and present findings of how the tensions were resolved.

4.86. In addition, the aim of the customer may be pursued under a misapprehension. When the customer expressed a need to transfer to protect the fund (for example because of concern about the PPF taking over) the firm has a responsibility to explore whether the concern is legitimate and ensure the customer is properly informed. Instead, when explaining the reasons for the recommendation, the adviser repeated the customer's views on the instability of the ceding scheme and stated, in BPS cases, that the scheme was under-funded.

4.87. The File Review revealed that sections of the Suitability Reports for BPS members were very similar, often stating that the customer had the objectives of wanting their pension reviewed along with control and flexibility. Similar vague or templated wording was also seen in the section listing the reasons for the recommendation. Instead of engaging in an assessment of transfer, the reasons for transfer sometimes consisted of different ways of restating the desire for an objective, or made general assertions without personalisation such as, 'the current scheme rules do not allow you to take full advantage of new pension freedom rules...' Adviser A accepted that she should have 'formulated [the reasons] in a different way'. In some cases, the real driver for transfer was not articulated in the Suitability Report at all, and the adviser accepted that they would have 'gone down a different route' with the customer if giving advice again.

Lack of necessary attitude to transfer risk and knowledge and experience

4.88. WWFS was obliged to obtain information on the customer's preferences regarding risk taking and their risk profile (COBS 9.2.2R) to ensure that the customer was prepared to exchange the guaranteed benefits of the defined benefit scheme for non-guaranteed benefits which are subject to investment risk borne by the customer. WWFS was required to obtain sufficient information to provide a reasonable basis for believing that the customer had the necessary experience and knowledge to understand the risks involved in the transfer (COBS 9.2.3R).

- 4.89. The adviser failed to demonstrate the customer had sufficient knowledge to understand the risks of transfer in 6 cases. Despite the fact find form prompting asking for detail around current and previous investments, the firm often recorded only that the customer had little experience but some understanding without expending or explaining how this satisfied the guidance. Where the customer had asserted a level of knowledge when their occupation and investments suggested this was not the case, there was no evidence of the adviser challenging or scrutinising these answers on file. The adviser relied on her own impression of the customer's intelligence even when the customer had no investment experience at all, with very limited savings yet, post-transfer, went on to manage the pension himself. This exposed the fund to significant risk.
- 4.90. In 5 cases, the customer did not have the necessary attitude to transfer risk. Customer files lacked evidence of discussions around risk, depletion of the fund and customer responses/rationale as regards their views. Nothing could be gleaned from customer backgrounds owing to lack of investment experience. WWFS failed to properly evaluate the attitude to risk questionnaires. The adviser stated that the answers provided by the customer were a tool to prompt discussion, and that the outcome of that discussion could have been better documented. It was accepted that the answers were not used to assess whether the customer had an appetite to give up guarantees offered by Defined Benefit schemes, and that, with hindsight, they should have been used in that way. Where a customer had stated that they wanted a guaranteed rate of return rather than uncertainty, this should have been a clear signal that the customer enjoyed the guaranteed benefits of the Defined Benefit Pension Scheme. Low/medium risk profiles within the sample suggested a preference for safe returns.

Transfer analysis not supportive of transfer

- 4.91. In order to provide pension transfer advice, WWFS was obliged to carry out a comparison between the benefits likely to be paid by the ceding scheme with the benefits afforded by a personal pension. The 'TVAS' document facilitates this comparison as required by COBS 19.1.2R(1). The main output from this document is a series of percentages, known as "critical yields" (CYs). These illustrate the annual growth rate (net of charges) that the customer would need to obtain on an investment of the CETV in order to replicate the benefits provided by the scheme. The firm must ensure that the comparison included enough information

for the customer to be able to make an informed decision, drawing the customer's attention to factors that both support and detract from the firm's advice.

- 4.92. The firm failed to follow this guidance in 7 cases. The adviser failed to fairly present the comparison or take into account the customer's objectives so as to make the comparison useful for the customer. Common errors include calculating the comparison to the wrong retirement age, and not reflecting a desire to take tax-free cash. Where calculated to a higher retirement age than desired by the customer, the critical yield figure will be lower, suggesting the receiving fund does not need to perform as well. Critical yields, where correctly calculated in these cases, were so high as to be unlikely to be achieved and exceeded what was likely to be achieved with the customer's attitude to risk grading.
- 4.93. WWFS failed to explain why despite the required growth rate, transfer was in the best interests of the customer. 17 suitability reports stated that, 'Even though it is unlikely the critical yield required to match the benefits that could be provided by your existing defined benefit pension can be achieved, I have still recommended that you transfer for all the other reasons stated' As stated above, the other reasons were often not personalised.

Customer Objectives can be met by the Defined Benefit Scheme

- 4.94. The firm recommended transfer away from the ceding scheme in circumstances where the customer had the objective of early retirement or had stated a preference for guaranteed returns, when this could be met by the current arrangement. When transfer away from the scheme is not necessary to achieve customer objectives, or results in the loss of a benefit which is important to the customer, the risk materialises that transfer is not in the customer's best interests. This was the case in 4 customer files reviewed by the Authority.
- 4.95. All cases that failed the assessment for suitability of transfer advice were found to have fallen below the standard set by the Authority in more than one way.
- 4.96. For example, Customer E was married and a BPS member with gross salary of £40,000 per annum. The customer had a DB from nearly 37 years pensionable service. The customer also had access to a DC workplace arrangement that they joined in April 2017 and was eligible for full state pension from age 67. The couple owned their own home, valued at £70,000, with no mortgage. There were no

investments recorded but they had joint savings of £22,000. Their combined expenditure was recorded as £1,157.45 per month. No expenditure in retirement figures had been captured by Adviser A:

- a) the adviser recommended transfer out when there was strong reliance on the BSPS, particularly between early retirement and state pension age;
- b) no sustainability assessment was completed showing how their lifestyle could be affected by transfer, or how crystallising some of the benefits in an unplanned way may impact the funds over time. The adviser did not show the customer could bear the risk of transfer;
- c) the need for flexibility is not self-evident, explained or scrutinised in the file;
- d) despite the customer's concern about the fund reduction on entering the PPF, the receiving scheme would have to achieve a critical yield of 6.6% to match these benefits which was a challenge for the lowest medium' attitude to risk rating. The critical yield to match the BSPS' benefits was 12% (without tax-free cash taken) and highly unlikely to be achievable given the risk profile; and
- e) the customer's only investment experience was entering into his employer's new DC scheme shortly before the advice, such that was nothing to suggest he would understand the risks noted above.

Unsuitable investment advice

- 4.97. The Suitability requirement in COBS 9.2.1R extends to the investment into which the firm has recommended the customer should transfer his or her pension funds. Just as the adviser must ensure the customer can bear the transfer risk, so they must ensure that there is a reasonable basis for believing that the customer can bear the risks associated with the chosen investment (COBS 9.2.1R(1)(a) and COBS 9.2.2R(1)(b)).
- 4.98. The customer will routinely be asked to complete a risk profile questionnaire which helps the adviser understand the customer's attitude to investment risk and their capacity for loss. The Authority has reviewed examples where the answers provided in this questionnaire by the customer do not match up with the risk

associated with the recommended fund. Connected to this is where the customer did not have the capacity to bear the investment risk, in circumstances where there was a lack of additional resource should there be a drain or fall in the fund. The make-up of the underlying funds, particularly the equity content, was seen not to be consistent with the customer's ability to cope with risk. This was particularly egregious where the customer lacked the knowledge and experience to understand the risks involved in the investment.

4.99. Customer F was 52, a married full-time worker for Tata Steel, earning £47,000 per annum. The couple were renting, had £2500 in savings and had no other investments, though the customer was entitled to full state pension and a small Defined Contribution (DC) pension started in 2017.

- a) the customer was assessed as 'lowest medium' attitude to risk and none of the risk profile questions around risk were answered positively by the customer. The risk grading was inappropriate for a risk averse customer;
- b) at least 46% of the underlying fund was to be invested in equities. This was not aligned with the customer's attitude to risk or capacity for loss. A fall in the value of the fund would materially affect the customer's retirement finances given the level of reliance upon it, particularly before state pension age; and
- c) the recently commenced DC scheme was the customer's only recorded experience of investments such that was no evidence to suggest the customer was positioned to understand the level of risk he was taking on.

Poor Quality Communication with Customers

4.100. The Authority's Rules about the provision of information to customers ensure that consumers have all the necessary information to make an informed decision and are, ultimately, treated fairly. WWFS failed to comply with the Authority's Rules in 15 (79%) of cases reviewed.

4.101. Across the files reviewed, objectives, priorities and recommendations were often replicated with little tailoring to the customer's circumstances.

Suitability Report failures

- 4.102. The firm was obliged to provide each of its Pension Transfer advice customers with a Suitability Report. The firm was obliged to set out in the report, as a minimum, the customer's demands and needs; why the firm had concluded that the transfer was suitable for the customer having regard to the information provided by the customer; and any possible disadvantages of the transaction for the customer. In other words, the report was a written record of the customer's circumstances and the adviser's Personal Recommendation and the reasons for it.
- 4.103. The Authority has observed a pattern of the adviser making broad assertions about the option of transferring out as compared with the alternatives which do not bear scrutiny; for example that the scheme is underfunded without discussion of the implications, the other options 'cannot accommodate your needs and objectives' without explanation or that 'you are likely to receive a higher income' after transfer when this is contradicted by the warning that the customer is accepting 'a lower income in exchange for flexibility. The section explaining the reason for the recommendation was highly templated across the files with little personalisation. Mr Lewis stated that, 'they are higher level general statements... Maybe they should have put something in there which was more personal to that particular client.' The report therefore fails to meet the fair, clear and not misleading requirements of COBS 4.2.1R with important elements of the rationale for transfer being highly templated.
- 4.104. The effect of these incorrect assertions is exacerbated where the report did not engage in meaningful assessment of the alternatives to transfer, explaining why transfer is in the best interests of the customer. Some customers have not been told that aims and objectives, particularly early retirement, could be met within the scheme or its replacement and therefore the firm has failed to explain why the recommendation is suitable (COBS 9.4.7R(2)). In fact, some reports are worded so as to misleadingly imply that that early retirement is only an option on transfer by stating that it helps 'take benefits before your normal retirement age' when early retirement would always have been available as an option for those BPS members who went into the PPF.
- 4.105. When challenged in interview in relation to one customer, Adviser A explained that the customer would be using the fund to 'plug gaps...over and above normal expenditure'. Although flexibility was mentioned as a reason for the

recommendation, it was not explained or evidenced that in her assessment, the customer would not be reliant on the fund. This was a missing piece of key information, without which, the advice could not be understood. Adviser A accepted that, 'I have fallen down on the...to be able to adequately articulate this in writing'.

- 4.106. Some reasons given for rejecting an alternative are not justifiable and seen across several files, for example, where the workplace DC scheme was ruled out because the customer wanted guidance on drawing benefits in the future, or where a life assurance policy was rejected to improve death benefits due to a unrecorded objective to reduce monthly expenditure.
- 4.107. Some reports were deficient in their drafting. They included incorrect information, repetitive content and complex tables, jargon and projections with little engagement with actually explaining to the customer how the options might meet their income retirement needs. Furthermore, WWFS failed to disclose information that would assist the customer in understanding their options, for example, where the report did not show the Critical Yield to the customer's preferred retirement date for the PPF so that a straightforward comparison could be made between the recommended fund and the default option. The presentation of information is contrary to the requirements in COBS 4.2.1R for the report to be clear and in COBS 19.1.2R for the firm to take reasonable steps to ensure the customer understands the advice and comparisons.

Transfer Analysis

- 4.108. WWFS must take reasonable steps to ensure that the customer understood transfer analysis report. This was important, given the limited knowledge and experience of many of the customers the sample. Where files did not demonstrate that this was the case, there is a risk that the customer followed the advice without understanding how transfer compared with what they were giving up. This was seen in 8 cases. The reports included numerous tables with various yields and retirement ages, making the significance of the outcome hard for the customer to understand, particularly when this was not addressed clearly in suitability reports.

5. FAILINGS

- 5.1. The regulatory provisions relevant to this Notice are referred to in Annex A.
- 5.2. The Authority finds that, during the Relevant Period, by reason of the matters described in section 4 of this notice, Mr Lewis breached:
- a) Statement of Principle 6, in that he failed to exercise due skill, care and diligence in managing the business of the firm for which he was responsible in his CF10 (Compliance Oversight) function; and
 - b) Statement of Principle 7, in that he failed to take reasonable steps to ensure, in respect of his performance of the CF10 (Compliance Oversight) function, that WWFS complied with Principles 6 and 9 of the FCA's Principles for Businesses, and COBS 2.1.1R, 9.2.1R, 9.2.2R, 9.2.6R and 19.1.2R, as a result of the deficiencies in the Firm's Pension Transfer recommendations.
- 5.3. In particular, in breach of Statement of Principle 7, Mr Lewis failed to take reasonable steps to ensure that:
- a) Each of the Pension Transfer Specialists working for the Firm obtained the necessary information about the customer;
 - b) Each of the Pension Transfer Specialists working for the Firm properly assessed, on the basis of the information obtained, or gave due consideration to, whether the recommendation was suitable for the customer and in their best interests. In particular, Adviser A, one of WWFS' Pension Transfer Specialists failed properly to assess:
 - i. whether the customer was reliant on the income from their DBPS and whether they could financially bear the risks involved in a Pension Transfer;
 - ii. whether the aims which drove the Pension Transfer recommended were in the best interests of the customer;
 - iii. whether alternatives to a Pension Transfer could meet the customer's needs;

- iv. whether the customer had the appropriate knowledge, experience and attitude to transfer risk;
 - v. whether the transfer analysis supported a recommendation to transfer out of the ceding scheme; and
 - vi. whether the receiving fund was suitable for some customers.
- c) the documentation issued to customers demonstrated the rationale for transfer, was easily comprehensible and error-free.

5.4. The failures set out at paragraph 5.3 (a)-(c) above resulted from Mr Lewis' failure to take the following reasonable steps:

- a) undertake any management information analysis regarding the recommendations produced by WWFS' Pension Transfer Specialists;
- b) challenge the reasons for why almost all customers were recommended to transfer out;
- c) respond with additional resource to the large increase in volume of defined benefit work from September 2017 onwards, a large proportion of which was undertaken by Adviser A, who was relatively inexperienced, particularly in advising on Pension Transfers;
- d) with knowledge of non-compliant Pension Transfer advice given by Adviser A, ensure that Adviser A's advice was routinely reviewed by an appropriately qualified person;
- e) in the knowledge of non-compliant Pension Transfer advice given by Adviser A, restrict the workload placed upon them and provide training/support;
- f) ensure that the Pension Transfer advice provided on behalf of WWFS was assessed not just for file completeness but for its suitability; and
- g) adequately monitor Adviser A, taking into account their inexperience and the large proportion of WWFS's Pension Transfer advice that they gave.

- 5.5. Each of these steps would have been reasonable ones for Mr Lewis to have taken in the performance of his CF10 (Compliance Oversight) function, to ensure that WWFS complied with Principles 6 and 9 of the FCA's Principles for Businesses, and the relevant COBS rules.
- 5.6. Furthermore, by not taking these steps, and thereby failing to maintain an appropriate level of understanding about WWFS' Pension Transfer business, a large proportion of which was delegated to Adviser A, an inexperienced Pension Transfer Specialist, Mr Lewis failed to exercise due skill, care and diligence in the performance of his CF10 (Compliance Oversight) function, in breach of Statement of Principle 6.
- 5.7. The Authority therefore considers that Mr Lewis is not fit and proper to perform the SMF16 (Compliance Oversight) senior management function, or any function in relation to the regulated activity of advising on Pension Transfers and Pension Opt Outs carried on by an authorised person, exempt person and exempt professional firm.

6. SANCTION

Financial penalty

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

Step 1: disgorgement

- 6.2. Pursuant to DEPP 6.5B.1G, at Step 1 the Authority seeks to deprive an individual of the financial benefit derived directly from the breach where it is practicable to quantify this.
- 6.3. Mr Lewis did not derive direct financial benefit from the breach.
- 6.4. Step 1 is therefore £0.

Step 2: the seriousness of the breach

- 6.5. 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.
- 6.6. The period of Mr Lewis' breach of Statements of Principle 6 and 7 was from 16 March 2017 to 14 December 2017. Pursuant to DEPP 6.5B.2G(2), in cases where the breach latest less than 12 months, the relevant income will be that earned by the individual in the 12 months preceding the end of the breach. The Authority considers Mr Lewis' relevant income for this period to be £31,987.96.
- 6.7. 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%
- 6.8. 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

- 6.9. Mr Lewis' breach caused a significant risk of loss, as a whole, to consumers who transferred out of their Defined Benefit Pension Scheme as a result of his advice. Completed transfers had a total CETV of £9,769,550.32. The total CETVs of these cases and cases stopped in the advice pipeline was £53,492,321.30. Mr Lewis' breaches would have placed a large proportion of those funds at significantly increased risk had it not been for the VREQ. (DEPP 6.5B.2G(8)(b)).
- 6.10. Mr Lewis' breach caused a significant risk of loss to individual consumers who transferred out of their Defined Benefit Pension Scheme as a result of advice given to them by WWFS. For many customers, their Defined Benefit Pension Scheme was their most valuable asset (average CETV of the file sample was £393,006, average CETV for pipeline cases was £310,090) and was their main retirement provision (DEPP 6.5B.2G(8)(c)).
- 6.11. Mr Lewis' breach disproportionately affected BSPS members, who made up the majority of WWFS' Pension Transfer advice customers during the Relevant Period and many of whom were in a vulnerable position due to the uncertainty surrounding the future of the BSPS (DEPP 6.5B.2G(8)(d)).

Nature of the Breach

- 6.12. The breach was a continuous one during the Relevant Period, though the harm caused was concentrated in the period from September 2017 to December 2017 (DEPP 6.5B.2G(9)(b)).
- 6.13. Mr Lewis is an experienced industry professional having worked in financial services since 1989, working a regional manager, IFA, Compliance Officer, Business Quality Manager and founder of West Wales Financial Services Limited. He held senior management functions at WWFS ((DEPP 6.5B.2G(9)(j) and (k)). As the Compliance Officer at WWFS, who had responsibility for designing and implementing the compliance process, he has significant responsibility for non-compliant advice issued by the firm ((DEPP 6.5B.2G(9)(l)).
- 6.14. Although Mr Lewis took some steps to meet his responsibilities, these were inadequate ((DEPP 6.5B.2G(9)(n)).

Whether the breach was deliberate and/or reckless

- 6.15. The breaches committed by Mr Lewis were as a result of his serious lack of competence, rather than deliberate or reckless acts (DEPP 6.5B.2G(11)).

Level of Seriousness

- 6.16. DEPP 6.5B.2G(12) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the Authority considers the following factor to be relevant:

- a) Mr Lewis' breach caused a significant risk of loss to individual consumers (DEPP 6.5B.2G(12)(a)).

- 6.17. DEPP 6.5B.2G(13) lists factors likely to be considered 'level 1, 2 or 3 factors'. Of these, the Authority considers the following factors to be relevant:

- a) Mr Lewis' breach was committed negligently (DEPP 6.5B.2G(13)(d)).

- 6.18. Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 3 and so the Step 2 figure is 20% of £31,987.96.

- 6.19. Step 2 is therefore £6,397.59.

Step 3: mitigating and aggravating factors

- 6.20. 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.

- 6.21. The Authority has considered whether any of the mitigating or aggravating factors listed in DEPP 6.5B.3G, or any other such factors, apply in this case and has concluded that none applies to a material extent, such that the penalty ought to be increased or decreased.

Step 4: adjustment for deterrence

- 6.22. 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.
- 6.23. The Authority considers that the Step 3 figure of £6,397.59 does not represent a sufficient deterrent to Mr Lewis and others and has therefore increased the penalty by a factor of six.
- 6.24. Step 4 is therefore £38,300 (rounded down to nearest £100).

Step 5: settlement discount

- 6.25. 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.
- 6.26. The Authority and Mr Lewis reached agreement at Stage 1 and so a 30% discount applies to the Step 4 figure.
- 6.27. Step 5 is therefore £26,800 (rounded down to nearest £100).

Conclusion as to financial penalty

- 6.28. Having applied the five-step framework set out in DEPP, the appropriate level of financial penalty to be imposed on Mr Lewis is £26,800.
- 6.29. The Authority would have imposed a financial penalty of £38,300 on Mr Lewis (reduced to £26,800 as Mr Lewis agreed to settle at an early stage of the Authority's investigation and therefore qualified for a 30% (stage 1) discount under the Authority's executive settlement procedures). However, the Authority recognises that there is significant liability for redress for WWFS's customers which has fallen to the FSCS. As at 21 November 2023, the FSCS has paid out

£758,725.55 in compensation to customers of WWFS. Had it not been for the compensation limit of £85,000, the total compensation available to customers would have been £972,197.28. In these circumstances, the Authority has agreed with Mr Lewis that in lieu of the imposition of a financial penalty, the sum of £26,800, be paid direct to the FSCS to contribute towards any redress due to WWFS's customers. This is in furtherance of the Authority's consumer protection objective. In light of the above, and taking into account all the exceptional circumstances of the BSPS, the Authority hereby publishes a statement of Mr Lewis' misconduct.

Statement of Misconduct

- 6.30. The Authority's policy in relation to the imposition of a public censure is set out in Chapter 6 of DEPP. DEPP sets out non exhaustive factors that may be of particular relevance in determining whether it is appropriate to issue a public censure rather than impose a financial penalty. DEPP 6.4.2G (5) includes that it may be a factor (depending on the nature and seriousness of the breach) in favour of a public censure rather a financial penalty including but not limited to where a person has taken steps to ensure that those who have suffered loss due to the breach are fully compensated for those losses. Whilst the full amount of any losses due to Mr Lewis' breaches are not yet quantified, they may be significant. In light of this, and the FSCS having already paid out £758,725.55 to WWFS's customers, the Authority has agreed that the sum of £26,800 should be paid direct to the FSCS.
- 6.31. The Authority has had regard to the fact that Mr Lewis has agreed to transfer to the FSCS assets that would otherwise be used to satisfy any financial penalty imposed by the Authority to be used towards any redress due to WWFS's customers. On that basis, the Authority has decided not to impose a financial penalty on Mr Lewis but instead hereby publishes on its website the Notice as a statement of Mr Lewis' misconduct under section 66 of the Act.

Withdrawal of Approval and Prohibition Order

- 6.32. The Authority considers that it is appropriate and proportionate to prohibit Mr Lewis from performing the following functions because he is not a fit and proper person to perform such functions due to his lack of competence and capability:

- (a) any senior management function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm; and
- (b) any function in relation to the regulated activity of advising on Pension Transfers and Pension Opt Outs carried on by an authorised person, exempt person or exempt professional firm.

6.33. The Authority has had regard to the guidance in Chapter 9 of EG in considering whether to withdraw Mr Lewis'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.

6.34. The Authority considers it is appropriate and proportionate in all the circumstances to withdraw Mr Lewis' SMF3 (Executive Director), SMF16 (Compliance Oversight) and SMF17 (Money Laundering Reporting Officer) senior management functions at WWFS.

7. PROCEDURAL MATTERS

7.1. This Notice is given to Mr Lewis under and in accordance with section 390 of the Act. The following statutory rights are important.

Decision maker

7.2. The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.

Publicity

7.3. 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 Authority must publish such information about the matter to which this notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

- 7.4. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Authority contacts

- 7.5. For more information concerning this matter generally, contact Kingsley Moore at the Authority (direct line: 020 7066 0401/email: Kingsley.Moore2@fca.org.uk).

Nicholas Hills

Head of Department

Financial Conduct Authority, Enforcement and Market Oversight Division

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

The Financial Services and Markets Act 2000 ("the Act")

The Authority's operational objectives

1. The Authority's operational objectives are set out in section 1B(3) of the Act and include securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.

Section 56 of the Act

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

Section 63 of the Act

3. Section 63 of the Act provides that the Authority may withdraw an approval under section 59 given by the Authority in relation to the performance by a person of a function if the Authority considers that the person is not a fit and proper person to perform the function.

Section 66A of the Act

4. Under section 66A of the Act, 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, including the imposition of a penalty of such amount as it considers appropriate.
5. Under section 66A of the Act a person is guilty of misconduct if, inter alia, he at any time failed to comply with rules made by the Authority under section 64A of the Act and at that time was an approved person, or had been knowingly concerned in a contravention of relevant requirement by an authorised person and at that time the person was an approved person in relation to the authorised person.

RELEVANT REGULATORY PROVISIONS

The Authority's Handbook of Rules and Guidance

6. In exercising its powers to impose a financial penalty, the Authority must have regard to the relevant regulatory provisions in the Authority's Handbook of rules and guidance (the "Handbook"). The main provisions that the Authority considers relevant are set out below.

Principles for Businesses ("PRIN")

7. The Principles are a general statement of the fundamental obligations of firms under the regulatory system and are set out in the Handbook. They derive their authority from the Authority's rulemaking powers as set out in the Act and reflect the Authority's regulatory objectives. They can be accessed here:

<https://www.handbook.fca.org.uk/handbook/PRIN/2/1.html>

8. Principle 6 of the FCA's Principles for Businesses states that:

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

9. Principle 9 of the FCA's Principles for Businesses states that:

"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."

Statements of Principle and Code of Practice for Approved Persons ("APER")

10. The part of the Authority's handbook known as APER sets out the Statements of Principle issued under section 64 of the Act as they relate to approved persons and descriptions of conduct which, in the opinion of the Authority, do not comply with a Statement of Principle.

11. APER further describes factors which, in the opinion of the Authority, are to be taken into account in determining whether or not an approved person's conduct complies with particular Statements of Principle.

12. Statement of Principle 6 states that:

"An approved person performing an accountable higher management function must exercise due skill, care and diligence in managing the business of the firm for which they are responsible in their accountable function".

13. Statement of Principle 7 states that:
- "an approved person performing an accountable higher management function must take reasonable steps to ensure that the business of the firm for which they are responsible in their accountable function complies with the relevant requirements and standards of the regulatory system."*
14. 'Accountable higher management functions' includes any accountable function that is an Authority controlled function that is a significant influence function. Significant influence functions include the following controlled functions: CF1 (Director), CF3 (Chief Executive), CF10 (Compliance Oversight) and CF11 (Money Laundering Reporting).
15. APER 3.1.8AG provides, in relation to applying Statements of Principle 5 to 7, that the nature, scale and complexity of the business under management and the role and responsibility of the individual performing an accountable higher management function within the [APER employer (in place from 7 December 2020, previously "the firm")] will be relevant in assessing whether an approved person's conduct was reasonable.
16. APER 3.3.1G states that in determining whether or not the conduct of an approved person performing an accountable higher management function complies with Statements of Principle 5 to 7, the following are factors which, in the opinion of the Authority, are to be taken into account:
- (1) whether he exercised reasonable care when considering the information available to him;
 - (2) whether he reached a reasonable conclusion which he acted on;
 - (3) the nature, scale and complexity of the [APER employer's] (in place from 7 December 2020, previously "the firm's") business;
 - (4) their role and responsibility as an approved person performing an accountable [significant-influence (in place until 6 March 2016)] or [higher management (in place from 7 March 2016)] function; and
 - (5) the knowledge he had, or should have had, of regulatory concerns, if any, arising in the business under his control.
17. APER 4.6 describes conduct which in the opinion of the Authority does not comply with Principle 6.

18. APER 4.6.2G provides that in the opinion of the Authority, conduct of the type described in APER 4.6.3G, APER 4.6.5G, APER 4.6.6G or APER 4.6.8G does not comply with Statement of Principle 6.
19. APER 4.6.3G provides that failing to take reasonable steps to adequately inform themselves about the affairs of the business for which they are responsible falls within APER 4.6.2G.
20. APER 4.6.4G provides that Behaviour of the type referred to in APER 4.6.3 G includes, but is not limited to:
 - (1) permitting transactions without a sufficient understanding of the risks involved;
 - (2) permitting expansion of the business without reasonably assessing the potential risks of that expansion;
 - (3) inadequately monitoring highly profitable transactions or business practices or unusual transactions or business practices; [...]
21. APER 4.6.5G provides that delegating the authority for dealing with an issue or a part of the business to an individual or individuals (whether in-house or outside contractors) without reasonable grounds for believing that the delegate had the necessary capacity, competence, knowledge, seniority or skill to deal with the issue or to take authority for dealing with part of the business, falls within APER 4.6.2G (see APER 4.6.13G).
22. APER 4.6.6G provides failing to take reasonable steps to maintain an appropriate level of understanding about an issue or part of the business that they have delegated to an individual or individuals (whether in-house or outside contractors) falls within APER 4.6.2G (see APER 4.6.14G).
23. APER 4.6.7G provides that behaviour of the type referred to in APER 4.6.6 G includes but is not limited to:
 - (1) disregarding an issue or part of the business once it has been delegated;
 - (2) failing to require adequate reports once the resolution of an issue or management of part of the business has been delegated; [...]
24. APER 4.6.8G provides that failing to supervise and monitor adequately the individual or individuals (whether in-house or outside contractors) to whom responsibility for dealing with an issue or authority for dealing with a part of the business has been delegated falls within APER 4.6.2G.

25. APER 4.6.9G provides that behaviour of the type referred to in APER 4.6.8G includes, but is not limited to:
- (1) failing to take personal action where progress is unreasonably slow, or where implausible or unsatisfactory explanations are provided;
 - (2) failing to review the performance of an outside contractor in connection with the delegated issue or business.
26. In determining whether or not the conduct of an approved person performing an accountable higher management function under APER 4.6.5G, APER 4.6.6G and APER 4.6.8G complies with Statement of Principle 6, the following are factors which, in the opinion of the FCA, are to be taken into account:
- (1) the competence, knowledge or seniority of the delegate; and
 - (2) the past performance and record of the delegate.
27. APER 4.6.13G (Delegation) provides, amongst other provisions, that:
- (1) An approved person performing an accountable higher management function may delegate the investigation, resolution or management of an issue or authority for dealing with a part of the business to individuals who report to them or to others.
 - (2) The approved person performing an accountable higher management function should have reasonable grounds for believing that the delegate has the competence, knowledge, skill and time to deal with the issue. For instance, if the compliance department only has sufficient resources to deal with day-to-day issues, it would be unreasonable to delegate to it the resolution of a complex or unusual issue without ensuring it had sufficient capacity to deal with the matter adequately. [...].
28. APER 4.7 describes conduct which in the opinion of the Authority does not comply with Principle 7.
29. APER 4.7.2G provides that in the opinion of the Authority, conduct of the type described in APER 4.7.3G, APER 4.7.4G, APER 4.7.5G, APER 4.7.7G, APER 4.7.9G, APER 4.7.10G or APER 4.7.11AG does not comply with Statement of Principle 7.
30. APER 4.7.3G provides that failing to take reasonable steps to implement (either personally or through a compliance department or other departments) adequate and appropriate systems of control to comply with the relevant requirements and standards of the regulatory system in respect of the

regulated activities of the [APER employer] (in place from 7 December 2020, previously “the firm”) firm in question (as referred to in Statement of Principle 7) falls within APER 4.7.2G. [In the case of an approved person who is responsible, under SYSC 4.4.5R(2), with overseeing the firm's obligation under SYSC 4.1.1R, failing to take reasonable care to oversee the establishment and maintenance of appropriate systems and controls falls within APER 4.7.2G. (in place until 8 December 2019)].

31. APER 4.7.4G provides that failing to take reasonable steps to monitor (either personally or through a compliance department or other departments) compliance with the relevant requirements and standards of the regulatory system in respect of the regulated activities of the [APER employer] (in place from 7 December 2020, previously “the firm”) in question (as referred to in Statement of Principle 7) falls within APER 4.7.2G.
32. APER 4.7.11G provides that the Authority expects an approved person performing an accountable higher management function to take reasonable steps both to ensure their [APER employer’s] (in place from 7 December 2020, previously “firm’s”) compliance with the relevant requirements and standards of the regulatory system and to ensure that all staff are aware of the need for compliance.
33. APER 4.7.12G provides that an approved person performing an accountable higher management function need not themselves put in place the systems of control in their business (APER 4.7.4G). Whether he does this depends on his role and responsibilities. He should, however, take reasonable steps to ensure that the business for which he is responsible has operating procedures and systems which include well-defined steps for complying with the detail of relevant requirements and standards of the regulatory system and for ensuring that the business is run prudently. The nature and extent of the systems of control that are required will depend upon the relevant requirements and standards of the regulatory system, and the nature, scale and complexity of the business.

Conduct of Business Sourcebook (“COBS”)

The client’s best interest rule

34. COBS 2.1.1R:
 - (1) A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).

Communication is fair clear and not misleading

35. COBS 4.2.1R:

- (1) A firm must ensure that a communication or a financial promotion is fair, clear and not misleading.

Assessing suitability: the obligations

36. COBS 9.2.1R:

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

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

- (a) knowledge and experience in the investment field relevant to the specific type of designated investment or service;
- (b) financial situation; and
- (c) investment objectives;

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

37. COBS 9.2.2R:

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

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

- (2) The information regarding the investment objectives of a client must include, where relevant, information on the length of time for which he wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment.

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

38. COBS 9.2.3 R:

The information regarding a client's knowledge and experience in the investment field includes, to the extent appropriate to the nature of the client, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved, information on:

(1) the types of service, transaction and designated investment with which the client is familiar;

(2) the nature, volume, frequency of the client's transactions in designated investments and the period over which they have been carried out;

(3) the level of education, profession or relevant former profession of the client.

39. COBS 9.2.4 R:

A firm must not encourage a client not to provide information for the purposes of its assessment of suitability.

40. COBS 9.2.5 R:

A firm is entitled to rely on the information provided by its clients unless it is aware that the information is manifestly out of date, inaccurate or incomplete.

Insufficient information

41. COBS 9.2.6R:

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

Suitability reports

42. During the Relevant Period COBS 9.4 set out the following rules and guidance concerning Suitability reports.

43. COBS 9.4.1 R:

A firm must provide a suitability report to a retail client if the firm makes a personal recommendation to the client and the client:

[...]

(2) buys, sells, surrenders, converts or cancels rights under, or suspends contributions to, a personal pension scheme or a stakeholder pension scheme; or

(3) elects to make income withdrawals or purchase a short-term annuity; or

(4) enters into a pension transfer or pension opt-out

44. COBS 9.4.7R:

The suitability report must, at least:

(1) specify the client's demands and needs;

(2) 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

(3) explain any possible disadvantages of the transaction for the client.

45. COBS 9.4.8 G:

A firm should give the client such details as are appropriate according to the complexity of the transaction.

Pension transfers, conversions, and opt-outs

46. COBS 19.1 applies, with some exclusions, to a firm that gives advice or a personal recommendation about a pension transfer, a pension conversion or a pension opt-out. The following provisions of COBS 19.1 are set out as they applied during the Relevant Period.

47. COBS 19.1.2R:

A firm must:

(1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme or other pension scheme with safeguarded benefits with the benefits afforded by a personal pension scheme, stakeholder pension scheme or other pension scheme with flexible benefits, before it advises a retail

client to transfer out of a defined benefits pension scheme or other pension scheme with safeguarded benefits;

(2) ensure that that comparison includes enough information for the client to be able to make an informed decision;

(3) 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, in good time, and in any case no later than when the key features document is provided; and

(4) take reasonable steps to ensure that the client understands the firm's comparison and its advice.

48. COBS 19.1.3G:

In particular, the comparison should:

(1) take into account all of the retail client's relevant circumstances;

(2) have regard to the benefits and options available under the ceding scheme and the effect of replacing them with the benefits and options under the proposed scheme;

(3) explain the assumptions on which it is based and the rates of return that would have to be achieved to replicate the benefits being given up;

(4) be illustrated on rates of return which take into account the likely expected returns of the assets in which the retail client's funds will be invested; and

(5) where an immediate crystallisation of benefits is sought by the retail client prior to the ceding scheme's normal retirement age, compare the benefits available from crystallisation at normal retirement age under that scheme.

49. COBS 19.1.6G:

When advising a retail client who is, or is eligible to be, a member of a defined benefits occupational pension scheme or other scheme with safeguarded benefits whether to transfer, convert or opt-out, a firm should start by assuming that a transfer, conversion or opt-out will not be suitable. A firm should only then consider a transfer, conversion or opt-out to be suitable if it can clearly demonstrate, on contemporary

evidence, that the transfer, conversion or opt-out is in the client's best interests

50. COBS 19.1.7G:

When a firm advises a retail client on a pension transfer, pension conversion or pension opt-out, it should consider the client's attitude to risk including, where relevant, in relation to the rate of investment growth that would have to be achieved to replicate the benefits being given up.

51. COBS 19.1.7AG:

When giving a personal recommendation about a pension transfer or pension conversion, a firm should clearly inform the retail client about the loss of the safeguarded benefits and the consequent transfer of risk from the defined benefits pension scheme or other scheme with safeguarded benefits to the retail client, including:

(1) the extent to which benefits may fall short of replicating those in the defined benefits pension scheme or other scheme with safeguarded benefits;

(2) the uncertainty of the level of benefit that can be obtained from the purchase of a future annuity and the prior investment risk to which the retail client is exposed until an annuity is purchased with the proceeds of the proposed personal pension scheme or stakeholder pension scheme; and

(3) the potential lack of availability of annuity types (for instance, annuity increases linked to different indices) to replicate the benefits being given up in the defined benefits pension scheme.

52. COBS 19.1.8G:

53. When a firm prepares a suitability report it should include:

(1) a summary of the advantages and disadvantages of its personal recommendation;

(2) an analysis of the financial implications (if the recommendation is to opt-out); and

(3) a summary of any other material information.

Fit and Proper test for Employees and Senior Personnel ("FIT")

54. Guidance on the question whether an individual is a fit and proper person is given in the part of the Handbook called the Fit and Proper Test for Employees and Senior Personnel (FIT). FIT 1.3.1G states that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person to perform a particular controlled function. The most important considerations will be the person's:

- (1) honesty, integrity and reputation;
- (2) competence and capability; and
- (3) financial soundness.

55. For the purposes of this notice the only relevant consideration is (2) competence and capability.

Enforcement Guide ("EG")

56. The Authority's policy for exercising its power to make a prohibition order is set out in Chapter 9 of EG.

57. EG 9.2.2 states that the Authority has the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant. Depending on the circumstances of each case, the Authority may seek to prohibit an individual from performing any class of function in relation to any class of regulated activity, or it may limit the prohibition order to specific functions in relation to specific regulated activities. The Authority may also make an order prohibiting an individual from being employed by a particular firm, type of firm or any firm.

58. EG 9.2.3 states that the scope of the prohibition order will depend on the range of functions which the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of risk which he poses to consumers or the market generally. At EG 9.3.5(4) the Authority gives a serious lack of competence as an example of the type of behaviour which has previously resulted in the Authority deciding to issue a prohibition order.

59. EG sets out the Authority's approach to taking disciplinary action. The Authority's approach to financial penalties is set out in Chapter 7 of EG, which can be accessed here:

<https://www.handbook.fca.org.uk/handbook/EG/7/?view=chapter>

Decision Procedures and Penalties Manual (“DEPP”)

60. Chapter 6 of DEPP, which forms part of the Authority’s Handbook, sets out the Authority’s policy for imposing a financial penalty. 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 to financial penalties imposed on individuals in non-market abuse cases, which can be accessed here:

<https://www.handbook.fca.org.uk/handbook/DEPP/6/5B.html>