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FINAL NOTICE

To: **David Samuel Watters**

Reference Number: **DSW01054**

Address: **Number One
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Date: **10 July 2017**

1. ACTION

- 1.1 For the reasons given in this Final Notice, the Authority hereby imposes on Mr David Samuel Watters a financial penalty of £75,000.

2. SUMMARY OF REASONS

- 2.1 During the period from 1 February 2006 to 30 April 2009 ("the relevant period"), the business which is now carried on by Lanyon Astor Buller Limited ("LAB"), in respect of which Mr Watters held the CF10 (Compliance

oversight) controlled function, and certain other controlled functions, provided advice to over 700 members of UK registered defined benefit pension schemes ("DB schemes") about the merits of transferring out of their DB schemes as part of an enhanced transfer value ("ETV") exercise. Approximately 500 scheme members, across 11 ETV exercises, who received advice transferred out of their DB schemes, between them transferring a total of about £12.7 million.

- 2.2 ETV exercises involve an offer from a sponsoring employer to pay an enhanced pension transfer value to pension scheme members if they transfer out of the scheme. Typically, these exercises involve scheme members transferring their pension benefits from a DB scheme into a UK registered defined contribution pension scheme ("DC scheme"). DB schemes usually provide guaranteed pension incomes based on factors including period of membership, final salary and pension accrual rate. In contrast, DC schemes provide no such guarantees as pension incomes are based on the performance of underlying investments. Accordingly, the Authority has included guidance in its Handbook since prior to the relevant period that, when advising a DB scheme member on whether to transfer, a firm should start by assuming that such a transfer will not be suitable. The guidance also states that a firm should only then consider such a transfer to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer is in the client's best interests.
- 2.3 All 11 of the ETV exercises referred to in paragraph 2.1 above involved the possible transfer of pension benefits from a DB scheme into a DC scheme. Further, the 11 ETV exercises all included an offer of a direct cash payment to the transferring scheme member. In such circumstances, it is of paramount importance that customers are provided with compliant advice (including that the advice is suitable for the client and is communicated in a way that is fair, clear and not misleading). It is only with the benefit of compliant advice that customers can assess the real merits of the transfer.
- 2.4 The Authority continues to have a strong focus on the pensions market. The Authority highlighted ETV exercises as an area of concern in its 2015/16 Business Plan and identified the fair treatment of customers in the pensions market as a priority area in its 2016/17 Business Plan. DB scheme to DC scheme transfers were also a focal point of the Authority's "Pension reforms

- proposed changes to our rules and guidance" consultation paper (CP 15/30) published in October 2015.

2.5 During the relevant period Mr Watters performed the CF10 controlled function at the partnership trading under the name McClure Watters until 1 July 2006 and thereafter under the name FGS McClure Watters (the "Partnership") and, from 8 May 2008, LAB. As such, he was responsible for oversight of the Partnership's compliance with the Authority's Conduct of Business rules (COB) and the compliance of the Partnership and LAB (together the "Firms") with the Authority's Conduct of Business Sourcebook rules (COBS). However, in breach of Statement of Principle 6, Mr Watters failed to use due skill, care and diligence in discharging this responsibility. Mr Watters failed to:

(1) take reasonable steps adequately to inform himself about his obligations in performing the CF10 controlled function and about the specific nature and risks of the ETV advice business;

(2) take reasonable steps to ensure that the ETV advice process was compliant and capable of providing compliant advice. In particular, Mr Watters:

a. left the design of the ETV advice process to the pension advisers engaged by the Partnership, without obtaining appropriate independent expert opinion and advice to ensure that the ETV advice process complied with, and was capable of providing advice that complied with, applicable regulatory requirements. This was particularly inappropriate because one of the pension advisers was directly financially incentivised to advise customers to transfer; and

b. responded to concerns raised by the pension advisers about compliance issues with respect to the ETV advice business by approving the appointment of an external compliance consultant to review the ETV advice process, but took little, if any, part in the appointment and failed to take any, or any reasonable, steps to ensure that the consultant was instructed to, and did, undertake an adequate review, and that its recommendations were properly acted upon;

- (3) identify obvious ways in which the ETV advice process failed to comply with certain of the COB/COBS rules, which he should have identified either from his own review of the process at the outset, or from the limited file reviews that he subsequently undertook from time to time, or from engaging an external compliance consultant to undertake a proper review;
- (4) take reasonable steps to monitor the ETV advice process to ensure that it was compliant with the rules in COB/COBS and that compliant advice was being given. In particular, Mr Watters:
 - a. failed to give any, or sufficient, consideration to the compliance of the ETV advice process and of the advice given in his interactions with the pension advisers; and
 - b. approved the appointment of a further external compliance consultant in 2007 to review the ETV advice business, despite knowing that this consultant was not qualified to comment on whether the ETV advice process and the advice given were compliant and was therefore not in a position to carry out an effective review. Mr Watters also took little, if any, interest in the outcome of this consultant's review, and did not take any, or any reasonable, steps to ensure that its recommendations were acted upon;
- (5) take reasonable steps to identify and manage adequately the following potential conflicts of interest:
 - a. the Partnership and thereafter LAB were paid commission by the pension provider to whom customers transferred; accordingly, the Firms benefitted financially from customers choosing to transfer. The Authority has seen no evidence in the files it has reviewed that this was properly disclosed to customers prior to the application to transfer being made; and
 - b. one of the pension advisers engaged by the Partnership was paid a proportion of the Partnership's proceeds from the ETV advice business that the pension adviser conducted. The pension adviser was

therefore directly financially incentivised to advise customers to transfer. This was not identified as a concern by Mr Watters at any stage during the relevant period; and

(6) undertake any review of the Partnership's processes and documentation in light of the impending implementation of MiFID in the form of the COBS rules. Had he done so, such a review may have identified at least some of the respects in which the ETV advice process was defective.

2.6 These failings came to light as a result of a thematic review commissioned by the Authority of ETV pension transfers, covering a total sample of 292 case files. From time to time, the Authority conducts thematic reviews to assess key risks relating to various products across the financial sector. As part of the Thematic Review, the Authority arranged for a sample of 17 of LAB's customer files (relating to 16 customers) to be reviewed by a third party. The outcome of the review was that, in respect of each of the 17 customer files, disclosure was found to be unacceptable and suitability failings were identified.

2.7 The Authority reviewed the same 17 Thematic Review customer files and identified significant failings in the ETV advice process which led to a serious risk of unsuitable advice being given to retail customers. This risk crystallised, resulting in a serious risk of unsuitable customer outcomes.

2.8 The Authority therefore imposes on Mr Watters a financial penalty of £75,000 pursuant to section 66 of the Act for failing to comply with Statement of Principle 6. By failing to comply with Statement of Principle 6, Mr Watters failed to meet the minimum regulatory standards for competence and capability in exercising the CF10 controlled function.

3. DEFINITIONS

3.1 The definitions below are used in this Final Notice.

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

"APER" means the Statements of Principle and Code of Practice for Approved Persons section of the Handbook.

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

"COB" means the Conduct of Business section of the Handbook, which was in place until 31 October 2007.

"COBS" means the Conduct of Business Sourcebook section of the Handbook, which was introduced to give effect to MiFID and was in place from 1 November 2007.

"DB scheme" means a UK registered defined benefits pension scheme.

"DC scheme" means a UK registered defined contribution pension scheme.

"DEPP" means the Authority's Decision Procedure and Penalties Manual section of the Handbook, which was in place from 28 August 2007.

"ENF" means the Authority's Enforcement sourcebook section of the Handbook, which was in place until 27 August 2007.

"ETV" means enhanced transfer value.

"ETV advice business" means the Firms' line of business involving the provision of ETV pension transfer advice.

"ETV advice process" means the Firms' process for giving ETV pension transfer advice.

"ETV exercise" means an exercise where members of a DB scheme are offered an enhancement to the transfer value(s) that would otherwise have been available to them or some other inducement to transfer their accrued benefits into a different pension scheme.

"ETV pension transfer" means the transfer of a member of a DB scheme pursuant to an ETV exercise.

"Fact Find" means the document used to gather information regarding a customer's personal circumstances and investment objectives.

"the Firms" means the Partnership and LAB.

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

"LAB" means Lanyon Astor Buller Limited.

"Member Discharge Form" means the binding instruction form (Form C) signed by a scheme member to facilitate a transfer of their pension benefits.

"MiFID" means the Markets in Financial Instruments Directive (2004/39/EC).

"the Partnership" means the partnership trading under the name McClure Watters until 1 July 2006 and thereafter under the name FGS McClure Watters.

"Pension Adviser A" means the pension adviser who worked for the Partnership until 31 August 2007, as described in paragraph 4.9.

"Pension Adviser B" means the pension adviser who worked for the Partnership, and subsequently for LAB, throughout the relevant period, as described in paragraph 4.9.

"the relevant period" means 1 February 2006 to 30 April 2009.

"Second Interim Report" means the report, dated 15 February 2017, containing interim findings of the Skilled Person's review.

"Skilled Person" means the skilled person selected and appointed by the Authority on 18 June 2015 pursuant to section 166 of the Act.

"Statement of Principle 6" means Statement of Principle 6 of the Statements of Principle issued by the Authority under section 64 of the Act and set out in APER.

“Suitability Report” means the letter provided to a customer giving the reasons why the Partnership/LAB had concluded that the recommended transaction was suitable for that customer.

“Thematic Review” means the Authority’s thematic review of ETV pension transfers published in July 2014 (TR14/12 – Enhanced transfer value pension transfers).

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

“TVAS Advice Report letter” means the letter provided to a customer giving initial advice on transferring out of a DB scheme and summarising the TVAS report.

“TVAS report” means the transfer value analysis system report which illustrates the rate of return required in a DC scheme to match the existing scheme benefits (i.e. the critical yield).

4. FACTS AND MATTERS

ETV pension transfers

- 4.1 Sponsoring employers sometimes undertake transfer exercises in order to manage their pension liabilities. They may wish to give scheme members the option of transferring out of the employer’s DB scheme, and they may do this by means of an ETV exercise, where offers are made to all scheme members to transfer. Where a scheme member transfers out of a DB scheme, the employer has no further obligation to that member in relation to the DB scheme. Thus, when a transfer is made, the performance risk of the pension fund is transferred from the employer to the member.
- 4.2 ETV exercises are incentivised pension transfer exercises. Employers will offer to pay an enhancement which usually takes the form of an increase to the pension transfer value and, historically, has included a direct cash payment.
- 4.3 Due to the potential complexity of transfers from DB schemes (including ETV pension transfers) members may be heavily reliant on the advice provided by financial services advisory firms. In particular, DB scheme members:

- may lack the skills and experience to make a decision about transferring;
- may not understand the value of their existing benefits, the cost of providing these benefits and the implications of losing the underlying guarantees of a DB scheme; and/or
- historically, may have been influenced by the direct cash incentive which was usually available immediately rather than upon retirement.

4.4 DB scheme pensions pay out a secure income for life and provide valuable safeguarded benefits. Accordingly, the Authority has included guidance in its Handbook since prior to the relevant period that, when advising a DB scheme member on whether to transfer, a firm should start by assuming that such a transfer will not be suitable. A firm should only consider a transfer to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer is in the member's best interests.

4.5 During the relevant period, an advisory firm was required to obtain sufficient information from members to understand the essential facts about them. Moreover, advisory firms had an overarching responsibility to ensure that communications with customers (including personal recommendations on the suitability of a pension transfer from a DB scheme) were clear, fair and not misleading. In addition, advisory firms had record-keeping obligations, including a requirement to retain indefinitely records relating to the suitability of a pension transfer.

Background

4.6 The Partnership was a chartered accounting practice based in Belfast, Northern Ireland, authorised by the Authority from 1 December 2001 until 3 March 2009. The Partnership mainly conducted audit work but established a separate financial services division to provide customers with pension and investment advice.

4.7 On 8 May 2008, the financial services advisory business of the Partnership was transferred to LAB, which became an authorised firm on that date. Mr Watters is the chairman and the sole registered shareholder of LAB.

- 4.8 During the relevant period, the Firms gave advice to over 700 members of DB schemes in connection with 11 ETV exercises, with most of these members receiving advice from the Partnership, and LAB having a residual role. All 11 of the ETV exercises involved the possible transfer of pension benefits from a DB scheme into a DC scheme. Further, the 11 ETV exercises all included an offer of a direct cash payment to the transferring scheme member. The Partnership provided advice to customers in respect of ETV exercises from 1 February 2006 to 8 May 2008. Subsequently, from 8 May 2008 to 30 April 2009, LAB provided advice to customers in respect of these exercises. Since 30 April 2009, no advice has been given by the Firms in respect of any ETV exercise.
- 4.9 The giving of ETV pension transfer advice was undertaken by two pension advisers (or, in respect of some ETV exercises, by just one of them), both of whom were pension transfer specialists. One of the pension advisers (Pension Adviser A) worked for the Partnership as an independent contractor until 31 August 2007 and was paid a percentage of the income received by the Partnership relating to their advice; this was 60% in respect of a new client to the Partnership and 40% in respect of an existing client. The other pension adviser (Pension Adviser B) was employed on a salary and bonus basis (which was not directly linked to the performance of the ETV advice business) throughout the relevant period, first for the Partnership and subsequently for LAB.
- 4.10 The Partnership charged an engagement fee to each employer undertaking the ETV exercise for providing advice to its DB scheme members. In addition, the Partnership received initial commission, and the Partnership and thereafter LAB received annual renewal commission, from the pension provider to whom scheme members transferred. As far as the Authority is aware, LAB continues to receive this annual renewal commission.
- 4.11 Between 1 December 2001 and 3 March 2009, Mr Watters was approved by the Authority to perform the CF10 (Compliance oversight), CF8 (Apportionment and oversight) and CF4 (Partner) controlled functions at the Partnership.

- 4.12 Between 8 May 2008 and 1 August 2011, Mr Watters was approved by the Authority to perform the CF10 controlled function at LAB. Mr Watters was also approved to perform the CF8 controlled function at LAB between 8 May 2008 and 31 March 2009 and has been approved to perform the CF1 (Director) controlled function at LAB since 8 May 2008.

Regulatory Review of ETV Pension Transfer Advice

- 4.13 In September 2013 the Authority commissioned a third party to assist with a thematic review of ETV pension transfers in the period from 2008 to 2012 whereby employers had offered enhanced transfer values to encourage scheme members (comprising current and former employees) to leave their DB schemes. The findings of the review were published in the Authority's "Enhanced transfer value pension transfers" paper (TR14/12), dated July 2014.
- 4.14 Specifically, the Thematic Review focussed on the "end-to-end" advice given to DB scheme members who had transferred their pension funds into DC schemes. The Thematic Review considered a sample of 292 case files across a significant proportion of advisory firms known to have given ETV pension transfer advice during the review period. The review used a methodology which entailed an assessment of two key areas: suitability (i.e. whether the recommendation provided, and the advice process that the member was put through, resulted in a suitable outcome in the member's individual circumstances) and disclosure (i.e. the way the financial adviser communicated with the member). The review found that in 48% of case files reviewed the advice was either unsuitable or unclear, and that in 74% of case files reviewed disclosure was unacceptable.
- 4.15 LAB was selected for the Thematic Review and a sample of 17 of its customer files (in respect of 16 of its customers) was assessed for suitability and disclosure. The outcome of the third party's review was that, in respect of each of the 17 customer files, disclosure was found to be unacceptable and suitability failings were identified.
- 4.16 On 16 October 2014 the Authority notified LAB of the results of the third party's review of the 17 customer files. The Authority summarised the relevant failings as follows:

- (1) "in all 17 cases, customers lost benefits or guarantees without good reason or sufficient justification;
- (2) all 17 cases were deemed unsuitable because those customers incurred additional costs without good reason;
- (3) in five cases, it was unclear whether the customers were exposed to a level of risk that they were not willing and able to take;
- (4) one case was deemed unsuitable because the customer was recommended a product where there was a need for ongoing reviews but this was not explained, offered or put into place;
- (5) in one case, it was unclear whether or not the customer was recommended a product that matched their needs and objectives; and
- (6) in one case, the customer was recommended a product that did not match their timescales."

4.17 The Authority also reviewed the 17 customer files to consider whether there were inadequacies in the ETV advice process which may have resulted in customers receiving unsuitable advice to transfer from a DB scheme to a DC scheme. The Authority found serious failings in the ETV advice process. A summary of the failings is set out below:

- (1) a Fact Find was present in all 17 files, however in each of the files it did not adequately capture key factual information relevant to the customer's personal circumstances and objectives (in breach of COBS 9.2.1R and 9.2.2R);
- (2) 14 files contained a letter asking the customer to sign and return a binding Member Discharge Form to facilitate the transfer from their DB scheme before any advice or analysis had been provided (the other three files did not contain a copy of the letter) (in breach of COBS 4.2.1R and 19.1.2R);
- (3) all 17 files contained a TVAS Advice Report letter containing initial advice which did not make a clear recommendation. Instead, it simply

presented each customer with options/points to consider, leaving them to make their own decision on whether to transfer or not (in breach of COBS 4.2.1R and 19.1.2R, and inconsistent with COBS 19.1.6G);

- (4) in all 17 files the TVAS Advice Report letter enclosed a personal pension application form to be completed and returned by the customer, and all 17 files contained a completed personal pension application form which had been sent to the product provider before a Suitability Report had been issued to the customer. This indicates that customers were asked to commit, and may have committed, to a transfer before they had been given a personal recommendation from an adviser. In fact, the process was such that it was possible for customers to make an application to transfer having had only limited contact (in writing) with a pension adviser and without receiving a personal recommendation (in breach of COBS 4.2.1R and 19.1.2R);
- (5) 16 files contained a Suitability Report recommending a product with a "Cautious" risk profile regardless of the attitude to risk originally indicated in the customer's Fact Find (in the 17th file, it was not possible to identify which product was recommended because the relevant page of the Suitability Report was missing). Of those 16 files, six stated the customer had a "low" attitude to risk; eight had a "medium" attitude to risk; and two had a "high" attitude to risk – yet the same product was recommended to all of them (in breach of COBS 9.2.1R, 9.2.2R and 9.4.7R);
- (6) in all 17 files the evidence was not sufficient to verify that the recommendation given in the Suitability Report had been fully tailored to the customer's individual needs (in breach of COBS 9.2.1R);
- (7) all 17 files contained a TVAS Advice Report letter and a Suitability Report which failed to disclose, or failed to disclose prior to an application to transfer being made, both the full extent of the charges associated with the recommended personal pension and the commission that the Partnership/LAB would receive (in breach of COBS 4.2.1R, 6.1.9R and 6.1.11R);

- (8) none of the 17 files contained records of any conversation between adviser and customer in which the advice in the TVAS Advice Report letter was discussed or in which the recommendation was made to transfer. Either there was no such conversation, in which case the customer made an application to transfer before receiving a personal recommendation (in breach of COBS 19.1.2R), or, if there was, no record of it was made and retained (in breach of COBS 9.5.2R);
- (9) the pension provider to whom the customer was recommended to transfer was the same in all 17 files, but none of the 17 files contained any information showing which other pension providers had been considered and why other pension providers had not been recommended (in breach of COBS 9.2.1R); and
- (10) all 17 files contained a key features document which, as evidenced by the documentation held on file, was first provided to the customer with the Suitability Report, by which time the customer had already made the decision, and had applied, to transfer (in breach of COBS 14.2.14R).

4.18 The ETV pension transfer advice in all 17 files was given in the period following 1 November 2007, when the relevant Conduct of Business rules were set out in COBS. In particular, COBS 4 contains rules and guidance relating to the Authority's requirement that communications with clients must be fair, clear and not misleading, COBS 6 contains rules and guidance regarding information that must be provided to a customer about costs and associated charges (including fees and commission), COBS 9 sets out the regulatory standards to be complied with when giving advice, COBS 14 contains rules and guidance relating to the provision of product information to clients and COBS 19 provides further rules to be complied with, and guidance to be considered, when giving pension transfer advice.

4.19 The Authority considers that the failings identified in paragraph 4.17 above breached, at least, the COBS rules referred to in that paragraph. Details of these rules, and of guidance that the ETV advice process did not follow, are set out in Annex A. As the ETV advice process remained substantively unchanged throughout the relevant period, it follows that the ETV advice process during the time that the COB rules applied (i.e. prior to 1 November

2007) breached the requirements of the COB rules, and was inconsistent with the COB guidance, set out in Annex A.

4.20 Following the Thematic Review, the Authority decided that a wider past business review was necessary to determine the extent of any customer detriment suffered in consequence of the failings identified. The Authority therefore appointed the Skilled Person to carry out a review and provide the Authority with a report on the matter. The Skilled Person reviewed 30 of the Firms' customer files. The Skilled Person's Second Interim Report identified similar failings to those referred to at paragraphs 4.16 and 4.17 above and breaches of both the COB and COBS rules. Although the Skilled Person has not yet issued a final report, the Second Interim Report is a further indication that the ETV advice process did not comply with relevant regulatory requirements throughout the relevant period.

4.21 In the course of its investigation into Mr Watters' conduct, the Authority obtained and reviewed an additional customer file (this was one of the files given to the Skilled Person for the purpose of its review and was not one of the 17 files referred to at paragraph 4.15 above). The initial purpose was to assess whether changes were made to the ETV advice process in the light of the recommendations of Consultant B, described below at paragraphs 4.38 to 4.40. This is the only file the Authority has seen which contained a note of a conversation with the customer discussing advice that was being given and the merits of transferring. In the conversation, the customer articulated a rationale for transferring. However, in breach of COBS 9.2.1R and 9.4.7R, the Suitability Report set out standardised reasons for the personal recommendation to transfer which were unrelated to the rationale set out in the note of the conversation; that rationale was not, in any event, a sound basis for recommending that the customer transfer.

Mr Watters' compliance oversight role

4.22 Mr Watters did not give ETV pension transfer advice and had a limited role in designing the ETV advice process. However, as the holder of the CF10 controlled function, Mr Watters was responsible for taking reasonable steps to ensure that: (a) the ETV advice process was compliant; (b) the ETV advice process was capable of providing compliant advice; and (c) the advice given complied with relevant COB/COBS rules. In interview, Mr Watters acknowledged that he was ultimately responsible for reviewing the ETV

advice process to “ensure that we complied” and to follow up on “the points that might have been raised by the independent compliance reviewers”.

Mr Watters’ expertise as holder of the CF10 controlled function

4.23 Mr Watters told the Authority that he possessed a “practical insight” into pensions having previously acted as a trustee for a DB scheme which permitted transfers.

4.24 Mr Watters did not obtain any formal compliance qualifications or complete any relevant training courses either during or prior to the relevant period. He could only recall attending a “session” with the Authority in 2004 which considered a number of general topic areas. Whilst he may also have undertaken some general and ad hoc research as to the requirements of his compliance oversight role, such research would not have been sufficient adequately to inform himself about his obligations in performing the CF10 controlled function.

Design of the ETV advice process

4.25 Mr Watters permitted the two pension advisers (see paragraph 4.9 above) to design the advice process without any independent oversight by an appropriately qualified person. Mr Watters told the Authority that he had reviewed the ETV advice process at the outset. However, he did not himself have the necessary expertise to assess whether the ETV advice process was compliant and he failed to identify many obvious failings in the ETV advice process (see paragraph 4.17 above).

4.26 One of the pension advisers (Pension Adviser A) was remunerated in a way which meant they had a direct financial interest in DB scheme members transferring rather than remaining in their DB scheme (see paragraph 4.9 above). Mr Watters did not identify this as a concern at any stage, including when initially asking the pension advisers to design the ETV advice process.

Mr Watters’ interactions with the pension advisers during the ETV exercises

4.27 During the relevant period, Mr Watters had no appropriately detailed interactions with the pension advisers. In his interactions with them he did not give any, or sufficient, consideration to the compliance of the ETV advice

process and of the advice given. Instead, he interacted with the pension advisers in respect of the ETV exercises on an "ad hoc" basis and typically to address commercial points. Mr Watters informed the Authority that he spent only "5-10%" of his time on ETV advice business.

Mr Watters' review of ETV pension transfer files

4.28 Mr Watters told the Authority in interview that he personally reviewed a number of ETV pension transfer customer files during the relevant period in order to discharge his compliance oversight responsibilities. He stated that the review entailed "reading through the correspondence" to determine whether "it made sense" and comparing customer files against a "checklist" to ensure that relevant documentation had been included. He stated that these reviews were infrequent ("twice a year maximum") and typically involved a population of no more than three files.

4.29 The Authority has seen no record of any of the limited file reviews that Mr Watters said he carried out during the relevant period. Mr Watters did not identify any failings in the ETV advice process in the course of these reviews. However, in interview by the Authority, he was able to identify some obvious failings; for example, he noted that customers were asked to sign and return Member Discharge Forms (Form C) prior to receiving any advice. He said this was "somewhat confusing" and he accepted that "if the Form C had been signed before the advice that would have been inappropriate."

Mr Watters' engagement of external compliance consultants

4.30 Mr Watters informed the Authority that he engaged external compliance consultants as a step to ensuring the adequacy of the ETV advice process and of the advice given.

Consultant A

4.31 Consultant A was appointed in April 2006 to review the ETV advice process for the first ETV exercise conducted by the Partnership, after the pension advisers had raised concerns about compliance issues with respect to the Partnership's ETV advice business. The appointment of Consultant A was made on the recommendation of Pension Adviser A, who had a direct personal financial interest in customers choosing to transfer. Mr Watters did

not himself instruct Consultant A and could not recall the specific terms of engagement.

- 4.32 Mr Watters could not recall what recommendations were made by Consultant A but believed they resulted in changes to documentation. The limited evidence available to the Authority regarding the nature and extent of Consultant A's review suggests that it might have related to a possible conflict of interest for the Partnership and a need to protect itself from future claims. Nevertheless, the Authority has also seen evidence that Consultant A commented on, amongst other things, the Suitability Report template used by the Partnership for the first ETV exercise. Specifically, Consultant A suggested removing two 'reasons for transferring' contained in the Suitability Report template as they were unlikely to be relevant to customers. These recommendations were not acted upon and the template remained materially unchanged during the relevant period. This is in spite of Mr Watters' belief that "[he] would have insisted that any changes that [Consultant A] recommended were followed because [...] why engage them if you don't follow the recommendation".
- 4.33 Consultant A also briefly outlined the chronological steps in the ETV advice process which it recommended the Partnership adopt. Mr Watters did not implement Consultant A's recommendation in this regard, nor take any, or any reasonable, steps to ensure that it was acted upon. This meant that an application to transfer form was sent to customers before a clear recommendation had been made, with the resulting risk that DB scheme members would make an application to transfer without receiving proper advice, and the key features document was only sent after DB scheme members had already committed to the transfer, in breach of COB 6.2.7R (and later, COBS 14.2.14R(2)) which required it to be provided in advance.
- 4.34 Mr Watters has been unable to show the Authority what Consultant A was in fact asked to do. Notwithstanding, Consultant A does not appear to have been asked to review the entirety of the Partnership's ETV advice process to the level of detail that would have been appropriate and required in order to provide adequate advice on the process to be followed. Its work appears to have taken three hours, for which it charged £90. In any event, Mr Watters failed to take any, or any reasonable, steps to ensure that the limited recommendations that Consultant A made were acted upon.

Consultant B

- 4.35 Consultant B had been engaged by the Partnership since around 1998 to perform annual compliance reviews of its audit and investment businesses.
- 4.36 Mr Watters was aware that Consultant B lacked experience of pension transfers and that initially it had been reluctant to report on this part of the investment advisory business. Nevertheless, Mr Watters approved the appointment of Consultant B to consider the Partnership's ETV advice business as part of its annual report on the investment business for 2007. This was the only occasion on which Consultant B was asked to consider the ETV advice business. Consultant B's report was dated 21/22 August 2007 and covered the period from 1 July 2006 to 30 June 2007. Mr Watters has not been able to provide any evidence regarding the scope of the instructions given to Consultant B.
- 4.37 In respect of its review of the Partnership's ETV advice business, Consultant B's report outlined how the transfer process worked and referred to the "standard" methodology and documentation used. The report also included a standalone review of three customer files which recorded the documentation present in each file.
- 4.38 The report raised a specific concern regarding product provider research, noting that it "concentrated mainly on availability and administration procedures and did not include an analysis of past performance". The report also stated that advice documents were "somewhat confusing in parts, given the nature of the recipients". The report confirmed that "a number of improvements were recommended to [one of the pension advisers]".
- 4.39 Consultant B also commented, to a limited extent, on certain of the Partnership's standard form documents used in the ETV advice business.
- 4.40 Mr Watters initially told the Authority that these recommendations were not provided to him. He subsequently made representations to the Authority that he saw the report and also received verbal feedback confirming that there were no major problems. However, Mr Watters has been unable to provide any evidence of improvements being made to the ETV advice process or to any documents in accordance with Consultant B's

recommendations. The Authority therefore concludes that Mr Watters failed to take any, or any reasonable, steps to ensure that the recommendations that Consultant B made were acted upon.

Implementation of MiFID

- 4.41 Mr Watters cannot recall taking any steps to review the processes in place at the Partnership in advance of the introduction of MiFID and COBS. As a result, no steps were taken to ensure that the Partnership's processes (including its ETV advice process) would be compliant after the new COBS rules came into force on 1 November 2007.

5. FAILINGS

- 5.1 The regulatory provisions relevant to this Final Notice are referred to in Annex A.
- 5.2 In 2006, providing ETV pension transfer advice was a new line of business for the Partnership. This kind of advice is complex and requires specialist knowledge and training. The impact of the advice can be significant for customers who are pension scheme members. Accordingly, the potential harm to customers if they receive poor advice can be substantial. All of these factors meant that the Partnership (and subsequently LAB) needed to take particular care to ensure that this business would be conducted in a manner that was compliant with regulatory requirements.
- 5.3 Mr Watters performed the CF10 controlled function at the Partnership throughout the relevant period, and at LAB from 8 May 2008. In that role, he was responsible for oversight of compliance with the COB rules and subsequent COBS rules. He was required to use due skill, care and diligence in discharging this responsibility.
- 5.4 As Mr Watters had little experience of pensions and pension transfer advice, he was not personally in a position to assess the quality of the ETV advice process and the quality of advice given. In particular, he was not in a position to assess whether the ETV advice process, and the advice given in any particular case, complied with applicable regulatory requirements.

5.5 In these circumstances, in order to discharge his responsibilities, Mr Watters should have exercised due skill, care and diligence and taken reasonable steps to:

(1) adequately inform himself about:

- a. his obligations in performing the CF10 controlled function; and
- b. the specific nature and risks of the ETV advice business;

(2) ensure that the ETV advice process was compliant and capable of providing compliant advice; and

(3) ensure that the advice given by the Firms was compliant.

5.6 During the relevant period, in the following respects, Mr Watters did not exercise due skill, care and diligence in undertaking the CF10 controlled function with regard to the Firms' ETV advice business:

(1) Mr Watters failed to take reasonable steps adequately to inform himself about his obligations in performing the CF10 controlled function and about the specific nature and risks of the ETV advice business. Had he taken such steps, he should have been sufficiently well informed to avoid the failings described below.

(2) Mr Watters did not take reasonable steps to ensure that the ETV advice process was compliant and capable of providing compliant advice. In particular:

- a. it was not appropriate for Mr Watters to leave the design of the ETV advice process to the pension advisers, without obtaining appropriate independent oversight to make sure it was compliant with, and was capable of providing advice that complied with, applicable regulatory requirements. This was particularly inappropriate given that one of the pension advisers (Pension Adviser A) had a direct financial interest in customers choosing to transfer; and

b. although Mr Watters approved the appointment of Consultant A to look at the ETV advice process, he failed to take any, or any reasonable, steps to ensure that the consultant was instructed to, and did, undertake an adequate review, and that its recommendations were properly acted upon. Instead:

i. Mr Watters left the engagement and instruction of Consultant A to one of the pension advisers (Pension Adviser A), who had a direct personal financial interest in customers choosing to transfer. This made Mr Watters' failure to exercise proper oversight all the more negligent.

ii. Consultant A's review was limited. It appears to have comprised three hours' work for which Consultant A charged £90.

iii. Mr Watters took limited interest in the outcome of the review and failed to take any, or any reasonable, steps to ensure that the recommendations made were acted upon.

(3) The ETV advice process failed, in many obvious ways, to comply with relevant COB and COBS rules. These failings were identified by the Authority when reviewing the sample of 17 customer files - see paragraph 4.17 above - and the file mentioned at paragraph 4.21 above. Mr Watters should have identified these failings either from his own review of the process, or from the limited file reviews that he subsequently undertook from time to time, or from engaging an external compliance consultant to undertake a proper review. In interview with the Authority, Mr Watters was able to identify some of those failings.

(4) Mr Watters did not take reasonable steps to monitor the ETV advice process to ensure that it was compliant with the rules in COB/COBS and that compliant advice was being given. In particular:

a. in his interactions with the pension advisers with respect to the ETV advice business, Mr Watters failed to give any, or sufficient, consideration to the compliance of the ETV advice process and of the advice given; and

b. Mr Watters approved the appointment of Consultant B to conduct a review in 2007, despite knowing that it was not qualified to carry out a full review of the ETV advice process. It appears that Consultant B's assessment concerned primarily whether the process was being followed rather than whether it was compliant and whether compliant advice was being given. As a result, Consultant B did not identify the flaws in the ETV advice process. Further, Mr Watters showed no, or little, interest in the outcome of the review and did not take any, or any reasonable, steps to ensure that its recommendations were acted upon.

(5) Mr Watters did not take reasonable steps to identify and manage adequately the following potential conflicts of interest:

a. the Partnership and thereafter LAB received commission from the pension provider to whom customers transferred (see paragraph 4.10 above); accordingly, the Firms benefitted financially from customers choosing to transfer. In order to manage this potential conflict appropriately, customers should have been properly and fully informed. The Authority has seen no evidence in the files it has reviewed that this was properly disclosed in advance of the application to transfer being made; and

b. one of the pension advisers (Pension Adviser A) was paid a proportion of the Partnership's proceeds from the ETV advice business that the pension adviser conducted (see paragraph 4.9 above). Mr Watters failed to identify the risk that the pension adviser would be incentivised to recommend that customers transfer. A consequence of this failure was that Mr Watters failed to identify the need to take particular care that an independent check on the ETV advice process and advice being given was properly carried out.

(6) Mr Watters failed to undertake any review of the Partnership's processes and documentation in light of the impending implementation of MiFID in the form of the COBS rules. Had he done so, such a review may have identified at least some of the respects in which the ETV advice process was defective.

5.7 Mr Watters' conduct described above constituted breaches of Statement of Principle 6, in that Mr Watters failed to exercise due skill, care and diligence in discharging his responsibilities as the holder of the CF10 (Compliance oversight) controlled function.

5.8 As a result of Mr Watters' failings, customers were exposed to a serious risk of receiving unsuitable advice. This risk crystallised, resulting in a serious risk of unsuitable customer outcomes.

6. SANCTION

Imposition of Financial Penalty

6.1 The Authority's policy for imposing a financial penalty is set out in Chapter 6 of the Decision Procedures and Penalties Manual ("DEPP"). The relevant sections of DEPP are set out in more detail in Annex A.

6.2 Mr Watters' conduct occurred before the change in the regulatory provisions governing the determination of financial penalties on 6 March 2010. Accordingly, the Authority has applied the penalty regime in place before 6 March 2010. All references to DEPP in this Final Notice are to the regulatory provisions in force prior to 6 March 2010. The Authority has also had regard to the provisions of the Enforcement sourcebook ("ENF") which were in force during the relevant period: relevant sections are set out in Annex A.

6.3 The principal purpose of imposing a financial penalty is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour.

6.4 In determining whether a financial penalty is appropriate the Authority is required to consider all the relevant circumstances of a case. Applying the criteria set out in DEPP 6.2.1G (and ENF 11.4.1G) (regarding whether or not to take action for a financial penalty or public censure) and DEPP 6.4.2G (and ENF 12.3.3G) (regarding whether to impose a financial penalty or

public censure), the Authority considers that a financial penalty is an appropriate sanction, given the serious nature of the breaches.

- 6.5 DEPP 6.5.2 (and ENF 13.3.3G) sets out a non-exhaustive list of factors that may be of relevance in determining the level of a financial penalty. The Authority considers that the following factors are particularly relevant in this case.

DEPP 6.5.2(1) (ENF 13.1.2) – Deterrence

- 6.6 In determining whether to impose a financial penalty, the Authority has had regard to the need to ensure those who are approved persons exercising the compliance function act with appropriate levels of competence and capability and in accordance with regulatory requirements and standards. The Authority considers that a financial penalty should be imposed to demonstrate to Mr Watters and others the seriousness with which the Authority regards Mr Watters' behaviour.

DEPP 6.5.2(2) (ENF 13.3.3(1)) – The nature, seriousness and impact of the breach in question

- 6.7 In determining the appropriate sanction, the Authority has had regard to the seriousness of the breaches, including the nature of the requirements breached and the duration of the breaches.
- 6.8 The Authority has concluded that Mr Watters exercised inadequate compliance oversight of the ETV advice business carried out by the Firms. The incentivised nature of an ETV pension transfer creates a serious risk that customers, if improperly advised, may unnecessarily give up existing guaranteed benefits and thereby suffer detriment. Mr Watters failed to take reasonable steps to ensure that the ETV advice process was compliant and capable of providing compliant advice, and that compliant advice was being given. This resulted in a serious risk that customers would receive unsuitable advice. This risk crystallised, resulting in a serious risk of unsuitable customer outcomes.

DEPP 6.5.2(3) (ENF 13.3.3(2)) – The extent to which the breach was deliberate or reckless

- 6.9 The Authority has concluded that the breaches were neither deliberate nor reckless.

DEPP 6.5.2(4) (ENF 13.3.3(3)) – Whether the person on whom the penalty is to be imposed is an individual

- 6.10 The Authority recognises that it is likely that the financial penalty imposed on Mr Watters, as an individual, will have a significant impact on him but considers it is proportionate in relation to the seriousness of his misconduct.

DEPP 6.5.2(5) (ENF 13.3.3(3)) – The size, financial resources and other circumstances of the person on whom the penalty is to be imposed

- 6.11 The Authority has been provided with some (partly verified) information about Mr Watters' current income, liabilities and assets. However, Mr Watters has not provided verifiable evidence that the penalty imposed by the Authority will cause him serious financial hardship.

DEPP 6.5.2(6) (ENF 13.3.3(4)) – The amount of benefit gained or loss avoided

- 6.12 Mr Watters was a partner in the Partnership and is the registered shareholder of 100% of the shares in LAB, 60% of which he told the Authority he holds on trust for other owners. Accordingly, Mr Watters has benefitted financially from the Firms' ETV advice business and, as LAB continues to receive annual renewal commission (see paragraph 4.10), continues to do so. If, and to the extent that, customers transferred from a DB scheme into a DC scheme as a result of receiving non-compliant advice from the Firms, and they would not have transferred had they received compliant advice, then the Firms and thus, indirectly, Mr Watters would have benefitted financially from Mr Watters' breach of Statement of Principle 6. In all of the circumstances, it is not possible to quantify the amount by which Mr Watters may have benefitted.

DEPP 6.5.2(8) (ENF 13.3.3(5)) – Conduct following the breach

- 6.13 Mr Watters was approved to perform the CF10 (Compliance oversight) controlled function at LAB until 1 August 2011 and has not performed that function since. Mr Watters has cooperated with the Authority in its investigation of this matter.

DEPP 6.5.2(9) (ENF 13.3.3(6)) – Disciplinary record and compliance history

- 6.14 The Authority has taken into account the fact that Mr Watters has not been the subject of any previous disciplinary action.

DEPP 6.5.2(10) (ENF 13.3.3(7)) – Other action taken by the FCA

- 6.15 In determining the financial penalty, the Authority has taken into account the financial penalties it has imposed on other approved persons for similar misconduct.
- 6.16 Having considered all the circumstances set out above, the Authority therefore imposes a financial penalty of £75,000 on Mr Watters.

7. REPRESENTATIONS

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

8. PROCEDURAL MATTERS

Decision maker

- 8.1 This Final Notice is given under, and in accordance with, section 390 of the Act.
- 8.2 The decision which gave rise to the obligation to give this Final Notice was made by the Regulatory Decisions Committee.

Manner of and time for payment

- 8.3 The financial penalty must be paid in instalments by Mr Watters to the Authority as follows:
- £25,000 to be paid by 25 July 2017, 14 days from the date of the Final Notice;
 - 12 instalments of £4,000 payable by the 25th of each month thereafter until and including 25 July 2018; and
 - a final instalment of £2,000 payable by 25 August 2018.

If the financial penalty is not paid

- 8.4 If all or any amount is not paid by the due date for payment provided by 8.3 above, the full amount of the financial penalty that has not yet been paid will immediately fall due and the Authority may recover the same as a debt owed by Mr Watters to the Authority.

Publicity

- 8.5 Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Final Notice relates. Under those provisions, the Authority must publish such information about the matter to which this Final 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 Mr Watters or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
- 8.6 The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Contacts

- 8.7 For more information concerning this matter generally, please contact Anna Couzens (direct line: 020 7066 1452) of the Enforcement and Market Oversight Division of the Authority.

Anthony Monaghan

Project Sponsor

Financial Conduct Authority, Enforcement and Market Oversight Division

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. RELEVANT STATUTORY PROVISIONS

- 1.1. The Authority's statutory objectives, set out in section 1B(3) of the Act, include the consumer protection objective.
- 1.2. Section 1C of the Act sets out the consumer protection objective: "securing an appropriate degree of protection for consumers."
- 1.3. Section 66 of the Act provides that the Authority may take action against a person if it appears to the Authority that he is guilty of misconduct and the Authority is satisfied that it is appropriate in all the circumstances to take action against him. A person is guilty of misconduct if, while an approved person, he has failed to comply with a statement of principle issued under section 64 or section 64A of the Act, or has been knowingly concerned in a contravention by a relevant authorised person of a relevant requirement imposed on that authorised person.

2. RELEVANT REGULATORY PROVISIONS

Conduct of Business sourcebook

The following are the provisions of COB referred to in paragraph 4.19 above:

- 2.1. COB 2.1.3R provides that when a firm communicates information to a customer, the firm must take reasonable steps to communicate in a way which is clear, fair and not misleading.
- 2.2. COB 5.2.5R provides that a firm must take reasonable steps to ensure it is in possession of sufficient personal and financial information about a customer before it gives a personal recommendation concerning a designated investment to that customer.
- 2.3. COB 5.2.9R(1)(i) provides that, in relation to a pension transfer, a firm must make a record of a customer's personal and financial circumstances that it has obtained and retain the record indefinitely.
- 2.4. COB 5.3.5R(1)(a)(iii) provides that a firm must take reasonable steps to ensure that, if in the course of designated investment business it makes any personal recommendation to a private customer to enter into a pension transfer or pension opt-out from an occupational pension scheme, the advice on investments or the transaction is suitable for the client.
- 2.5. COB 5.3.5R(3) provides that, in making the recommendation in (1), a firm must have regard to the facts disclosed by the client and other relevant facts about the client of which the firm is, or reasonably should be, aware.
- 2.6. COB 5.3.16R(1) provides that a suitability letter provided to a customer must explain why the firm has concluded that the transaction is suitable for the customer, having regard to his personal and financial circumstances.
- 2.7. COB 5.3.22R provides that a firm must ensure that a transfer value analysis is carried out in accordance with COB 6.6.87R – COB 6.6.93R before it makes any recommendations to a customer to transfer out of a DB scheme; that a copy of

the analysis must be delivered with the key features document or otherwise provided to the customer before he gives consent to the application to transfer; and that the firm must take reasonable steps to ensure the customer understands the analysis, drawing attention to factors which do and do not support the recommendation to transfer.

- 2.8. COB 5.3.29G provides that, when advising a customer who is, or is eligible to be, an active member of a DB scheme whether he should opt out or transfer, a firm should start by assuming it will not be suitable, and only then consider it to be suitable if it can clearly demonstrate on the evidence available at the time that it is in the customer's best interests.
- 2.9. COB 5.7.3R(1) provides that before a firm conducts designated investment business with or for a private customer, the firm must disclose in writing to that private customer the basis or amount of its charges for conducting that business and the nature or amount of any other income receivable by it or, to its knowledge, by its associate and attributable to that business.
- 2.10. COB 6.2.7R provides that when a firm sells, personally recommends or arranges the sale of a life policy to a private customer, the private customer must be provided with appropriate key features before the private customer completes an application for the policy.

Conduct of Business Sourcebook

The following are the provisions of COBS referred to in paragraph 4.19 above:

- 2.11. COBS 4.2.1R(1) provides that a firm must ensure that a communication or a financial promotion is fair, clear and not misleading.
- 2.12. COBS 6.1.9R(1) provides that a firm must provide a client with information on the total costs and charges to be paid by the client in connection with the designated investment business including all related fees, commissions, charges and expenses.
- 2.13. COBS 6.1.11R(1) provides that a firm must provide the information detailed in COBS 6.1.9R in good time before the provision of designated investment business.
- 2.14. COBS 9.2.1R(1) provides that a firm must take reasonable steps to ensure that a personal recommendation is suitable for its client.
- 2.15. COBS 9.2.1R(2) provides that when making a personal recommendation a firm must obtain the necessary information regarding the client's knowledge and experience in the investment field relevant to the specific type of designated investment or service; financial situation; and investment objectives, so as to enable the firm to make a recommendation which is suitable for him.
- 2.16. COBS 9.2.2R provides that a firm must obtain from the client such information as is necessary for the firm to understand the essential facts about him and have a reasonable basis for believing that the specific transaction is to be recommended to him. The rule then sets out a list of factors that the firm should obtain from the client regarding his investment objectives and financial situation.
- 2.17. COBS 9.4.7R provides that a suitability report must, at least, specify the client's demands and needs, explain why the firm has concluded that the recommended transaction is suitable for the client having regard to the information provided by

the client, and explain any possible disadvantages of the transaction for the client.

- 2.18. COBS 9.5.2R sets out that a firm must retain its records relating to the suitability of a pension transfer indefinitely.
- 2.19. COBS 14.2.14R(2) requires a firm to provide a key features document to the client in good time before the firm carries on the relevant business.
- 2.20. COBS 19.1.2R sets out the requirements for preparing and providing a transfer analysis.
- 2.21. COBS 19.1.6G provides that when advising a retail client who is, or is eligible to be, a member of a defined benefits occupational pension scheme whether to transfer or opt-out, a firm should start by assuming that a transfer or opt-out will not be suitable. A firm should only then consider a transfer or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer or opt-out is in the client's best interests.

Statements of Principle and Code of Practice for Approved Persons¹

- 2.22. Statement of Principle 6 states:

"An approved person performing a significant influence function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his controlled function."

- 2.23. The Code of Practice for Approved Persons sets out descriptions of conduct which, in the opinion of the Authority, do not comply with a Statement of Principle. It also sets out factors which, in the Authority's opinion, are to be taken into account in determining whether an approved person's conduct complies with a Statement of Principle.
- 2.24. APER 3.3.1E provides the factors to be taken into account in determining whether or not the conduct of an approved person performing a significant influence function complies with Statements of Principle 5 to 7.
- 2.25. APER 4.6 lists types of conduct which, in the opinion of the Authority, do not comply with Statement of Principle 6.

Financial penalty

- 2.26. During the relevant period, the Authority's policy for imposing a financial penalty was set out in Chapter 6 of DEPP and, until 27 August 2007, in ENF.
- 2.27. DEPP 6.1.2G provided that the principal purpose of imposing a financial penalty or issuing a public censure is to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches, and demonstrating generally the benefits of compliant behaviour. Financial penalties and public censures are therefore tools that the Authority may employ to help it to achieve its statutory objectives.

¹ All references in this Final Notice to the Authority's Statements of Principle and Code of Practice for Approved Persons (APER) denote the regulatory provisions in place during the relevant period.

- 2.28. ENF 13.1.2G made identical provision in the period during which it was in force.
- 2.29. DEPP 6.4 set out a non-exhaustive list of factors that may be relevant when the Authority is deciding whether to impose a financial penalty or issue a public censure.
- 2.30. DEPP 6.5.1G(1) provided that the Authority will consider all the relevant circumstances of a case when it determines the level of financial penalty (if any) that is appropriate and in proportion to the breach concerned. ENF 13.3.1G(1) made identical provision during the period it was in force.
- 2.31. DEPP 6.5.2G set out a non-exhaustive list of factors which may be relevant to determining the appropriate level of financial penalty to be imposed. ENF 13.3.3G set out a materially identical list of factors.

ANNEX B

REPRESENTATIONS

Representations received from Mr Watters

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

Lack of particularity in the allegations against Mr Watters

2. *The Authority's case, as set out in the Warning Notice, lacks any particularity of the alleged breaches of COB/COBS rules. This failure has significantly hindered Mr Watters' ability to understand and challenge the case against him and to prepare meaningful representations.*
3. The Authority considers that it was or should have been obvious to Mr Watters why the failings in the ETV advice process constituted breaches of the relevant COB/COBS rules, especially as the investigation report prepared by the Authority in respect of its investigation of Mr Watters, and other material provided to Mr Watters that was relied upon by the Authority in deciding to give the Warning Notice, provided specific cross-references to the COB/COBS rules. Nevertheless, the Authority has stated in paragraph 4.17 of this Notice, in respect of each specified failing in the ETV advice process, which relevant COBS rules the Authority considers, as a minimum, were breached. The Authority considers that the Warning Notice contained sufficient detail for Mr Watters to be able to understand and challenge the case against him and to prepare meaningful representations.

Historic nature of the allegations against Mr Watters

4. *The action proposed against Mr Watters relates to events which, in many cases, took place over a decade ago, in an entirely different regulatory climate and under a different regulatory regime. Many of the transfers took place before 1 November 2007 when the Handbook substantially changed. The Authority must not allow hindsight to affect its judgement; Mr Watters' actions cannot be assessed by reference to today's expectations.*
5. *Prior to 2008, many ETV exercises were carried out on a non-advised direct offer basis. It was only in mid-2008 that the Authority issued statements about the complexities of undertaking ETV exercises on a direct offer basis. Therefore, even during a period where the standard practice was for ETV exercises to be undertaken on a direct offer basis, the Partnership was providing independent advice.*
6. *Given that the allegations relate to events that took place a decade ago, it is unsurprising that much of the relevant documentation is no longer available or accessible, in particular as the relevant entities have undergone successive mergers/migrations/restructuring. Except where there was a legal obligation to retain such documentation, it is not open to the Authority to draw adverse inferences from the absence of documentation.*
7. The Authority agrees that the standards required of the ETV advice process must be viewed in the light of the rules and guidance in place during the relevant period (which ended in 2009). The Authority has taken into account the length of time since the ETV exercises took place, and has had regard to the relevant COB/COBS provisions in place at the time advice was given, in reaching its conclusions. The Authority notes that there have been no substantive changes to the provisions of APER regarding Statement of Principle 6 since the relevant period, and considers that

the standard of care expected of a person holding the CF10 controlled function in the relevant period was no lower than that expected of a person currently holding that controlled function.

8. The fact that the Partnership was providing independent advice on ETV exercises at a time when the standard practice was for ETV exercises to be undertaken on a non-advised direct offer basis does not affect the fact that, in giving advice, the Partnership was required to comply with relevant COB/COBS rules.
9. The Firms were required by relevant rules in COB/COBS (for example, COB 5.2.9R and COBS 9.5.2R) to retain indefinitely records relating to the suitability of a pension transfer. Mr Watters should therefore have taken reasonable steps to ensure that documents relating to the ETV advice business were securely retained by the Firms.

Proportionality and the scale of Mr Watters' business

10. *The Partnership was at all times a small firm with limited resources. During the period when Mr Watters was approved to perform the CF10 controlled function, the number of employees engaged by the Partnership in financial services provision never exceeded six people, and LAB has at no time employed more than seven people. Further, the ETV advice business formed only approximately 5–10% of the overall business of the Firms, whose main business was accountancy.*
11. The Authority has taken into account the fact that the financial services part of the Firms was relatively small and that the ETV advice business was a relatively small part of the overall business of the Firms. The Authority did not expect the Firms to have extensive systems and controls of the kind that were required in large businesses. However, the criticisms of Mr Watters are not predicated on such an expectation; rather, they are made because the ETV advice process failed to comply with certain COB/COBS rules in many obvious ways and Mr Watters did not take reasonable steps to oversee that process.

Alleged harm to consumers

12. *The Authority has not identified any actual harm to consumers caused by the alleged failings, and it is denied that there was a serious risk of harm. To Mr Watters' knowledge, there has never been a single complaint by a member who transferred out of a DB scheme. No member has alleged that they were misadvised or that they have suffered harm.*
13. Mr Watters' failure to take reasonable steps to ensure that the ETV advice process was compliant and was capable of providing compliant advice, and that the advice given was compliant, resulted in a serious risk that customers would receive unsuitable advice. This risk crystallised, resulting in a serious risk of unsuitable customer outcomes. The Authority therefore considers that Mr Watters' failings were serious, irrespective of whether actual harm has been caused to consumers. The absence of complaints from members is not an indicator that advice was suitable. Consumers who are poorly advised will frequently not be in a position to appreciate that fact.

The Skilled Person's review

14. *Although the Skilled Person has issued its Second Interim Report, its review is ongoing and it has not yet issued its final report. The Second Interim Report is the subject of continuing questions and discussion and its findings are not necessarily accepted. Fundamental errors in the Skilled Person's assumptions have been identified which affect some of the Skilled Person's and the Authority's conclusions.*

15. *In circumstances where the Skilled Person has not issued a final report, it is improper and prejudicial for the Authority to rely on the Second Interim Report in the context of the enforcement proceedings against Mr Watters. Relying on the report is inconsistent with a statement made by the Authority's Enforcement case team to Mr Watters' lawyer that the report would only be referred to as background and would not be relied on as evidence of breaches.*
16. The Second Interim Report sets out the Skilled Person's conclusions regarding whether, in the 30 files it reviewed, the Firms failed to comply with relevant COB and COBS rules. The Skilled Person's conclusions take into account representations made by LAB on its draft findings. The issues that LAB dispute do not materially affect the Skilled Person's conclusion that, in giving advice in relation to ETV pension transfers, the Firms failed to comply with the COB/COBS rules, and do not affect the Authority's conclusions regarding Mr Watters.
17. The Skilled Person will not issue a final report until it has determined whether the Firms' failings caused harm to consumers. However, as the Skilled Person has concluded that the Firms failed to comply with COB/COBS in giving advice in respect of ETV pension transfers, it is reasonable and appropriate for the Authority to refer to the Skilled Person's findings as set out in its Second Interim Report. The Authority has not relied upon the Second Interim Report in making its decision that Mr Watters failed to comply with Statement of Principle 6; it is referred to as a further indication that the ETV advice process did not comply with relevant regulatory requirements throughout the relevant period.

Mr Watters' compliance oversight role

18. *Mr Watters took on the responsibility of performing the CF10 controlled function at the Partnership in 2001 in good faith and with an understanding of what it entailed. He researched the role and familiarised himself with the relevant regulations and obligations.*
19. *It was reasonable and appropriate for Mr Watters to rely on the pension advisers to take an active role in identifying compliance issues that were particular to the context of the ETV exercises and to place confidence in their judgement. Both the pension advisers were approved persons throughout the relevant period and were highly qualified, and he expected them to carry out their role properly.*
20. *Mr Watters had regular, open and honest communication with both pension advisers and it was reasonable and appropriate for Mr Watters to draw comfort from the fact that they did not raise any concerns. Mr Watters also, in his capacity as a CF10, drew comfort from meetings of the partners and of the Partnership's Risk Committee and from feedback from the employer companies.*
21. *Both of the pension advisers were intimately involved in the design, implementation and review of the ETV advice process. In respect of the Authority's investigation of Mr Watters, each of the pension advisers had an interest in minimising their own responsibility for the ETV advice process and the extent of their work on ETV exercises, given that those exercises are now being criticised.*
22. Mr Watters did not obtain any formal compliance qualifications or complete any relevant training courses either during or prior to the relevant period. Whilst Mr Watters may have undertaken some general and ad hoc research as to the requirements of his compliance oversight role, such research would not have been sufficient adequately to inform himself about his obligations in performing the CF10 controlled function.

23. Although Mr Watters was entitled to place some reliance on the professionalism and abilities of the pension advisers, he was not entitled to rely on them to ensure that the ETV advice process was compliant. It was Mr Watters' obligation, which he did not delegate at any time, to oversee the ETV advice process to ensure it was compliant. This was particularly necessary because Pension Adviser A was directly financially incentivised to advise customers to transfer.
24. Mr Watters interacted with the pension advisers in respect of the ETV exercises on an "ad hoc" basis, typically to address commercial points, and he did not have any appropriately detailed interactions with them. The pension advisers did raise concerns about compliance issues with respect to the Partnership's ETV advice business which, as is explained in paragraph 4.31 of this Notice, led to the appointment of Consultant A. The Authority has not seen any evidence that the Risk Committee or partner meetings ever considered any issues regarding the compliance of the ETV advice process, and any positive feedback received from employer companies is unlikely to have been relevant to the compliance of the process.
25. The Authority acknowledges that the pension advisers were involved in the design, implementation and review of the ETV advice process. As part of its investigation into Mr Watters, the Authority interviewed both pension advisers, and has paid due regard to their account of events, as well as that of Mr Watters. Mr Watters accepts that he did not delegate his compliance oversight function to the pension advisers in any way. Therefore, irrespective of any comments made by the pension advisers regarding their roles in the ETV exercises, it is not disputed that Mr Watters was ultimately responsible for oversight of the Partnership's compliance with the COB rules and the Firms' compliance with the COBS rules.

The ETV advice process

26. *The ETV advice process was largely developed by the pension advisers, but Mr Watters reviewed and approved it. Mr Watters regularly monitored the ETV advice process.*
27. *Mr Watters recognises that DC Schemes are inherently less certain than DB Schemes, but it must be recalled that DC Schemes may perform better or worse than DB Schemes and there are at least nine compelling and legitimate reasons why an individual would choose to transfer. Many, if not the majority, of the approximately 500 scheme members who transferred out of their DB Schemes did so against the advice of the pension advisers.*
28. *Whilst the Fact Find could have been more comprehensive, it adequately captured the key information relevant to the member's personal circumstances and objectives. Moreover, the Fact Find was not the only source of information from the members, as in most cases the members would have had further interaction – whether in person, by telephone or by post – with the pension adviser.*
29. *Mr Watters accepts that some members were sent a letter which appeared to instruct them to sign and return the Member Discharge Form before any advice was provided. The intention was for the form to be signed and returned after advice had been given and if the member wished to transfer. If there are cases where this sequence was not adhered to, this was due to imperfect expression in the letter and/or an administrative error. Whilst some members may have returned the form ahead of receiving advice, Mr Watters is not aware of any case where a member transferred without advice being given.*
30. *The purpose of the TVAS Advice Report letter was not to make a firm recommendation, but rather to enable the member to make an informed decision. It*

is entirely appropriate that, having received independent advice on the comparative advantages and disadvantages, the decision at this stage should rest with the member.

31. *In many cases, the TVAS Advice Report letter would have led to further communication with the scheme member about the advice. Mr Watters accepts that not all of these communications would have been recorded and/or retained, but there was no regulatory requirement to do so. The client files therefore do not tell the whole story.*
32. *The purpose of the Suitability Report was to confirm the advice given and the decisions that had been made, explain the basis for those decisions and disclose any fees or commission that may have been paid or generated as a result of the advice. It was at this stage that a firm recommendation was made.*
33. *It is correct that the majority of the members who transferred were recommended a product from the same pension provider. This was, in part, because the pension provider facilitated a block transfer which enabled the member to enjoy a tax free cash entitlement greater than 25% of the transfer value. The Partnership analysed the market and, on the basis of that analysis, shortlisted six pension providers. The pension provider chosen was considered to be the best option for the members, although it was certainly not a given.*
34. The Authority has seen no record of any of the limited file reviews that Mr Watters said he carried out during the relevant period. If he did carry out reviews, he failed to identify any of the many obvious ways in which the ETV advice process failed to comply with relevant COB and COBS rules, some of which he was able to identify in interview with the Authority.
35. Throughout the relevant period, guidance issued by the Authority made it clear that, when advising a member of a DB scheme whether to transfer to a DC scheme, a firm should start by assuming that a transfer will not be suitable (COB 5.3.29G and COBS 19.1.6G). The reason for this guidance is that the guaranteed benefits provided by a DB scheme are usually very expensive or impossible to replicate outside such a scheme. Whether it is proper to transfer has to be determined on the basis of full knowledge of all the relevant circumstances of the client, including the client's needs and objectives and the specific details of the scheme, bearing in mind this starting assumption. It is not acceptable for a firm to advise a member to transfer simply on the basis that one of the "compelling and legitimate" reasons to transfer applies. Every Suitability Report reviewed by the Authority made a recommendation that the client should transfer, so the Authority considers it is unlikely that many members transferred against the advice of the pension advisers.
36. The Fact Find was not adequate as, in all 17 files reviewed by the Authority, it did not ask appropriate questions about the members and their objectives. As the ETV advice process did not require the pension adviser to keep any notes or record of any information that was provided orally, and as the 17 files did not contain any such notes, the Authority is not able to assess whether, in respect of these 17 files, the members had any further interaction with the pension adviser.
37. The Authority acknowledges that it could have been an administrative error that led to members being asked to sign and return the Member Discharge Form before they were even sent the TVAS Advice Report letter. Nevertheless, this was still a serious failing given that a significant proportion of members returned the form before being sent the TVAS Advice Report letter and, although Mr Watters is not aware of any scheme member actually transferring before they received advice, he cannot be certain that they did not do so. In all 17 files a completed personal pension

application form was sent to the product provider to process the transfer before a Suitability Report had been issued to the member, and the files contain no records of a personal recommendation having been given at an earlier stage.

38. It was inadequate for the TVAS Advice Report letter to provide initial advice which did not make a clear recommendation. The pension adviser's role was to make a personal recommendation that was suitable for the client, starting from the assumption that a transfer would not be suitable, and it was not sufficient simply to set out information about the advantages and disadvantages of transferring, presenting both options as equally valid depending on whether certain factors were more or less important to the member. The factors that were relevant to consider were complex, based on adequate information about the member's knowledge, experience, financial situation and investment objectives, and needed professional judgement to assess, so it was not appropriate to leave the decision to the scheme member.
39. Due to the lack of records, neither the Authority nor Mr Watters is able to say for certain whether there was any further communication with a scheme member after the TVAS Advice Report letter was sent. Either there was no such communication, in which case the customer made an application to transfer before receiving a personal recommendation (in breach of COB 5.3.22R and COBS 19.1.2R), or, if there was such a communication, a failure to make and retain records of communications would have been a breach of COB 5.2.9R and COBS 9.5.2R.
40. Scheme members should have decided whether to transfer after receiving a personal recommendation, but the Suitability Report was supplied after the scheme member had applied to transfer. The COB rules (5.3.22R, 5.7.3R and 6.2.7R) and COBS rules (6.1.9R, 6.1.11R and 14.2.14R) also required fees and commission to be disclosed and the key features document to be given to scheme members before they made their decision to transfer, as they were material to the member's decision as to whether to follow the advice they were given. However, the key features document was supplied with the Suitability Report, i.e. after the scheme member had applied to transfer.
41. Mr Watters' submission regarding the choice of pension provider does not address the Authority's concerns that almost all scheme members were recommended the same product, irrespective of their circumstances and attitude to risk, and that the 17 files did not contain any information showing which other pension providers had been considered and why other pension providers had not been recommended.

Consultant A

42. *The Partnership was not required to appoint an external consultant, and it was not common practice to do so. He should therefore be praised, not criticised, for voluntarily appointing external consultants, at a cost to the firm.*
43. *The review by Consultant A was not high-level or limited in scope. Consultant A was appointed to review the whole of the ETV advice process, to ensure its regulatory compliance, and its work resulted in changes to the Partnership's documentation. The Partnership received detailed advice from Consultant A as to the ETV advice process, but regrettably the report cannot now be located. It is fanciful to suggest that Consultant A's work only took three hours for a total cost of £90; Mr Watters recalls that about £4,000 (plus VAT) was actually paid to Consultant A.*
44. *Mr Watters reasonably cannot recall, a decade later, the precise recommendations made by Consultant A, but is adamant he would have insisted that any recommendations were implemented as the entire purpose of instructing an*

independent external compliance consultant was to improve the ETV advice process. Mr Watters denies that Consultant A's recommendations were not properly implemented, noting the similarities in the process envisaged by the consultant and the process actually implemented by the Partnership. Mr Watters drew comfort from Consultant A's scrutiny and "clean bill of health".

45. As Mr Watters had little experience of pensions and pension transfer advice, he was not personally in a position to assess the quality of the ETV advice process and so it was necessary for him to obtain appropriate independent oversight of the ETV advice process to make sure it was compliant. This need was exacerbated by the fact that Pension Adviser A had a direct financial interest in customers choosing to transfer. Although Mr Watters approved the appointment of Consultant A, he failed to take any, or any reasonable, steps to ensure it undertook an adequate review.
46. The Authority considers that the evidence supports its conclusion that Consultant A did not carry out a substantial review, and instead only did about three hours' work, at a total cost of £90. After Consultant A had provided the Partnership with its recommendations, it sent an email asking for payment of £90 for three hours' work. The Authority has not seen any evidence that Consultant A did any further work, or that the Partnership made any additional payment to Consultant A, but there is evidence that the consultant chased the Partnership for payment of the £90.
47. Mr Watters' recollection that Consultant A's recommendations were implemented is inconsistent with the evidence. As is described in paragraphs 4.32 and 4.33 of this Notice, no material changes were made to the Suitability Report template following Consultant A's advice, and the application to transfer form continued to be sent to customers before a clear recommendation had been made.

Consultant B

48. *Mr Watters denies that he knew or believed that Consultant B was not qualified to review the ETV advice process; there would be no rationale for Mr Watters or the Partnership to instruct and pay an expert in circumstances where they could not rely on the expert's judgement. Consultant B was instructed to review not only the process, but the content and quality of the client file.*
49. *Consultant B's report did not identify any breaches, only some areas for potential improvement. Mr Watters reasonably drew comfort from this.*
50. The evidence supports the Authority's conclusion that Mr Watters was aware that Consultant B was not qualified to review the ETV advice process, as in interview he informed the Authority that he knew that Consultant B was not a pension transfer specialist and that he had approached it before he instructed Consultant A, but it had suggested he look elsewhere.
51. It appears to the Authority that Consultant B was only asked to assess whether the ETV advice process was being followed, and was not asked to carry out a full review of the process and advise on whether it was compliant. The fact that Consultant B's report did not identify any breaches should not therefore have led Mr Watters to believe that the ETV advice process was compliant. In any event, Consultant B gave feedback on some of the advisory documentation, including that it was confusing in some respects.

Alleged conflicts of interest

52. *Whilst there was a hypothetical conflict of interest in the Partnership's commission structure, it was not one that caused, or should have caused, concern to the*

Partnership, which had properly considered the position. At the time, it was standard practice for pension providers to pay commission to independent advisers for members transferring out of a DB scheme. All relevant pension providers were offering similar commission rates, so the rate of commission was not a factor in recommendations made by the Firms.

53. *The commission payments from the pension providers did not motivate the Firms' conduct or affect their decision making. Not a single member was advised to transfer because of any financial gain to the Partnership or LAB. The Partnership was keen to ensure that members were treated fairly and with respect and it took its responsibility to provide independent and impartial advice very seriously.*
54. *In respect of the alleged potential conflict of interest relating to one of the pension advisers (Pension Adviser A), the pension adviser was an independent contractor, is a person of integrity and professionalism and the commission arrangement for the pension adviser had been in place before the Partnership first became involved in the ETV advice business. Mr Watters had ample opportunity to observe and review the pension adviser's performance and character and was confident that they were acting appropriately at all times. In all the circumstances, the alleged conflicts of interests were not realistic conflicts and they were adequately managed through correspondence/interaction with members, and through performance appraisals and reviews.*
55. *Regardless of whether it was standard practice for pension providers to pay commission to independent advisers for members transferring out of a DB scheme, it was a requirement under the rules for details of such commission to be disclosed prior to the client acting on the advice (COB 5.7.3R, COBS 6.1.9R and 6.1.11R). The ETV advice process did not comply with this requirement. Further, even if all relevant pension providers were offering similar commission rates, the late or non-disclosure of those rates meant that members did not know of the Firms' incentive to encourage them to transfer until it was too late.*
56. *Even if it was the case that no member was advised to transfer because of any financial gain to the Partnership or LAB, the proper way to deal with the conflict was to disclose it, and Mr Watters failed to take reasonable steps to ensure that the Firms did so.*
57. *Similarly, it was not sufficient for Mr Watters to assume that Pension Adviser A would not be incentivised to recommend that customers transfer because they were a person of integrity. Mr Watters should have taken reasonable steps to ensure that the conflict was disclosed and that an independent check on the ETV advice process and advice being given was properly carried out.*

MiFID and COBS

58. *The Partnership was fully aware of the impending implementation of MiFID and took appropriate steps to ensure compliance with the new regime. This is evident from the Partnership's "FSA Compliance Officers Annual Review", the purpose of which was to ensure the firm satisfied the Authority's rules and requirements for the period from 1 August 2007 to 31 July 2008. The review expressly identified COBS, treating customers fairly and MiFID as the relevant regulatory changes and verified that the Partnership was in compliance with these.*
59. *Further, MiFID is entirely independent of and irrelevant to the ETV advice business for the purposes of this case.*

60. The Authority has seen no evidence of any steps the Partnership took in advance of MiFID being implemented to ensure that it would be compliant with the new COBS rules. The Annual Review referred to was produced in August 2008, about 10 months after COBS came into force, and gives no details of any consideration of the implications of COBS or how the new rules might affect the ETV advice process.
61. Mr Watters' failure to undertake any review of the Partnership's processes and documentation in light of the impending implementation of MiFID is relevant to this case as, had he done so, such a review may have identified at least some of the respects in which the ETV advice process was defective.

Conclusions on alleged breaches

62. *Mr Watters recognises that there are areas in which the ETV advice process could have been improved. He takes these lessons seriously and they will inform how he conducts his business and regulatory compliance going forwards. Nevertheless, he maintains that the ETV advice process was compliant with the regulatory requirements notwithstanding its shortcomings.*
63. *On the whole, the communications with the members were fair, clear and not misleading (in accordance with COBS 4.2.1R). Any confusion was of an administrative nature and did not affect members' rights or obligations. The communications identified the risks and possible advantages in simple language, while also providing relevant technical information. Before making a recommendation, the Partnership obtained the necessary information regarding the member's financial situation and investment objectives through the Fact Find and further interactions with the member, so as to be able to make a personal recommendation suitable for the member (in accordance with COBS 9.2.1R and 9.2.2R). The Partnership then compared the benefits likely to be paid under a DB scheme with the benefits afforded by a DC scheme and ensured that the comparison included enough information to enable the member to make an informed decision in the TVAS Advice Report letter and the Suitability Report (in accordance with COBS 19.1.2R). Ultimately, the member was presented with sufficiently clear options in order to make an informed decision and the client obtained the result that they sought.*
64. *In the alternative, any shortcomings in the ETV advice process are insufficient, in all the circumstances, to establish that Mr Watters breached Statement of Principle 6. The mere fact that some matters may have gone wrong whilst he was exercising the CF10 controlled function does not mean that Mr Watters should be found personally culpable. Mr Watters placed appropriate reliance on the knowledge, capability and experience of the pension advisers. He engaged with them regarding the ETV advice business on a scheme by scheme basis as often as was deemed necessary, in both formal and informal meetings. He would expressly seek, and receive, assurances that the procedures were adequate and being adhered to. He also held performance appraisals as a way of keeping himself informed about the pension advisers' work. Mr Watters also conducted a sample check of the ETV advice process approximately twice a year to ensure compliance and to follow up on any issues raised. This was a process-driven review of the advice provided.*
65. *The current compliance and monitoring regime at LAB, which Mr Watters has been actively involved in designing, implementing and reviewing, is of an excellent standard.*
66. The Authority acknowledges Mr Watters' submission that he has learnt lessons from the issues identified with the ETV advice process, but for the reasons set out in this Notice it has concluded that the process was not compliant.

67. The Authority does not agree that the ETV advice process complied with COBS 4.2.1R, 9.2.1R, 9.2.2R and 19.1.2R. A summary of the ways in which the process failed to comply with these rules, and certain other COBS rules, is provided at paragraph 4.17 of this Notice. These failings were significant as they led to a serious risk of unsuitable advice being given to retail customers. This risk crystallised, resulting in a serious risk of unsuitable customer outcomes.
68. The Authority has concluded that Mr Watters failed to comply with Statement of Principle 6, such as to be personally culpable, for the reasons given in paragraph 5.6 of this Notice.
69. The standard of the current compliance and monitoring regime at LAB is not relevant to the Authority's conclusion that Mr Watters failed to perform the CF10 controlled function with due skill, care and diligence during the relevant period.

Financial penalty

70. *Mr Watters is not guilty of misconduct and so no sanction should be imposed on him. However, if the Authority concludes that Mr Watters is guilty of misconduct, there is no public benefit or advancement of the Authority's statutory objectives in taking enforcement action against him.*
71. *Relevant factors which support Mr Watters' position that no sanction should be imposed on him include: over 10 years have elapsed since the events in question; Mr Watters has not acted as a CF10 since 2011 and has no intention of ever doing so again; LAB is no longer involved in the ETV advice business and has no intention of re-entering that market; there have not been any complaints by any members who transferred out of a DB scheme; no actual harm to members has been found; Mr Watters is a senior chartered accountant with almost 40 years' experience, is a man of outstanding integrity and professional standing and has an unblemished regulatory record; Mr Watters and the Firms have cooperated fully with the Authority in relation to the Thematic Review, the Skilled Person's review and the investigation; Mr Watters has acted honestly at all times and it is not alleged that his actions were dishonest or reckless; and any enforcement action would have a devastating impact on Mr Watters' professional reputation and livelihood.*
72. *A financial penalty of £75,000 is excessive and is disproportionate to the seriousness of the allegations. The most severe appropriate sanction would be a private warning and/or a financial penalty in the region of £5,000 to £10,000. A financial penalty of £75,000 will have no additional deterrent effect on Mr Watters because he has no intention of acting as a CF10 again. It will also deter qualified and well-meaning individuals from acting as CF10s for risk of similar sanction.*
73. *In respect of the amount of benefit gained or loss avoided: it is not suggested that any breaches by Mr Watters were motivated by financial gain; Mr Watters did not take any salary or dividends from LAB; and the ETV advice business formed a very small proportion of the Partnership's/LAB's business.*
74. *Comparable cases are not analysed or even identified in the Warning Notice, and in any event would support the imposition of a financial penalty of about £20,000.*
75. The Authority has concluded that Mr Watters has breached Statement of Principle 6 for the reasons set out in paragraph 5.6 of this Notice. As is described at paragraph 6.4 of this Notice, the Authority has concluded, having regard to its penalty policy which applied during the relevant period, that a financial penalty is an appropriate sanction, given the serious nature of the breaches.

76. In deciding to impose a financial penalty on Mr Watters, and the level of that penalty, the Authority has taken into account, insofar as they are relevant, the factors which Mr Watters submits support his position that no sanction should be imposed on him. As is mentioned above, the Authority has concluded that it is appropriate to impose a financial penalty on Mr Watters, given the serious nature of the breaches.
77. The Authority considers that a financial penalty of £75,000 is appropriate and proportionate and reflects the serious nature of Mr Watters' failings. This is not a case where there was a single negligent misjudgement: it is a case of a prolonged failure to have regard to his obligations. The Authority considered all of the circumstances set out in section 6 of this Notice, including the need for deterrence, in deciding that it was appropriate to impose such a penalty. The Authority considers that the penalty ought to deter holders of controlled functions from paying insufficient regard to their duties, and that it is unlikely to deter any diligent person from taking on the CF10 compliance oversight function.
78. It has not been possible for the Authority to quantify the amount by which Mr Watters may have benefitted from his breach of Statement of Principle 6. However, the Authority considers that, as a former partner in the Partnership and the registered shareholder of 100% of the shares in LAB, Mr Watters would have benefitted financially if, and to the extent that, customers transferred from a DB scheme to a DC scheme as a result of receiving non-compliant advice from the Firms, and they would not have transferred had they received compliant advice.
79. Mr Watters was provided with a copy of the Authority's Enforcement Submissions Document, which included an analysis of comparable cases. The Authority has taken into account these cases, but considers that they can be distinguished from the case against Mr Watters and do not preclude the Authority from imposing a higher penalty. The Authority has also had regard to all of the circumstances set out in this Notice in deciding that it is appropriate to impose a financial penalty of £75,000.

Representations received from LAB

80. *The Warning Notice amounts to a de facto public censure of LAB.*
81. *The Authority's Supervisory Team have previously assured LAB that no public statement would be made about either the fact or findings of the Skilled Person's review.*
82. *The findings of the Skilled Person as set out in the Second Interim Report are interim in nature, and are the subject of dispute by LAB. Referring to these interim findings in the Notice unfairly pre-supposes the final outcome of the Skilled Person's review. Should the Notice or a final notice be published by the Authority referring to interim findings before the Skilled Person's review is complete, this will compromise the entire Skilled Person's review in a manner prejudicial to LAB.*
83. *The findings of the Thematic Review as they relate to LAB were never intended to be in the public domain. Further, the reference to the Thematic Review in the Warning Notice does not properly and fairly explain that some or all of the findings as they relate to LAB were replicated across other firms which were party to the Thematic Review, and that other firms are similarly subject to skilled person reviews.*
84. *LAB has not undertaken ETV advice business since April 2009 and LAB's compliance and governance arrangements are different from those in place during the relevant period. Publication of the Notice or a final notice is likely to cause significant reputational and financial damage to LAB's ongoing business.*

85. The Warning Notice does not effectively amount to a public censure of LAB (and nor does this Notice or any final notice). The Warning Notice and this Notice deal with Mr Watters' conduct (as would any final notice). It would not be appropriate to publish a notice in respect of that conduct which omitted details of the firm at which Mr Watters held the CF10 controlled function, which is in any case a matter of public record.
86. The decision to give Mr Watters this Notice has been made by the Regulatory Decisions Committee (a committee of the Authority's Board, which is independent of the Authority's Enforcement and Market Oversight and Supervision Divisions). As is mentioned in paragraph 8.8 of this Notice, the Authority must publish such information about the matter to which a decision notice or final notice relates as it considers appropriate. It is the Enforcement and Market Oversight Division, rather than the Regulatory Decisions Committee, which is responsible for publication decisions in respect of this Notice. The Regulatory Decisions Committee, however, notes that it is disputed by the Authority's Enforcement and Market Oversight Division that any statement made by the Authority's Supervision Division about their practices and ongoing work could reasonably be interpreted as an assurance to LAB that no public statement would be made about the Skilled Person's review in any enforcement action that the Authority decides to take.
87. In paragraphs 16 and 17 above the Authority explains why it considers it is reasonable and appropriate to refer to the findings of the Second Interim Report in the Notice. Whilst the decision on what information to publish in respect of the Notice is for the Enforcement and Market Oversight Decision, not the Regulatory Decisions Committee, the Regulatory Decisions Committee considers it unlikely that publication of this Notice would compromise the Skilled Person's review in a manner prejudicial to LAB.
88. The findings of the Thematic Review are relevant to the Authority's decision that Mr Watters has breached Statement of Principle 6 and the Authority considers it is entitled to refer to them in the Notice.
89. The Authority acknowledges that LAB has not undertaken any ETV advice business since the end of the relevant period. Whilst the decision on what information to publish in respect of the Notice is for the Enforcement and Market Oversight Division, the view of the Regulatory Decisions Committee is that the public interest in publishing the action the Authority is taking outweighs LAB's private interest in having its failings not made public.

Representations received from Pension Adviser B

90. *Pension Adviser B was not involved in the design of the ETV advice process. They were asked by Mr Watters to look at the process following the first ETV exercise which Pension Adviser A had secured and set up the process for. Pension Adviser A took on control of the ETV advice business until they left the Partnership in August 2007. Pension Adviser B then took over the ETV advice business, but had no reason to question the ETV advice process as Pension Adviser A and Mr Watters had been involved in a large number of ETV exercises by that point and Pension Adviser B understood that they had taken third party compliance advice on the ETV advice process.*
91. *At all times the advice Pension Adviser B gave would have been personal to the individuals who indicated they wished to seek advice. It took account of their personal circumstances, their attitude to risk, their objectives, their affordability and their capacity for loss. Pension Adviser B took notes for these clients, was aware of the importance of good record keeping and the requirement to ensure the client*

records were kept accurately and indefinitely, and would have expected their notes to be on the client files.

92. The Authority considers that the evidence supports its view that Pension Adviser B did have some involvement in the design of the ETV advice process, albeit that involvement was more limited than that of Pension Adviser A.
93. The file mentioned in paragraph 4.21 of this Notice is the only file the Authority has seen which contained a note of a conversation with the customer discussing advice that was given and the merits of transferring. The failure of the Partnership and/or LAB to comply with record keeping requirements means that it is not possible to ascertain whether, in a file which does not contain any notes, that is because no conversation took place between the pension adviser and the client or because any notes taken by the pension adviser have not been retained.