FINAL NOTICE

To: **Care Asset Management Limited**

FSA Reference Number: 155097

Address: 6th Floor Orbit House
Albert Street
Eccles
Manchester
Lancashire
M30 0BL

Date: 27 March 2013

ACTION

1. For the reasons given in this notice, the FSA hereby imposes on Care Asset Management Limited a financial penalty of £56,000 pursuant to section 206 of the Act in respect of breaches of Principle 9 (Customers: relationships of trust) of the FSA's Principles and certain applicable Rules set out in COB and COBS.

2. This penalty is for failings by Care in relation to its sales of products provided by Keydata. This notice relates solely to Care's conduct and does not make any criticism of Keydata or any person other than Care.

3. Care agreed to settle at an early stage of the FSA's investigation. Care therefore qualified for a 30% (stage 1) discount under the FSA's executive settlement procedures. Were it not for this discount, the FSA would have imposed a financial penalty of £80,000 on Care.

SUMMARY OF REASONS

4. Care is an independent financial adviser firm based in Manchester. It operates with 12 advisers, most of whom are self-employed. It focuses on providing advice to customers approaching or in retirement including customers in care homes.

5. Care advised a total of 98 customers to invest in Keydata Products during the Relevant Period. The total amount invested by Care's customers was £3.1 million. The Keydata Products involved investments in corporate bonds, which used the funds raised to purchase and hold life insurance policies.

6. Care failed to provide suitable advice in relation to sales of the Keydata Products having: incorrectly rated the risks of the Keydata Products; failed to communicate clearly to customers; and failed to have adequate systems in place to ensure it understood the risks its customers were willing and able to take. As a result of this misconduct, Care failed to comply with Principle 9.

7. The FSA found that Care breached Principle 9 in that it failed to take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who was entitled to rely upon its judgment. In particular Care had classified Keydata Products as "secure" on its risk rating list with a risk rating of 3 out of 8, indicating that the Keydata Products had a "lower risk profile". However, the Keydata Products included many of the characteristics of other products that had been graded as higher risk on Care's risk rating list. As a result, the advice to invest in Keydata Products which Care provided to its customers seeking a "secure", lower risk investment, was unsuitable.

8. Further Care failed to have adequate systems in place to ensure it:

   i. understood the risks its customers were willing and able to take. Care's process for assessing attitude to risk was inadequate as Care used language and terms that its customers would be unlikely to understand, it did not use a structured approach to assess the customer's risk classification and did not adequately record how the risk rating decision was reached;

   ii. provided written documentation to customers which adequately described the nature and wide-ranging risks of the Keydata Products in a clear and balanced way; and

   iii. adequately monitored the sale of Keydata Products. Care's internal review of its Keydata Product sales process did not identify or rectify the failings in its Keydata Product advice process or sufficiently challenge the advice that it had given. This was because Care's senior management played an integral part in both selling and checking Keydata Products sales. They thus lacked the independence required to carry out an objective review of the advice given to customers about Keydata Products.

9. The FSA regards these failings as being particularly serious for the following reasons:

   i. the potential risk to many of these customers was increased by their age. Many of Care's customers who purchased the Keydata Products were in or near retirement and some were resident in care homes, therefore they may have been particularly vulnerable in the event of loss of capital or income, however it was noted that many acted through an appointed attorney;

   ii. the misconduct occurred in respect of a series of Keydata product tranches which were recommended over a three and a half year period; and

   iii. while the focus of the FSA's investigation into Care was its sale of the Keydata Products, the investigation also identified systemic weaknesses across Care's systems and controls.

10. The FSA has also taken into account the following factors which mitigate the seriousness of Care's failings:

    i. Care voluntarily and proactively assisted its customers in obtaining redress from the FSCS as soon as it became aware that Keydata had been placed into administration;

    ii. since the FSA highlighted the above concerns, Care has taken a series of steps in response to improve its sales processes, including appointing an external compliance consultant to review and update its compliance arrangements and review future sales; and

    iii. Care has co-operated fully with the FSA's investigation which has assisted in ensuring the early resolution of the matter.

11. This action supports the FSA's regulatory objectives of maintaining market confidence and the protection of consumers.

DEFINITIONS

12. The definitions below are used in this Final Notice.

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

"Care" or "the Firm" means Care Asset Management Limited

"COB" means the Conduct of Business part of the FSA Handbook

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

"EG" means the FSA's Enforcement Guide

"Enforcement Review" means the review of Care's customer files by the FSA Enforcement team in relation to this Enforcement investigation into Care

"the FOS" means the Financial Ombudsman Service

"the FSA" means the Financial Services Authority

"the FSCS" means the Financial Services Compensation Scheme

"Keydata" means Keydata Investment Services Limited (in administration)

"Keydata Products" means products offered by Keydata that were based on investments in corporate bonds which were issued by special purpose vehicles incorporated in Luxembourg. The funds raised through the issue of the bonds (i.e. the amount invested by retail customers in the products through Keydata) were then invested in a portfolio of US life insurance policies and cash

"Lifemark" means Lifemark SA, the SPV incorporated in Luxembourg which issued bonds backing the Secure Income Bond 4, the Secure Income Plan and the Defined Income Plan

"Principles" means one of the Principles for Businesses set out in PRIN 2.1.1 R (Principles for Businesses) of the FSA Handbook

"SIB" means the Secure Income Bond 1, 2 and 3 (the first Keydata Products offered by Care)

"SLS" means SLS Capital SA, the SPV incorporated in Luxembourg which issued bonds backing the Secure Income Bond 1, 2 and 3

"SPV" means a special purpose vehicle

"the Relevant Period" means the period 30 September 2005 to 17 April 2009 inclusive

"the Tribunal" means the Upper Tribunal (Tax and Chancery Chamber)

"Traded Life Policy Investments" means pooled investments in life assurance policies sold either directly or indirectly through other investments such as funds of funds

FACTS AND MATTERS

13. Care is an independent financial adviser firm based in Manchester. It operates with 12 advisers, most of whom are self-employed. It focuses on providing advice to customers approaching or in retirement including customers in care homes.

Care's Keydata sales

14. During the Relevant Period, Care sold Keydata Products to 98 customers (137 policies were sold in all as some customers purchased more than one Keydata Product). These customers invested a total of £3.1 million in Keydata Products. All of these sales were made on an advised basis.

15. During the Relevant Period, Keydata Products equated to approximately 3% of Care's business. Care received 3% initial commission and 0.5% annual renewal commission in relation to Keydata Products. Care generated a total of £141,855 in commission (£122,923 in gross initial commission and £18,931 in annual renewal commission) from the sale of Keydata Products. Annual renewal commission payments stopped in June 2009.

16. Care's customers have received £1.96 million in compensation from the FSCS in relation to Keydata Products. The FSCS is seeking repayment of this sum plus additional sums from Care to cover the losses suffered by Care's customers. Twenty customers' investments exceeded the FSCS compensation threshold and as a result, £766,000 of Care's customers' investments in Keydata Products cannot be reimbursed by the FSCS.

The Keydata Products

17. Keydata was an FSA-authorised product provider that designed and distributed structured investment products both directly and via an extensive network of independent financial advisers. The Keydata Products offered investors an income or growth investment, by way of ISA, PEP or direct investment. The income option paid a specified percentage income (payable monthly, quarterly or annually) and aimed to ensure the full return of capital to the investor at the end of a five or seven year term. The growth option rolled up and reinvested the income payments to provide compound growth over the life of the product and similarly aimed to provide full return of capital at the end of the term.

18. The Keydata Products were based on investments in corporate bonds. On behalf of investors, Keydata purchased bonds which were issued by SPVs incorporated in Luxembourg. The first Keydata Product offered by Care was the SIB (Issues 1 to 3), for an investment in a bond issued by SLS. Care sold 38 of these Keydata Products. Care sold a further 99 Keydata Products which were investments in bonds issued by Lifemark. The funds raised through the issue of the bonds (i.e. the amount invested by retail customers in the products through Keydata) were then invested by the SPV in a portfolio of US life insurance policies and cash. The Keydata Product marketing materials stated that the investment mix was intended to be 60% policies/ 40% cash for the bonds issued by SLS, and 70% policies/ 30% cash for the bonds issued by Lifemark. SLS and Lifemark each purchased life insurance policies from elderly US citizens, paid the premiums due on those policies, and collected the maturity payment due under the policy when the individual died.

19. From September 2005 until December 2005, Care customers invested £460,000 into the Keydata Products backed by SLS and in the period from March 2006 to April 2009, Care customers invested £2.64 million into the Keydata Products backed by Lifemark.

Risks and Nature of the Keydata Products

20. Product material provided to Care by Keydata revealed the Keydata Products had a number of significant distinctive features including the following:

    i. although the Keydata Products were intended to return capital in full at the end of the investment period, they offered no capital guarantee, and put all capital invested at potential risk;

    ii. the successful performance of the Keydata Products depended on the accuracy of actuarial models used by Keydata. There was a risk that significant technological or pharmaceutical development could impact on the accuracy of the models and when insurance policies were likely to mature;

    iii. the bonds had a fixed term of five or seven years. This meant that Keydata undertook to return funds to investors on the date when the bond matured, even if, at that point in time, it had insufficient funds because the insured individuals were living longer than anticipated;

    iv. the underlying life insurance policy assets were not traded on an exchange in the way that stocks and shares are. The resale market for these assets also created a risk that, if it became necessary to sell an insurance policy to make funds available, this might take longer than anticipated, and might only be possible at a reduced value, reducing the value of the portfolio;

    v. the Keydata Products involved investment in a single specialist asset class (US senior life insurance policies) through a single issuer (at first SLS, then Lifemark). Although a percentage of the investment was to be held in cash, this was not held as a separate investment, but was intended to be used to pay the insurance premiums, income payments and operational costs associated with the investment; and

    vi. the Keydata Products had a significant international dimension: the underlying assets were US life insurance policies, and the issuers of the bonds were based in Luxembourg. As the bond issuer was offshore, customers would not have recourse to the FSCS statutory compensation scheme in the event of default of the bond issuer.

Care's assessment of the risks of Keydata Products

21. Care had a panel of products with different risks attached to them. Care's advisers could only recommend products from the panel. Products were included in the panel by directors' recommendation and after research and due diligence had been carried out on them. Care's due diligence on the Keydata Products included reviewing

Keydata publications as well as independent publications that covered the Keydata Products. Care also researched the topic of 'Life Settlement Securitisation' including reviewing independent reports, which set out best practices required for managing a sound life settlement fund, the key parties that must be in place, the inherent risks and the necessary criteria to be applied when purchasing life insurance policies for the fund. Care also asked Keydata to confirm that these best practices were being adhered to and to provide details of the relevant key parties. Keydata provided Care with details of the parties involved in the investments and a copy of the 'Policy Purchasing Parameters'.

22. Care rated the Keydata Products as "secure" on its risk rating list. On Care's rating system, "secure" was ranked the third lowest risk rating out of eight on Care's risk rating list (appearing in the list just above "protected" and "negligible" (when ranked highest to lowest) and below "secure plus", "cautious", "balanced", "international growth" and "UK speculative").

23. Care described the "secure" rating to customers as follows: *"Portfolios under this profile are essentially UK fixed interest securities. Types of investment which fall under this category would include gilts, fixed interest stock and corporate bonds. The standard deviation value over a 3 year period would typically be between 0.5 and 1.4 depending on the specific assets held"*.

24. In its direct marketing literature, Care said of the Keydata Products: *"Overall, we feel that the [relevant Keydata Product] offers the combination of a lower risk profile with a higher level of income and as such is suitable for investors with a SECURE risk profile who are seeking a regular fixed income or capital growth"*.

25. On Care's risk rating list the Keydata Products were considered less risky than all equities, international fixed interest securities and international corporate bonds and therefore potentially suitable for customers with a lower risk appetite. In coming to this conclusion, Care appears to have relied on Keydata's opinion in the Keydata Product literature that the Keydata Products were lower risk than many traditional stock market linked income investments.

26. However, Care's duty to advise on the suitability of investment products (including the risk rating of products) for its customers could not be discharged by reliance on Keydata's opinion of the riskiness of its products. Care was obliged to form its own view of the suitability of the Keydata Product for each particular consumer, based on information that Care had, or ought reasonably to have obtained, regarding the Keydata Products and their suitability for each customer's circumstances.

27. In deciding that the Keydata Products were "secure" Care did not take into account the following characteristics of the Keydata Products, which would suggest that a higher risk rating was appropriate, being characteristics of products that Care rated as higher risk, for example:

i. the Keydata Products had an offshore dimension which was noted as a feature of the higher risk “international growth” risk category and as such also came with an exchange rate risk, which UK fixed interest securities would not have;

ii. the underlying assets of the Keydata Products carried a liquidity risk – the Traded Life Policy Investments were not traded on an exchange and therefore may take longer than anticipated for resale and that resale might only be possible at a reduced value, thus reducing the value of the portfolio. This would be unlikely to be the case with other assets in the “secure” class, such as gilts and corporate bonds;

iii. the Keydata Products involved investment in a single specialist asset class, through a single issuer; and

iv. the complexity of the Keydata Products compared to other assets in the “secure” class.

28. These factors should have indicated to Care that the Keydata Products were in fact complex and higher-risk and therefore not likely to be suitable for investors who were looking for “secure”, lower risk profile investments.

29. Care’s conclusions from carrying out its due diligence on the Keydata Products did not demonstrate that Care fully understood and had taken its own view on the nature and risks of the Keydata Products when classifying them as having an inappropriate, lower risk rating.

30. The Enforcement Review looked at 16 of Care’s customer files where advice was given to invest in Keydata Products. All of those files had deficiencies in relation to the suitability of advice due to the inaccurate assessment of risk of the Keydata Products. For example, in ten of the 16 customer files looked at during the Enforcement Review, Care had transacted either none or only one previous piece of business with the customer ahead of making the Keydata Product recommendation. Many of the Care customers who purchased the Keydata Products had limited experience of such complex structured investment products and their inherent risks. The Keydata Products would not have been easily understood by these inexperienced retail investors. Also, due to their age and circumstances, the customers were less able to cope with any capital or income losses in the event that they occurred.

Care’s sales process for Keydata Products

31. Care’s sales of the Keydata Products were generated through regular interaction with its customers and from a direct marketing campaign. On receipt of a direct marketing letter, if a customer wished to invest in the Keydata Product, the customer would have to contact Care for more information. The direct marketing campaign carried out by Care in relation to the Keydata Products was the first time that Care had advertised and sold products using this method.

32. In at least four of the 16 customer files looked at during the Enforcement Review the customer had received the direct marketing letter from Care alerting them to the Keydata Products. The one page direct marketing letter's heading was, *"7.5% Annual Income With NO Stock Market Exposure"* and stated that the product was a five year investment where early access to the capital was possible but would be subject to charges and that the capital value of the investment may be reduced. The direct marketing letter also stated that capital would be returned in full on maturity provided the insurance companies issuing the underlying contracts, or the bond issuer, did not default or go into liquidation. The direct marketing letter further stated that there had never been a default by the selected insurers and that the insurance companies selected all had high credit ratings. The direct marketing letter concluded by stating: *"Overall, we feel that the [relevant Keydata Product] offers the combination of a lower risk profile with a higher level of income and as such is suitable for investors with a SECURE risk profile who are seeking a regular fixed income or capital growth"*. It also stated that demand was expected to be high, so customers were advised to contact Care at their earliest convenience.

33. The first step in Care's advice process was for the adviser to organise for the customer to complete a 'fact find'. Mostly this was done face to face but some of Care's customers who received the 'fact find' completed it themselves and returned it to Care. The 'fact find' document had to be completed before a recommendation was made.

34. The majority of Care's customers received an investment report or 'Care Report'. It set out the customer's financial situation, described the customer's aims and objectives and provided generic descriptions of various types of investments such as ISAs, Investment Bonds, Unit Trusts, Investment Trusts and OEICs. It also described care home funding that was available (such as funding available from the state). This 'Care Report' was a generic document made up primarily of standard paragraphs; it also included a description of Care's attitude to risk process and its eight risk ratings. These risk ratings did not materially change throughout the Relevant Period. None of the 'Care Reports' made any reference to Keydata Products or Traded Life Policy Investments, despite the fact that in five of the 16 customer files looked at during the Enforcement Review, the customer received the 'Care Report' at the same time as purchasing the Keydata Products.

35. The adviser would then talk to the customer ahead of a recommendation letter being produced. These discussions finalised the decision on the customer's attitude to risk and the advisers would make recommendations to the customer. Mainly these discussions were face to face, but sometimes they were held over the telephone. In nine of the customer files looked at during the Enforcement Review, the elderly customers were accompanied by a family member or the person who had been granted power of attorney for them. Six of those 16 customer files contained a record of the adviser's discussion with the customer, but in only one of those six files did the record of the discussions include information about the specific risks of the Keydata Products.

Care's written correspondence with its customers confirming its recommendation

36. Care sent a letter to its customers which included its recommendation for the customer to invest in Keydata Products. That letter was the main vehicle in the sales process to document Care's view of the risks of the Keydata Products. The letter was a three to five page, centrally approved document, which included numerous standard paragraphs. The letter followed the same structure throughout the Relevant Period. All the letters in the Enforcement Review included the sentence: *"We have provided you with Key Features document [sic] and particulars relating to the Keydata [particular product such as Secure Income Bond]"* and referred to the attached Keydata Product literature. The letter did not direct customers to any particular parts of the Keydata Products' brochure or state that the customer needed to read it.

37. Each letter contained two paragraphs about investment risks.

    i. The first paragraph was predominantly the same throughout the Relevant Period: *"As with all investments, past performance is not necessarily a guide to the future and your investment can fall as well as rise. It should also be noted that should you realize your investment prior to the [Bond] maturity date, the cash value is not guaranteed and you could get back less than the amount you originally invested. Your investment will also be subject to charges for early exits of £150 + VAT…"*. The first sentence was not specific to the Keydata Products and was a high-level generic investment risk warning. The second and third sentences highlighted the risk connected to early encashment but gave no explanation of the reason why the capital was not guaranteed or the extent of the possible loss of the capital.

    ii. There were two versions of the second paragraph that attempted to cover the other specific risks of the Keydata Products. The first version was used up to April 2008 and the second version was used thereafter. However the key statement outlining the risks of the investments remained the same in both versions as follows: *"However, it should be noted that capital return is not guaranteed and is at risk if the insurance companies issuing the underlying contracts default on their obligations, if the issuer of the bond goes into liquidation or if factors change which affect the rate at which the underlying insurance contracts mature"*.

38. This second paragraph did not adequately describe the relevant risks of the Keydata Products that Care should have identified had it fully understood and taken its own view on the nature and wide-ranging risks of the Keydata Products. For example, this second paragraph:

    i. made no mention of the illiquid nature of the underlying insurance policies (which meant that it might take longer than anticipated for resale and that resale might only be possible at a reduced value, reducing the value of the portfolio);

ii. made no mention of the risks associated with the Keydata Products having an international dimension;

iii. inadequately described the risk that the actuarial models used may not be accurate or the risk that the funds could not be returned to investors at the date of the bond maturity if the insured individuals were living longer than anticipated (stating only that there is a risk that *"factors change which affect the rate at which the underlying insurance contracts mature"*); and

iv. inadequately described the risk of the issuer going into liquidation as it failed to highlight the implications of the issuer being offshore, namely that customers would not have recourse to the FSCS statutory compensation scheme in the event of that type of default.

39. No other risk warnings were included in these letters. All of these letters sent to its customers by Care however highlighted Keydata's success and the awards Keydata had won, as well as the use of other choice positive statements about the underlying/associated companies involved with the Keydata Products that created the impression that there was little chance of financial failure of the underlying/associated entities involved with the Keydata Products.

40. There was no evidence in the customer files looked at during the Enforcement Review that any further advice or explanation of the risks of the Keydata Products was provided to the customer. The relevant Keydata Products were then purchased by the customer.

41. In all of the 16 customer files reviewed during the Enforcement Review, there was an inadequate and unbalanced description of the nature and risks of the Keydata Products recommended. Care's recommendation letters did not give a sufficient explanation of the risks of the Keydata Products such that customers could take investment decisions on an informed basis. The high-level 'summary approach' to risk disclosure that the letters used, together with the positive statements contained in the letters about Keydata itself, meant that the letters did not provide customers with a sufficiently clear and balanced explanation of the risks and features of the Keydata Products.

Care's assessment of customers' attitude to risk

42. Care's advisers discussed and recorded the customer's attitude to risk on the 'fact find' document. The customer's portfolios could be allocated between the eight categories of risk as "some, all, none or most".

43. The descriptions of Care's eight risk ratings as set out in the Care Reports were complex and used technical language such as the phrase "standard deviation". The risk rating also assumed the customer understood the nature of different securities and assets (e.g. gilts, fixed interest stock, corporate bonds, equities etc.). The FSA considers that the wording of, and definitions used in, Care's risk ratings were not sufficiently clear to enable customers to understand them.

44. None of the customer files looked at during the Enforcement Review recorded whether structured questions were used to determine the attitude to risk assigned to the customer, nor did they include any adequate description of the information the adviser provided to the customer in taking the decision as to the customer's attitude to risk. In 14 of those 16 customer files, the attitude to risk assigned to the customer was stated to be "secure" on Care's risk rating grading list.

45. The technical language used in Care's attitude to risk classifications and the lack of adequate explanation of the risk classification to these customers, leads the FSA to conclude that Care's assessment of customers' attitude to risk was not adequate to ensure that it fully understood the risks that the customer was willing and able to take to enable it to advise on a suitable investment.

Care's monitoring and overview of its Keydata Products' sales process

46. Care's management team performed 100% file checks on Care's investment advice; however, this did not prevent Care's customers from receiving insufficient explanation of the nature and risks of the Keydata Products as detailed above. All of the files were reviewed by Care's management and were approved for suitability of advice.

47. Rather than adequately challenging the sales and advice process, Care's monitoring of its sales of the Keydata Products reinforced the formulaic and highly standardised approach that Care took to the sale of the Keydata Products. Care's senior management were an integral part of both selling the Keydata Products and carrying out the file checks and as such, they lacked the independence required to form an objective view of the sales and advice process.

FAILINGS

48. The regulatory provisions relevant to this Final Notice are referred to in the Annex.

49. As a result of the facts and matters stated at paragraphs 21 to 47 above, the FSA considers Care breached Principle 9 as it recommended Keydata Products to customers who wanted lower risk or "secure" investments. Care had incorrectly classified Keydata Products as "secure" on its risk rating grading list when the Keydata Products included many of the characteristics of other products that had been graded as higher risk on Care's risk rating grading list. As a result the advice Care provided to its customers was unsuitable.

50. Further, Care failed to have adequate systems in place to ensure it:

    i. understood the risks its customers were willing and able to take. Care's process for assessing attitude to risk was inadequate as it used language and terms that its customers would not understand, it did not use a structured approach to assess the customers' risk classification and did not adequately record how it had reached the risk rating decision;

ii. provided letters to customers which adequately described the nature and wide-ranging risks of the Keydata Products in a clear and balanced way; and

iii. adequately monitored the sale of Keydata Products. Care's internal monitoring and file check reviews of Keydata Product sales did not identify or rectify the failings in its advice process, or sufficiently challenge the advice being given. This was because Care's senior management played an integral part in both selling and checking Keydata Products sales, thus they lacked the independence required to form an objective view of the sales and advice process.

51. In addition, by failing to communicate the Keydata Product information clearly to its customers, and in failing to correctly assess the suitability of the Keydata Products for its customers, for the reasons set out in paragraphs 21 to 47 above, Care also breached COB 5.2.5R and 5.3.5R and COBS 2.2.1R, 4.5.2R, 9.2.1R, 9.2.2R, 9.2.3R and 14.3.2R during the periods referred to in the Annex.

SANCTION

52. The FSA's policy on whether to issue a financial penalty is set out in Chapter 6 of DEPP, which forms part of the FSA's Handbook. As Care's misconduct occurred before the change in the regulatory provisions governing the determination of financial penalties on 6 March 2010, the FSA has applied the penalty regime as set out in DEPP that was in force up to and including 5 March 2010. Consequently, all references to DEPP in this section are references to the version that was in force up to and including 5 March 2010.

53. In determining the appropriate level of financial penalty the FSA has also had regard to Chapter 13 of ENF for the part of the Relevant Period up until 27 August 2007 (the last date ENF was in force) and Chapter 7 of EG thereafter. The FSA's approach to taking disciplinary action is set out in Chapter 2 of EG.

54. In determining whether a financial penalty is appropriate, the FSA is required to consider all the relevant circumstances of the case. DEPP 6.5.2G sets out a non-exhaustive list of factors which may be relevant in this respect. The FSA considers that the following factors listed below are particularly relevant in this case.

Deterrence: DEPP 6.5.2G (1)

55. The principal purpose of a financial penalty 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 others from committing similar breaches and demonstrating generally the benefits of compliant business.

The nature, seriousness and impact of the breach in question: DEPP 6.5.2G (2)

56. In determining the appropriate sanction, the FSA has had regard to the seriousness of the breaches by Care, including the duration and frequency of the breaches and whether the breaches revealed serious failings in Care's systems and controls, as well as the

loss or risk of loss caused to customers. For the reasons set out above, the FSA considers Care's breaches to be serious as: Care's customers were elderly and therefore were particularly vulnerable in the event of loss of capital or income; the misconduct spanned a period of over three and a half years; and the misconduct revealed systemic weaknesses across Care's systems and controls.

The extent to which the breach was deliberate or reckless: DEPP 6.5.2G (3)

57. The FSA has not determined that Care deliberately or recklessly contravened regulatory requirements.

The size, financial resources and other circumstances of the person on whom the penalty is to be imposed: DEPP 6.5.2G (5)

58. The FSA has considered the financial position of Care. Based on the evidence made available to the FSA, it considers that Care is able to pay the penalty. Care's directors have advised the FSA that they will pay the financial penalty personally; therefore the assets of Care will not be reduced as a result of the financial penalty imposed on Care by the FSA.

The Firm's conduct following the breach: DEPP: 6.5.2G (8)

59. Care is currently appealing against several FOS adjudicator findings relating to claims made against Care by its customers regarding Care's sales of Keydata Products. Following its referral to Enforcement, Care co-operated fully with the Enforcement investigation. Care agreed the facts quickly, ensuring an efficient resolution of the matter.

Disciplinary record and compliance history: DEPP 6.5.2G (9)

60. Care has not been the subject of any previous disciplinary action.

Other action taken by the FSA: DEPP 6.5.2G (10)

61. In determining the level of financial penalty, the FSA has taken into account penalties imposed on other authorised firms for similar behaviour.

62. Having considered all the circumstances set out above, the FSA considers that £80,000 (before any discount for early settlement) is the appropriate financial penalty to impose on Care.

PROCEDURAL MATTERS

Decision maker

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

64. This Final Notice is given under, and in accordance with, section 390 of the Act.

Manner of and time for Payment

65. The financial penalty is to be paid to the FSA in twelve instalments with the total amount of £56,000 to be paid within three years of the date of the Final Notice. The first instalment of £4,674 must be paid by Care within three months of the date of the Final Notice and eleven further instalments of £4,666 are to be paid at three monthly intervals.

Manner of and time for Payment

66. If any instalment is outstanding on the date due for that instalment, the FSA may recover the outstanding amount as a debt owed by Care and due to the FSA.

Publicity

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

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

FSA contacts

69. For more information concerning this matter generally, contact Kate Tuckley at the FSA (direct line: 020 7066 7086/fax: 020 7066 7087).

………………………………

Bill Sillett

Head of Department

FSA Enforcement and Financial Crime Division

Annex

RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND FSA GUIDANCE

1. Relevant statutory provisions

1.1. The FSA's statutory objectives are set out in section 2(2) of the Act. In relation to this case, the most relevant statutory objectives are maintaining market confidence and the protection of consumers.

1.2. Section 206(1) of the Act provides:

"If the Authority considers that an authorised person has contravened a requirement imposed on him by or under this Act,… it may impose on him a penalty, in respect of the contravention, of such amount as it considers appropriate".

Care is an authorised person for the purposes of section 206(1) of the Act. The requirements imposed on authorised persons include those set out in the FSA's Principles and Rules made under section 138 of the Act.

2. Relevant Handbook provisions

2.1. In exercising its power to issue a financial penalty, the FSA must have regard to the relevant provisions in the FSA Handbook.

2.2. In deciding on the above action, the FSA has also regard to guidance published in the FSA Handbook and set out in the Regulatory Guides, in particular the Decision Procedure and Penalties Manual ("DEPP").

Principles for Businesses

2.3. The Principles are a general statement of the fundamental obligations of firms under the regulatory system and are set out in the FSA Handbook. They derive their authority from the FSA's rulemaking powers as set out in the Act and reflect the FSA's regulatory objectives. The relevant Principle is as follows:

Principle 9 provides:

"A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment".

Conduct of Business Rules

3. The FSA has issued Rules under section 138 of the Act relating to the conduct of investment business, including relating to advising customers to purchase investment products. These are set out in the part of the FSA Handbook called Conduct of

Business ("COB") for products sold before 1 November 2007 and the Conduct of Business Sourcebook ("COBS") for products sold from 1 November 2007.

3.1. COB applied to firms up to and including 31 October 2007. The following Rules in COB are relevant regarding 'know your customer' and suitability:

COB 5.2.5R

Before a firm gives a personal recommendation concerning a designated investment to a private customer, or acts as an investment manager for a private customer, it must take reasonable steps to ensure that it is in possession of sufficient personal and financial information about that customer relevant to the services that the firm has agreed to provide.

COB 5.3.5R

(1) A firm must take reasonable steps to ensure that, if in the course of designated investment business:

> (a) it makes any personal recommendation to a private customer to:
>
> > (i) buy, sell, subscribe for or underwrite a designated investment (or to exercise any right conferred by such an investment to do so);
> >
> > …

the advice on investments or transaction is suitable for the client.

…

(3) In making the recommendation or effecting the transaction in (1), the firm must have regard to:

> (a) the facts disclosed by the client; and
>
> (b) other relevant facts about the client of which the firm is, or reasonably should be, aware.

…

3.2. COBS applied to firms with effect from 1 November 2007. The following Rules and Guidance in COBS are relevant regarding communicating with retail clients in relation to designated investments and suitability of advice:

COBS 2.2.1R

(1) A firm must provide appropriate information in a comprehensible form to a client about:

(a) the firm and its services;

(b) designated investments and proposed investment strategies; including appropriate guidance on and warnings of the risks associated with investments in those designated investments or in respect of particular investment strategies;

(c) execution venues; and

(d) costs and associated charges;

so that the client is reasonably able to understand the nature and risks of the service and of the specific type of designated investment that is being offered and, consequently, to take investment decisions on an informed basis.

(2) That information may be provided in a standardised format.

…

COBS 4.5.2R

A firm must ensure that information:

…

(2) is accurate and in particular does not emphasise any potential benefits of relevant business or a relevant investment without also giving a fair and prominent indication of any relevant risks;

(3) is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received; and

(4) does not disguise, diminish or obscure important items, statements or warnings.

COBS 4.5.4G

In deciding whether, and how, to communicate information to a particular target audience, a firm should take into account the nature of the product or business, the risks involved, the client's commitment, the likely information needs of the average recipient, and the role of the information in the sales process.

COBS 4.5.5G

When communicating information, a firm should consider whether omission of any relevant fact will result in information being insufficient, unclear, unfair or misleading.

COBS 9.2.1R

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

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

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

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

COBS 9.2.2R

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

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

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

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

COBS 9.2.3R

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

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

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

…

COBS 14.3.2R

A firm must provide a client with a general description of the nature and risks of designated investments, taking into account, in particular, the client's categorisation as a retail client or a professional client. That description must:

(1) explain the nature of the specific type of designated investment concerned, as well as the risks particular to that specific type of designated investment, in sufficient detail to enable the client to take investment decisions on an informed basis; and

(2) include, where relevant to the specific type of designated investment concerned and the status and level of knowledge of the client, the following elements:

> (a) the risks associated with that type of designated investment including an explanation of leverage and its effects and the risk of losing the entire investment;
>
> (b) the volatility of the price of designated investments and any limitations on the available market for such investments;
>
> (c) the fact that an investor might assume, as a result of transactions in such designated investments, financial commitments and other additional obligations, including contingent liabilities, additional to the cost of acquiring the designated investments; and
>
> (d) any margin requirements or similar obligations, applicable to designated investments of that type.