
FINAL NOTICE

To: Lighthouse Advisory Services Limited

**Firm
Reference
Number: 195199**

Date: 12 May 2023

1. ACTION

- 1.1. For the reasons given in this Final Notice, the Authority hereby issues a public censure in respect of Lighthouse Advisory Services Limited (LAS) pursuant to section 205 of the Act.
- 1.2. LAS agreed to resolve this matter.
- 1.3. The public censure will be issued on 12 May 2023 and will take the form of this Final Notice, which will be published on the Authority's website.

2. SUMMARY OF REASONS

Overview

- 2.1. The Authority has found that LAS breached Principle 9 (Customers: Relationships of Trust) of the Authority's Principles for Businesses (the Principles) between 1 April 2015 and 30 April 2019 (the Relevant Period). The breach relates to advice provided to customers to transfer out of occupational Defined Benefit Pension

Schemes (DBPS), among others the British Steel Pension Scheme (BSPS), into alternative pension arrangements. LAS failed to take reasonable care to ensure the suitability of the advice it provided to its customers in respect of Pension Transfers.

- 2.2. In July 2019, the Authority conducted an assessment of a representative sample of LAS' Defined Benefit (DB) Pension Transfer advice. This involved the assessment of suitability of the advice received by 17 customers who were advised during the period October 2015 to October 2018. Of the 17 files, 5 files (or 29%) were assessed as unsuitable, all of which related to customers who were members of the BSPS.
- 2.3. In December 2020, the Authority required LAS to appoint a Skilled Person to conduct a past business review of DB Pension Transfer advice that it provided to members of the BSPS between 1 April 2015 and 27 January 2020, plus a representative sample of DB Pension Transfer advice provided to non-BSPS members during the same period. This review found that 53% of the DB Pension Transfer advice provided to customers who were BSPS members was unsuitable and that 28% of DB Pension Transfer advice provided to customers who were not members of the BSPS was unsuitable.
- 2.4. The Skilled Person Review identified 108 files relating to BSPS members where LAS provided unsuitable advice. These customer files involved one or more of the following examples of unsuitability that are included in the Authority's Defined Benefit Advice Assessment Tool that the Authority has published in order to help the market understand how it assesses the suitability of DB Pension Transfer advice:
 - (1) In 73 cases, the customer was reliant upon, or would become reliant upon, income from the scheme;
 - (2) In 66 cases, the aim of the transfer was stated as to maximise death benefits, but there was insufficient evidence on file to demonstrate why this was in the customer's best interests;
 - (3) In 82 cases, the aim of the transfer was stated as to access flexible benefits, but there was insufficient evidence on the customer file to demonstrate why this was in the customer's best interests; and
 - (4) In 68 cases, the customer wanted to retire early but was able to meet their objective(s) while remaining in the scheme.

- 2.5. The Authority considers that these examples of unsuitability identified by the Skilled Person are similar to the examples that are present in the customer files assessed as part of the 2019 FCA Review.
- 2.6. LAS' unsuitable DB Pension Transfer advice disproportionately affected BSPS members, who made up a significant proportion of LAS' DB Pension Transfer advice customers during the Relevant Period in comparison with other ceding schemes. Many of these individuals were in a vulnerable position due to the uncertainty surrounding the future of the BSPS.
- 2.7. LAS was acquired by Quilter Financial Planning Limited (Quilter) in June 2019. As such, and although the facts that give rise to the breach occurred before Quilter acquired LAS, from this date Quilter became responsible for the advisers, and therefore the DB Pension Transfer advice provided by LAS.
- 2.8. As at 30 April 2023, Quilter (on behalf of LAS) had paid approximately £23.17 million in redress to customers who received unsuitable DB Pension Transfer advice from LAS and sustained losses as a result of that advice. At this date, a further £0.44 million in redress had been offered to customers but was yet to be, or had not been, accepted by those customers. As a result, neither LAS, nor Quilter on its behalf, has retained the benefit of LAS' breach.
- 2.9. The redress exercise was carried out promptly, on Quilter's own initiative and went above and beyond the Authority's guidance on calculating redress for customers who received unsuitable DB Pension Transfer advice (the FCA Redress Calculation Guidance). This is because redress offered to LAS customers who received unsuitable advice and sustained losses as a result of that advice included an additional allowance that would enable customers to obtain further financial advice for no charge, which was not something that the FCA Redress Calculation Guidance required at the time. The Authority considers the manner in which the redress exercise was conducted to be a good example to firms which discover that harm has been caused to customers.
- 2.10. During the Relevant Period, LAS advised 1,567 customers, 262 of whom were members of the BSPS, on the transfer of their safeguarded pension benefits from a DBPS.
- 2.11. The total value of the DBPS on which LAS gave advice was £655,046,598 with an average transfer value of approximately £325,295 for non-BSPS DB Pension Transfer customers and approximately £482,603 for BSPS members.

- 2.12. The Authority has carried out significant work in response to the harm caused to members of the BPS by authorised firms providing unsuitable DB Pension Transfer advice. The Authority launched a redress scheme for BPS members who suffered financially as a result of unsuitable DB Pension Transfer advice in February 2023. As an equivalent redress scheme (i.e. the Skilled Person Review) has already been completed for BPS members who received DB Pension Transfer advice from LAS, LAS' customers who participated in the Skilled Person Review are excluded from the Authority's scheme.
- 2.13. The Authority has chosen not to impose a financial penalty on LAS due to Quilter's actions in promptly and proactively paying, or offering to pay, redress to all impacted customers and the very high levels of co-operation with the Authority's investigation. This is despite the misconduct occurring prior to Quilter's acquisition of LAS. Since the acquisition, Quilter has also taken action to improve LAS' control environment to ensure that similar misconduct will not occur in future.

LAS' advice relating to DB Pensions

- 2.14. A DB pension, also known as a final salary pension, provides a guaranteed lifetime income that usually increases each year in order to protect against inflation. It may also continue to be paid to the partner of the recipient at a reduced rate when the recipient dies. A DB pension is particularly valuable because an employer sponsor carries the financial burden associated with offering a secure, guaranteed retirement income for life to members.
- 2.15. This is in contrast to a Defined Contribution (DC) pension scheme whereby employer and employee capital contributions are invested, so that a fund is built up which may be accessed after the age of 55. However, the investment and mortality risk are borne by the member. DC pension schemes may be either occupational (work) or personal schemes.
- 2.16. The starting point for Pension Transfer advice is the presumption of unsuitability in respect of a transfer of funds out of a DBPS. This is based on the guidance set out in COBS 19.1.6G that a firm should only consider a Pension Transfer, conversion or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the customer's best interests. For the majority of customers, it is likely to be in their best interests to remain in their DBPS because of the valuable guarantees and protections it offers in respect of retirement income.

- 2.17. The 2019 FCA Review identified that, in 29% of the customer files reviewed by the Authority (which all related to BSPS members), LAS placed undue weight on the benefits of transferring out of their DB Pension as a means of achieving customers' objectives, such that the advice to transfer out of their DBPS was not in their best interests. For BPS members this manifested in understating the potential value of the PPF/replacement BPS scheme in favour of a transfer. The Authority has found that some of the unsuitable customer files identified through the 2019 FCA Review involved customers who were advised to transfer out of their DBPS and who would, in fact, have been able to meet their objectives by remaining in their DBPS and there was insufficient information on each file to demonstrate why LAS had considered the transfer out to have been in the customer's best interest.
- 2.18. The Authority also identified that in 60% of the unsuitable customer files reviewed as part of the 2019 FCA Review, their DB pension fund was the customer's most valuable asset, and many had limited additional resource or other pension provision. These customers therefore were reliant on the guaranteed benefits of their DB pension fund and a transfer out of their DBPS created a greater vulnerability for these customers. In particular, the transfer exposed the customer to the risk that they would not be able to meet their income needs throughout retirement since their income would become dependent on the performance of the recommended investment.

Regulatory Failings

- 2.19. Based on the unsuitable DB Pension Transfer advice identified through the 2019 FCA Review and the Skilled Person Review, the Authority has found that during the Relevant Period LAS failed to take reasonable care to ensure the suitability of its DB Pension Transfer advice. In particular LAS failed to:
- (1) Properly assess and demonstrate that the transfer was in the customer's best interests as they would have been able to meet their objectives without transferring out of the DBPS;
 - (2) Properly assess, on the basis of the information obtained, or give due consideration to, whether the customer could financially bear the risks involved in a DB Pension Transfer. In particular, LAS failed to identify where customers would be reliant on the income from their DBPS in retirement; and

(3) Challenge the stated preferences of the customer when making recommendations, and appropriately question or test their rationale and motivations.

2.20. The combined effect of these failings created a significant risk of unsuitable advice being given to LAS' customers. This is serious for the following reasons:

(1) DB Pensions are a financial investment for which the customer's advice needs are high in respect of the decision to transfer out of the DBPS. LAS' DB Pension customers therefore needed accurate and adequate information to be able to make an informed decision regarding the financial implications of transferring their pension; and

(2) The decision to transfer out of a DBPS can affect customers, and sometimes their dependants, for the rest of their lives. The decision to transfer out of their DBPS that offered guaranteed benefits could therefore have a significant financial impact on customers who were already potentially financially vulnerable.

3. DEFINITIONS

3.1. The definitions below are used in this Notice:

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

"the Authority" means the Financial Conduct Authority;

"Appointed Representative" means a firm or person who carries on a regulated activity on behalf, and under the responsibility, of a firm authorised by the Authority (the principal). In appointing an Appointed Representative, the principal assumes responsibility for the regulated activities that the Appointed Representative carries out;

"the BSPS" or the "Scheme" means the British Steel Defined Benefit Pension Scheme that was in place at the start of the Relevant Period before moving into the PPF and being succeeded by the BSPS 2 during the Relevant Period;

"BSPS 2" means the Defined Benefit Pension Scheme designed to succeed the BSPS, created after the RAA was put into effect;

"CETV" means cash equivalent transfer value, which is the cash value of benefits which have been accrued to, or in respect of, a member of a pension scheme at

a particular date. The CETV represents the expected costs of providing the member's benefits within the scheme and, in the case of a Defined Benefit Pension Scheme, the CETV is determined using actuarial assumptions;

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

"Compliance Support" means LGP's compliance support team;

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

"Defined Contribution" or "DC Pension" means a pension that pays out a non-guaranteed and unspecified amount depending on the defined contributions made and the performance of investments;

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

"EG" means the Authority's Enforcement Guide;

"the FCA BSPS Redress Scheme" means the redress scheme that the FCA has launched under section 404 of the Act for BSPS members who suffered financially as a result of unsuitable DB Pension Transfer advice;

"the 2017 FCA Review" means the Authority's review of 5 LAS DB Pension Transfer customer files relating to BSPS members in late 2017;

"the 2019 FCA Review" means the Authority's review of 17 of LAS DB Pension Transfer files in July 2019;

"the Firm" or "LAS" means Lighthouse Advisory Services Limited;

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

"LFA" means Lighthouse Financial Advice Limited;

"LGP" means Lighthouse Group PLC;

“PCLS” means pension commencement lump sum, an amount of money available to a member of a pension scheme which may be paid out as a lump sum when they begin taking pension benefits, and which is not subject to taxation;

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

“Pension Transfer Specialist” or “PTS” has the meaning given in the Handbook and includes an individual appointed by a firm to give advice on or check, amongst other things, the suitability of a pension transfer, and who has passed the required examinations as specified in the Training and Competence Sourcebook, part of the Handbook;

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

“PPF” means the Pension Protection Fund;

“PRIN” means the Authority’s Principles for Businesses;

“Quilter” means Quilter Financial Planning Limited;

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

“the Relevant Period” means 1 April 2015 to 30 April 2019;

“SIPP” means a self-invested pension scheme and has the meaning given in the Handbook;

“the Skilled Person Review” means the independent review conducted of DB Pension Transfer advice given by LAS to members of the BSPS between 1 April

2015 and 27 January 2020, plus a representative sample of DB Pension Transfer advice given to non-BSPS members during the same period;

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

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

“TVAS” stands for ‘transfer value analysis’ and is the comparison that a firm was, until 1 October 2018, required to carry out in accordance with COBS 19.1.2R when a firm gave advice or a personal recommendation about, amongst other things, a Pension Transfer.

4. FACTS AND MATTERS

Background

- 4.1. LAS is a financial advisory firm, authorised since 1 December 2001. During the Relevant Period, Lighthouse Financial Advice Limited (LFA) was the self-employed adviser division and an Appointed Representative of LAS. LAS conducted its DB Pension Transfer work through LFA.
- 4.2. During the Relevant Period, LAS had permission to carry on the regulated activities of, amongst other things, advising on Pension Transfers, advising on investments (excluding Pension Transfers) and arranging (bringing about) deals in investments.
- 4.3. During the Relevant Period, LAS advised 1,567 of its customers, 262 of whom were members of the BSPS, on the transfer of their safeguarded pension benefits from a DBPS into an alternative pension arrangement.
- 4.4. LAS was acquired by Quilter in June 2019. As such, and although the facts that give rise to the breach occurred before Quilter acquired LAS, from this date Quilter became responsible for the advisers, and therefore the DB Pension Transfer advice provided by LAS. Following the acquisition by Quilter, the Authority undertook an assessment of a representative sample of LAS’ DB Pension Transfer advice. This involved the assessment of suitability of the advice received by 17 customers who were advised during the period October 2015 to October 2018. Of the 17 files reviewed for suitability, 5 files (or 29%) in the sample (all of which related to advice given to BSPS members) were assessed as unsuitable.

- 4.5. In early 2020, Quilter informed the Authority that it intended to undertake a voluntary past business review of DB Pension Transfer advice that LAS had provided to BPS members, in order to assess the suitability of that advice. However, in December 2020, the Authority required LAS to appoint a Skilled Person to conduct a past business review of all DB Pension Transfer advice that LAS provided between 1 April 2015 and 27 January 2020 to members of the BPS plus a representative sample of DB Pension Transfer advice provided to non-BPS members during the same period (the Skilled Person Review).
- 4.6. The Skilled Person Review found that, during the Relevant Period, unsuitable advice had been given in 156 out of the 373 cases (41.8%) in which LAS customers had been advised to transfer out of their DBPS. In relation to advice provided to members of the BPS during the Relevant Period, 53% of the advice provided was assessed as unsuitable. In relation to advice provided to customers who were not members of the BPS during the Relevant Period, 28% of the advice provided was assessed as unsuitable.
- 4.7. The proportion of unsuitability across the population of BPS members who received advice from LAS during the Relevant Period that was assessed by the Skilled Person is similar to that of the 2019 FCA Review sample (53% unsuitability in the Skilled Person Review compared to 50% unsuitability in the 2019 FCA Review). The Authority therefore considers that its findings in relation to the unsuitability of advice provided by LAS to BPS members in the 2019 FCA Review are similar to the outcome of the Skilled Person Review.

DB Pension Transfers

- 4.8. Pensions are generally understood to be a traditional and tax-efficient way of saving money for retirement. The value of someone's pension can have a significant impact on their quality of life during retirement and will determine how early they can afford to retire. Pensions are, in most cases, a primary resource for ensuring financial stability in retirement. For some people, they are the only way of funding retirement.
- 4.9. Customers who engage authorised firms to provide them with advice in relation to their pensions place significant trust in those providing the advice. Where a financial adviser or advice business fails to conduct its affairs in a manner that is compliant with the Authority's regulatory requirements, this exposes their customers to a significant risk of harm. This is particularly so in the case of DB Pension Transfer advice where it is critical that customers are provided with

suitable advice on transferring out their valuable benefits, taking a holistic and sufficiently detailed view of their individual circumstances.

- 4.10. Pensions can be structured in a variety of ways. A DBPS however is particularly valuable because an employer sponsor carries the financial burden associated with offering a secure, guaranteed income for life to members, which typically increases each year in line with inflation. This is in contrast to, for example, a DC Pension scheme where employer and employee capital contributions are invested, but the investment and mortality risk are borne by the member. The Authority expects that for the majority of customers it is in their best interests to remain in their DBPS because of the guarantees and protections it offers.
- 4.11. Customers who engage advisers and authorised firms to provide them with advice in relation to their pensions therefore place significant trust in them. It is important that firms and their advisers exercise reasonable care when advising customers regarding their pensions, ensuring that the advice given to a customer is suitable for them, having regard to all of their relevant circumstances. This is even more important when customers have no option but to make a decision regarding their pension, as was the case in relation to BSPS members.
- 4.12. Transferring out of a DBPS involves giving up guaranteed benefits in exchange for a cash equivalent transfer value (CETV) which is typically invested in a DC Pension. If a customer leaves a DBPS, they may have to buy an annuity to obtain a guaranteed level of income. Alternatively, they may rely on income from investments, but investments will have to be managed in such a way as to produce ongoing income; and even then, there is no guarantee as to the amount or duration of that income.
- 4.13. The introduction of pensions freedoms (introduced in April 2015) for DC Pensions made transferring out of a DBPS an attractive option for some people. However, given the nature of the guaranteed benefits provided under a DBPS, advisers' default assumption should be that transferring out and giving up those benefits is unlikely to be suitable for a customer unless they can clearly demonstrate, based on a customer's specific circumstances, that it is in their best interests.

The British Steel Pension Scheme

- 4.14. The BSPS was one of the largest DBPSs in the UK, with approximately 125,000 members and £15 billion in assets as of 30 June 2017. In March 2017, the BSPS was closed to future accruals, which meant that no new members could join it and

existing members could no longer build up their benefits. The BSPS also had an ongoing funding deficit.

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

- 4.20. On 31 March 2022 the Authority launched a consultation paper for a redress scheme under section 404 of the Act for BSPS members who suffered financially as a result of unsuitable DB Pension Transfer advice.
- 4.21. The consultation paper made reference to the finding of the Rookes Review, an independent review of the support given to BSPS members during restructuring and 'Time to Choose', that BSPS members experienced, and were influenced by, a set of unique circumstances. This included the following:
- (1) BSPS members were faced with making decisions critical to their long-term financial security, a very important decision on a complex issue with a tight deadline;
 - (2) They generally had given little consideration to their pension prior to the 'Time To Choose' period commencing and therefore had little knowledge of their options; and
 - (3) The scale of the exercise, and the geographical concentration of members, meant there was difficulty in accessing accurate information and guidance about their options.
- 4.22. As an equivalent redress scheme (i.e. the Skilled Person Review) has already been completed for BSPS members who received DB Pension Transfer advice from LAS, LAS' customers who participated in the Skilled Person Review are excluded from the FCA BPS Redress Scheme.

LAS' Defined Benefit Pension Transfer Business

- 4.23. During the Relevant Period, there was a marked increase in the number of customers whom LAS advised on a DB Pension Transfer. From 30 April to 31 December 2015, LAS advised 115 customers on the transfer of their DB pension, of which 1 was a BPS member. By contrast, in 2017, LAS advised 645 customers on the transfer of their DB pension, of which 178 were BPS members.
- 4.24. During 2017, LAS advised approximately 3 times as many DB Pension Transfer customers as it had between April 2015 and December 2016. A total of 398 customers received DB Pension Transfer advice from LAS between August and December 2017.
- 4.25. During the Relevant Period, LAS advised on DB Pension Transfers totalling £655,046,598.26. Of that figure, £126,441,925 (or 19%) represented the sum

transferred away from the BSPS. The average transfer value was £482,603 for BSPS members.

LAS' involvement in BSPS cases

- 4.26. LAS' involvement in providing DB Pension Transfer advice to BSPS members arose largely through the relationship that its parent company, Lighthouse Group Plc (LGP), had established with the recognised trade union at the British Steel site in Scunthorpe. Through LGP's relationship with the trade union, certain LAS advisers were initially invited to provide seminars and one-to-one surgeries to BSPS members on a range of financial planning topics, including the financial implications of being made redundant and retirement planning.
- 4.27. In 2016, two LAS advisers, Adviser A and Adviser B, were then jointly invited by the British Steel HR department and the recognised trade union to be based partially on-site at the British Steel plant in Scunthorpe to operate as a triage of referring cases to qualified Pension Transfer Specialists (PTSs), after public announcements and press coverage led to a number of members wanting to transfer out of the BSPS.
- 4.28. Two LAS advisers, Adviser A and Adviser B, worked partially on-site at the British Steel plant in Scunthorpe. A third adviser, Adviser C, worked remotely, having been introduced to Adviser A by LAS. Adviser A was not a PTS and as such was not qualified to provide DB Pension Transfer advice, and neither Adviser B nor Adviser C had much, if any, prior experience in advising customers in the complex and high-risk area of DB Pension Transfers.
- 4.29. As uncertainty regarding the future of the BSPS persisted, an increased volume of BSPS members sought DB Pension Transfer advice. Some BSPS members were concerned that if the Scheme entered the Pension Protection Fund (PPF), they would suffer a material reduction in their pension in retirement, and conversations between steel workers at the British Steel plant fuelled fears regarding the future of the BSPS. This resulted in a heightened sense of panic which led to a high number of steelworkers approaching Adviser A and Adviser B (who were partially based on-site at Scunthorpe) to arrange meetings to discuss their pension.
- 4.30. LAS recognised that the provision of DB Pension Transfer advice to BSPS members was complex and high-risk, especially in 2017 when there was ongoing uncertainty regarding the future of the BSPS and only limited information available regarding the successor scheme, BSPS 2. In particular, LAS recognised

that without details of the successor scheme to the BSPS, it was not in a sufficiently informed position to give individual specific advice as it was unable to conduct a full transfer value analysis (TVAS) exercise. Accordingly, between March and June 2017, LAS decided not to allow its advisers to provide any DB Pension Transfer advice to BSPS members pending final confirmation of the benefits associated with BSPS 2.

Adviser A's experience

- 4.31. Adviser A worked partially on-site at the British Steel plant in Scunthorpe, and in many instances was the first point of contact with customers seeking LAS' advice.
- 4.32. Adviser A was not qualified to provide DB Pension Transfer advice. Their role in relation to DB Pension Transfer advice given to BSPS members was to act as an introducing adviser, responsible for conducting the initial fact-finding meeting with the customer to gather information regarding their circumstances, and then referring the case to a qualified PTS (usually Adviser C) to draft the recommendation to the customer. Although Adviser C was responsible for preparing the recommendation, Adviser A would deliver the Suitability Report to the customer and explain Adviser C's recommendation to the customer even if they had not discussed that recommendation in detail with Adviser C.
- 4.33. Adviser A was not PTS qualified yet operated in an environment where a large number of customers were seeking to transfer out of their DBPS and would approach Adviser A in the first instance due to their position on-site in Scunthorpe.

LAS' DB Pension Transfer advice process

- 4.34. During the Relevant Period, LAS' DB Pension Transfer advice process required that once a customer seeking DB Pension Transfer advice had made contact with LAS, an initial fact-finding meeting was set up with an adviser, not necessarily a PTS, to discuss the customer's key objectives and facilitate the information gathering process. In practice, Adviser A and Adviser B were usually responsible for conducting these meetings with BSPS members as they were present at the British Steel site in Scunthorpe. LAS' occupational pension transfer process required the adviser during the initial customer meeting to:
 - (1) provide the customer with the Firm's Client Agreement and cover the key aspects of the Agreement with the customer;

- (2) cover the customer proposition including: the scope of products offered by the Firm; remuneration on an initial, ongoing and ad-hoc basis; the advice offered; ongoing advice and the advice process;
 - (3) explain the Fee Agreement; and
 - (4) conduct a fact-finding exercise to establish the customer's personal information and objectives, financial situation, existing investments, attitude to risk and capacity for loss. The procedures required the adviser to obtain sufficient information including soft facts to understand the needs and circumstances of a customer and to show that the recommendations made, or actions taken were suitable for the customer. Sufficient information was required in the fact find to show the objectives and priorities had been reached.
- 4.35. Following the initial meeting, if the customer decided they wanted to proceed with the DB Pension Transfer, the adviser would refer the information to a qualified PTS. The PTS was then required to contact the customer to verify the fact find, following which they would conduct the TVAS exercise via an independent source and talk the customer through the key points of the Key Facts Document and Fund Information. A customer specific illustration was required to be provided to the customer prior to the completion of any paperwork.
- 4.36. The PTS would then draft the Suitability Report, which was required to, at least:
- (1) specify the customer's demands and needs;
 - (2) explain why the Firm had concluded that the recommended transaction was suitable for the customer having regard to the information provided by the customer; and
 - (3) explain any disadvantages of the transaction for the customer.
- 4.37. The Firm's procedures provided guidance as to the information that the adviser should include in each section of the Suitability Report.
- 4.38. Once the PTS had reached a recommendation and drafted the Suitability Report, they were required to submit all documentation for checking through LAS' document management software. The file and underlying documentation would be placed into the pre-sale file checking queue for review by the next available PTS within Compliance Support.

- 4.39. LAS' customers were typically charged an initial fee of 3% of their transfer value for the implementation of advice provided, capped at £20,000. LAS also offered two tiers of optional ongoing advice service with a standard charge of 0.75% of the fund value per annum. The 0.75% ongoing fee was subsequently reduced after it was decided that it was too high, and the reduction was reflected to customers retrospectively.

Compliance Support's file checking process

- 4.40. LGP operated its Compliance Support function at a Group level. Compliance Support was responsible for checking customer files either on a pre-sale or post-sale basis depending on the area of business. As regards DB Pension Transfer advice, LGP's internal procedures required all cases to be subject to pre-sale checking by qualified PTSs within Compliance Support (i.e. before advisers issued the advice to customers) as it was considered by LAS to be a higher risk area of business. This included an assessment of the suitability of the DB Pension Transfer advice.
- 4.41. Based on its assessment of each DB Pension Transfer customer file, Compliance Support assigned each DB file that they reviewed a grade on a scale from A (if a file showed advice that was very likely to be suitable and could be communicated to the customer) to D (if the reasons for proposed advice were unclear and the advice was considered unlikely to be suitable meaning that the advice could not be communicated to the customer and the file could not be re-submitted to Compliance Support).
- 4.42. The grade assigned to the file determined whether the advice proposed by the PTS could be provided to the customer in its current form, or if any amendments needed to be made to the advice and/or the customer file before that advice could be provided to the customer. Advice could only be communicated to a customer once Compliance Support was satisfied that the advice was suitable, and the file was complete.
- 4.43. LAS took a number of steps to increase the number of customer files that Compliance Support could review, in order to address the increase in DB Pension Transfer business. The PTSs conducting the pre-sale file checking were supported when necessary with additional resource provided by qualified PTSs from an external compliance consultancy. The external compliance consultancy acted as an overspill resource to ensure Compliance Support did not become overburdened and was still able to properly conduct pre-sale file checks.

- 4.44. The Authority notes the steps taken by LAS to increase its capacity to meet the increased volume of customer files that Compliance Support needed to review and that LGP employed qualified PTSs to conduct the pre-sale file checks. However and notwithstanding these steps, the file-checking process did not address the undue weight that LAS placed on the benefits of transferring DB pensions as a means of achieving customer objectives as the Authority and the Skilled Person Review still identified unsuitable DB Pension Transfer advice that was provided to customers after it went through this pre-sale file checking process.

The Authority's Review of LAS' DB Pension Transfer advice in 2017

- 4.45. In December 2017, as part of its supervisory work on DB Pension Transfer advice, the Authority required information from LAS regarding advice given to members of the BSPS, including the new business register detailing customers advised in relation to their BSPS benefits and details of the advice process followed for DB Pension Transfer business. The Authority also required copies of six customer files in order to assess the suitability of advice to transfer out of the BSPS (the 2017 FCA Review).
- 4.46. Of the six files supplied, five related to BSPS members – the sixth was not a BSPS member. The 2017 FCA Review of the five BSPS files found all files to be suitable and the Authority informed the Firm of the outcome of its review via telephone on 22 December 2017. As no suitability issues with the advice were identified, the Authority did not issue a feedback letter to the Firm setting out the outcome of its review, although LAS did refer to the outcome of the 2017 FCA Review in contemporaneous email correspondence with the Authority.
- 4.47. LAS' senior management took comfort from the outcome of the 2017 FCA Review, as well as the outcome of a separate review conducted by an external compliance consultancy, that DB Pension Transfer advice issued by LAS was suitable. However and notwithstanding the comfort derived from the outcome of the 2017 FCA Review, the Authority and the Skilled Person Review still identified unsuitable DB Pension Transfer advice that was provided to customers.

The Authority's Review of LAS' DB Pension Transfer advice in 2019

Background

- 4.48. The Authority monitored the DB Pension Transfer advice market to identify firms that had advised on a significant volume of pension transfers. Following the acquisition by Quilter in June 2019, the Authority undertook an assessment of

LAS' DB Pension Transfer work across the Relevant Period, which included a sample of LAS' DB Pension Transfer files.

- 4.49. The overarching suitability requirement under COBS 9.2.1R(1) is for a firm to take reasonable steps to ensure that a Personal Recommendation is suitable for its customers.
- 4.50. The results of the file review exercise conducted by the Authority identified that unsuitable advice had been provided. Of the 17 files reviewed in the 2019 FCA Review, 5 files (or 29%) were assessed as unsuitable (all of which were BPS member files) and 1 file (6%) as having material information gaps (which was a file of a non-BPS member), meaning that in this particular case LAS had failed to collect sufficient information to be able to provide a Personal Recommendation and as such should not have proceeded to provide one.
- 4.51. The reasons for unsuitability varied across the unsuitable files, however they mainly centred around there being insufficient evidence on file to demonstrate that the transfer was in the customer's best interests, and the customer being able to meet their objectives by remaining in their current DBPS and not transferring. LAS provided DB Pension Transfer advice to these customers in circumstances where they had failed to take reasonable steps to ensure the Personal Recommendation made was suitable (COBS 9.2.1R(1)). In 60% of unsuitable files, LAS failed to give due consideration to whether the customer could financially bear the risks associated with the DB Pension Transfer.
- 4.52. The primary purpose of a pension is to meet the income needs of an individual in retirement. Consequently, by treating maximisation of a customer's death benefits, or seeking flexibility via alternative pension arrangements as a high priority, there is an increased risk that this is at the expense of the primary income purpose. There may therefore be a trade-off that must be resolved in the best interests of the customer given their individual circumstances (COBS 9.2.1R(1) and 9.2.2R(1)(b)). Unless there are special circumstances (e.g., terminal illness), meeting the income needs in retirement should take precedence over other objectives.
- 4.53. The 2019 FCA Review identified 24% of customer files where this tension was resolved in favour of a Pension Transfer, but where LAS did not demonstrate the rationale behind this and gave undue weight to the customer's objectives, for example, greater flexibility. In fact, in 18% of customer files the Suitability Report set out generic disadvantages of the DB Pension Transfer and sometimes even

acknowledged that the customer may run out of funds in retirement yet still justified the DB Pension Transfer on the basis that other objectives would be achieved even though it was not in the customer's best interests. LAS failed in 18% of customer files to challenge customers' stated preferences when making recommendations, or appropriately question customers' rationale for seeking a transfer out of their DBPS. Based on the 2019 FCA Review, it appears that LAS attributed more weight to the benefits of the Pension Transfer – where it helped achieve the customer's objectives – than to its risks. In so doing, LAS failed to satisfy the requirement in COBS 9.2.1R(1) to take reasonable steps to ensure that the Personal Recommendation was suitable for the customer.

- 4.54. In relation to BSPS members, it appears to the Authority that LAS did not adequately consider the alternatives to transferring in relation to the BPS, such as the PPF or BPS 2, even where these options would have achieved the customer's objectives.
- 4.55. Overall, through the 2019 FCA Review the Authority found that in 29% of the sample of cases it reviewed, LAS' approach to advice meant that a transfer out of the DBPS was deemed the best option without an adequate assessment of the customer's circumstances. Further, in 18% of the sample of cases it reviewed the Authority found that LAS failed to justify why customers' other objectives of having greater flexibility or death benefits outweighed the benefit of the guarantees offered by the DBPS such that it was in their best interest to transfer out of it.

Customer A

- 4.56. Customer A was a member of the BPS, aged 55 at the time of seeking advice. Aside from their pension, the customer had no other assets or investments other than £16,000 in cash, a DC Pension of uncertain value and their main residence which had an outstanding mortgage of £32,000.
- 4.57. Although one of Customer A's main objectives was to take their benefits flexibly and have control over their pension, Customer A had limited investment or pension experience. Customer A had limited knowledge and experience to enable them to understand the risks involved in transferring their DB pension and in some instances provided inconsistent answers about their knowledge and experience. The customer's appetite for risk was assessed as "lowest medium".

- 4.58. Customer A would also be reliant on the income from the BSPS in retirement. The Scheme was projected to provide £20,486, set against the customer's income need of £15,600. Given the lack of other assets, the pension under review was the customer's main source of income in retirement and by far the largest asset. The customer's income need was lower than the BSPS had been projected to provide at the desired early retirement age of 60.
- 4.59. The file also noted that Customer A wanted to pay off their mortgage immediately, however there was no evidence why it was in their best interests to do so. The mortgage payments appeared to be affordable, and the analysis suggests that even achieving a mid-rate return on their pension when transferred, the customer would be unlikely to be able to achieve the same level of income from the scheme. The TVAS drawdown shows funds matching the scheme as running out at age 80, and therefore there was a risk that the customer could not financially bear the risks associated with the Pension Transfer.
- 4.60. It was not in Customer A's best interests to access their lump sum or take their pension flexibly given the reliance on the guaranteed income it would provide in retirement. There was no evidence that the customer was able or willing to compromise retirement income to access these options via a DC Pension scheme. Whilst the adviser considered a number of alternatives, there was little scrutiny of the fact that taking benefits flexibly may not be required (for example, the customer could continue to repay their mortgage until the end of the term in 5 years). The advice does not comply with COBS 9.2.1R(1) or 9.2.2R(1), and is not in line with the guidance in COBS 19.1.6G.

Customer B

- 4.61. Customer B was a member of the BSPS, aged 55 at the time of seeking advice with no financial dependants. Customer B had a mortgage of £20,000 and assets comprising circa £5,600 in cash savings and £150 in shares. Customer B's intended retirement age was 59, at which point they required an income of £15,600 per annum in retirement. Given the lack of other assets, Customer B was likely to be entirely reliant on the Scheme in retirement until state pension age. Customer B was projected to receive a state pension of £6,309, and therefore would still be reliant on the Scheme monies thereafter. As such, LAS failed to demonstrate that Customer B was able to bear the risks of the Pension Transfer.
- 4.62. The primary aim of the Pension Transfer was stated so that the customer could retire early, from age 59, however there was insufficient evidence to demonstrate

why this was in the customer's best interests. Customer B was likely to be able to retire early and meet their objectives while remaining in the Scheme. The BSPS was projected to provide £14,216 in retirement, close to the customer's required income need, and would involve taking no investment risk. Customer B could have used the PCLS available to top up the income shortfall until their state pension had commenced, at which point their entire income requirement would be met by guaranteed sources.

- 4.63. Customer B wanted flexibility to draw a higher income in the early years of retirement. Customer B could have taken a reduced income with PCLS which may have been able to achieve this objective. The Scheme was offering £48,000 PCLS and this was also an option under the PPF. LAS failed to adequately consider the option of the PPF and failed to clearly demonstrate why the Pension Transfer was in the customer's best interest. This is not compliant with COBS 9.2.1R(1) or 9.2.2R(1), and is not in line with the guidance in COBS 19.1.6G.
- 4.64. The file also noted that Customer B had an excess income of circa £380 per month, however LAS failed to give consideration to saving these additional monies in either a pension or savings account which could have provided a further source of income or flexibility at retirement, or alternatively could have funded the income shortfall at retirement. There was no evidence that LAS considered these options and, given that the starting point for Pension Transfer advice is that a transfer is unlikely to be suitable, and especially in view of the customer's reliance on these monies, LAS failed to demonstrate that the advice to transfer was in the customer's best interests. This is not compliant with COBS 9.2.1R(1) or COBS 9.2.2R(1), and is not in line with the guidance COBS 19.1.6G.

Customer C

- 4.65. Customer C was a British Steel worker, aged 54 at the time of seeking advice from LAS and with four children. Customer C was a discharged bankrupt (6 years previous at the time of the advice). There was no information on file about the salary, state pension or other pensions of the customer's spouse. The couple had no savings and Customer C's only pension was the BSPS. As such, Customer C would have been reliant on the guaranteed income from the BSPS in retirement. LAS failed to assess or give adequate consideration to the risk that Customer C could not financially bear the risks involved in the Pension Transfer.
- 4.66. Customer C was advised to transfer out of the Scheme notwithstanding the fact that it was their most valuable asset, and they would be reliant on the income in

retirement. The file noted that Customer C's outgoings were low and £1,200 per month was required in retirement. Despite Customer C's current outgoings of £2,200 per month and lack of any other savings, this appeared unrealistic but the file did not evidence whether LAS took steps to challenge the difference between Customer C's retirement income needs and their current outgoings.

- 4.67. The transfer out of the BPS was recommended on the grounds that it would meet the customer's objectives of achieving income flexibility, flexible death benefits, control over investment choice and tax efficient drawdown of income. It appears that LAS placed greater emphasis on the customer's objectives, failing to assess whether the Pension Transfer was in Customer C's best interests and that the objectives could in fact be achieved by staying in the Scheme.
- 4.68. Whilst the adviser stated that Customer C did not want to match the Scheme and take more income in the early years of retirement, the customer did not indicate they valued death benefits and flexibility over the cost of a drop in income. The adviser ran a cashflow taking the desired income and demonstrated the customer would not run out of funds until 112 but this assumed the income required did not increase with inflation and the investment return year on year was over 6.2%. As the drawing from the pension from age 60 was less than that offered from the BPS it is not clear why it was demonstrably better for the customer to transfer and accept additional investment risk. The adviser stated this is because Customer C may not be able to retire at age 60 if the scheme went into the PPF, however this was not an accurate reflection of the PPF benefit. It appears that LAS placed undue weight on the customer's objectives without properly considering the alternatives to transferring.

Skilled Person Review

- 4.69. In early 2020, LAS informed the Authority that it intended to undertake a voluntary past business review of DB Pension Transfer advice that it had provided to BPS members, in order to assess the suitability of that advice.
- 4.70. The Authority decided that LAS should conduct this past business review through a Skilled Person Review. In December 2020, the Authority required LAS to appoint a Skilled Person under section 166(3)(a) of the Act to conduct a past business review of DB Pension Transfer advice provided by LAS during the period 1 April 2015 to 27 January 2020 to:
- (1) members of the BPS advised to transfer; and

(2) a representative sample of non-BSPS members.

4.71. In relation to the BSPS, LAS advised on 203 cases during the Relevant Period which were in-scope of the Skilled Person Review, 108 (53%) of which were found to be unsuitable. In relation to non-BSPS cases, LAS advised on 170 files during the Relevant Period that were in-scope of the Skilled Person Review, 48 (28%) of which were found to be unsuitable.

4.72. The Skilled Person Review identified 108 files relating to BSPS members in which LAS provided unsuitable advice. These customer files involved one or more of the following examples of unsuitability that are included in the Authority's Defined Benefit Advice Assessment Tool that the Authority has published in order to help the market understand how it assesses the suitability of DB Pension Transfer advice:

(1) In 73 cases, the customer was reliant upon, or would become reliant upon income from the scheme;

(2) In 66 cases, the aim of the transfer was stated as to maximise death benefits, but there was insufficient evidence on file to demonstrate why this was in the customer's best interests;

(3) In 82 cases, the aim of the transfer was stated as to access flexible benefits, but there was insufficient evidence on the customer file to demonstrate why this was in the customer's best interests; and

(4) In 68 cases, the customer wanted to retire early but was able to meet their objective(s) while remaining in the scheme.

4.73. The Authority considers that these examples of unsuitability identified by the Skilled Person are similar to the examples that are present in the customer files assessed as part of the 2019 FCA Review.

4.74. As at 30 April 2023, Quilter (on behalf of LAS) had paid approximately £23.17 million in redress to customers who received unsuitable DB Pension Transfer advice from LAS and sustained losses as a result of that advice. At this date, a further £0.44 million in redress had been offered to customers but was yet to be, or had not been, accepted by those customers.

5. FAILINGS

5.1. The regulatory provisions relevant to this Notice are referred to in Annex A.

- 5.2. Based on the facts and matters above, the Authority finds that LAS breached Principle 9 by failing to take reasonable care to ensure the suitability of its advice. In particular, LAS failed to:
- (1) Properly assess and demonstrate that the Pension Transfer was in the customer's best interests as they would have been able to meet their objectives without transferring out of the scheme;
 - (2) Properly assess, on the basis of the information obtained, or give due consideration to, whether the customer could financially bear the risks associated with the Pension Transfer. In particular, LAS failed to identify where customers would be reliant on the income from their Defined Benefit Pension Scheme in retirement; and
 - (3) Challenge the stated preferences of the customer when making recommendations, and appropriately question or test their rationale and motivations.
- 5.3. The Authority considers that as a result, a number of customers received unsuitable DB Pension Transfer advice and then made the decision to proceed with a Pension Transfer when this was not in their best interests.
- 5.4. Having regard to the issues above, the Authority considers that it is appropriate and proportionate in all the circumstances to take disciplinary action against LAS for its breach of Principle 9 during the Relevant Period.

6. SANCTION

- 6.1. The Authority hereby publishes this Notice as a statement of LAS' misconduct pursuant to section 205 of the Act.
- 6.2. The Authority has had regard to the provisions of DEPP 6 regarding penalty. The Authority has also had regard to the provisions of Chapter 7 of the Enforcement Guide.
- 6.3. The principal purpose of imposing a financial penalty or publishing a statement of misconduct is to promote high standards of regulatory conduct by deterring firms who have breached regulatory requirements from committing further contraventions, helping to deter other firms from committing similar contraventions, and demonstrating generally to all firms the benefits of compliant behaviour. In the particular circumstances of this case, the Authority does not

consider it would be appropriate to impose a financial penalty. The Authority considers that its objectives may appropriately be achieved by means of a public censure.

6.4. In reaching this conclusion, the Authority has had regard to the following matters:

- (1) LAS benefitted financially from the provision of unsuitable advice, obtaining revenue that it would not otherwise have received;
- (2) LAS' conduct was serious such that ordinarily a substantial penalty would be justified;
- (3) Quilter (on behalf of LAS) has paid or committed to pay in excess of £23 million to customers found to have received unsuitable DB Pension Transfer advice. In addition, Quilter voluntarily agreed to include in its redress methodology an additional allowance which would enable customers to obtain further advice for no charge, which went above and beyond what Quilter was strictly required by the FCA Redress Calculation Guidance in place at that time;
- (4) The degree of cooperation that Quilter (on behalf of LAS) showed during the Authority's investigation of the breach. In particular:
 - a) Quilter voluntarily offered to provide, and provided, the Authority with a copy of an investigation report produced by external legal counsel, relating directly to matters under investigation by the Authority. Quilter did not attempt to assert privilege over the investigation report or its underlying materials. The investigation report assisted and expedited the Authority's investigation by helping to identify relevant documents.
 - b) Quilter also continued to employ a key employee solely so they could assist with the provision of information to the Authority, much of which was held on legacy systems, as part of its investigation.
 - c) Quilter proactively brought additional information to the Authority's attention to assist the investigation, which enabled the Authority to scope targeted information requirements to obtain that information.
- (5) Since the facts that gave rise to the breach occurred, LAS has become part of a larger group that has invested in LAS' control environment to ensure that similar misconduct will not occur in future.

7. PROCEDURAL MATTERS

7.1. This Notice is given to LAS under section 390 of the Act.

7.2. The following statutory rights are important.

Decision maker

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

Publicity

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

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

Authority contacts

7.6. For more information concerning this matter generally, contact Kingsley Moore at the Authority (direct line: 020 7066 0401 / email: kingsley.moore2@fca.org.uk).

Nicholas Hills

Head of Department

Financial Conduct Authority, Enforcement and Market Oversight Division

ANNEX A

1. RELEVANT STATUTORY AND REGULATORY PROVISIONS

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

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."

2. RELEVANT REGULATORY PROVISIONS

Principles for Businesses

2.1. The Principles are a general statement of the fundamental obligations of firms under the regulatory system and are set out in the Authority's Handbook. They derive their authority from the Authority's rule-making powers set out in the Act. The relevant Principles are as follows.

2.2. During the Relevant Period, Principle 9 stated:

"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 Sourcebook ("COBS")

2.3. The following rules and guidance in COBS (as were in place during the Relevant Period) are relevant to assessing suitability of Pension Transfer advice given to customers. Any material changes to the rules and guidance throughout the Relevant Period are identified in footnotes.

2.4. COBS 2.1.1R stated that a firm must act honestly, fairly and professionally in accordance with the best interests of its client.

2.5. COBS 9.2.1R stated that:

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

2.6. COBS 9.2.2R (1) stated 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, 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:

- (1) meets his investment objectives;
- (2) is such that he is able financially to bear any related investment risks consistent with his investment objectives; and
- (3) 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.

2.7. COBS 9.2.2R (2) stated that 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.

2.8. COBS 9.2.2R(3) stated that the information regarding the financial situation of a client must include, where relevant, information on the source and extent of his

¹ In later versions of COBS this is expressed in COBS 9.2.1R(1)(a).

regular income, assets, including liquid assets, investments and real property, and regular financial commitments.

2.9. COBS 9.2.3R stated that the information regarding a client's knowledge and experience in the investment field includes, to the extent appropriate to the nature of the client, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved, information on:

- (1) the types of service, transaction and designated investment with which the client is familiar;
- (2) the nature, volume, frequency of the client's transactions in designated investments and the period over which they have been carried out;
- (3) the level of education, profession or relevant former profession of the client.

2.10. COBS 9.2.6R stated that if a firm does not obtain the necessary information to assess suitability, it must not make a personal recommendation to the client or take a decision to trade him.

2.11. COBS 9.4.1R stated that a firm must provide a suitability report to a retail client if the firm makes a personal recommendation to the client and the client enters into a pension transfer, pension conversion or pension opt-out.²

2.12. COBS 9.4.7R stated that the suitability report must, at least:

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

2.13. COBS 19.1.1R stated that if an individual who is not a pension transfer specialist gives advice or a personal recommendation about a pension transfer, a pension

² From 4 October 2018 COBS 9.4.2AR required a suitability report to be provided where a personal recommendation was made in relation to a pension transfer or pension opt out.

conversion or pension opt-out on a firm's behalf, the firm must ensure that the recommendation or advice is checked by a pension transfer specialist.

2.14. COBS 19.1.2R , between 8 June 2015 and 31 March 2018, stated that a firm must:

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

2.15. COBS 19.1.3G explained the information that should be contained within a comparison. In particular, the comparison should:

- (1) take into account all of the retail client's relevant circumstances;
- (2) have regard to the benefits and options available under the ceding scheme and the effect of replacing them with the benefits and options under the proposed scheme;
- (3) explain the assumptions on which it is based and the rates of return that would have to be achieved to replicate the benefits being given up;
- (4) be illustrated on rates of return which take into account the likely expected returns of the assets in which the retail client's funds will be invested; and
- (5) where an immediate crystallisation of benefits is sought by the retail client prior to the ceding scheme's normal retirement age, compare the benefits available from crystallisation at normal retirement age under that scheme.

- 2.16. COBS 19.1.6G stated that when advising a client who is, or is eligible to be, a member of a Defined Benefit Pension Scheme or other scheme with safeguarded benefits whether to transfer, convert or opt-out, a firm should start by assuming that a transfer, conversion or opt-out will not be suitable. A firm should only consider a transfer, conversion or opt out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the client's best interests.

DEPP

- 2.17. Chapter 6 of DEPP, which forms part of the Authority's Handbook, sets out the Authority's statement of policy with respect to the imposition and amount of financial penalties under the Act.

The Enforcement Guide

- 2.18. The Enforcement Guide sets out the Authority's approach to exercising its main enforcement powers under the Act.