
FINAL NOTICE

To: **LJ Financial Planning Ltd**

Firm Reference Number: **429142**

Address: **750 Mandarin Court, Warrington, Cheshire, WA1 1GG**

Date: **9 December 2020**

1. ACTION

- 1.1. For the reasons given in this Final Notice, the Authority hereby impose on LJ Financial Planning Ltd ('LJFP') a financial penalty of £107,200 pursuant to section 206 of the Financial Services and Markets Act 2000 ('the Act').
- 1.2. LJFP agreed to resolve this matter and qualified for a 30% (stage 1) discount under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £153,200 on LJFP.

2. SUMMARY OF REASONS

- 2.1. LJFP is an independent financial adviser ("IFA") firm based in Warrington, Cheshire. Between 5 March 2010 and 6 December 2012 ("the Primary Relevant Period"), LJFP recommended that 114 customers transfer their pensions into SIPPs, without providing any advice on the underlying investments which were to be held in those SIPPs. The total amount invested in this way by LJFP's customers was just over £6 million.

- 2.2. In making a personal recommendation to a retail customer to establish a SIPP, LJFP was required to consider whether that recommendation was suitable, not only in the sense that a SIPP was a suitable vehicle for the customer in the light of his personal circumstances, but also that it was suitable in the light of the investments which were proposed to be held within the SIPP. In addition, LJFP was required to assess whether both the SIPP wrapper itself and the underlying investments proposed to be held within the SIPP matched the customer's attitude to risk and capacity for loss as well as his knowledge and experience.
- 2.3. During the Primary Relevant Period, LJFP failed, in breach of Principle 9 and certain rules of the Authority's Conduct of Business Sourcebook ("COBS"), to take reasonable care to ensure the suitability of its advice for its customers who were entitled to rely upon its judgement in relation to the transfer of their existing pensions into SIPPs in that, amongst other things, it:
- a) failed to provide advice to customers on the underlying investments to be held within the SIPPs which were often high-risk, esoteric and illiquid; and
 - b) did not assess adequately the needs and circumstances of its customers such that it failed to ensure that its recommendations matched their knowledge and experience, objectives, appetite for risk and capacity for loss.
- 2.4 Further, between 1 January 2013 and 6 November 2017, ("the Secondary Relevant Period"), LJFP failed, in breach of Principle 8 and certain rules of the Authority's Systems and Controls Sourcebook ("SYSC"), to ensure that it identified and managed potential conflicts of interests fairly between itself and its customers and, where necessary, disclosed those conflicts of interest to its customers.
- 2.5 The Authority regards these failings as serious, in particular, because:
- a) LJFP facilitated the transfer of its customers' occupational and personal pension schemes into high-risk investments which, in many instances, are now worthless;
 - b) LJFP's customers were often approaching or already in retirement and therefore would face greater difficulties in rebuilding their investment portfolios in the event of loss of capital or income; and

c) customers should be able to expect an IFA to manage its potential conflicts of interest fairly and disclose them where necessary. This ensures that the customer's interests have been put before that of the IFA and customers are provided with all relevant information to make an informed investment decision.

2.6 The Authority hereby impose a financial penalty on LJFP of £107,200 pursuant to section 206 of the Act.

3 DEFINITIONS

3.1 The definitions below are used in this Notice:

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

"AIM" means the Alternative Investment Market, the London Stock Exchange's market for small and medium sized companies.

"Amber Financial Investments" means Amber Financial Investments Limited.

"Amber IFA" means Amber IFA Company Limited.

"AR" means Appointed Representative.

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

"COBS" means the Authority's Conduct of Business Sourcebook.

"DEPP" means the section of the Authority's Handbook entitled 'Decision Procedure and Penalties Manual'.

"DFM" means discretionary fund manager.

"FOS" means the Financial Ombudsman Service.

“Handbook” means the Authority’s Handbook of rules and guidance;

“IFA” means independent financial adviser.

“introducer” means one of six unauthorised introducers whose business model involved identifying customers who wanted to transfer their existing occupational or personal pension scheme into a SIPP in order to purchase unregulated, alternative investments which were available from the introducer.

“Introducer 1” means the first introducer as a result of whom LJFP commenced its ‘non-advised’ pension transfer business.

“KPI” means a key performance indicator.

“KYC” means “Know Your Customer” information.

“LJFP” means LJ Financial Planning Ltd.

“MiFID” means the Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments.

“Nucleus” means Nucleus Financial Group.

“Paradigm IFA” means Paradigm IFA Company Limited.

“Prism” means Prism Capital Management Limited.

“the Primary Relevant Period” means 5 March 2010 to 6 December 2012.

“Principles” means the Authority’s Principles for Businesses.

“the Secondary Relevant Period” means 1 January 2013 to 6 November 2017.

“SIPP” means self-invested personal pension.

“Skilled Person” means a person appointed pursuant to section 166 of the Act.

“SYSC” means the Authority’s Systems and Controls Sourcebook.

“Tatton Investment Management” means Tatton Investment Management Limited.

“Tatton Asset Management” means Tatton Asset Management Plc.

“Tatton Capital” means Tatton Capital Limited.

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

4. FACTS AND MATTERS

Background

- 4.1 LJFP is an IFA firm based in Warrington, Cheshire. It was incorporated on 8 November 2004 and was authorised by the Authority on 17 June 2005 with permission to conduct regulated activities, including advising on investments, and advising on pension transfers and pension opt-outs.
- 4.2 Members are able to switch or transfer from their existing pension scheme to another pension provider, at their discretion. They may approach an IFA, such as LJFP, directly to seek advice on the advantages and disadvantages of whether to undertake such a switch or transfer.
- 4.3 During the Primary Relevant Period, LJFP entered into contractual arrangements with a number of unauthorised introducers whose business model involved identifying customers who wanted to transfer out of their existing occupational or personal pension scheme into a SIPP in order to purchase unregulated, alternative investments which were available from the introducer.
- 4.4 A SIPP is an arrangement which forms all or part of a personal pension scheme, which gives the member the power to direct how some or all of the member's contributions are invested. Typically, the member has a wider breadth of choice around the investment options in a SIPP than a normal personal pension scheme.
- 4.5 When the introducers had identified customers who wanted to transfer or switch out of their existing pension into a SIPP so as to acquire an alternative investment, they would pass on the individuals' details to LJFP. Either LJFP or one of the ARs within its network would then provide advice to these new customers, and would

ultimately arrange the switch or transfer. However, rather than advising on the entire proposition, encompassing both the SIPP wrapper and the underlying investments, LJFP limited its advice to sourcing a suitable SIPP alone. LJFP and its ARs began providing such advice and arranging pension switches or transfers for clients into SIPPs on this basis from 5 March 2010. LJFP characterised this new workstream as 'non-advised' pension transfer business, and 'arrangement-only' or 'execution-only' SIPPs.

LJFP's 'non-advised' pension transfer business

- 4.6 In 2008, LJFP entered into a joint venture with an accountancy firm which involved setting up an AR registered to LJFP. In early 2010, the same accountancy firm introduced LJFP to one of its clients, Introducer 1. Introducer 1 was an unauthorised company involved in marketing alternative investments to customers. Its business model involved identifying customers who wanted to transfer out of their existing occupational or personal pension schemes into a SIPP in order to purchase unregulated, alternative investments. As part of this process, Introducer 1 wanted to enter into an arrangement whereby it would introduce customers to LJFP with a view to LJFP or one of its ARs providing advice which would facilitate the switch or transfer from their existing pension arrangement into a SIPP.
- 4.7 During the Primary Relevant Period, LJFP received customer introductions not only from Introducer 1 but also from 5 other introducers. Each of the other introducers had a similar modus operandi to Introducer 1 and a similar relationship with LJFP, whereby LJFP or its AR's role was to provide advice to customers in order to facilitate the transfer or switch out of their existing pension into a SIPP. The advice provided by LJFP was always in relation to the SIPP alone and never encompassed the underlying investments.
- 4.8 In March 2010, LJFP decided to offer this 'non-advised' SIPP service to customers introduced by Introducer 1. Neither LJFP nor any of its ARs had facilitated pension transfers for customers into SIPPs without providing advice on the underlying investments prior to March 2010 and, as such, this was a new workstream. Despite this, LJFP did not carry out any risk assessments on the providers of the underlying investments, nor did it conduct due diligence on any of the introducers themselves.

The process for switching or transferring an existing pension into a SIPP through LJFP

- 4.9 Customers that wanted to transfer their existing pension into a SIPP in order to acquire an alternative investment would provide basic personal and financial information to the introducer, which the introducer would record in a data capture form and then pass on to LJFP or one of its ARs. This basic information purported to enable LJFP to advise the customers in relation to the proposed transaction and, ultimately, to arrange the pension transfer.
- 4.10 Different introducers' data capture forms differed to a certain extent but, in all instances, set out basic information about the customer such as their financial dependants, their employment and salary, their assets and liabilities, their existing pension arrangements, their retirement objectives and, in some instances, a 'budget planner' detailing their routine income and expenditure.
- 4.11 On receipt of an introduction, LJFP or one of its ARs would send an 'introduction letter' to the customer. This would acknowledge receipt of the customer's request to set up a new SIPP account, and might typically enclose:
- 1) a 'letter of authority' for execution by the customer to enable LJFP to contact the customer's existing pension provider for information;
 - 2) a copy of the client agreement; and
 - 3) details of the next steps which would include obtaining transfer information and discharge paperwork from the customer's existing pension arrangement.
- 4.12 Once it had received the executed letter of authority back from the customer, LJFP would be in a position to obtain the required information from the customer's existing pension provider, which would include the pension transfer value, member's discharge form and any additional pension scheme information. LJFP or its AR would then produce a recommendation report which would be provided to the customer. All such recommendation reports purported to exclude LJFP's obligation to advise on both the suitability of the SIPP and the underlying investment with statements such as; *"My recommendation is limited to sourcing a suitable SIPP to meet your requirements", "You do not wish us to provide you with any investment advice and only require us to recommend a suitable pension*

plan for you to achieve your objective” and “You intend to make your own investment selections for your SIPP once it is set up and no advice is required from us in this area.” In fact, the recommendation report would go no further than to detail which SIPP provider LJFP had assessed to be suitable for the customer, purportedly, from its research of *“the whole of the market”* and to advise the customer to *“transfer your existing funds into the SIPP bank account pending future investment by yourself.”* The recommendation report did not consider whether it was *per se* suitable for the customer to transfer their pension into a SIPP in the first place and nor did it consider the suitability of the underlying investment to be held in the SIPP.

4.13 In addition to the recommendation report, LJFP or its ARs would send the customer a Key Features Document which contained generic information on the SIPP product, particularly regarding the aims, commitment entailed, charges, legal and tax status, commission payable and cancellation rights, as well as risks and potential disadvantages. LJFP would also send the documentation required to establish the new SIPP and facilitate the transfer of pension funds into the SIPP account. Depending on the recommendation, the customer would either:

- 1) Act on the adviser’s advice and proceed with the transfer; or
- 2) Act against the adviser’s advice not to transfer and request the pension funds to be transferred on an insistent client basis.

4.15 If the customer agreed for the transfer to proceed, the customer could then apply for (a) the SIPP to be set up and (b) the purchase of the investments with the trustee of the SIPP and the introducer. The underlying investments within the SIPPs included investments in overseas property, including in St Lucia and the Cayman Islands, UK commercial property, traded life insurance policies and teak. Despite the high-risk nature of many of these investments, at no point did LJFP or its ARs advise the customer on the suitability of the transfer as a whole or caution them as to the underlying investments to be held within the SIPP.

4.16 During the Primary Relevant Period, LJFP and its ARs provided advice and facilitated the transfer of 114 pensions into SIPPs. LJFP’s revenue from facilitating transfers of its customers’ pension funds into these high-risk alternative investments was £167,243.04 and the total value of the pensions transferred was £6,036,125.

Compliance and oversight of the 'non-advised' pension transfer business

4.17 Prior to commencing its non-advised pension transfer workstream, LJFP did not conduct adequate compliance checks to assess the risks and regulatory issues of offering its customers access to non-advised SIPPs.

4.18 However, in October 2011 (by which time LJFP had already commenced its non-advised pension transfer business) LJFP contacted its compliance advisers as it wanted advice in relation to the client agreements which were going to be used in relation to certain specific items of new non-advised SIPP business. The compliance adviser's advice to LJFP, both over the telephone and subsequently followed up in writing, was clear and unequivocal, and included the following:

- *"Where the client has approached you to set up a SIPP with the view for them to invest into an alternative investment such as an Unregulated Collective Investment (UCIS), you have a duty of care, to ensure such an investment is suitable to the client. You are required to search the Whole of the Market to find a suitable SIPP based on the client's circumstances, needs and clients risk profile.*
- *"If you deem the investment which the client wishes to invest within as not suitable, you should ensure this is made clear to the client within any suitability reports issued."*
- *"It would not be deemed as acceptable to arrange a SIPP for a client if you felt the investment the client intends to invest within as not being suitable to them e.g. an UCIS or other alternative investment."*
- *"It would not be deemed as acceptable to make a recommendation to transfer into a SIPP without making a recommendation as to where the monies should be invested within."*

4.19 The compliance advisers also set out the process that LJFP should follow if a customer was insistent which included highlighting the risks associated with this course of action and recording clear evidence on the customer file that they were not following the adviser's advice. The compliance advisers further advised that *"Our view is that you should not deal with such a transaction if you do not deem*

this as suitable as you still have some liability when making an arrangement on behalf of a client”.

4.20 A senior employee of LJFP responded to its compliance advisers, stating:

‘...I want to make sure that the clients are totally clear that we are not providing them with any advice as to the appropriateness of the SIPP in the first place, so I doubt we can use the standard CA [client agreement] that mentions ongoing service!

Last week we met a couple of introducers who have already passed one of our advisers a couple of dozen SIPP leads, and they’re hoping to send us loads more. Before we get too deeply involved though I want to make sure that if these clients ever become unhappy with whatever whacky investment they put in their SIPP we can’t be blamed for letting them have the SIPP in the first place.

... We’re not getting involved in the underlying investment advice whatsoever, and frankly we don’t want to know, and we’re making that very clear at every opportunity.

Your input would be greatly appreciated, as we could be doing 10 or more of these every month and I need to safeguard the firm as much as possible in case we get any complaints, or equally in case the FSA (or its successor) decide to have another SIPP review.’

4.21 Following this exchange, LJFP noted its compliance adviser’s reservations about the non-advised SIPP business but asked its compliance consultants to review their client agreements again. The compliance advisers did not review the client agreements and made it clear that they had not been involved in creating the sales process or documentation for the non-advised SIPP business which had occurred to date.

4.22 Approximately three months later, on 29 January 2012, the compliance advisers received a further email from LJFP asking them to review documentation relating to the non-advised SIPP business including a template letter from an introducer to a potential investor along with a brochure and investor synopsis of documents relating to land purchase in the Cayman Islands. Although clearly aware of the nature of the underlying investment, LJFP reiterated in this email that it was not

advising customers on the investment but were only involved in setting up the SIPPs. There is no documentary evidence of a response from the compliance advisers to LJFP's email dated 29 January 2012.

- 4.23 Following on from this correspondence between LJFP and its compliance advisers, LJFP continued to offer advice to customers in order to facilitate the transfer of their pensions into SIPPs, without advising them on the suitability of the SIPP wrapper and the underlying investments as a whole, until December 2012.

The Authority's 'non-advised' pension transfer business customer file review

- 4.24 The Authority conducted a review of 10 of LJFP's non-advised pension transfer business customer files, further to which it made the following findings:

- 1) Recommendation reports were generic and failed to provide customers with recommendations tailored to their circumstances.
- 2) LJFP did not advise customers whether a SIPP was *per se* a suitable product to transfer their pension funds into and only provided advice on the specific SIPP products to be used, further providing no assessment of the underlying investments. As a result, LJFP did not attempt to shed any light on whether the SIPP wrapper and the underlying investment as a whole were suitable for the customer, and were unable to provide a proper comparison of the customers' existing arrangements against the proposed new arrangements. Accordingly, LJFP's customers were not in a position to make an informed investment decision as to whether to transfer their pension funds.
- 3) As LJFP did not take into consideration any charges or fees pertaining to the underlying investments, LJFP was also unable to calculate accurately the full cost of the transfers for the customer. This approach meant that LJFP only took account of the charges associated with the SIPP and disregarded the significant commission fees payable to the introducers in relation to the investments.
- 4) LJFP failed to accurately record the customers' objectives identified in the introducers' data capture forms into LJFP's recommendation reports, and failed to provide any reasons for the differences between the two documents.

In particular, 'better investment performance' was frequently recorded as an objective in the data capture forms, but never in the recommendation reports.

- 5) There were no instances where LJFP had identified their customers' attitude to risk.
- 6) There were no instances where LJFP had identified the customers' investment knowledge and level of experience.
- 7) LJFP did not obtain full financial disclosure from customers or assess their capacity for loss, and the recommendation reports made no reference to the customers' financial positions or the risk they were able to take.
- 8) In the case of pension transfers where customers were seeking to exit Defined Benefit schemes in order to invest in SIPPs, LJFP advised against such transfers but did not provide an adequate discussion of the customers' existing benefits. At the same time, LJFP stated that it was willing to arrange the transfers on an insistent client basis. This meant that LJFP was helping customers to divest themselves of valuable Defined Benefits without providing them with adequate information in relation to the disadvantages of doing so.
- 9) In this way, LJFP's did not perform the necessary checks to ensure that the transfer as a whole, including the SIPP wrapper and underlying investments, was suitable for these customers, creating the significant risk that it was facilitating the transfer of its customers' pension arrangements into unsuitable, high-risk investments.

4.25 In order to illustrate the findings of the Authority's review, set out below are summaries in relation to three customers of LJFP's non-advised pension transfer business.

Customer A

4.26 The customer file for Customer A shows that he:

- a) was 47 years old;
- b) had previously been declared bankrupt;

- c) had, as at the date the form was completed, no assets other than his pension;
- d) was, as at the date the form was completed, receiving housing benefits; and
- e) excluding benefits, had an income of £6,000 per annum.

4.27 In fact, Customer A's only asset of any value was his occupational pension scheme. In the event that this pension scheme was depleted, Customer A would have no means of replenishing it given that his salary was only £6,000 per annum and, as such, this would have a materially detrimental effect on his standard of living in retirement.

4.28 It is apparent from the data capture form that LJFP received from the introducer that Customer A was interested in transferring his existing pension arrangement into a SIPP in order to use his pension fund to invest in overseas property in St Lucia. The AR of LJFP which was the direct point of contact with Customer A recorded in its recommendation report that *"You do not wish us to provide you with any investment advice and only require us to recommend a suitable pension plan for you to achieve your objectives"*, further stating that *"My recommendation is limited to sourcing a suitable SIPP to meet your requirements"*. On this basis, despite its high-risk nature, the AR made no comment in relation to the suitability of the underlying alternative investment for Customer A's purposes. Rather, it merely advised Customer A to set up a SIPP with a designated SIPP provider and transfer his pension funds, worth £100,849.76, into the SIPP *"pending future investment by yourself"*. In fact, the recommendation report only expressed one note of caution in stating that *"Although we are providing no investment advice or any advice regarding the suitability of the transfers that you instruct us to carry out, we would strongly recommend that as you are planning to transfer an occupational pension scheme you take professional advice as these schemes may contain valuable benefits that would be lost forever on transferring."* Nonetheless, the recommendation report went on to state that the AR had agreed to arrange the setting up of the SIPP and to facilitate the transfer of funds from Customer A's existing pension arrangements for a fixed fee of £1,500.

4.29 There is no evidence on file that the AR gave due consideration to Customer A's attitude to risk, his knowledge and/or apparent lack of experience with SIPP products or investing generally, or had sufficient regard (if any) to Customer A's

capacity for loss from the SIPP or the underlying investment. Moreover, Customer A did not receive a meaningful comparison of the charges he would incur from the new arrangements as compared with his existing pension arrangements, although the recommendation report did state in general terms that it was very likely that, due to the combination of SIPP charges and underlying investment charges, the overall cost of the new arrangement would be significantly higher than the current charges in his existing pension.

- 4.30 Shortly thereafter, the AR supplied the necessary application documentation to enable Customer A to set up his new SIPP and facilitated the transfer of funds from Customer A's occupational pension scheme into a SIPP account. As anticipated, Customer A used the entirety of his pension funds to invest in a property development in St Lucia. This investment was non-standard, illiquid and esoteric. As such, and being a high-risk investment, it was clearly unsuitable for a retail customers such as Customer A.
- 4.31 Consequently, Customer A complained to LJFP in March 2017 and the complaint was subsequently referred to the FOS in June 2017. However, LJFP settled the complaint before a decision by the FOS was required and Customer A received redress totalling £88,500.

Customer B

- 4.32 The customer file for Customer B shows that he:
- a) was 40 years old;
 - b) had, as at the date the form was completed, no assets other than his pension;
 - c) had, as at the date the form was completed, debts totalling £8,000; and
 - d) had previously had a County Court Judgement, mortgage/rent arrears or defaults.
- 4.33 Customer B had a salary of £30,000 per annum and his only assets of any value were his two occupational pension schemes.
- 4.34 It is apparent from the data capture form that LJFP received from the introducer that Customer B was also interested in transferring his existing pension

arrangements into a SIPP in order to use his pension funds to invest in overseas property in St Lucia. The AR of LJFP which was the direct point of contact with Customer B, once again, recorded in its recommendation report that *"You do not wish us to provide you with any investment advice and only require us to recommend a suitable pension plan for you to achieve your objectives"*, further stating that *"My recommendation is limited to sourcing a suitable SIPP to meet your requirements"*. On this basis, despite its high-risk nature, the AR made no comment in relation to the suitability of the underlying alternative investment for Customer B's purposes. Rather, it merely advised Customer B to set up a SIPP with a designated SIPP provider and transfer his pension funds, worth £94,719.34, into the SIPP *"pending future investment by yourself"*. Once again, the recommendation report only expressed one note of caution in stating that *"Although we are providing no investment advice or any advice regarding the suitability of the transfers that you instruct us to carry out, we would strongly recommend that as you are planning to transfer an occupational pension scheme you take professional advice as these schemes may contain valuable benefits that would be lost forever on transferring."* The AR also informed Customer B that he had not disclosed full and complete information about his financial circumstances, and that the advice related only to the area of retirement planning. Nonetheless, as per Customer A, the recommendation report went on to state that the AR had agreed to arrange the setting up of the SIPP and to facilitate the transfer of funds from Customer B's existing pension arrangements for a fixed fee of £1,500.

4.35 There is no evidence on Customer B's file that the AR recorded the customer's attitude to risk, his knowledge and experience of SIPP products or investing generally, or had sufficient regard (if any) to Customer A's capacity for loss from the SIPP or the underlying investment.

4.36 Moreover, Customer B did not receive a meaningful comparison of the charges he would incur from the new arrangements as compared with his existing pension arrangements, although the recommendation report did state in general terms that it was very likely that, due to the combination of SIPP charges and underlying investment charges, the overall cost of the new arrangement would be significantly higher than the current charges in his existing pension.

4.37 Shortly after, the AR provided the necessary application documentation to enable Customer B to set up the SIPP and facilitated the transfer of funds from Customer B's occupational pension schemes into a SIPP account. Customer B used the

entirety of his pension funds to invest in a property development in St Lucia. This investment was non-standard, illiquid and esoteric. Again, being a high-risk alternative investment, it was clearly unsuitable for a retail customer such as Customer B.

4.38 Consequently, Customer B complained to LJFP in January 2017. LJFP did not uphold this complaint and Customer B subsequently referred the complaint to the FOS in March 2017.

4.39 LJFP settled the complaint before a decision was required by the FOS and Customer B received redress totalling £137,000.

Customer C

4.40 The customer file for Customer C shows that he:

- a) was 42 years old;
- b) at the time the form was completed, he had £12,000 of equity in property but £12,900 of loans and credit card debts; and
- c) was employed and received a salary of £23,500 per annum and a further income of £2,598 per month.

4.41 From the data capture form, it is apparent that Customer C wanted to transfer his existing pension arrangement into a SIPP in order to use his pension funds to invest in UK commercial property. As seen with Customers A and B, the AR of LJFP which was the direct point of contact with Customer C recorded in its recommendation report that *"You do not wish us to provide you with any investment advice and only require us to recommend a suitable pension plan for you to achieve your objectives"*, further stating that *"My recommendation is limited to sourcing a suitable SIPP to meet your requirements"*.

4.42 The AR made no comment in relation to the suitability of the underlying alternative investment for Customer C's purposes. Rather, it merely advised Customer C to set up a SIPP with a designated SIPP provider and transfer his pension funds, worth £15,797.75, into the SIPP *"pending future investment by yourself"*.

- 4.43 There is no evidence to suggest that the AR gave due consideration to the financial circumstances of Customer C, nor did the AR consider the customer's attitude to risk, their knowledge and experience of SIPPs or investing generally, or have any regard for Customer C's capacity for loss from the SIPP or underlying investment.
- 4.44 Moreover, Customer C did not receive a meaningful comparison of the charges he would incur from the new pension arrangements as compared with his existing arrangements, although, the recommendation report did state that it was very likely, due to the SIPP charges and the underlying investment charges, that the overall cost of the new pension arrangements would be significantly higher than the current charges in his existing pension.
- 4.45 Customer C agreed with the recommendation to transfer into a specified SIPP, and the AR provided the necessary documentation to set up the SIPP and facilitated the transfer of funds into the SIPP account. As anticipated, Customer C used the entirety of his pension funds to invest in commercial property.
- 4.46 Consequently, Customer C complained to LJFP in February 2016 and the complaint was subsequently referred to the FOS in April 2016. However, LJFP settled the complaint before a decision by the FOS was required and Customer C received redress totalling £18,000.

Conflicts of interest

Tatton Investment Management Limited ('Tatton Investment Management')

- 4.47 In 2009, senior employees of LJFP invested a total value of £5,000 in Paradigm IFA Company Limited ('Paradigm IFA'). Paradigm IFA was a shareholder of Prism Capital Management Limited ('Prism'), a company whose principal activity was investment fund management. However, over the course of 2013-2014, all shares in Prism were acquired by a company called Tatton Capital Limited ('Tatton Capital'), which led to Prism changing its company name to Tatton Oak Limited ('Tatton Oak').
- 4.48 This transaction resulted in all of the shares in Tatton Oak held by Paradigm IFA being transferred to Tatton Capital. As part of the overall transaction, the senior employees of LJFP who had previously invested in Paradigm IFA acquired minority shareholdings in Tatton Capital.

- 4.49 In addition to Tatton Capital owning 100% of the shares in Tatton Oak, it also held all the shares in a separate group company called Tatton Investment Management, whose principal activity was investment fund management. This meant that the senior employees of LJFP had, through their shareholdings in Tatton Capital, an indirect 1.066% interest in Tatton Investment Management.
- 4.50 On 19 June 2017, Tatton Investment Management Limited and a number of other companies merged under Tatton Asset Management Plc, which listed on AIM. As a result of this restructuring, the senior employees of LJFP held 77,833 shares and LJFP held 47,385 shares in Tatton Asset Management Plc, equivalent to a 0.25% shareholding.

Amber Financial Investments Limited ('Amber Financial Investments')

- 4.51 In early 2013, LJFP acquired 4,800 shares in a company called Amber IFA Company Limited ('Amber IFA'), equivalent to a shareholding of 4.96%. By May 2013, Amber IFA had, in turn, acquired 17,700 shares in a separate company called Amber Financial Investments, and, by May 2015, it had increased this shareholding to 21,450 shares, equivalent to a 40.76% shareholding in Amber Financial Investments. This meant that LJFP, through its shareholding in Amber IFA, had an indirect 2.02% interest in Amber Financial Investments.
- 4.52 Amber Financial Investments provided a 'wrap platform' service to IFAs. A wrap platform offers third-parties, such as an IFA, the opportunity to create an account that would provide them with access to an investment portfolio, managed by the 'wrap provider', for a single fee.

LJFP's Wrap Platform / DFM SIPP business

- 4.53 Before LJFP started exploring other wrap platforms and DFMs, LJFP was authorised to operate and manage its own model portfolio which it offered to its customers. This area of the business was separate to the non-advised pension transfer business discussed above.
- 4.54 In January 2010, LJFP's compliance advisers visited LJFP to carry out a compliance check. During this visit, the compliance advisers identified the need for LJFP to disclose its interests in companies it was recommending to customers, stating "We

have recommended that all potential conflicts of interest are fully disclosed in the firm's client agreement including its part ownership of the WRAP that the firm currently use". It is apparent that LJFP was compliant with this advice as illustrated by the fact that it disclosed various minority shareholdings, including its interest in Prism, to customers in its template client agreement.

4.55 From 20 March 2012, LJFP and its ARs started recommending Amber Financial Investments as a wrap platform provider for its customers. LJFP chose Amber Financial Investments on the basis that, having conducted analysis, LJFP had a positive view of the platform's offering and charges. LJFP also felt that its indirect shareholding in Amber Financial Investments enabled it to have valuable insights into the firm on the basis that it provided LJFP with access to Amber Financial Investment's senior management and its future development.

4.56 At the outset, LJFP also included its interest in Amber Financial Investments in its template client agreement. In this regard, the template client agreement disclosed that LJFP:

"holds minority shareholdings in Prism Capital Management Limited and Amber Financial Investments Limited and will receive annual dividends if declared. The amount of any dividend payable in respect of these holdings will be determined by the directors of the respective companies having allowed for the on-going management and costs of the business. The existence of the shareholdings and any potential benefit will in no way influence our recommendation in relation to the most suitable product or provider and we can also confirm that the shares and the potential benefits do not affect your product terms."

4.57 This approach accorded with LJFP's Conflicts of Interest Policy as at that time which stated that:

"LJ Financial Planning Limited offers advice in accordance with that disclosed to you in our Initial Disclosure Document and Client Agreement. Occasions may arise where we or one of our other clients have some form of interest in business being transacted for you. If this happens or we become aware that our interests or those of one of our other clients conflict with your interests, we will write to you and obtain your consent before we carry out your instructions, and detail the steps we will take to ensure fair treatment.

...

Where we identify that an actual or potential conflict of interest exists we will notify you in writing of that fact to enable you to make an informed decision about whether or not you wish to proceed.”

- 4.58 However, by 1 January 2013, LJFP had updated its template client agreement and, in error, removed the references to its interests in third-parties, including Prism and Amber Financial Investments. This oversight occurred when LJFP’s client agreement was redesigned following the Authority’s Retail Distribution Review.
- 4.59 As a result, during the Secondary Relevant Period, it is estimated that LJFP wrote 759 SIPP plans recommending Amber Financial Investments to 721 customers whilst failing to disclose its interest in Amber Financial Investments.
- 4.60 As stated above, prior to 1 June 2015, LJFP’s advisers and its ARs would select investments for customers through a discretionary fund manager (‘DFM’) which was managed by LJFP. From June 2015, LJFP and its ARs began to recommend to customers that they make investments through external DFM providers, rather than using the DFM managed by LJFP. Having conducted research within the wrap managed portfolio market, LJFP chose Tatton Investment Management as their preferred DFM provider on the basis of the quality of its offering and its competitive charges. Once again, LJFP felt that its small indirect shareholding in Tatton Investment Management also afforded it with transparency and access to senior management, as well as resulting in specific cost-savings for LJFP’s customers.
- 4.61 The data which LJFP has readily available does not readily state the volume or value of transactions processed in which LJFP wrote SIPP business with Tatton DFM. However, LJFP has indicated that Tatton DFM was often used with either the Amber Financial Investments’ wrap platform or another wrap platform called Nucleus Financial Group (‘Nucleus’). On this basis, it is estimated that LJFP wrote 585 SIPP plans recommending Tatton DFM to 563 customers whilst failing to disclose its interest in Tatton Investment Management during the Secondary Relevant Period.
- 4.62 LJFP received several reminders from its compliance advisers on the importance of identifying, managing and disclosing conflicts of interest during the Secondary Relevant Period.
- 4.63 In February 2013, LJFP’s compliance advisers conducted a systems and controls audit of LJFP. Although conflicts of interest were not an area that was specifically

reviewed during this visit, the compliance advisers provided information and guidance on the management of conflicts. This highlighted to LJFP that it must take all reasonable steps to identify conflicts of interest, and maintain and operate effective organisational and administrative arrangements to prevent conflicts of interests. LJFP were also reminded in the audit report that, where a conflict may arise, LJFP must give its customers sufficient information to allow them to make an informed decision regarding the risk presented by that conflict.

- 4.64 On 18 August 2014, LJFP's compliance advisers carried out a compliance visit to LJFP. Again, the scope of the visit did not include a specific review of LJFP's controls around their conflicts of interests, but the compliance advisers did refer LJFP to the Authority's guidance on inducements and conflicts of interests. As a result, the compliance advisers advised LJFP, amongst other things, to maintain a conflicts of interest register and conduct analysis on any potential conflicts of interest.
- 4.65 On 29 January 2015, LJFP carried out a review of its conflicts of interest. In the review paper, LJFP formally identified that the firm/certain senior employees were linked to Amber Financial Investments and Tatton Investment Management by way of minority shareholdings. However, without any explanation or analysis, LJFP concluded that these minority shareholdings could not create conflicts of interest and so no conflict of interest management measures were needed. Despite this conclusion, the review paper noted that "*Chinese walls exist with Amber/Tatton*". However, it did not provide any details of what 'Chinese walls', or information barriers, existed in relation to Amber Financial Investments and Tatton Investment Management.
- 4.66 On 30 January 2015, the following day, LJFP's compliance advisers carried out a further compliance visit to LJFP. Although the visit did not include a review of LJFP's controls around their conflicts of interest, LJFP's compliance advisers provided information on the Authority's guidance on inducements and conflicts of interests, just as they had done in their visit in August 2014. Similarly, amongst other things, the compliance advisers advised LJFP to maintain a conflicts of interest register and review any potential conflicts of interest.
- 4.67 In June 2015, LJFP's compliance advisers carried out a further compliance visit in which the report made various recommendations for LJFP to address as a matter of urgency, including in relation to its conflicts of interest. The recommendations included that LJFP should:

- 1) review the robustness on monitoring of its conflicts of interest policy;
- 2) ensure all LJFP staff were able to identify and explain actual and potential conflicts of interests; and
- 3) be able to demonstrate the monitoring processes were appropriate to ensure that there were no conflicts of interests with the interests of advisers, ARs and LJFP.

4.68 The report also reminded LJFP that dealing with both actual and potential conflicts of interest was a central part of treating customers fairly.

4.69 Despite the compliance advisers' recommendations made as a result of the visit in June 2015, no changes to the conflicts of interest policy were made from the previous version and it did not prompt LJFP to revisit the ongoing issue of its interests in Amber Financial Investments and Tatton Investment Management.

4.70 In November 2015, LJFP's Board decided to stop using its then compliance advisers, and began using another external compliance adviser from 1 May 2016. The new compliance advisers first visited LJFP in June 2016 to carry out an initial compliance and risk assessment review which included consideration of LJFP's policies and procedures in relation to conflicts of interest and a review of its investment disclosure documents. As part of the review, a number of risks were identified and the new compliance advisers set out a remedial action plan for LJFP to consider how it wanted to deal with each risk. However, the action plan did not suggest that any remedial action was required by LJFP in relation to conflicts of interest and no mention was made of the lack of reference to LJFP's interests in its disclosure documents.

4.71 There were no further compliance visits in 2016 however, LJFP's compliance advisers did provide it with access to a template compliance manual. Within this compliance manual, LJFP had access to a template client agreement for use as a basis for meeting its disclosure obligations. The template client agreement included a generic section in relation to conflicts of interest for Non-MiFID and MiFID firms but it also included the following specific disclosures:

"This section can be deleted if the section does not apply to your firm.

Firms who are shareholders of AMBER need to insert the following wording

It is important that you are aware that [IFA FIRM] has an interest in Amber IFACo Limited, a company that has an interest in the Amber platform ("Amber Financial Investments Limited"). [IFA FIRM] holds 2% of the total share capital of Amber IFACo but will receive no dividends or income in relation to the interest in the Amber platform and also has no voting rights. The capital value of the shareholding in Amber IFACo will be dependent on the value of the proceeds arising from any capital involving the Amber platform."

- 4.72 In May 2017, the Authority conducted a visit to LJFP. During this visit, the Authority identified weaknesses in LJFP's systems for identifying, managing and disclosing the risks associated with potential conflicts of interest, namely the interests in Amber Financial Investments and Tatton Investment Management. In its response to the Authority dated 30 May 2017, LJFP admitted that the non-disclosure of its interests in Amber Financial Investments and Tatton Investment Management had occurred as a result of an oversight and, accordingly, that it was taking steps to remedy this omission by amending its suitability templates so as to include appropriate disclosures where Amber Financial Investments or Tatton Investment Management were recommended.
- 4.73 In June 2017, LJFP's compliance advisers carried out their annual compliance review of LJFP. The purpose of the annual compliance review was to ensure that LJFP's compliance procedures/systems and controls were in line with the standards expected by the Authority. As with the compliance adviser's initial compliance and risk assessment review of June 2016, each risk to LJFP was rated as either red, amber or green.
- 4.74 However, in the audit of June 2017, LJFP's conflicts of interest were identified as an amber risk and it was noted that LJFP's conflicts of interest policy needed updating to include the shareholdings in Amber Financial Investments and Tatton Investment Management and an explanation as to how these conflicts were managed. The compliance advisers also stated that LJFP should disclose and explain these interests to customers in recommendation reports where Amber Financial Investments or Tatton Investment Management were recommended.
- 4.75 From 6 November 2017 onwards, when recommending either Amber Financial Investments or Tatton Investment Management to its customers, LJFP specifically disclosed the interests it held in those companies in its recommendation reports.

- 4.76 LJFP created a conflict of interests register on or around 30 November 2017. This was despite LJFP's compliance adviser's recommendation in August 2014 and January 2015 that LJFP ought to have a conflict of interests register in place.
- 4.77 The conflicts of interest register set out the interests held by LJFP in Tatton Investment Management and Amber Financial Investments and identified them as conflicts. The conflicts of interest register also listed the measures that LJFP had taken to mitigate the risks arising from these conflicts. These measures included that advisers were free to use whichever wrap platform or DFM they deemed to be suitable for the customer, and that there was no detriment to customers resulting from the charging structure. There was, however, no reference to the existence of information barriers (or 'Chinese walls'), as referred to in the review carried out by LJFP in January 2015.

Remediation of deficiencies by LJFP

'Non-advised' pension transfer business

- 4.78 In September 2017, the Authority sent LJFP a letter setting out its conclusions following the Authority's visit to LJFP's premises in May 2017. As a result of the deficiencies identified in LJFP's sales and advisory process for pension transfers and switches, at the request of the Authority, LJFP undertook to cease its pension transfer regulated activities. The Authority also noted that for LJFP to resume pension-related regulated activity, a Skilled Person would need to be appointed to ensure that LJFP's pension sales and advice process was robust and compliant.
- 4.79 On 3 January 2018, the Skilled Person provided the Authority with a summary of their findings for Phase 1 of the review. Weaknesses were identified with LJFP's governance around pension switching and transfer activities, compliance oversight in relation to pension switching and transfer activities and sales and advisory process. The Skilled Person also set out recommendations for LJFP to implement in the business with a view to the firm attaining robust and effective compliance controls and governance.
- 4.80 LJFP carried out the necessary remedial work which the Skilled Person agreed had been adequately implemented by LJFP. On 25 April 2018, the Authority agreed for LJFP to be released from its undertaking as LJFP had embedded the Skilled Person's recommendations.
- 4.81 In addition to remediating its systems and controls, LJFP has made significant progress in relation to providing redress to its non-advised pension transfer

business customers. To date, LJFP had received 73 complaints from customers either directly, through claims management companies or through the FOS. LJFP has paid redress of £2,668,819.97 to 41 customers who has been impacted by this failing. The remaining customer complaints are either in the process of being resolved by LJFP or were closed with no redress payments made because the complaints were either found by the FOS in favour of LJFP or the complaint was not made within the statutory time limit.

- 4.82 Customers that have not yet complained will be contacted by LJFP as part of the ongoing redress exercise.

Conflicts of interest

- 4.83 As part of the remediation work completed during the Skilled Person's review, LJFP was required to implement a number of changes to the way that conflicts of interests were managed and disclosed. This included tailoring the conflicts of interest policy to the firm and ensuring that it was communicated to all staff and ARs. LJFP also had to update its conflicts of interest register so that it recorded actual and potential conflicts of interest identified and ensure that it was regularly reviewed in conjunction with firm's disclosure obligations. The Skilled Person reviewed these changes and agreed that LJFP had addressed their recommendations.
- 4.84 Additionally, in June 2017, LJFP made the decision that it would disclose the interests it held in Amber Financial Investments and Tatton Investment Management by adding a paragraph to its template recommendation reports where those companies were recommended. The Authority notes that these changes were implemented from 6 November 2017 and, from that date, when recommending either Amber Financial Investments or Tatton Investment Management to its customers, LJFP specifically disclosed the interests it held in those companies in its recommendation reports.

5 FAILINGS

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

LJFP's 'Non-advised' pension transfer business

- 5.2. Principle 9 required LJFP to take reasonable care to ensure the suitability of its advice for any customer who was entitled to rely upon its judgment.
- 5.3. COBS 9.2.1R (1) further stated that *"A firm must take reasonable steps to ensure that a personal recommendation ... is suitable for its client"* and COBS 9.2.1R (2) stated that *"When making the personal recommendation ... 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 ... which is suitable for him."*
- 5.4. COBS 9.2.1R (1) required LJFP, in making a personal recommendation to a retail client to establish a SIPP, to consider whether that recommendation was suitable not only in the sense that a SIPP was a suitable vehicle for the customer in the light of his personal circumstances but also that it was suitable in the light of the investments which were proposed to be held within the SIPP.
- 5.5. Moreover, the requirements in COBS 9.2.1R (2), COBS 9.2.2R and COBS 9.2.3R meant that LJFP had to assess whether both the SIPP wrapper and the underlying investments proposed to be held within the SIPP were suitable, taking into account the customer's knowledge and experience, his financial situation and capacity for loss, and his investment objectives. If that was not the case, then it would not be suitable advice to recommend the SIPP.
- 5.6. During the Primary Relevant Period, LJFP failed, in breach of Principle 9, COBS 9.2.1R (1)-(2), COBS 9.2.2R and COBS 9.2.3R to take reasonable care to ensure the suitability of its advice for its customers who were entitled to rely upon its judgement in relation to the transfer of their existing pensions into SIPPs in that, amongst other things, it:
 - a) Focussed solely on providing advice in relation to a suitable SIPP provider whilst failing to advise its customers on the suitability of the unregulated, underlying investments to be held in the SIPP which were often high-risk, esoteric and illiquid; and

b) did not assess adequately the needs and circumstances of its customers such that it failed to ensure that its recommendations matched their knowledge and experience, objectives and the risk they were willing and able to take.

5.7. This approach meant that LJFP facilitated the transfer of its customers' occupational and personal pension schemes into high-risk investments in circumstances where it could not have been satisfied either that this was consistent with their attitude to risk and capacity for loss or that those customers had the necessary experience and knowledge to understand the risks that were inherent in the investments.

Conflicts of interest

5.8. Principle 8 required LJFP to manage conflicts of interest fairly, both between itself and its customers and between a customer and another client.

5.9. SYSC 10 required firms to take all reasonable steps to identify the types of conflicts of interest that arise, or may arise, in the course of carrying out regulated activities between the firm and a client or one client and another. Once a firm had identified an actual or potential conflict, it was required to maintain and operate effective organisational arrangements with a view to taking all reasonable steps to prevent conflicts of interest from constituting or giving rise to a material risk of damage to the interests of its clients.

5.10. The obligations in SYSC 10 concerned both potential and actual conflicts. If a firm was in a situation where it could receive a benefit but had yet to receive it, this was enough to impair the judgement of that firm, so the potential conflict needed to be managed in the same way as an actual conflict.

5.11. More specifically, LJFP was required to:

1) take all reasonable steps to identify conflicts of interest between itself, including its managers, employees and its ARs on the one hand, and clients of the firm on the other, as set out in SYSC 10.1.3R;

2) take into account, as a minimum, whether the firm was likely to make a financial gain, or avoid a financial loss, at the expense of the client and/or had an interest in the outcome of a service provided to the client or a transaction

carried out on behalf of the client which was distinct from the client's interest in that outcome, as set out in SYSC 10.1.4R (1)-(2);

- 3) maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps to prevent conflicts of interest from constituting or giving rise to a material risk of damage to the interests of its clients, as set out in SYSC 10.1.7R; and
- 4) clearly disclose the general nature and/or sources of conflicts of interest to the client before undertaking business for the client if arrangements to manage conflicts of interest were not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of a client would be prevented, as set out in SYSC 10.1.8R.

5.12. During the Secondary Relevant Period, LJFP failed, in breach of Principle 8, SYSC 10.1.3R, SYSC 10.1.4R (1)-(2), SYSC 10.1.7R and SYSC 10.1.8R to identify, manage fairly and disclose obvious potential conflicts of interest in that, amongst other things, it:

- a) failed to keep itself apprised of ongoing potential conflicts of interest arising from the firm/its senior employees' shareholdings in Amber Financial Investments and Tatton Investment Management;
- b) failed to correctly assess and identify that the interests in Amber Financial Investments and Tatton Investment Management were potential conflicts of interest when undertaking its first review of conflicts of interest in January 2015;
- c) failed to maintain and operate effective organisational and administrative arrangements designed to prevent the potential conflicts of interest in relation to Amber Financial Investments Tatton Investment Management from constituting or giving rise to a material risk of damage to the interests of its clients;
- d) processed 759 plans where it had recommended Amber Financial Investments as the wrap provider to customers whilst failing to disclose its interest in Amber Financial Investments to those customers;

- e) processed an estimated 585 plans in which it recommended that customers use Tatton Investment Management as their DFM without disclosing that it held an interest in Tatton Investment Management.
- 5.13. Moreover, LJFP's failings occurred in circumstances where it received several reminders from its compliance advisers on the importance of identifying, managing and disclosing conflicts of interest.
- 5.14. Whilst the Authority accepts that the above failings did not give rise to actual detriment to LJFP's customers in this case, in that it is not suggested that Amber Financial Investments and Tatton Investment Management were unsuitable for those customers to whom they were recommended, nonetheless those customers should have been able to rely upon their IFA to manage its potential conflicts of interest fairly and disclose them where necessary. This would ensure that the customers' interests had been put before that of the IFA and that customers were provided with all relevant information in order to make an informed investment decision.

6 SANCTION

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

Financial penalty – Principle 9

Step 1: disgorgement

- 6.2 Pursuant to DEPP 6.5A.1G, at Step 1 the Authority seeks to deprive a firm of the financial benefit derived directly from the breach where it is practicable to quantify this.
- 6.3 The Authority has not identified any financial benefit that LJFP derived directly from its breach.
- 6.4 Step 1 is therefore £0.

Step 2: the seriousness of the breach

- 6.5 Pursuant to DEPP 6.5A.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. Where the amount of revenue generated by a firm from a particular product line or business area is indicative of the harm or potential harm that its breach may cause, that figure will be based on a percentage of the firm's revenue from the relevant products or business area.
- 6.6 The Authority has decided that the revenue generated by LJFP is indicative of the harm or potential harm caused by its breach. The Authority has therefore determined a figure based on a percentage of LJFP's relevant revenue.
- 6.7 LJFP's relevant revenue is the revenue derived from LJFP's recommendations to 114 customers to transfer their existing pension into a SIPP during the Primary Relevant Period. The Authority considers LJFP's relevant revenue for the Primary Relevant Period to be £167,243.
- 6.8 In deciding on the percentage of the relevant revenue that forms the basis of the Step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 20%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach; the more serious the breach, the higher the level. For penalties imposed on firms there are the following five levels:
- a) Level 1 – 0%
 - b) Level 2 – 5%
 - c) Level 3 – 10%
 - d) Level 4 – 15%
 - e) Level 5 – 20%
- 6.9 In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly. DEPP 6.5A.2G (11) lists factors likely to be considered

'level 4 or 5 factors'. Of these, the Authority has decided the following factor to be relevant:

- a) The breaches caused a significant loss or risk of loss to individual consumers.

6.10 DEPP 6.5B.2G (12) lists factors likely to be considered 'level 1, 2 or 3 factors'. Of these, the Authority has decided the following factor to be relevant:

- a) The breaches were committed negligently.

6.11 The Authority has also decided that the following factors are relevant:

- a) The loss or risk of loss to consumers, as a whole, was significant and the overall value of the pensions transferred into SIPPs was over £6 million.
- b) Customers did not receive advice on the underlying investments within the SIPP in circumstances where these investments were often clearly unsuitable, being high-risk, illiquid and esoteric.
- c) In this way, LJFP facilitated the transfer of its customers occupational and personal schemes into high-risk investments which, in many instances, are now worthless.
- d) LJFP's compliance consultants articulated their concerns in relation to the 'non-advised' pension transfer business in October 2011 but LJFP did not cease this activity until over a year later, in December 2012.

6.12 Taking all of these factors into account, the Authority has decided the seriousness of the breach to be level 4 and so the Step 2 figure is 15% of £167,243.

6.13 Step 2 is therefore £25,086.

Step 3: mitigating and aggravating factors

6.16 Pursuant to DEPP 6.5A.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the breach.

6.17 The Authority has decided that there are no mitigating or aggravating factors.

6.18 Step 3 is therefore £25,086.

Step 4: adjustment for deterrence

6.19 Pursuant to DEPP 6.5A.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the firm who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.

6.20 The Authority has decided that the Step 3 figure of £25,086 does not represent a sufficient deterrent in the circumstances of this case.

6.21 The Authority has decided that in order to achieve credible deterrence the Step 3 figure should be increased by a multiplier of 4.

6.22 Step 4 is therefore £100,344.

Step 5: settlement discount

6.23 Pursuant to DEPP 6.5A.5G, if the Authority and the firm on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the firm reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.

6.24 The Authority and LJFP reached agreement at Stage 1 and so a 30% discount applies to the Step 4 figure.

6.25 Step 5 is therefore £70,240.

Financial penalty – Principle 8

Step 1: disgorgement

- 6.26 Pursuant to DEPP 6.5A.1G, at Step 1 the Authority seeks to deprive a firm of the financial benefit derived directly from the breach where it is practicable to quantify this.
- 6.27 The Authority has not identified any financial benefit that LJFP derived directly from its breach.
- 6.28 Step 1 is therefore £0.

Step 2: the seriousness of the breach

- 6.29 Pursuant to DEPP 6.5A.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. Where the amount of revenue generated by a firm from a particular product line or business area is indicative of the harm or potential harm that its breach may cause, that figure will be based on a percentage of the firm's revenue from the relevant products or business area.
- 6.30 The Authority has decided that the revenue generated by LJFP is indicative of the harm or potential harm caused by its breach. The Authority has therefore determined a figure based on a percentage of LJFP's relevant revenue. LJFP's relevant revenue is the revenue derived from LJFP's recommendations to customers to transfer their pension funds into Amber Financial Investments' wrap platform and/or Tatton DFM. As explained at paragraph 4.61, LJFP was unable to readily confirm the amount of revenue derived from its recommendations to use the Tatton DFM and accordingly the Authority has estimated that on the basis of available information.
- 6.31 The Authority has decided LJFP's relevant revenue for the Secondary Relevant Period to be £2,645,625.
- 6.32 In deciding on the percentage of the relevant revenue that forms the basis of the Step 2 figure, the Authority decided the seriousness of the breach and chooses a percentage between 0% and 20%. This range is divided into five fixed levels

which represent, on a sliding scale, the seriousness of the breach; the more serious the breach, the higher the level. For penalties imposed on firms there are the following five levels:

- a) Level 1 – 0%
- b) Level 2 – 5%
- c) Level 3 – 10%
- d) Level 4 – 15%
- e) Level 5 – 20%

6.33 In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly. DEPP 6.5A.2G (11) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the Authority has decided the following factors to be relevant:

- a) the breaches caused a risk of loss to individual consumers; and
- b) the breach revealed serious or systemic weaknesses in the firm's procedures or in the management systems or internal controls relating to part of the firm's business.

6.34 DEPP 6.5A.2 G (12) lists factors likely to be considered 'level 1, 2 or 3 factors'. Of these, the Authority has decided the following factors to be relevant:

- a) No profits were made or losses avoided as a result of the breach, either directly or indirectly;
- b) There was no, or limited, actual or potential effect on the orderliness of, or confidence in, markets as a result of the breach; and
- c) The breaches were committed negligently.

6.35 Taking all of these factors into account, the Authority has decided the seriousness of the breach to be level 3 and so the Step 2 figure is 10% of £2,645,625.

6.36 Step 2 is therefore £264,563.

6.37 Pursuant to DEPP 6.5.3(3)G, the Authority may decrease the level of penalty arrived at after applying Step 2 of the framework if it considers that the penalty is disproportionately high for the breaches concerned. Notwithstanding the serious and long-running nature of the breaches, the Authority considers that the level of penalty would nonetheless be disproportionate if it were not reduced, meaning it should be adjusted.

6.38 To achieve a penalty that (at Step 2) is proportionate to the breach, the Step 2 figure is reduced to £52,913.

Step 3: mitigating and aggravating factors

6.39 Pursuant to DEPP 6.5A.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the breach.

6.40 The Authority has decided there are no mitigating or aggravating factors.

6.41 Step 3 is therefore £52,913.

Step 4: adjustment for deterrence

6.42 Pursuant to DEPP 6.5A.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the firm who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.

6.43 The Authority has decided that the Step 3 figure of £52,913. represents a sufficient deterrent to LJFP and others, and so has not increased the penalty at Step 4.

6.44 Step 4 is therefore £52,913.

Step 5: settlement discount

- 6.45 Pursuant to DEPP 6.5A.5G, if the Authority and the firm on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the firm reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.
- 6.46 The Authority and LJFP reached agreement at Stage 1 and so a 30% discount applies to the Step 4 figure.
- 6.47 Step 5 is therefore £37,039.

Penalty

- 6.48 The Authority hereby imposes a total financial penalty of £107,200 on LJFP for breaching Principles 8 and 9.

7 PROCEDURAL MATTERS

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

Decision maker

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

Manner and time for payment

- 7.3 The financial penalty must be paid in full by 23 December 2020 to the Authority no later than 4pm.

If the financial penalty is not paid

- 7.4 If all or any of the financial penalty is outstanding on 23 December 2020, the Authority may recover the outstanding amount as a debt owed by LJFP and due to the Authority.

Publicity

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

Authority contacts

- 7.7 For more information concerning this matter generally, contact Natalie Tenorio Bernal at the Authority (direct line: 020 7066 6904/email: natalie.tenoriobernal@fca.org.uk).

Anthony Monaghan

Head of Department

Financial Conduct Authority, Enforcement and Market Oversight Division

Annex A

Relevant Statutory and Regulatory Provisions

1 Relevant Statutory Provisions

1.1 The Authority's operational objectives are set out in section 1B (3) of the Act and include the objectives of 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 relevant requirement imposed on the person, 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 Business ('Principles')

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 Principle 8 (Conflicts of interest) stated that:

'A firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client.'

2.3 Principle 9 (Customers: relationships of trust) stated that:

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

Conduct of Business Sourcebook ('COBS')

2.4 COBS is the part of the Authority's Handbook which sets out the Authority's requirements in relation to the conduct of designated investment business and connected activities.

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.

(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 stated that:

'(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.'

2.7 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.'

Senior Management Arrangements, Systems and Controls ('SYSC')

2.8 SYSC is part of the Authority's handbook which sets out the Authority's requirements in relation to a firm's senior management arrangements, systems and controls.

2.9 SYSC 10.1.3R stated that:

'A firm must take all reasonable steps to identify conflicts of interest between:

(1) the firm, including its managers, employees and appointed representatives (or where applicable, tied agents), or any person directly or indirectly linked to them by control, and a client of the firm; or

(2) one client of the firm and another client;

that arise or may arise in the course of the firm providing any service referred to in SYSC 10.1.1 R.'

2.10 SYSC 10.1.4R stated that:

'For the purposes of identifying the types of conflict of interest that arise, or may arise, in the course of providing a service and whose existence may entail a material risk of damage to the interests of a client, a common platform firm and a management company must take into account, as a minimum, whether the firm or a relevant person, or a person directly or indirectly linked by control to the firm:

(1) is likely to make a financial gain, or avoid a financial loss, at the expense of the client;

(2) has an interest in the outcome of a service provided to the client or of a transaction carried out on behalf of the client, which is distinct from the client's interest in that outcome;

...

The conflict of interest may result from the firm or person providing a service referred to in SYSC 10.1.1 R or engaging in any other activity or, in the case of a management company, whether as a result of providing collective portfolio management services or otherwise.'

2.11 SYSC 10.1.7R stated that:

'A firm must maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps to prevent conflicts of interest as defined in SYSC 10.1.3R from constituting or giving rise to a material risk of damage to the interests of its clients.'

2.12 SYSC 10.1.8R stated that:

'(1) If arrangements made by a firm under SYSC 10.1.7 R to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of a client will be prevented, the firm must clearly disclose

the general nature and/or sources of conflicts of interest to the client before undertaking business for the client.

(2) The disclosure must:

(a) be made in a durable medium; and

(b) include sufficient detail, taking into account the nature of the client, to enable that client to take an informed decision with respect to the service in the context of which the conflict of interest arises.

(3) This rule does not apply to the extent that SYSC 10.1.21 R applies.'

2.13 SYSC 10.1.9G stated that:

'Firms should aim to identify and manage the conflicts of interest arising in relation to their various business lines and their group's activities under a comprehensive conflicts of interest policy. In particular, the disclosure of conflicts of interest by a firm should not exempt it from the obligation to maintain and operate the effective organisational and administrative arrangements under SYSC 10.1.7 R. While disclosure of specific conflicts of interest is required by SYSC 10.1.8 R, an over-reliance on disclosure without adequate consideration as to how conflicts may appropriately be managed is not permitted.'