
FINAL NOTICE

To: Omar Hussein

**Individual
Reference
Number: OXH01061**

Date: 11 October 2021

1. ACTION

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

- a) imposes on Mr Omar Hussein ("Mr Hussein"), pursuant to section 66 of the Financial Services and Market Act 2000 (the "Act"), a financial penalty of £116,000.00;
- b) withdraws, pursuant to section 63 of the Act, Mr Hussein's approval given by the Authority under section 59 of the Act to perform the SMF3 (Executive Director), SMF16 (Compliance Oversight), and SMF17 (Money Laundering Reporting) functions at Consumer Wealth Limited ("CWL"); and
- c) makes an order, pursuant to section 56 of the Act, prohibiting Mr Hussein from performing any function in relation to any regulated activity carried on by any authorised or exempt person, or exempt professional firm.

1.2 Mr Hussein agreed to resolve this matter and qualified for a 30% (stage 1) discount in financial penalty under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £165,797.38 on Mr Hussein.

2. SUMMARY OF REASONS

Background

- 2.1 On the basis of the facts and matters described below, the Authority considers that between 20 March 2015 and 1 March 2017 (the "Relevant Period"), Mr Hussein breached Statement of Principle 1 and Statement of Principle 7 of the Authority's Statements of Principle and Code of Practice for Approved Persons Chapter of the Authority's Handbook ("APER") by failing to act with integrity and by failing to take reasonable steps to ensure that CWL complied with the relevant standards and requirements of the regulatory system.
- 2.2 During the Relevant Period, Mr Hussein was approved to perform the CF1 (Director), CF10 (Compliance Oversight), CF11 (Money Laundering Reporting) and CF30 (Customer) controlled functions at CWL, a financial advisory firm specialising in the provision of pension switching services of which he was the sole owner. Upon the introduction of the Senior Managers and Certification Regime on 9 December 2019, Mr Hussein's approvals became the SMF3 (Executive Director), SMF16 (Compliance Oversight), and SMF17 (Money Laundering Reporting) functions.
- 2.3 Pensions are a traditional and tax-efficient way of saving money for retirement. The value of someone's pension can have a significant impact on their quality of life during retirement and, in some circumstances, may affect whether they can afford to retire at all. Customers who engage authorised firms to provide them with advice in relation to their pensions place significant trust in those providing the advice. Where a financial adviser fails to act with integrity and to conduct the affairs of their advice business in a manner that is compliant with the Authority's regulatory requirements, this exposes their customers to a significant risk of harm.
- 2.4 As CWL's principal director during the Relevant Period, Mr Hussein was responsible for establishing and maintaining CWL's systems and controls and the oversight of the business of CWL. As the most senior and principal financial adviser at CWL, Mr Hussein was also responsible for ensuring the suitability of advice provided to the customers of CWL in relation to recommendations made to switch their existing pension into a new Self-Invested Personal Pension ("SIPP").

Summary of misconduct

- 2.5 During the Relevant Period, Mr Hussein failed to act with integrity and failed to take reasonable steps to ensure that the business of CWL, for which he was responsible, complied with the relevant requirements and standards of the regulatory system.

- 2.6 Mr Hussein advised, and permitted others at CWL to advise, customers to switch their existing pensions into a new SIPP. These SIPPs invested a significant proportion of customers' retirement savings into Portfolio 6 ("P6"), a portfolio of investments managed by Greyfriars Asset Management LLP ("Greyfriars"). CWL recommended 620 of its customers switch from their existing personal pensions into SIPPs which included a large investment in P6. The Authority considers that in each customer file that it reviewed, this was unsuitable advice.
- 2.7 P6 was a high-risk investment principally due to the nature of its underlying investments. These comprised corporate mini-bonds issued to finance speculative projects such as overseas property developments, car parks, green energy projects and holiday resorts. The individual mini-bonds in P6 offered returns of up to 11% per annum which was an indicator of the underlying investment risk. The investments in P6 were also unregulated and illiquid in nature. A number of the underlying investments in P6 subsequently failed and P6 was closed to new investment in 2016. To date, the Financial Services Compensation Scheme ("FSCS") has upheld 437 claims against CWL and paid out over £4.3m in compensation to customers of CWL, including in respect of advice given on P6.
- 2.8 The Authority's investigation found that during the Relevant Period, both personally and through his direction of CWL, Mr Hussein:
- a) Advised customers to switch their existing pensions into a SIPP when a pension switch was often unnecessary and not in their best interests. Recommendations to switch were based on inadequate and generic assessments of customers' needs which were highly likely to result in a recommendation to switch;
 - b) Advised customers to invest large portions of their SIPP (up to 49%) into P6. This investment, particularly in such large amounts, was completely unsuitable for CWL's customers given their risk profiles, objectives and individual circumstances and went against the recommendations of P6's own fund manager;
 - c) Prepared unclear and misleading Suitability Reports for customers recommending they switch pensions. The Reports failed to communicate important risk warnings in relation to P6, for example, that it was a high-risk and potentially illiquid investment. In addition, the Suitability Reports provided misleading information as to CWL's charges. In all 24 customer files reviewed by the Authority, CWL recommended pension switches as being "*more cost effective*" when this was simply untrue when all charges were considered;

- d) Made false and misleading statements and confirmations to P6's fund manager, Greyfriars, including that CWL's customers were "*experienced investors*" when there was no reasonable basis for doing so; and
 - e) Charged customers significant fees for an ongoing advice service. However, there is no evidence CWL ever provided this service to customers, or ever made any substantial arrangements to do so, during the Relevant Period. CWL also failed to make clear this was an optional extra service separate to its pension switch advice. During the Relevant Period only a single customer declined the service.
- 2.9 Between May and June 2015, Mr Hussein advised, and permitted others at CWL to advise, the firm's initial 48 customers to invest a portion of their SIPPs into P6 without conducting due diligence to a reasonable level on the suitability of P6 and its underlying investments for retail customers. In any event, it should have been obvious to Mr Hussein from even the limited information that he had gathered that P6 was unlikely to be suitable for CWL's customers, except in very limited circumstances and investment sizes.
- 2.10 Between the period June 2015 and July 2016, Mr Hussein conducted some due diligence on P6. The high-risk nature of the investment and the risks it presented to customers should have become even clearer to Mr Hussein from these due diligence steps. However, Mr Hussein continued to advise, and permitted others at CWL to advise, more than 500 customers to transfer large parts of their pensions into P6. Mr Hussein's explanation for this was that he believed P6 was "*fully liquid*" and "*not high-risk*", and that it was a regulated product. Mr Hussein's assessments were wholly unreasonable and directly contradicted by the information he had gathered in his limited due diligence.
- 2.11 Mr Hussein was aware of the statements and risk warnings contained in the promotional documentation relating to P6. These made clear the high-risk nature of the underlying investments. Mr Hussein had never advised on pension switches before setting up CWL and by his own admission was "*not a stock picker*" and "*not a fund manager*". Mr Hussein therefore knew he lacked the expertise or any proper basis to ignore the statements and risk warnings in the promotional material. Notwithstanding this, Mr Hussein rejected the statements and risk warnings of P6's own fund manager on the basis that he did not "*agree*" with them.
- 2.12 Mr Hussein also disregarded clear guidance from Greyfriars that P6 was appropriate for only a small proportion of an investor's funds. Notwithstanding this, Mr Hussein created a Central Investment Proposition ("*CIP*") which recommended a default

position that 49% of a typical CWL customer's funds be invested into P6, irrespective of their individual risk profile.

- 2.13 While the investment risks associated with P6 may have been acceptable for experienced and sophisticated investors who had a higher capacity for loss, they were unsuitable for CWL's customers, who were typically low net worth, inexperienced in financial products, of limited financial means and had little or no capacity for loss. Further, although P6's investment manager, Greyfriars, was regulated by the Authority, this did not extend to the underlying mini-bond investments held in P6.
- 2.14 Mr Hussein also described customers advised to invest in P6 as "*experienced investor[s] in property, bonds and mainstream investments*" in Application Forms provided to Greyfriars. This information was incorrect and contradicted by CWL's own fact gathering. In the most serious cases, CWL described some individuals who had no job, no income except benefits and no assets except their pension as an "*experienced investor in property, bonds and mainstream investments*".
- 2.15 Mr Hussein classified CWL's customers as "*experienced investors*" based on their existing pension and the underlying investments held within it. This approach was unreasonable. Mr Hussein ignored customers' actual investment experience, which, beyond being in an existing pension arrangement, was often effectively non-existent. Further, the fact that CWL provided a pension switch service meant that its customers would always already hold a pension which was invested in different products. Mr Hussein's assertion that such customers constituted "*experienced investors*" rendered the term redundant as all pension switch customers would satisfy the definition.
- 2.16 In addition, the Suitability Reports Mr Hussein prepared for CWL customers advising them to switch pensions contained insufficient information and explanation of the material risks and disadvantages inherent in P6. Mr Hussein also omitted specific risks relating to P6 from the Suitability Reports, again because he did not "*agree*" with them. Mr Hussein's approach meant that the Suitability Reports were misleading and that CWL's customers were not provided with key advice and information about the nature and suitability of the underlying investments in their SIPP before deciding to invest a substantial portion of their pensions into a high-risk investment portfolio.

Breaches and failings

- 2.17 During the Relevant Period, Mr Hussein failed to act with integrity and breached Statement of Principle 1 (acting with integrity) of APER. In particular, Mr Hussein:
- a) advised, and permitted CWL to advise, the firm's initial 48 customers to invest nearly half their pensions into P6 on the basis it was a suitable investment before carrying out a reasonable level of due diligence on P6, and in circumstances where even on the basis of the information available to him, it should have been obvious to him that the advice was unsuitable; and
 - b) advised, and permitted CWL to advise, more than 500 further customers to invest, in most cases, nearly half their pensions into P6 when even the limited due diligence Mr Hussein did conduct made it apparent that P6 was a fundamentally unsuitable investment for CWL's customers, except in very limited circumstances and amounts.
- 2.18 Mr Hussein provided this advice to customers in circumstances where he:
- a) disregarded clear statements and risk warnings regarding P6 contained in the Greyfriars documentation on the basis that he "*disagreed*" with them, when he knew that he did not have the expertise to conclude that such risks could reasonably be disregarded; and
 - b) disregarded Greyfriars' recommendation that only a "*small proportion*" of an investor's portfolio should be allocated to P6 and instead proceeded with a Central Investment Proposition which advised CWL customers to invest 49% of their SIPPs into P6.
- 2.19 Mr Hussein deliberately and unjustifiably closed his mind to the risks he was taking with his customers' retirement savings and failed to communicate those risks to his customers. In doing so, he acted recklessly and therefore without integrity.
- 2.20 In addition, Mr Hussein acted without integrity as he:
- a) misrepresented to Greyfriars that customers investing in P6 were "*experienced investors in property, bonds and mainstream investments*", without having any reasonable basis for doing so;
 - b) misrepresented CWL customers' total investable funds and / or financial position to Greyfriars, being aware that Greyfriars would not normally accept investments of more than 25% of a customer's investable funds into P6; and

- c) charged customers for an on-going advice service which there is no evidence CWL ever provided, or ever put any substantial arrangements in place to effect, during the Relevant Period.

2.21 Mr Hussein also breached Statement of Principle 7 of APER during the Relevant Period by failing to take reasonable steps to ensure that the business of CWL for which he was responsible in his accountable functions complied with relevant regulatory requirements and by being knowingly concerned in such breaches. In particular, Mr Hussein failed to:

- a) ensure that CWL had due regard to whether switching a customer's existing pension into a SIPP was in that customers' best interests;
- b) ensure that CWL took reasonable care to assess customers' knowledge and experience in relation to investments in financial products and whether a pension switch was appropriate for them;
- c) ensure that CWL adequately assessed the suitability of the underlying investments within the proposed SIPP for each customer's specific risk profile and individual needs;
- d) prevent CWL advising initial customers and transferring their funds into P6 prior to carrying out a reasonable level of due diligence on P6;
- e) prevent CWL employees advising customers to invest in P6 when even basic due diligence had made clear that P6, particularly in the proportions recommended, was an unsuitable investment for CWL's target market;
- f) ensure that the Suitability Report CWL prepared for each customer advising them to switch pensions contained sufficient information and a clear and fair explanation of the material risks and specific disadvantages associated with investing a large portion of their SIPP in P6;
- g) prevent CWL giving customers unclear and misleading charge comparisons between customers' existing pension plans and the proposed SIPP they were being recommended; and
- h) ensure that CWL's on-going advice service was clearly communicated as being an optional and voluntary service that was separate from the initial switching advice and for which the customer's explicit, informed consent ought to have been obtained.

2.22 The Authority considers Mr Hussein's failings to be particularly serious and to demonstrate a reckless lack of integrity for the following reasons:

- a) Mr Hussein was aware of the Authority's pension alerts published in 2013 and 2014 (the "Alerts") which made clear that an assessment of the suitability of underlying investments must form part of the advice given to customers switching their SIPPs. SIPPs intended to hold non-mainstream propositions were unlikely to be suitable options for the vast majority of retail customers. Mr Hussein concluded that the Alerts were not applicable to P6. That conclusion was wrong and Mr Hussein had no reasonable basis for coming to that view. As a qualified financial adviser, it should have been obvious to Mr Hussein that the Alerts were directly applicable to P6 and that P6 was unsuitable for retail customers, except in very limited circumstances.
- b) Mr Hussein's customers included individuals who were vulnerable due to their age, their inability to replace capital, medical conditions and / or other personal circumstances.
- c) Mr Hussein's actions resulted in a significant risk of financial detriment to the customers of CWL. CWL advised 620 of its customers to switch from their existing personal pensions into SIPPs which included a large investment in P6. The Authority estimates the combined value of and risk of detriment to funds invested in P6 by CWL's customers to be in the region of £13.5m.
- d) The breaches identified demonstrate serious failings by Mr Hussein across multiple of his controlled functions. In particular, Mr Hussein's oversight of the business of CWL (as CF1), his responsibility for CWL's compliance with regulatory requirements (as CF10) and his responsibility for the suitability of advice given to the customers of CWL (as CF30).

2.23 Mr Hussein continues to maintain that his advice in relation to P6 was suitable, that P6 was not a high-risk or illiquid investment and that it was appropriate to describe customers advised to invest in P6 as "*experienced investors*". His reckless lack of integrity and continued lack of insight into his misconduct mean that Mr Hussein poses a serious on-going risk to consumers.

Action

2.24 For the above reasons, the Authority considers that Mr Hussein is not a fit and proper person to perform any function in relation to any regulated activity carried on by any authorised, exempt person or exempt professional firm.

- 2.25 The Authority withdraws Mr Hussein's approval to perform the SMF3 (Executive Director), SMF16 (Compliance Oversight) and SMF17 (Money Laundering Reporting) functions at CWL pursuant to section 63 of the Act and makes an order prohibiting Mr Hussein from performing any functions in relation to any regulated activities carried on by an authorised or exempt person or exempt professional firm pursuant to section 56 of the Act. This order is effective from the date of this Notice.
- 2.26 The Authority also imposes a financial penalty of £116,000.00 on Mr Hussein pursuant to section 66 of the Act.
- 2.27 This action supports the Authority's operational objectives of securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.

3. DEFINITIONS

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

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

"APER" means the Authority's Statements of Principle and Code of Practice for Approved Persons;

"Approved Person" means an individual who the Authority approves to perform one or more activities called 'controlled functions' for an authorised firm;

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

"CF1 Director" or "CF1" is an individual who performs the controlled function of director at an authorised firm;

"CF10 Compliance Oversight" or "CF10" is an individual who performs the controlled function of compliance oversight at an authorised firm;

"CF11 Money Laundering Reporting" or "CF11" is an individual who performs the controlled function of money laundering reporting at an authorised firm;

"CF30 Customer Function" or "CF30" is an individual who performs the controlled function of dealing with customers at an authorised firm;

"CIP" means Central Investment Proposition at CWL;

"COBS" means the Conduct of Business Sourcebook;

"CPD" means Continued Professional Development;

"CWL" means Consumer Wealth Limited;

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

"DFM" means Discretionary Fund Manager;

"EG" means the Authority's Enforcement Guide;

"FIT" means the Authority's Fit and Proper test for Employees and Senior Personnel section of the Handbook;

"FOS" means the Financial Ombudsman Service;

The "Handbook" means the Authority's Handbook of Rules and Guidance, as applicable during the Relevant Period;

"Greyfriars" or "GAM" means Greyfriars Asset Management LLP;

"Mr Hussein" means Mr Omar Hussein;

"IAR" means Introducer Appointed Representative;

"ISA" means and Instant Savings Account;

"mini-bond" means an illiquid debt securities offering marketed to retail investors. These instruments are typically offered by small or start-up companies which provide a fixed rate of interest over a set period, at the end of which an investor's initial investment is repaid.

"P6" means the Greyfriars Asset Management DFM Portfolio 6;

"Part 4A permission" means, as defined in section 55A of the Act (Application for permission), a permission given by the Authority under Part 4A of the Act (Permission to carry on regulated activities), or having effect as if so given.

"Relevant Period" means the period from 20 March 2015 to 1 March 2017;

"RDR" means the Authority's Retail Distribution Review;

"SIPP" means Self-Invested Personal Pension;

"Statement of Principle" means of the Statements of Principle for Approved Persons set out in Chapter 2 of APER;

"the Pension Alerts" mean the FCA Alerts issued in January 2013 and April 2014;

"the CWL P6 Agreement" means the 'adviser as client' agreement between CWL and Greyfriars dated 26 May 2015;

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

"the 2015 Fund Selection Strategy" means the strategy implemented by CWL in 2015;

"the Firm" means CWL;

"the FCA Visits" means the visit by the Authority to CWL on 13 and 14 July 2016; and

"the Skilled Person's Report" means the Skilled Person Report into CWL issued on 10 March 2017 pursuant to section 166 of the Act.

4. FACTS AND MATTERS

Background

The Authority's Pension Alerts in January 2013 and April 2014

- 4.1 In January 2013, the Authority published an alert in relation to advising on pension transfers or switches with a view to investing pension money into unregulated products through a SIPP. The Authority stated that financial advisers recommending investments into investment vehicles in other products, such as a SIPP, were expected to consider the suitability of the entire proposition, i.e. the wrapper and the underlying product. The suitability of the underlying product had to be assessed in the context of the customer's individual circumstances and any wider investment strategy, where appropriate.
- 4.2 In April 2014, the Authority issued a further alert in which it reminded regulated firms that "*if the underlying investment is not suitable for the customer, then the overall advice is not suitable*". The Authority warned "*switches to SIPPs intended to hold non-mainstream propositions are unlikely to be suitable options for the vast majority of retail customers*", referred to the findings of its supervisory work, and noted that examples of underlying investments seen included overseas property developments, store pods and forestry.
- 4.3 The Authority also published notices in respect of enforcement action taken against the partners of a pension advice firm who failed to comply with the rules in this area. In March 2015, the Authority published further notices in relation to directors

of another firm which failed to comply with regulatory requirements in this area. The directors concerned were prohibited from senior positions in financial services following the Authority's finding that (amongst other matters) they had failed to ensure customers received suitable pension switching advice and failed to oversee properly the firm's compliance function, which had been outsourced to external consultants.

CWL

- 4.4 CWL was incorporated on 4 December 2014. Mr Hussein was throughout the Relevant Period the sole shareholder and principal director of CWL.
- 4.5 On 20 March 2015, the Authority authorised CWL to advise on investments (except on Pension Transfers and Pension Opt Outs) in respect of Retail (Investment) and Retail (Non-Investment Insurance) customers. During the Relevant Period, CWL provided financial advice to pension customers considering switching their pension funds into a SIPP.
- 4.6 A SIPP is a trust-based wrapper for an individual's pension investment. It gives tax relief on an individual's contributions and tax-free growth and offers much wider investment powers than are generally available for personal pensions and group personal pensions. These allow an individual to invest in a wide range of assets. In addition, a SIPP offers greater control over where and when funds are invested or moved than is permitted by traditional pension arrangements run by investment management and life assurance companies or Defined Benefit Pension Schemes.
- 4.7 CWL obtained its new business leads through Introducer Appointed Representatives ("IARs") offering pension reviews. CWL's business model entailed agents making cold-calls to target customers, from a database of customers, who had not opted out of being contacted via this method through the Telephone Preference Service. The Authority found that customer complaints stated some recipients of the phone calls had been told that the review was "*government backed*" and that the review could "*improve the performance*" of their pension.
- 4.8 If customers agreed to a pension review, CWL or the IAR would send a courier to the home of the customer for them to obtain a signed letter of authority permitting CWL to contact their current pension provider to request details of their current pension.
- 4.9 Between the period March 2015 and December 2016, CWL employed 4 financial advisers. In addition to the financial advisers, CWL had 6 Paraplanners, 2

Reviewers, 10 Customer Service Officers, 14 Administrators and 1 Compliance Officer reporting into an external compliance firm.

- 4.10 On 13 and 14 July 2016, the Authority visited CWL and raised concerns about the suitability of advice to customers, the adequacy of due diligence on investment recommendations and Mr Hussein's understanding of CWL's activities and associated regulatory obligations.
- 4.11 On 16 August 2016, the Authority formally communicated its concerns to CWL and requested it cease all regulated activity pending a Skilled Person report pursuant to section 166 of the Act with a view to carrying out an assessment of CWL's systems and controls and regulatory compliance. On 17 October 2016, the Authority's Supervisory division issued a Requirement Notice to CWL pursuant to section 166 of the Act. The Skilled Person produced a final report on 10 March 2017. The Skilled Person performed a detailed review of 25 CWL customer files. In no instances did the Skilled Person find that both the advice to switch pensions and the specific investment strategy proposed were "*suitable*" for the customer.
- 4.12 The Authority subsequently reviewed 24 of the 25 customer files assessed by the Skilled Person and found that in all cases the customer had been exposed to a level of risk that they were not willing and able to take. Further, all customer files reviewed by the Authority showed that the customer had been recommended a product that, when all charges were included, was in fact more expensive than their existing one. This was even though each customer's Suitability Report recommended the pension switch as being "*more cost effective*".
- 4.13 On 19 April 2018, CWL voluntarily applied to the Authority to cancel its Part 4A permission to carry on regulated activities.
- 4.14 On 12 December 2018 and 15 March 2019, the Financial Ombudsman Service published findings in favour of two customers who had complained about the advice provided to them by CWL to switch their pensions into P6.
- 4.15 CWL was placed into Members Voluntary Liquidation on 18 December 2018 and Creditors Voluntary Liquidation on 2 July 2019. Companies House documentation published on 23 May 2019 showed that CWL had consumer complaint liabilities of £699,643.
- 4.16 On 5 November 2019, the FSCS announced that it had declared CWL 'in default'. As at the date of this Notice, the FSCS has upheld 437 claims against CWL and paid out over £4.3m in compensation to customers of CWL. A further 171 claims are still being assessed by FSCS. Given that CWL's central investment proposition advised

customers to invest 49% of their SIPP into P6 and 49% into a global investment fund (of which no concerns have been identified), the Authority considers these claims primarily relate to CWL's advice to customers to switch out of their existing pensions into a SIPP and / or to invest in P6 specifically.

- 4.17 When calculating compensation, the FSCS assessed that all of the corporate mini-bonds included within P6 meet its definition of an 'illiquid fund'. The FSCS defines 'illiquid funds' as those investments which are not tradable and/or for which no surrender value is available, meaning the customer's holdings cannot be realised or redeemed.

Mr Hussein

- 4.18 In the period between September 2011 and April 2014, Mr Hussein worked at various high street banks as a financial advisor. Mr Hussein's role as a financial adviser principally involved advising customers in relation to stocks, shares and ISAs.
- 4.19 Whilst working in financial services in the period September 2011 and April 2014, Mr Hussein concurrently obtained professional qualifications relevant to his financial adviser role. These qualifications included a Certificate for Financial Advisers, in August 2012 and a Level 4 Diploma for Financial Advisers, in July 2013. The Authority considers the Level 4 Diploma for Financial Advisers to be the minimum level qualification needed for an individual to become a financial adviser.
- 4.20 In December 2016 Mr Hussein obtained a Level 6 Award in Pension Transfers. This qualification was obtained by Hussein after the Authority's visits to the Firm on 13 and 14 July 2016 and after CWL had recommended 620 pension switches which included an allocation into P6.
- 4.21 Although pension switching was the core specialism of CWL, Mr Hussein had no practical experience of advising on pension switches specifically or pensions generally, prior to founding CWL in December 2014. The first opportunity for Mr Hussein to acquire practical knowledge and experience of switching pensions and related advice was in the performance of his CF30 (Customer) advice role at CWL during the Relevant Period.

Mr Hussein's roles and responsibilities at CWL

- 4.22 On 20 March 2015 Mr Hussein was authorised by the Authority to hold the CF1 (Director), CF10 (Compliance), CF11 (Money Laundering Reporting) and CF30 (Customer) controlled functions at CWL. Mr Hussein held these controlled functions throughout the Relevant Period until 8 December 2019, when the Senior Managers and Certification Regime came into force. From 9 December 2019, Mr Hussein was automatically transferred to the SMF3 (Executive Director), SMF16 (Compliance Oversight) and SMF17 (Money Laundering Reporting) functions.
- 4.23 Mr Hussein was ultimately responsible for the business of CWL throughout the Relevant Period. He set the business strategy at CWL. For example, Mr Hussein made the decision for CWL to offer a restricted advice service.
- 4.24 In performing his CF1 (Director) function, Mr Hussein had oversight of and day to day responsibility for the business of CWL. Although the CWL business structure changed over time to employ additional staff, all staff at CWL including senior management and financial advisers reported directly into Mr Hussein throughout the Relevant Period. During the Relevant Period, Mr Hussein was also one of CWL's financial advisers, advising customers in the performance of his CF30 (Customer) role. In performing his CF30 (Customer) role, Mr Hussein advised on a total of 12 of the 24 customer files reviewed by the Authority.
- 4.25 Mr Hussein also held the CF10 (Compliance) controlled function although regulatory support was provided by an external compliance firm throughout the Relevant Period. Mr Hussein told the Authority that in performing his CF10 (Compliance) role he reviewed the suitability of advice provided by CWL's other financial advisers and he also reviewed the work undertaken by CWL's external compliance firm. None of the 24 customer files reviewed by the Authority contained any evidence of such discussions and nor were there any records of meetings between Mr Hussein and the advisors to demonstrate whether such discussions had taken place during the Relevant Period.

Portfolio 6

CWL's relationship with Greystriars and P6

- 4.26 During the period April 2004 to April 2018 the Greystriars Discretionary Fund Management ("DFM") service operated a range of risk rated portfolios aimed at financial advisers, who were invited to select the portfolio suitable for their

customers' objectives and risk profile. The Fund Managers at Greyfriars had discretionary powers to purchase and sell specific assets within each portfolio at any time to suit the objectives and strategy of that portfolio. The Greyfriars DFM service offered five risk-graded traditional model portfolios and allocation to each asset class was determined according to customers' risk grading of: (i) Cautious; (ii) Balanced; (iii) Adventurous; and (iv) Aggressive.

4.27 In April 2014, Greyfriars introduced a sixth investment portfolio P6, which was promoted exclusively to financial advisors. Documentation relating to P6 stated that the "*non-correlated*" P6 was added to the range of services offered by Greyfriars to financial advisors as an opportunity to invest in a fully-managed non-correlated investment, using varied asset classes with the potential for investors to gain high returns. Investments were said to be selected on their own merit to perform independently of major markets utilising instruments such as corporate bonds.

4.28 The Greyfriars documentation also stated that most traditional investment assets are "*correlated*", i.e. their value is influenced by macroeconomic, industry, sector or commodity trends. When the economic cycle turns to a recessionary phase, most correlated investments suffer. Greyfriars stated that most sophisticated or experienced investors would counter this risk by holding a proportion of their investment portfolio in "*non-correlated*" assets.

4.29 The nature of P6 was described in the following terms:

"Non-Correlated Products: The nature of Portfolio Six is that it holds a mix of non-correlated products, i.e. low capital funds (either regulated by an EEA regulator, or unregulated), fixed interest corporate bonds issued by specific trading entities or the subsidiaries set up for the purpose, and Funds which hold combinations of the previous two examples".

4.30 Further, "*non-correlated*" assets were described as including a "*range of potential investments including real estate and corporate bonds*".

4.31 It was Mr Hussein's account that he first became acquainted with Greyfriars prior to making the application for CWL to be authorised by the Authority, in January 2015. It was also Mr Hussein's account that in the early stage, he explored and considered the business offerings of Greyfriars. Mr Hussein told the Authority that he was specifically drawn to P6 because of his experience with individuals who had difficulties accessing discretionary fund management services and because the assets were "*non-correlated*".

- 4.32 CWL entered into an agreement with Greyfriars on 26 May 2015 to provide DFM services to CWL which specifically related to Greyfriars' P6 product ("the CWL P6 Agreement").
- 4.33 Pursuant to the terms of that agreement, Greyfriars was responsible for making discretionary fund management decisions relating to the selection of products in P6 and would deal exclusively with CWL and not the underlying customer. CWL was responsible for selecting and assessing the suitability of the Greyfriars model portfolio (P6) when advising a customer to switch pensions.
- 4.34 Where a financial adviser has a professional relationship with a discretionary fund management service, the financial adviser is responsible for the suitability of advice it provides to its customer. Although Mr Hussein was not responsible for selecting the investments in P6, he was responsible for assessing the suitability of P6 for his customers.
- 4.35 The CWL P6 Agreement described CWL as "*a start-up company*", but it nevertheless anticipated introducing "*1200 DFM cases to Greyfriars in the following 12 months*".

The composition and liquidity of P6

- 4.36 P6 was made up exclusively of mini-bonds including overseas investments in real estate, car parks, renewable energy and holiday resorts. The bonds were not listed on a regulated market and generally promised high returns, frequently between 7% and 11% per annum.
- 4.37 Greyfriars described the liquidity of P6 in the following terms:
- "The intermediary understands Portfolio Six [...] isn't as liquid as more conventional investments [...]. '[Company A]'s Warehousing System will endeavour, where required, to facilitate trades on a matched bargain basis at each point of dealing, although there may be occasions when this is not possible. Should this occur it is likely any investor may be locked into a security for an indefinite period".*
- 4.38 Where redemptions could not be paid to customers through Greyfriars' normal issuer redemption route, a separate "*Warehousing*" facility, which did not belong to Greyfriars, was stated to be available to facilitate redemptions by customers. In such instances, the redemption funds would have come directly from the separate facility.

- 4.39 Following the Authority's intervention, in 2016 Greyfriars stopped accepting any new money into P6 on a permanent basis.

CWL's initial advice recommending P6 in May 2015 and due diligence in June 2015

- 4.40 Mr Hussein told the Authority that he had carried out due diligence on P6. Mr Hussein started recommending P6 to customers in May 2015, before he had carried out important due diligence steps on the product and was largely reliant on due diligence conducted by other parties. This was despite the fact that CWL's own 2015 Fund Selection Strategy (see paragraph 4.44) stated that non-correlated assets were to be "*selected carefully, based on an extensive programme of due diligence*".
- 4.41 CWL first recommended a customer to switch from their existing pension into P6 (and a separate global investment fund) on 29 May 2015 three days after signing the CWL P6 Agreement with Greyfriars. In the period between 29 May 2015 and 26 June 2015 CWL advised a total of 48 customers to switch their pensions into SIPPs which included an allocation into P6.
- 4.42 However, the first recorded instance of P6 being discussed in the context of due diligence was at the CWL investment committee meeting on 28 June 2015. Mr Hussein was present at this Investment Committee meeting at which it was agreed that further information regarding the "*capital*", "*security*" and "*liquidity*" of P6 would be sought from Greyfriars. The Investment Committee noted that it had considered the due diligence undertaken by Greyfriars on P6 which included a report prepared by a third-party.

CWL establishes its Fund Selection Strategy in July 2015

- 4.43 During the Relevant Period, CWL provided advice to typically low net worth customers, who, it stated, would otherwise struggle to obtain advice in the post Retail Distribution Review environment. The Firm's target market was explicitly stated to be customers with modest pensions and whose investment experience was limited.
- 4.44 In July 2015, after it had begun advising customers to invest in P6, CWL published its "*Fund Selection Strategy*" document. The 2015 Fund Selection Strategy established the Firm's approach to selecting products, fund managers and investment funds. The 2015 Fund Selection Strategy was approved by the CWL

investment committee. The Fund Selection Strategy described CWL's target market in the following terms:

"This strategy document has been prepared against the backdrop of the company's target market: the mass market ... Consumer Wealth's clients generally have limited experience of dealing with investment based financial products. They are not familiar with complex investment products, they generally have either a cautious or balanced attitude to risk and usually a limited capacity for loss. Finally, they have typically undertaken investment transactions on a relatively infrequent basis. These factors have therefore been taken into account in formulating this strategy document, with particular reference to the fund selection aspects".

4.45 The Fund Selection Strategy also stated:

"In developing its philosophy and methodologies on fund selection, the Investment Committee has been mindful of the company's obligations to take into account the client's knowledge and experience in the relevant investment field. This requirement is amplified by COBS 9.2.3R, which states: 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:

- 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".*

4.46 CWL identified "non-correlated assets" as a type of investment potentially suitable for customers. CWL explained that this investment vehicle was selected to protect part of a customer's SIPP investment portfolio from macro-economic shocks, based on selecting strategies where the drivers of returns are either not correlated, or ideally negatively correlated, to price movement in more traditional asset classes.

CWL asserted that this offered investors the opportunity to optimise the performance of their portfolios, whilst providing a hedge against the cyclical nature of traditional equity and bond markets. However, as noted at paragraphs 4.27 to 4.28 above, the Greyfriars documentation referred to the use of "*non-correlated*" assets by "*sophisticated or experienced investors*".

4.47 By the time the CWL Fund Selection Strategy was formally established and implemented in July 2015, identifying its customer base and the requisite regulatory requirements applicable to customers and its investment offering, CWL had already commenced advising customers to transfer their funds into P6 in May 2015. It was Mr Hussein's account that the Fund Selection Strategy was developed earlier, but it was not formally approved until July 2015.

4.48 Moreover, although CWL's Fund Selection Strategy contained an explanation for selecting non-correlated assets as an investment vehicle, it failed to consider to what extent and in what amounts it was appropriate to include non-correlated assets in its customers' portfolios, despite identifying that CWL's target market had limited experience and familiarity with complex investment products. (see paragraph 4.44 above).

CWL review of P6 in September 2015

4.49 On 29 September 2015, the CWL Investment Committee held a further meeting at which Mr Hussein was present and where due diligence on P6 was discussed. The Investment Committee considered the due diligence conducted by Greyfriars including a legal opinion received from a third-party. The Investment Committee agreed with the third-party conclusion that the bonds within P6 were "*non-readily realisable securities*".

4.50 This was a clear indication to Mr Hussein that there was a risk the underlying investments in P6 could be difficult to price and sell. In certain scenarios, there could be no or only a limited secondary market for P6. The lack of a secondary market meant that customers could be unable to sell or trade their investments to access their funds if required, for example, where there had been a change in their personal circumstances such as reaching retirement age.

CWL review of P6 in March and June 2016

4.51 On 24 March 2016, the CWL Investment Committee recorded a further review of the Greyfriars due diligence process. The Committee noted that redemptions in P6

were still being completed within 30 days of application and therefore it considered the bonds were standard assets for the purpose of SIPP operators' capital adequacy requirements. The definition of standard assets for these purposes required that an asset be capable of being readily realised within 30 days, whenever required. Given the legal advice that the bonds in P6 were not readily realisable securities and Greyfriars' warnings as to P6's liquidity, that conclusion was incorrect and inconsistent with other information Mr Hussein was aware of. P6 could not be readily realised within 30 days whenever required. Moreover, the definition of a standard asset was relevant to SIPP operators in calculating their capital requirements. It did not enable an IFA to automatically conclude an investment was appropriate or suitable for their customers.

- 4.52 On 28 June 2016, the CWL Investment Committee recorded a meeting between CWL's external compliance consultant and Greyfriars which had taken place on 23 June 2016. Greyfriars had provided CWL's external compliance consultant with a 2-year update on P6. The CWL Investment Committee noted that P6 had achieved its main aim of delivering consistent returns and insulating investors from cycles in the equity markets.

Statements and risk warnings in P6 documentation

- 4.53 The Greyfriars documentation contained numerous clear statements and risk warnings in relation to P6. Examples of statements and risks warnings included:
- a) *"The portfolio will consist of investments that are not regulated and this affects client's rights to complain to the Ombudsman and under the FSCS";*
 - b) *"The investments are illiquid in nature and in extreme market conditions clients may be unable to exit at any price";*
 - c) *"The values of the investments and the income therefrom can fall as well as rise. Valuations will not always be tested in free market conditions";*
 - d) *"Cons: Non-transferable, high risk, lack of transparency, imbalanced downside and upside exposure, lack of investor protection and not covered by FSCS";*
 - e) *"Portfolio Six will have one dealing date per month...and as such isn't as liquid as more conventional investments" ... "Company A's warehousing system will endeavour, where required, to facilitate trades on a matched bargain basis at each point of dealing, although there may be occasions when this is not*

possible. Should this occur, it is likely any investor may be locked into a security for an indefinite period...";

- f) *"Portfolio Six is designed as a long-term investment however investors can exit at any time for no additional fee (subject to marketability of the underlying investments)";* and
- g) *"Portfolio Six' is promoted exclusively to Financial Advisers for clients [...] who are looking to gain access to the diversification benefits alternative investments bring, in proportion to an overall portfolio of assets. In particular, for those investors who are looking to gain a relatively stable, strong level of income for a considerable period of time, but who appreciate, in full, the risks with such investments...".*

4.54 Mr Hussein reviewed the P6 documentation and was therefore on notice of these risks. In addition, the Authority found that the terms of the CWL P6 Agreement signed by Mr Hussein on 26 May 2015 confirmed his understanding that *"Portfolio Six isn't as liquid as more conventional investments"* and that customers could be *"locked into a security for an indefinite period"*.

4.55 Further, CWL completed an application form for each customer whom it recommended invest in P6 which it sent to Greyfriars (the "Application Forms"). The Application Forms contained the disclaimer that *"Given the nature of the underlying investments, the liquidity of the portfolio may be restricted, but we will endeavour to facilitate trades via the single dealing point each month, where necessary"*. This statement provided further indication as to significant liquidity risks of P6. In all the cases reviewed by the Authority where Mr Hussein was the CF30 adviser, the declaration to each Application Form was signed by Mr Hussein.

BBC Panorama broadcast in July 2016

4.56 On 11 July 2016, a BBC Panorama programme aired. The programme focused on selling practices and direct investment into overseas property being developed by Company B. P6 included a series of Company A's bonds with an approximate value of £13.5m.

4.57 CWL's Investment Committee convened a meeting to discuss the programme which Mr Hussein attended. The CWL Investment Committee identified the reputational risk associated with continuing to recommend customers to invest in a portfolio that included an allocation to corporate bonds backed by Company B's assets. The CWL Investment Committee noted a further meeting with Greyfriars at which it was

reported that *"Greyfriars' experience to date of dealing with [Company B] has been the security provided has been of an acceptable standard and Company B has made all payments in accordance with the bond schedule"*.

The Authority's visits in July 2016

- 4.58 Following the Authority's visits to the Firm on 13 and 14 July 2016 (see paragraph 4.10 above), a further CWL Investment Committee meeting was convened on 18 July 2016. This meeting discussed the Authority's visit and specifically the concerns raised regarding advice relating to P6. The CWL Investment Committee noted that it remained of the view that P6 could perform a legitimate role in an investment portfolio for a broad range of retail customers. The Committee stated that this was based on the extensive due diligence performed on the fund and assurances from Greyfriars that it offered an acceptable level of liquidity. Notwithstanding those factors, CWL took the view that with immediate effect, no further recommendations should be made to customers to invest into P6.

Mr Hussein's advice

Advice to switch pensions

- 4.59 In all of the customer files reviewed by the Authority and the Skilled Person, the rationale used by CWL to justify recommending customers switch pensions was either unsuitable or unclear. Reasons provided by CWL to customers in their Suitability Reports to justify recommendations to switch included statements and objectives which were often inaccurate or equally true of a customer's existing pension scheme. For example:
- a) The Suitability Reports did not compare fees under the recommended SIPP on a like-for-like basis with those under customer's existing pension scheme(s) (see paragraphs 4.86 to 4.89 below). This meant that in all 24 customer files reviewed by the Authority, the pension switch did not actually meet a customers' stated objective to achieve a reduction in fees and charges. Indeed, when all relevant charges were taken into account, in every case reviewed, the customer was exposed to higher charges as a result of the switching, rather than lower.
 - b) Suitability Reports prepared by Mr Hussein also included generic objectives for switching such as *"the ability to pass on benefits to your family"* and *"the capability to track the performance of your pension fund"*. In many cases, such

objectives could be achieved by customers with their existing pension provider without needing to incur significant pension switching fees. However, Suitability Reports informed customers that their stated objectives could not be met by their current provider.

c) Another stated objective for switching included in Suitability Reports was “*access to ongoing pension and investment advice*”. However, there was no need for a customer to switch pensions to access such advice.

4.60 The Skilled Person also identified that CWL did not have a central formal pension switch policy governing its pension switch activity. Instead, CWL had a limited number of short stand-alone documents. CWL’s pension switch policy on when it would or would not recommend a pension switch was not sufficiently detailed or clear; there was no articulation of CWL’s rationale for recommending a switch, for example, a reduction in existing fees and charges for the customer could be a reason to recommend a switch. Additionally, CWL did not have a formal procedure document setting out how pension switch activity should be undertaken. This was particularly important given CWL’s business relied on IARs and cold calling potential customers to offer “*pension reviews*”.

4.61 The absence of a clear rationale for switching pensions and clear charge comparisons meant that in all 24 customer files reviewed by the Authority, there was no justification for Mr Hussein/CWL recommending that customers switch from their existing pension provider into a SIPP. This was particularly concerning given that CWL only received advice fees when a customer agreed to switch pensions.

Assessment of customers’ experience and attitude to risk

4.62 CWL’s assessment of a customers’ knowledge and experience in relation to financial products, their investment objectives and attitude to risk was contained in its fact find documents and its Suitability Reports. CWL customers were asked for details of their assets and liabilities, income and expenditure and existing pension.

4.63 None of the 24 customer files reviewed by the Authority contained any evidence that CWL took steps to assess the suitability of the underlying investments within the SIPP (including P6) for that customer’s individual needs and risk profile. Nor did they demonstrate that CWL took any reasonable steps to assess customers’ knowledge and experience in relation to financial products. This information was required for CWL to advise on whether or not P6 (including the underlying investments) would be suitable for the customer.

4.64 Further, Mr Hussein's decision to disregard risk warnings relating to P6 (see paragraphs 4.69 to 4.70 below) also meant that CWL failed to discuss key risks associated with P6 in assessing its suitability for customers. By way of example, Greyfriars' Appropriateness Flow Chart, which was to be used when assessing CWL customers suitability for P6, specifically requested a financial adviser seek confirmation that a customer understood that the underlying investments were not FCA regulated, nor FSCS protected. However, Mr Hussein's position – for which he had no rational basis - was that these risks did not need to be communicated to customers as he disagreed with them.

4.65 In any event, customers were often advised to invest the same amount of their SIPP into P6 irrespective of information gathered during their customer fact find. This reflected CWL's CIP which recommended a 49% allocation into P6, largely irrespective of a customer's appetite for risk or personal circumstances. By way of example, the Authority's review of customer files identified customers categorised between low and relatively high attitudes to risk who were all advised to invest 49% of their SIPPs into P6. Similarly, the same 49% investment into P6 was recommended to customers who had completely different levels of income and savings. There was no reasonable basis for considering the exact same allocation to P6 was suitable for all such customers.

Advice on a SIPP and underlying investments

4.66 When a financial adviser is advising on an investment wrapper product, such as a SIPP, that financial adviser must consider the suitability of the overall proposition (i.e. the suitability of both the SIPP wrapper and the underlying investments) to be able to advise their customers properly. Where the customer is selling existing investments (including transferring or switching their existing pension) to invest in financial instruments via a SIPP, the financial adviser must assess the suitability of that underlying investment for the customer prior to recommending a SIPP. The regulatory provisions relevant to these requirements are referred to in Annex A.

4.67 The Alerts published by the Authority in January 2013 and April 2014 set out its expectations of financial advisers advising on overseas property investments. The Authority's alerts made clear that financial advisers must give careful consideration to the particular features of the investment in question, and that the suitability of the underlying investment must form part of the advice to the customer. If the underlying investment was not suitable for the customer, then the overall pension switch advice was not suitable.

4.68 It was Mr Hussein's account that he was aware of the Alerts but discounted them because he did not consider them to be applicable to the underlying investments in P6. He had no reasonable basis for doing so. It was clear that P6 included investments in overseas property and it was incumbent upon CWL and its financial advisers to consider whether such an investment was suitable. By wrongly discounting the alerts, Mr Hussein missed a critical step in assessing the suitability of the underlying investments as part of his overall recommendation that customers switch to a SIPP.

Mr Hussein's advice in relation to P6

4.69 Mr Hussein told the Authority that he had reviewed certain documentation relating to Greyfriars' P6, and he had knowledge of the statements and the risks warnings contained in the Greyfriars P6 documentation.

4.70 However, Mr Hussein explained that he disregarded these statements and risk warnings because he did not "agree" with them. This was despite the fact that prior to founding CWL, Mr Hussein had no pensions advisory experience. Further, Mr Hussein admitted at interview that his ability to assess investments was limited as he was "not a stock picker" and "not a fund manager". Mr Hussein was therefore aware of the limitations of his knowledge but nonetheless chose to ignore the warnings of P6's own fund manager.

4.71 Instead, Mr Hussein took the view that P6:

- a) was not high-risk and he disagreed with Greyfriars giving P6 this risk rating;
- b) was a regulated product and a standard asset for capital adequacy purposes;
and
- c) was fully liquid because, irrespective of the underlying investments, in his experience customers had been able to redeem their investment when required.

4.72 Each of these positions was directly contradicted by statements and / or information in the Greyfriars P6 documentation (see paragraph 4.53 – 4.55 above). Moreover, Mr Hussein had agreed to the terms of the CWL P6 Agreement which confirmed, amongst other things, his understanding that P6 was not as liquid as more conventional investments.

4.73 The CWL Investment Committee meetings which took place during the period June 2015 to September 2015 also discussed "liquidity" and "security of capital" issues and noted that the P6 "bonds are non-readily realisable securities" which were

further indications as to the risk profile and suitability of P6. Mr Hussein therefore had ample information available to him to be aware of the high-risk nature of P6 and that it was unlikely to be suitable for CWL's customers.

- 4.74 Given the statements and risk warnings contained in the P6 documentation and the terms of the CWL P6 Agreement, it was or ought to have been clear to Mr Hussein that each of the conclusions he had reached in his assessment of P6 and his resulting decisions to disregard Greyfriars' risk warnings were incorrect and unreasonable. Given CWL's customers consisted of typically low net worth investors with limited investment experience and financial sophistication, P6 was entirely unsuitable to be included in the Firm's CIP, let alone to form up to 49% of many of CWL customers' SIPPs.
- 4.75 The Authority considers that CWL's allocation of 49% of customers' SIPPs into P6 meant that the overall exposure of their pension to risk was significantly higher than was suitable for them. It was Mr Hussein's view that when P6 was combined with a separate global investment fund, CWL had sufficiently balanced investment risk for its customers. Mr Hussein described this as a "*blended*" approach and took the view that applying this approach meant he could discount the specific warnings that only a small proportion of a customer's assets should be invested in P6. He had no reasonable basis for that belief. Combining P6 (and including 49% of a customer's funds into P6) with a separate fund did not make the overall SIPP suitable for CWL's customers as it still meant that nearly half of their pensions were invested in underlying investments which were high-risk and unsuitable for them.
- 4.76 In September 2016, Mr Hussein formally responded to the Authority's Feedback letter of August 2016 following the Authority's Visits. In this response, Mr Hussein reiterated that he did not agree that P6 was high-risk or illiquid or that it was unsuitable for retail investors.
- 4.77 Mr Hussein's view that P6 was a liquid investment was based on the fact that CWL customers had, to date, been able to redeem their investment when a request had been made. This demonstrated a fundamental failure by Mr Hussein to understand the liquidity risks he had been informed of. The liquidity of any investment is not measured only by its ability to meet a small number of redemptions in favourable market conditions but also larger volumes in stressed market conditions. In such circumstances (and as Greyfriars had warned Mr Hussein) it could become impossible for customers to exit their investment in P6.
- 4.78 Prior to the 18 July 2016 Investment Committee meeting (following which recommendations to customers to invest in P6 ceased), CWL recommended 620 of

its customers to switch from existing personal pensions, into SIPPs which had an allocation to P6 (frequently up to 49%). This exposure to an unsuitable, high-risk and illiquid investment resulted in a risk of detriment to CWL customers estimated to be in the region of £13.5m. Those customers were largely low net worth and financially unsophisticated and likely to be particularly adversely affected by losses of this magnitude.

Suitability Reports

- 4.79 CWL prepared a Suitability Report for each customer to whom it recommended a pension switch. Mr Hussein routinely signed off the Suitability Reports personally.
- 4.80 As noted above, P6 was a high-risk investment due to the nature of the underlying investments (including unregulated overseas property developments). This was reflected in the warnings and guidance provided by P6's own DFM, Greyfriars. Such investments may have been appropriate for experienced investors who had a higher capacity for loss. However, these were expressly not the types of customers which CWL targeted. The mini-bonds which were included in P6 offered returns of up to 11% per annum which was an indicator of their relatively high underlying investment risk. The investments in P6 were also unregulated and illiquid in nature.
- 4.81 It was Mr Hussein's view that P6 was a "*medium risk investment*" and therefore suitable for CWL's CIP and its Advice Matrix. This was despite the fact that statements and risk warnings contained in the Greyfriars documentation relating to P6 clearly pointed to it being a higher risk rather than a medium risk investment.
- 4.82 The CWL Suitability Reports purported to set out the "*inherent risks associated with this product*". However, Mr Hussein acknowledged that the Suitability Reports failed to specify which risks related to which product.
- 4.83 The disadvantages in relation to the SIPPs CWL recommended were set out in the "*Risks and potential disadvantages associated with the contract*" section of the Suitability Reports. This set out a list of factors for CWL customers to consider before agreeing to switch pensions. However, the risks and potential disadvantages associated with the recommended SIPP were generic. Each suitability report only contained high-level, identical risk warnings such as "*Past performance is no guarantee*" ... "*The price of units and the income from them can fall as well as rise*" ... and "*investment values may go down as well as up*" ...
- 4.84 CWL's Suitability Reports did not explain any of the specific risks associated with P6. The Authority considers that given the high-risk nature of P6, the Suitability

Reports should have, at a minimum, communicated and explained the risk warnings contained in the Greyfriars P6 documentation. However, by Mr Hussein's own admission, he deliberately chose not to communicate these specific risk warnings to customers in the Suitability Reports because he did not "agree" with them. As a result:

- a) The Suitability Reports contained no information to indicate to customers that P6 included investments in speculative overseas developments nor any other indication that P6 was a high-risk investment (or, even on Mr Hussein's own assessment, a medium-risk investment).
- b) The only information relating to the liquidity of the proposed investments was included in the "*Product Inherent Risks*" section of the Suitability Reports. This was simply the words "*liquidity risk*". This was included in a list of ten complex financial risks with no further explanation.
- c) The Suitability Reports made no reference to Greyfriars' warning that only a small portion of customer's funds (and in any event not more than 25%) should be invested in P6. Nor was any specific explanation provided as to why such a large allocation to P6 was viewed as being suitable.
- d) The Suitability Reports contained no information to make clear that P6 contained underlying investments which were unregulated and not covered by the FSCS.

4.85 CWL's customers were retail investors with limited knowledge and experience of financial services products. It was therefore necessary for those customers to be provided with clear information and explanations about the disadvantages in relation to the SIPP recommended by CWL and the material risks associated with P6 so that they could provide their informed consent to the proposed pension switch.

Comparison of pension charges

4.86 Mr Hussein was responsible for considering the fees charged by CWL when advising on whether a pension switch was suitable and in the best interests of CWL's customers. Mr Hussein was also responsible for ensuring that the charges comparison presented to customers in the Suitability Reports were fair, clear and not misleading.

- 4.87 At the point of the initial pension switch advice provided by CWL to customers, CWL charged a one-off fee of 5% of the amount it invested into the new SIPP pension, up to a maximum of £1,500. The Authority considers that a key justification for recommending a switch is if the charges under the SIPP are materially lower than under the customer's existing scheme, allowing for the one-off adviser charge of 5%. In all 24 customer files reviewed by the Authority, when all the CWL charges were taken into account, the costs to the customer were higher than if they had not switched.
- 4.88 By way of example, in each of the Suitability Reports reviewed by the Authority, the "*Charges and Costs Comparison*" did not include the initial advice charge that would be applied to customers switching to the proposed SIPP. The comparisons also failed to include the cost of CWL's ongoing advice service (charged annually at 1% of a customer's total SIPP). Whilst these fees were mentioned elsewhere in the Suitability Reports, they were not included in the comparison table, despite it purporting to be an "*analysis of all comparative costs and charges*".
- 4.89 The Suitability Reports were therefore misleading and unfair. They did not clearly compare the charges under the ceding scheme with those under the recommended SIPP and made it difficult for a customer to carry out a side by side comparison of the charges, particularly as CWL's customer base was typically inexperienced in financial products and investments. CWL's customers were provided with misleading information and would therefore not have been in a position to make an informed decision about CWL's recommendation to switch their pensions.

Application Forms

- 4.90 As noted at paragraph 4.55 above, CWL submitted Application Forms to Greyfriars on behalf of each customer whom it recommended to invest in P6. These Application Forms contained responses to questions regarding the appropriateness of P6. The information CWL supplied in these responses was misleading and inaccurate.
- 4.91 Mr Hussein personally signed many of the Application Forms reviewed by the Authority. In each Application Form, identical responses were recorded in answer to certain questions. In response to a question regarding their investment experience, every CWL customer was stated to be an "*experienced investor in property, bonds and mainstream investments*". In the section which asked why investing in unregulated underlying investments would be suitable for the customer, Mr Hussein replied in each case "*Client requires diversification of his*

overall investment portfolio and is attracted to un-correlated nature of the fixed returns this service offers”.

- 4.92 It was Mr Hussein’s account that he considered customers to be experienced investors on the basis of their existing pension and the underlying investments held within it. The Authority’s investigation identified that the customers whom CWL advised included, amongst others, unemployed individuals and an individual receiving Disability Living Allowance, living in rented accommodation, with no liquid assets. The customer file for this individual noted *“has nothing, lives off his benefits due to having a major disability”*. Another customer was an individual, who was employed as a housekeeper, with no liquid assets and living in rented accommodation and receiving housing benefit contributions towards rent. Both individuals were amongst the customers Mr Hussein determined to be *“experienced investors in property, bonds and mainstream investments”*.
- 4.93 None of the individuals whose files the Authority reviewed had provided any information to CWL to confirm or support Mr Hussein’s assessment that they had knowledge and experience in relation to financial products. It was therefore unreasonable to treat such customers as experienced investors and provide investment advice on that basis. In addition, the Authority considers the fact that certain customers owned or had a mortgaged property and an existing pension did not mean they had knowledge and experience of financial products generally nor that P6 was a suitable investment for them.
- 4.94 Mr Hussein also took an unreasonable and misleading approach to calculating customers’ investable assets.
- 4.95 One of the questions on the Application Form asked CWL what proportion of a customer’s total assets their investment in P6 represented. Mr Hussein was aware that Greyfriars would not normally accept an investment into P6 where it represented more than 25% of a customer’s investable assets. The Greyfriars P6 documentation stated that P6 was appropriate only for a *“small proportion”* of an investor’s funds. CWL therefore, when calculating a customer’s investable assets for the purposes of the Application Form, ignored customers’ liabilities and included the entire value of their homes (including the mortgage element) and emergency savings. This approach had the effect of making many of CWL customers’ investments in P6 appear to be only a few percent of their total investable assets when, in fact, it was a far larger proportion.
- 4.96 In other cases, for customers who did not own a home and had little or no savings (and therefore the above approach could not be applied) Mr Hussein provided a

'side letter' to Greyfriars explaining why, notwithstanding these circumstances, he still viewed an investment in P6 of more than 25% of their total assets to be suitable.

- 4.97 Again, Mr Hussein's explanation of these customers' financial circumstances to Greyfriars was misleading. In one example, relating to a customer he was advising invest 49% of their SIPP into P6, Mr Hussein wrote to Greyfriars confirming "*client is holding sufficient alternative liquid assets to enable them to cope with any unforeseen financial contingencies without having to access their investment into P6*" and that the allocation to P6 was appropriate given their "*ability to take risk*". In fact, CWL's customer fact find had identified that the customer in question was unemployed, that their only income was Jobseeker's Allowance and that their pension was their only financial asset.

On-going service and annual reviews

- 4.98 CWL offered an ongoing service with a guaranteed annual review at an annual cost of 1% of the value of a customer's total investment. The service purported to provide customers with monitoring of funds for their continuing suitability; review of the circumstances and the client's attitude to risk; and an opportunity to keep financial arrangements up to date and reports on the performance of a customer's investments. The 1% annual review fee was not capped, so in the cases of customers with larger investments it could represent a larger fee than that charged for the initial switching advice.
- 4.99 CWL's Suitability Reports failed to make the voluntary nature of the ongoing advice service clear and did not explicitly request a customer's acceptance of the service. Indeed, when describing adviser charges, the Suitability Reports described it as an "*annual servicing fee*". The Skilled Person's Report identified that, during the Relevant Period, only a single customer declined the ongoing service when switching pensions. The Authority considers that this exceptionally high uptake indicated that customers were insufficiently aware of the optional nature of the service.
- 4.100 None of the 24 customer files reviewed by the Authority contained any documentation to suggest that that annual reviews or related monitoring and review work had actually taken place in respect of these customers. Nonetheless, the 1% annual review fee had still been charged from these customers' SIPPs.

- 4.101 Moreover, prior to May 2017, no policy existed explaining how CWL's annual reviews were to be conducted. Notwithstanding this, Mr Hussein proactively encouraged advisors at CWL to promote the ongoing review service.
- 4.102 At interview, Mr Hussein acknowledged that annual reviews had not taken place in respect of customers because there was not a system in place and CWL was reliant on customers 'taking up' the service. In these circumstances, CWL continued to charge the 1% annual fee despite being unable to contact customers to provide the service.
- 4.103 It was Mr Hussein's account that towards the end of the Relevant Period, he introduced a policy whereby customers who did not use the ongoing service for two years were no longer charged the 1% fee after that period. However, even with this change, CWL still was charging customers for two years of a service which they were not receiving.
- 4.104 The Authority considers that not only did CWL fail to make customers aware of the voluntary nature of the ongoing service, the acceptance of which was not explicitly requested, but the purported service in fact was not and could not be delivered because there was no annual review system in place at CWL.

5. FAILINGS

- 5.1. The regulatory provisions relevant to this Notice are referred to in Annex A.
- 5.2. By reason of the facts and matters above, during the Relevant Period, Mr Hussein failed to act with integrity and breached Statement of Principle 1 (acting with integrity) of APER. In particular Mr Hussein:
- a) advised, and permitted CWL to advise, the firm's initial 48 customers to invest nearly half their pensions into P6 on the basis it was a suitable investment for them before carrying out a reasonable level of due diligence on P6 and in circumstances where, even on the limited information available, it was clear that the investment was not suitable;
 - b) advised, and permitted CWL to advise, a total of 620 customers to invest up to 49% of their pensions into P6 when even the limited due diligence Mr Hussein did conduct made it apparent that P6 was a fundamentally unsuitable investment for CWL's customers, except in very limited circumstances and amounts.

- 5.3. Mr Hussein provided this advice to customers in circumstances where he:
- a) recklessly disregarded clear statements and risk warnings regarding P6 contained in the Greyfriars documentation on the basis that he "*disagreed*" with them. Mr Hussein knew that he did not have the expertise to conclude that such risks could reasonably be disregarded; and
 - b) recklessly disregarded Greyfriars' recommendation that only a "*small proportion*" of an investor's portfolio should be allocated to P6 and instead proceeded with a Central Investment Proposition which advised CWL customers to invest 49% of their SIPPs into P6 irrespective of their attitude to risk or personal circumstances.
- 5.4. In doing so, Mr Hussein deliberately and unjustifiably closed his mind to the risks he was taking in providing unsuitable advice in relation to his customers' retirement savings. He also deliberately did not communicate material risks to his customers in their Suitability Reports with the result that he misled them as to the risks involved in their pension switches. In doing so, he acted recklessly and therefore without integrity.
- 5.5. In addition:
- a) Mr Hussein misrepresented to Greyfriars that customers investing in P6 were "*experienced investors in property, bonds and mainstream investments*". He had no reasonable basis for making these statements and they were contradicted by information gathered during CWL's own customer fact finding work;
 - b) Mr Hussein misrepresented CWL customers' total investable funds and / or financial position to Greyfriars, being aware that Greyfriars would not normally accept investments of more than 25% of a customer's assets into P6. In the most serious cases, Mr Hussein represented that multiple customers who had no job and no or minimal assets were "*experienced investors*" and had sufficient alternative liquid assets to invest in P6 when he knew this to be untrue; and
 - c) Mr Hussein charged customers for an on-going advice service without putting in place any material arrangements to provide it.
- 5.6. Mr Hussein therefore made statements to and regarding CWL customers that he knew or ought to have known were misleading, unfair and inaccurate. Mr Hussein's conduct resulted in CWL customers investing significant portions of their retirement savings into unsuitable investments and exposed them to an unacceptable risk of

detriment.

5.7. Mr Hussein also breached Statement of Principle 7 during the Relevant Period because he failed to take reasonable steps to ensure that CWL complied with the relevant requirements and standards of the regulatory system.

5.8. By reason of the facts and matters referred to above, during the Relevant Period Mr Hussein breached Statement of Principle 7 by failing to take reasonable steps to:

- a) ensure that CWL had due regard to whether switching a customer's existing pension into a SIPP was in that customers' best interests, including appropriate policies and procedures for when to recommend a pension switch;
- b) ensure that CWL took reasonable care to assess customers' knowledge and experience in relation to investments in financial products and the overall SIPP proposition appropriate for them;
- c) ensure that CWL adequately assessed the suitability of the underlying investments within the proposed SIPP, in particular P6, for each customer's specific risk profile and individual needs, being individuals who were entitled to rely upon CWL's judgment;
- d) prevent CWL employees advising initial customers and transferring their funds into P6 prior to carrying out a reasonable level of due diligence;
- e) prevent CWL employees advising customers to invest in P6 when even basic due diligence had made clear that P6, particularly in the proportions recommended, was an unsuitable investment for CWL's target market;
- f) ensure that customers' Suitability Reports contained a clear and fair explanation of the material risks and specific disadvantages associated with investing a large portion of their SIPP in P6;
- g) ensure that customers' Suitability Reports provided charge comparisons between their existing pension plans and the proposed SIPP they were being recommended which were clear and not misleading;
- h) ensure that CWL's on-going advice service was clearly communicated as being an optional and voluntary service that was separate from the initial switching advice and for which customer's explicit, informed consent ought to have been obtained. Further, that appropriate systems were in place to ensure this service was actually provided;

- i) gather sufficient information from customers in order to properly assess their knowledge, experience and risk appetite in relation to investments in financial products so as to be able to provide suitable advice; and
 - j) ensure that CWL's Suitability Reports contained any information or explanation of the specific risks and disadvantages associated with P6.
- 5.9. As a result of these failings, Mr Hussein caused CWL to breach Principles 3, 6, 7 and 9 of the Authority's Handbook.

6. SANCTION

Financial penalty

- 6.1. As a result of Mr Hussein's breaches of Statement of Principles 1 and 7, the Authority has decided to, and hereby does impose, a penalty pursuant to section 66 of the Act. The Authority's policy on the imposition of a financial penalty is set out in Chapter 6 of DEPP. In determining the financial penalty, the Authority has had regard to that guidance.
- 6.2. In determining the financial penalty to be attributed to Mr Hussein's breaches, the Authority has had particular regard to the following matters as applicable:
- a) the need for credible deterrence;
 - b) the nature, seriousness and impact of the breach;
 - c) the aggravating factors relating to the breach; and
 - d) the settlement discount for agreeing to resolve this matter.
- 6.3. The penalty calculation in relation to Mr Hussein is set out in Annex B to this Notice. Having regard to all the circumstances, the Authority considers that £116,000.00 is the appropriate financial penalty to impose on Mr Hussein.

Prohibition Order and withdrawal of approval

- 6.4. The Authority has the power to make prohibition orders in respect of individuals under section 56 of the Act and the power to withdraw approval from an approved person under section 63 of the Act. The Authority's approach to exercising these powers is set out at Chapter 9 of the Enforcement Guide.
- 6.5. In considering whether to withdraw the approval given to Mr Hussein under section

59 of the Act and to impose a prohibition order, the Authority has had regard to all relevant circumstances of the case. In particular, the Authority has considered Mr Hussein's fitness and propriety and the severity of the risk which Mr Hussein poses to consumers and to confidence in the financial system.

- 6.6. Given the nature and seriousness of the failings outlined above, the Authority considers that Mr Hussein acted recklessly and without integrity in respect of advice provided to CWL's customers and in respect of the truth and completeness of numerous statements made to and regarding those customers. Further, the Authority considers that Mr Hussein's conduct demonstrated that he failed to take reasonable steps to ensure that the business of the firm for which he was responsible in his accountable function complied with the relevant requirements and standards of the regulatory system.
- 6.7. Further, Mr Hussein's conduct resulted in a risk of detriment to funds invested in P6 by CWL's customers of approximately £13.5m. To date, the FSCS has upheld 437 claims against CWL and paid out over £4.3m in compensation to customers of CWL, including in respect of advice given on P6. Mr Hussein maintains, despite the findings of the Skilled Person's Report and the specific warnings provided in P6 documentation, that P6 was not a high-risk investment, was sufficiently liquid and that it was appropriate to create a CIP which allocated 49% of CWL customers' SIPPs into P6. Mr Hussein further maintains that it was appropriate to treat all CWL customers as "*experienced investors*".
- 6.8. The Authority considers that, given Mr Hussein's ongoing failure to show insight into the serious failings in his conduct of the business of CWL and the appropriateness and suitability of the advice he provided through CWL, he continues to pose a serious risk to consumers and to confidence in the financial system more widely.
- 6.9. The Authority therefore withdraws Mr Hussein's approval given by the Authority under section 59 of the Act to perform the SMF3 (Executive Director), SMF16 (Compliance Oversight), and SMF17 (Money Laundering Reporting) functions at CWL and makes an order prohibiting Mr Hussein from performing any function in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm.

7. PROCEDURAL MATTERS

- 7.1. This Notice is given to Mr Hussein, Consumer Wealth Limited (in liquidation) and Greyfriars Asset Management LLP (in liquidation) under section 390(1) 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.

Manner and time for payment

- 7.4. The financial penalty of £116,000 must be paid in full to the Authority by Mr Hussein within 18 months of the issuance of this Final Notice in accordance with the payment schedule agreed by the Authority. The date stipulated for the purpose of the agreed payment schedule is the date of this Final Notice.

If the financial penalty is not paid

- 7.5. If all or any of the financial penalty is outstanding within 18 months from the date of the issuance of this Final Notice, or is not paid when due, the Authority may recover the outstanding amount as a debt owed by Mr Hussein and due to the Authority.
- 7.6. The third parties have not referred the matter to the Tribunal within 28 days of the date on which the Decision Notice was issued to them.

Publicity

- 7.7. 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.

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

Authority contacts

- 7.9 For more information concerning this matter generally, contact Laurenz Maurer (direct line: 020 7066 8096 / email: laurenz.maurer@fca.org.uk) or Shamsheer Singh (direct line: 020 7066 5284 / email: shamsheer.singh@fca.org.uk) at the Authority.

Lauren Rafter

Interim Head of Department

Financial Conduct Authority, Enforcement and Market Oversight Division

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

RELEVANT STATUTORY PROVISIONS

1. The Authority's statutory objectives, set out in section 1B(3) of the Act, include the consumer protection objective and integrity objectives.
2. Section 56 of the Act provides that the Authority may make an order prohibiting an individual from performing a specified function, and function falling within a specified description or any function, if it appears to the Authority that that individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, exempt person or a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities.
3. Section 66 of the Act provides that the Authority may take action against a person if it appears to the Authority that the person is guilty of misconduct and the Authority is satisfied that it is appropriate in all the circumstances to take action against him/her. Misconduct includes failure, while an approved person, to comply with a Statement of Principle issued under section 64 of the Act. The action that may be taken by the Authority pursuant to section 66 of the Act includes the imposition of a penalty on the approved person of such amount as it considers appropriate.

RELEVANT REGULATORY PROVISIONS

4. In exercising its power to make a prohibition order, the Authority must have regard to guidance published in the Handbook and in Regulatory Guides, such as EG. The relevant main considerations in relation to the action specified above are set out below.

The Enforcement Guide

5. The Authority's policy in relation to exercising its power to issue a prohibition order is set out in the Enforcement Guide ("EG").

6. EG 9.1 explains the purpose of prohibition orders in relation to the Authority's statutory objectives.
7. EG 9.2 sets out the Authority's general policy on making prohibition orders. In particular:
 - a) EG 9.2.1 states that the Authority will consider all relevant circumstances, including whether enforcement action has been taken against the individual by other enforcement agencies, in deciding whether to make a prohibition order;
 - b) EG 9.2.2 states that the Authority has the power to make a range of prohibition orders depending on the circumstances of each case; and
 - c) EG 9.2.3 states that the scope of a prohibition order will depend on, among other things, the reasons why the individual is not fit and proper and the severity of risk he poses to consumers or the market generally.

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

8. The Authority's Statements of Principle have been issued under section 64 of the Act.
9. APER sets out the fundamental obligations of approved persons and sets out descriptions of conduct, which, in the opinion of the Authority, does not comply with the Relevant Statements of Principle. It also sets out, in certain cases, factors to be taken into account in determining whether an approved person's conduct complies with a Statement of Principle.
10. APER 2.1A.3P, which applies from 1 April 2013, sets out Statement of Principle 1 which states that an approved person must act with integrity in carrying out his accountable functions.
11. APER 3.13G provides that, when establishing compliance with, or a breach of, a Statement of principle, account will be taken of the context in which a course of conduct was undertaken, including the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour expected in that function.
12. APER 3.1.4G provides that an approved person will only be in breach of a Statement of Principle if they are personally culpable, that is, where their conduct was deliberate or where their standard of conduct was below that which would be reasonable in all the circumstances.

13. APER 4.1.4G sets out examples of behaviour which the Authority considers does not comply with Statement of Principle 1 (acting with integrity).

14. Statement of Principle 7 states:

"An approved person performing significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function complies with the relevant requirements and standards of the regulatory system".

The Fit and Proper Test for Approved Persons

15. The part of the Authority's Handbook titled "The Fit and Proper Test for Approved Persons" (FIT) sets out the criteria that the Authority will consider when assessing the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an approved person.

16. FIT 1.3.1G states that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person. The most important considerations will be the person's honesty, integrity, and reputation, competence and capability and financial soundness.

The Enforcement Guide

17. The EG sets out the Authority's approach to exercising its main enforcement powers under the Act.

The Authority's policy for exercising its power to make a prohibition order

18. The Authority's policy in relation to prohibition orders is set out in Chapter 9 of the EG.

19. EG 9.1 states that the Authority may exercise this power where it considers that, to achieve any of its regulatory objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities or to restrict the functions which he may perform.

20. EG 9.17 states where the Authority is considering making a prohibition order against an individual other than an individual referred to in EG 9.8 to 9.14, the Authority will consider the severity of the risk posed by the individual, and may prohibit the individual where it considers this is appropriate to achieve one or more

of its statutory objectives.

21. EG 9.18 states when considering whether to exercise its power to make a prohibition order against an individual, the Authority will consider all the relevant circumstances of the case. These may include, but are not limited to, where appropriate, the factors set out in EG 9.9.
22. The relevant factors set out in EG 9.9 are:
 - a) The matters set out in section 61(2) of the Act;
 - b) Whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety of approved persons are set out in FIT (Honest, integrity and reputation); FIT 2.2 (Competence and capability) and FIT 2.3 (Financial soundness);
 - c) The relevance and materiality of any matters indicating unfitness; and
 - d) The severity of the risk which the individual poses to consumers and to confidence in the financial system.

Principles of Business

23. 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.
24. Principle 9 states: "*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.*"
25. Conduct of Business 2.10 The following rules in COBS are relevant regarding suitability of advice given to customers: COBS 2.1.1R (1) A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule)

COBS 9.2.1R

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

- (2) When making the personal recommendation or managing his investments, the firm must obtain the necessary information regarding the client's:
- (a) knowledge and experience in the investment field relevant to the specific type of designated investment or service;
 - (b) financial situation; and
 - (c) investment objectives;
- so as to enable the firm to make the recommendation, or take the decision, which is suitable for him.
- [...]

COBS 9.2.2R

- (1) A firm must obtain from the client such information as is necessary for the firm to understand the essential facts about him and have a reasonable basis for believing, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended, or entered into in the course of managing:
- (a) meets his investment objectives;
 - (b) is such that he is able financially to bear any related investment risks consistent with his investment objectives; and
 - (c) is such that he has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.
- (2) The information regarding the investment objectives of a client must include, where relevant, information on the length of time for which he wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment.
- (3) The information regarding the financial situation of a client must include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments.

COBS 9.2.3R

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

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

ANNEX B

PENALTY ANALYSIS

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

Steps 1: disgorgement

2. Pursuant to DEPP 6.5B.1G, at Step 1 the Authority seeks to deprive an individual of the financial benefit derived directly from the breach where it is practicable to quantify this.
3. The Authority identified no financial benefit that Mr Hussein derived directly from the breach in connection with regulated activities.
4. Step 1 is therefore £0.

Steps 2: the seriousness of the breach

5. Pursuant to DEPP 6.5B.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. That figure is based on a percentage of the individual's relevant income. The individual's relevant income is the gross amount of all benefits received by the individual from the employment in connection with which the breach occurred, and for the period of the breach.
6. The period of Mr Hussein's breach was from 20 March 2015 to 1 March 2017 inclusive. The Authority considers Mr Hussein's relevant income for this period to be £89,042.63. The Authority has assessed that on the facts of this case, the monies that Mr Hussein received should be included in the monies that the Authority considers to be 'relevant income' for the purposes of assessing any financial penalty to be imposed on him (those monies being a benefit received by him from the employment in connection with which the breaches occurred).
7. In deciding on the percentage of the relevant income that forms the basis of the step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 40%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach; the more serious the

breach, the higher the level. For penalties imposed on individuals in non-market abuse cases there are the following five levels:

- a) Level 1 – 0%
 - b) Level 2 – 10%
 - c) Level 3 – 20%
 - d) Level 4 – 30%
 - e) Level 5 – 40%
8. In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly. The Authority considers the following factors to be relevant.

Impact of the breach

9. The Authority considers that there are several factors present in this case relating to the impact of Mr Hussein's breaches which affect the seriousness of his misconduct as set out in DEPP 6.5B.2(7)). Specifically:
- a) Mr Hussein's failings meant that CWL customers invested a total of £13.5m via their SIPPs into an investment portfolio which was unsuitable for them and created a risk of detriment to them. The underlying investments which comprised P6 were high-risk investments that were unregulated and therefore not covered by the FSCS. CWL customers investing in unregulated investments were therefore at risk of losing all of their investments. There was therefore a significant risk of loss associated with Mr Hussein's failings.
 - b) The Authority's review of the customer files revealed that Mr Hussein's customers included individuals whose physical and personal circumstances meant that they were vulnerable particularly as they had minimal or no capacity for loss, were typically low net worth and inexperienced in financial products. Indeed, it was CWL's stated business model to target such types of consumers.
 - c) Since 2015, the FOS have received approximately 40 complaints against CWL. Of these, three complaints have so far been upheld by the FOS in final decisions. In these decisions, the Ombudsman noted the trouble, upset and concern that Mr Hussein's and CWL's advice had caused inexperienced retail investors.

Nature of the breach

10. In addition, a number of factors relating to the nature of the breach are relevant in the Authority's overall assessment of the seriousness of the breach (see DEPP 6.5B.2(9)). In particular:
- a) Mr Hussein's failings meant that the identified breaches continued for a period of almost two years and would likely have continued but for the Authority's intervention.
 - b) Mr Hussein caused and in some instances encouraged other individuals at the Firm to commit the identified breaches.
 - c) As the CF1 (Director) and CF10 (Compliance) of CWL, Mr Hussein was the most senior person at the Firm. Mr Hussein also held significant responsibility for the financial advice the business provided in relation to the identified breaches concerning the P6 investment.
 - d) Mr Hussein failed to act with integrity in respect of a number of the breaches.
 - e) Mr Hussein abused a position of trust. Mr Hussein's customers were inexperienced investors who entrusted him with their retirement savings (in some cases their only asset). Mr Hussein's misconduct saw him recklessly disregard risks and provide unsuitable advice to these customers. He also made and caused to be made misleading statements to and regarding his customers.

Whether the breaches were deliberate and / or reckless

11. The Authority found Mr Hussein's conduct to include both deliberate and reckless misconduct. Specifically, Mr Hussein:
- a) recklessly disregarded clear statements and risk warnings regarding P6 contained in the Greyfriars documentation on the basis that he "*disagreed*" with them, when he knew that he did not have the expertise to conclude that such risks could reasonably be disregarded;
 - b) recklessly disregarded Greyfriars' recommendation that only a "*small proportion*" of an investor's portfolio should be allocated to P6 and instead proceeded with a Central Investment Proposition which advised CWL customers to invest 49% of their SIPPs into P6;

- c) misrepresented to Greyfriars that customers investing in P6 were "*experienced investors in property, bonds and mainstream investments*", without having any reasonable basis for doing so;
 - d) misrepresented CWL customers' total investable funds and / or financial position to Greyfriars, being aware that Greyfriars would not normally accept investments of more than 25% of a customer's investable funds into P6; and
 - e) charged customers for an on-going advice service which there is no evidence CWL ever provided.
12. Taking all of these factors into account, the Authority considers the seriousness of the breach to be Level 5 and so the Step 2 figure is 40% of £89,042.63.
13. Step 2 is therefore £35,617.05.

Step 3: mitigating and aggravating factors

14. Pursuant to DEPP 6.5B.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the breach.
15. The Authority does not consider there to be any factors that mitigate the breaches. Pursuant to DEPP 6.5B.3 G (2), several factors aggravate the breach as follows:
- a) The Authority had previously published alerts to the financial adviser market in 2013 and 2014. These clearly related to the advice Mr Hussein was providing and were intended to prevent precisely the type of consumer detriment which occurred in this case. Mr Hussein's conduct took place after the publication of the two FCA alerts. Mr Hussein told the Authority that he was aware of the concerns expressed by the FCA in those publications, but nonetheless chose to disregard them, wrongly taking the view they did not apply to his activities. Given that the Authority had publicly called for an improvement in standards in relation to the behaviour constituting the breach or similar behaviour, it was incumbent on Mr Hussein to not discount the various risks and warning statements he was aware of from the Greyfriars P6 documentation when he had no reasonable basis for doing so.
 - b) The Authority has previously published numerous Final Notices relating to misconduct and unsuitable advice in the financial adviser sector and in pensions

advice specifically. See for example *Andrew Rees, Timothy Hughes and Lloyd Pope*.

16. As a result, the Authority considers that an uplift of 35% to the penalty at Step 3 to be appropriate.
17. The Step 3 figure is therefore £47,370.68.

Step 4: adjustment for deterrence

18. Pursuant to DEPP 6.5B.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the individual who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.
19. The Authority considers that the figure reached at Step 3 is unlikely to send a credible message of deterrence to either Mr Hussein or to others. The Authority has therefore decided to apply an uplift to the financial penalty to achieve credible deterrence. The Authority's considers this to be appropriate given that:
 - a) the absolute value of the penalty is too small in relation to the seriousness, nature and impact of the breach to meet the Authority's objective of credible deterrence;
 - b) the Authority's previous action in respect of similar breaches has failed to improve industry standards; and
 - c) the Authority considers it is likely that similar breaches will be committed by the individual or other individuals in the future absent an appropriate increase in the penalty.
20. Taking all of the above factors into account, the Authority considers it appropriate to increase the figure at Step 4 by a multiple of 3.5.
21. The Step 4 figure is therefore £165,797.38.

Step 5: settlement discount

22. Pursuant to DEPP 6.5B.5G, if the Authority and the individual on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the

individual reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.

23. Mr Hussein agreed to settle at Stage 1 and so a 30% discount applies to the Step 4 figure.
24. The Step 5 figure is therefore £116,000.00 (penalty rounded down to the nearest hundred).

Penalty

25. Having applied the five-step framework set out in DEPP and rounding down to the nearest hundred, the Authority has decided that the appropriate financial penalty to be imposed on Mr Hussein is **£116,000.00** for breaching Statement of Principle 1 and Statement of Principle 7 during the Relevant Period.
26. The financial penalty is to be paid in accordance with the payment schedule agreed between Mr Hussein and the Authority.