
FINAL NOTICE

To: **Leslie Lugsden**

Of: **18 Market Street
New Mills
High Peak
Derbyshire
SK22 4AE**

Individual reference number: **LSL00001**

Date: **27 January 2010**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives you, Leslie Lugsden, final notice about a requirement to pay a financial penalty.

1. THE PENALTY

- 1.1. The FSA gave you a Decision Notice on 27 January 2010 which notified you that pursuant to section 66 of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to impose a financial penalty of £10,500 on you for failing to comply with Principles 2 and 7 of the FSA's Statements of Principle and Code of Practice for Approved Persons ("the Statements of Principle").
- 1.2. You agreed to settle at an early stage of the FSA's investigation. You therefore qualified for a 30% (stage 1) discount under the FSA's executive settlement procedures. Were it not for this discount, the FSA would have imposed a financial penalty of £15,000 on you.
- 1.3. You confirmed on 11 January 2010 that you would not refer the matter to the Financial Services and Markets Tribunal.

- 1.4. Accordingly, for reasons set out below and having agreed with you the facts and matters relied on, the FSA imposes a financial penalty on you in the amount of £10,500.

2. REASONS FOR THE ACTION

- 2.1. On the basis of the facts and matters described below, the FSA has taken action as a result of your conduct as an approved person at Sett Valley Insurance Services (“Sett Valley”) between 1 December 2001 and 1 May 2009 (“the relevant period”).

- 2.2. During the relevant period, your conduct fell short of the FSA’s prescribed regulatory standards for approved persons. In particular, you:

- (1) breached Statement of Principle 2 as you failed to act with due skill, care and diligence in managing the business of Sett Valley for which you were responsible in your controlled functions in that you failed to:
 - (a) demonstrate that you obtained sufficient personal and financial information about Sett Valley’s customers to assess the suitability of your recommendations;
 - (b) demonstrate that you adequately assessed and described the customer’s attitude to risk;
 - (c) demonstrate that you had undertaken adequate or independent product research to support your recommendations;
 - (d) ensure that suitability reports were clear, fair and not misleading and explained, in sufficient detail, why your recommendations were suitable;
 - (e) explain the main consequences, including associated costs, charges and risks, of your recommendations; and
 - (f) retain adequate records explaining why your recommendations were suitable.
- (2) breached Statement of Principle 7 as you failed, as an approved person performing a significant influence function, to take reasonable steps to ensure that the business of Sett Valley, for which you are responsible in your controlled functions, complied with the relevant requirements and standards of the regulatory system and the associated provisions of Conduct of Business and Insurance Conduct of Business rules listed in Annex A in that you failed to ensure that:
 - (a) Sett Valley put in place adequate systems, processes and controls in relation to the adequacy of management, oversight and sales processes to ensure compliance with regulatory requirements and standards and associated rules; and

- (b) Sett Valley did not provide advice to customers outside of the scope of its Part IV permissions;
- 2.3. The FSA regards these failings as particularly serious because they exposed customers to the risk of receiving unsuitable advice, as Sett Valley and/or you:
 - (a) could not demonstrate the suitability of recommendations to customers;
 - (b) could not demonstrate that customers were provided with adequate information in respect of recommendations to ensure that they were in a position to make an informed decision; and
 - (c) had provided advice to customers outside of the scope of its Part IV permissions.
- 2.4. The FSA has taken into account the fact that you have cooperated fully with the FSA's investigation which it regards as a mitigating factor.
- 2.5. The FSA has concluded that the nature and seriousness of the breaches outlined above warrants the imposition of a financial penalty. The FSA therefore has imposed a financial penalty of £10,500 on you.
- 2.6. This action supports the FSA's statutory objectives of protecting consumers and maintaining market confidence.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

- 3.1. The relevant statutory provisions and regulatory requirements are set out at Annex A to this Final Notice.

4. FACTS AND MATTERS RELIED ON

Background

- 4.1. You are one of two partners at Sett Valley. You were approved by the FSA on 1 December 2001 to perform the following controlled functions ("CF") at Sett Valley: CF4 (Partner), CF8 (Apportionment and Oversight – until 31 March 2009), CF10 (Compliance Oversight) and CF11 (Money Laundering Oversight). On 14 January 2005, you were also approved by the FSA to be responsible for insurance mediation and on 1 November 2007 to perform CF30 (Customer Function).
- 4.2. Sett Valley has been authorised by the FSA since 1 December 2001 to conduct regulated activities in insurance and investment business and it has four customer advisers.
- 4.3. The FSA carried out a Treating Customers Fairly ("TCF") assessment of Sett Valley, as part of the FSA's enhanced supervisory strategy, in June 2008 and identified that Sett Valley had not made adequate progress in implementing TCF. The FSA conducted a follow up TCF visit in September 2008 and Sett Valley's partners were interviewed and customer files were reviewed.

- 4.4. The FSA has conducted an investigation into Sett Valley to review its compliance with relevant regulatory requirements and standards in connection with its business during the relevant period.
- 4.5. As a result of the investigation, the FSA considers that your conduct as an approved person fell short of the FSA's prescribed regulatory standards for approved persons and you have breached Statement of Principles 2 and 7.

Suitability of advice

- 4.6. You were unable to demonstrate that you had taken reasonable care to ensure the suitability of your advice. Specifically, you failed to:
- (1) demonstrate that you obtained sufficient personal and financial information about customers to assess the suitability of your recommendations to enter into investment and insurance contracts. As part of its investigation, the FSA reviewed four investment customer files in which you were the adviser, where the recommendations were made prior to Supervision's visit in September 2008. In all four files reviewed, there was insufficient "know your customer" information held on the customer files to justify the recommendations made. For example, factfinds were not present on the file or were incomplete.
 - (2) demonstrate that you adequately assessed and described the customer's attitude to risk. In all four cases, while the factfind included a generic attitude to risk rating, there was no description of the rating or examples of the type of product falling within each category;
 - (3) demonstrate that you had undertaken adequate or independent product research to support your recommendations. Three out of the four files reviewed did not contain any evidence of research on alternative products or providers, while the other file only contained research on one of the two products being recommended;
 - (4) communicate with clients in a way that was clear, fair and not misleading. In all four cases reviewed, you issued suitability reports which contained insufficient detail to enable customers to make an informed decision. For example, they were not individually tailored to the particular customer, nor did they adequately explain why, having regard to the customer's personal and financial circumstances, you had concluded that the recommended product was suitable for that customer;
 - (5) demonstrate that you had provided adequate information relating to alternative products or providers to customers. In two out of four cases, the suitability reports for different customers either did not include or contained limited information about alternative products and providers and the reason for discounting them;
 - (6) demonstrate that you had explained the main consequences, including associated costs, charges and risks, of your recommendations. In all four files reviewed, the suitability reports did not contain sufficient detail of the costs

and charges associated with your advice. Appropriate risk warnings were not included in the suitability reports in three of the four cases; and

- (7) retain adequate records explaining why your recommendations were suitable. For example, in all four files reviewed, there was no evidence that the necessary disclosure documentation had been provided.

- 4.7. By failing to record sufficient and accurate information about customers and product research, and by providing inadequate suitability reports, you could not demonstrate that your recommendations were made on the basis of an adequate assessment of customers' needs and circumstances. You have therefore failed to ensure that you acted with due skill care and diligence in carrying out your controlled function in breach of Statement of Principle 2.

Systems and Controls

- 4.8. You were unable to demonstrate, as an approved person performing a significant influence function, that you had taken reasonable steps to ensure that the business of Sett Valley, for which you are responsible in your controlled functions, complied with the relevant requirements and standards of the regulatory system and the associated provisions of Conduct of Business and Insurance Conduct of Business rules listed in Annex A. Specifically, you failed to ensure that:-

- (1) the systems, processes and controls at Sett Valley in relation to the adequacy of management, oversight and sales processes to ensure compliance with regulatory requirements and standards were adequate. For example, Sett Valley:
 - (a) had significant failings in its advice and sales processes which led to customers being put at risk of receiving unsuitable advice. As part of its investigation, the FSA reviewed 19 of Sett Valley's investment files where recommendations were made prior to Supervision's visit in September 2008. In 17 of the 19 files reviewed, there was insufficient personal and financial information on the customer file, incomplete or non-existent factfinds to demonstrate the suitability of the recommendation. Furthermore, in all 19 files there was no evidence that disclosure documentation had been provided and in 16 of the 19 files there was no evidence of research into alternative products or providers. Our findings are supported by a review of Sett Valley's core business areas conducted by its external compliance consultants in September 2008. The consultants used a traffic light rating system to assess the adequacy of each core business area, with "red" defined as being the most serious requiring urgent attention. This included a review of Sett Valley's selling practices, which were rated "red"; and
 - (b) demonstrated a failure to understand how to deal with customer complaints. In one case Sett Valley incorrectly time barred a mortgage endowment complaint, in another it could not demonstrate that it had complied with a customer's request to provide documentation and in

another the final response did not address all the issues raised in the letter of complaint.

- (2) Sett Valley provided advice to customers within the scope of its Part IV permissions. On at least two occasions, Sett Valley advised customers to transfer from an occupational pension scheme to a personal pension scheme, when it did not have permission to provide such advice.

- 4.9. By failing to take reasonable steps to ensure that Sett Valley's business complied with the relevant requirements and standards of the regulatory system, for which you were responsible in your controlled function, you breached Statement of Principle 7.

5. ANALYSIS OF BREACHES

- 5.1. By reason of the facts and matters referred to in paragraphs 4.6(1) to 4.6(7) above, the FSA considers that you were unable to demonstrate that you took reasonable care to ensure the suitability of Sett Valley's advice in breach of Statement of Principle 2. Specifically, you failed to obtain and retain sufficient personal and financial information about Sett Valley's customers, undertake adequate or independent product research, ensure that suitability reports were clear fair and not misleading and explain the main consequences and risks of your recommendations.

- 5.2. By reason of the facts and matters referred to in paragraphs 4.8(1) to 4.8(2) above, the FSA considers that you failed, as an approved person performing a significant influence function, to take reasonable steps to ensure that the business of Sett Valley, for which you are responsible in your controlled functions, complied with the relevant requirements and standards of the regulatory system and the associated provisions of Conduct of Business and Insurance Conduct of Business rules listed in Annex A, in breach of Statement of Principle 7. Specifically, you failed to:

- (1) maintain adequate systems, processes and controls in relation to the adequacy of management, oversight and sales processes to ensure compliance with regulatory requirements and standards and associated rules; and
- (2) ensure Sett Valley did not provide advice to customers outside of the scope of its Part IV permissions.

- 5.3. Having regard to the facts and matters set out in this notice, the FSA considers it proportionate and appropriate in all the circumstances to take disciplinary action against you.

6. ANALYSIS OF SANCTION

Imposition of a financial penalty

- 6.1. The FSA's policy on the imposition of financial penalties as at the date of this notice is set out in Chapter 6 of the Decision Procedures and Penalties Manual ("DEPP"), which forms part of the FSA Handbook. In addition, the FSA has had regard to the corresponding provisions of Chapter 13 of the Enforcement Manual ("ENF") in force during the relevant period until 27 August 2007 and Chapter 7 of the Enforcement Guide ("EG"), in force thereafter.

- 6.2. The principal purpose of a financial penalty is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour.
- 6.3. In determining whether a financial penalty is appropriate the FSA is required to consider all the relevant circumstances of a case. Applying the criteria set out in the DEPP 6.2.1 (regarding whether or not to take action for a financial penalty or public censure) and 6.4.2 (regarding whether to impose a financial penalty or a public censure), the FSA considers that a financial penalty is an appropriate sanction, given the serious nature of the breaches, the risks you created for customers of Sett Valley and the need to send out a strong message of deterrence to other persons of the consequences of recommending a course of action to customers without demonstrating the suitability of those recommendations.
- 6.4. DEPP 6.5.2G sets out a non-exhaustive list of factors that may be of relevance in determining the level of a financial penalty. The FSA considers that the following factors are particularly relevant in this case.

Deterrence (DEPP 6.5.2(1))

- 6.5. A financial penalty will deter other individuals from operating businesses that fail to treat their customers fairly as a result of management and control failings.

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

- 6.6. In determining the appropriate sanction, the FSA has had regard to the seriousness of the breaches, including the nature of the requirements breached, the duration and frequency of the breaches, whether the breaches revealed serious failings in Sett Valley's systems and controls and the number of customers who were affected and/or placed at risk of loss.
- 6.7. Your failings covered the period from 1 December 2001 to 1 May 2009 and are viewed as being particularly serious because you:
- (1) could not demonstrate the suitability of your recommendations;
 - (2) could not demonstrate that you provided customers with adequate information in respect of your recommendations to ensure that they were in a position to make an informed decision; and
 - (3) failed to ensure that Sett Valley had adequate systems and controls, could demonstrate the suitability of its recommendations and conducted business within the scope of its Part IV permission.
- 6.8. The FSA has also taken into account the following steps taken by you which have served to mitigate your failings:
- (1) prior to the Enforcement investigation, and as a result of visit by Supervision in September 2008, you accepted that there were issues with Sett Valley's sales processes and took steps to rectify these shortcomings by appointing an

external compliance consultant to conduct a full business review of its systems, controls and procedures. Following the appointment of the external compliance consultant, there was a significant improvement in Sett Valley's processes, including record keeping and quality of advice; and

- (2) you have cooperated fully with the FSA investigation.

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

- 6.9. The FSA has found no evidence to show that you acted in a deliberate or reckless manner.

Conduct following the breach (DEPP 6.5.2(8))

- 6.10. You have been proactive in taking steps to rectify your shortcomings and have co-operated with the FSA during the investigation. By doing so, you have allayed the FSA's immediate concern that you might pose an ongoing risk to consumers.

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

- 6.11. You have not been the subject of previous disciplinary action.

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

- 6.12. In determining the level of financial penalty, the FSA has taken into account penalties imposed by the FSA on other approved persons for similar behaviour.

FSA Guidance (DEPP 6.5.2 (12)):

- 6.13. Your conduct is serious given the substantial amount of material the FSA has published in relation to TCF, which has been highly publicised and is easily accessible.

7. CONCLUSION

- 7.1. Having regard to the seriousness of the breaches and the risk posed to the customers the FSA considers a financial penalty of £15,000 (before discount for early settlement) to be appropriate.

8. DECISION MAKERS

- 8.1. The decision which gave rise to the obligation to give this Final Notice was made by the Settlement Decision Makers on behalf of the FSA.

9. IMPORTANT

- 9.1. This Final Notice is given to you in accordance with section 390 of the Act.

Manner of and time for Payment

- 9.2. The financial penalty must be paid in full by you to the FSA by no later than 10 February 2010, 14 days from the date of the Final Notice.

If the financial penalty is not paid

- 9.3. If all or any of the financial penalty is outstanding on 11 February 2010, the FSA may recover the outstanding amount as a debt owed by you and due to the FSA.

Publicity

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

FSA contact

- 9.6. For more information concerning this matter generally, you should contact Anna Hynes (Tel: 0207 066 9464) of the Enforcement and Financial Crime Division of the FSA.

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Tom Spender
Head of Department
FSA Enforcement and Financial Crime Division

ANNEX A

RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE

1. Statutory provisions

- 1.1. The FSA's regulatory objectives are set out in section 2(2) of the Act and include market confidence, public awareness, the protection of consumers and the reduction of financial crime. In relation to this case, the most relevant statutory objectives are the protection of consumers and market confidence.
- 1.2. Section 66 of the Act provides that the FSA may take action against a person if it appears to the FSA that he is guilty of misconduct and the FSA is satisfied that it is appropriate in all the circumstances to take action against him. Misconduct includes failure, while an approved person, to comply with a statement of principle issued under 64 of the Act. The action that may be taken by the FSA includes the imposition of a penalty on the approved person of such amount as it considers appropriate.

2. Relevant Handbook provisions

- 2.1. In exercising its power to impose a financial penalty, the FSA must have regard to relevant provisions in the FSA Handbook of rules and guidance ("the FSA Handbook"). The main provisions relevant to the action specified above are set out below.

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

- 2.2. APER sets out the Statements of Principle as they relate to approved persons and descriptions of conduct which, in the opinion of the FSA, do not comply with a Statement of Principle. It further describes factors which, in the opinion of the FSA, are to be taken into account in determining whether or not an approved person's conduct complies with a Statement of Principle.
- 2.3. APER 3.1.3G states 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 to be expected in that function.
- 2.4. APER 3.1.4G provides that an approved person will only be in breach of a Statement of Principle where he is personally culpable, that is in a situation where his conduct was deliberate or where his standard of conduct was below that which would be reasonable in all the circumstances.

- 2.5. APER 3.1.6G provides that APER (and in particular the specific examples of behaviour which may be in breach of a generic description of conduct in the code) is not exhaustive of the kind of conduct that may contravene the Statements of Principle.
- 2.6. The Statements of Principle relevant to this matter are:
- (1) Statement of Principle 2 which provides that an approved person must act with due skill, care and diligence in carrying out his controlled function; and
 - (2) Statement of Principle 7 which provides that an approved person performing a 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.
- 2.7. APER 3.3.1E states that in determining whether or not the conduct of an approved person performing a significant influence complies with Statements of Principle 5 to 7, the following are factors which, in the opinion of the FSA, are to be taken into account:
- (1) whether he exercised reasonable care when considering the information available to him;
 - (2) whether he reached a reasonable conclusion which he acted on;
 - (3) the nature, scale and complexity of the firm's business;
 - (4) his role and responsibility as an approved person performing a significant influence function; and
 - (5) the knowledge he had, or should have had, of regulatory concerns, if any, arising in the business under his control.
- 2.8. APER 4.2 lists types of conduct which, in the opinion of the FSA, do not comply with Statement of Principle 2.
- 2.9. APER 4.2.3E states that failing to inform a customer of material information in circumstances where he was aware, or ought to have been aware of such information and the fact that he should provide it, falls within the type of conduct that would not comply with Statement of Principle 2.
- 2.10. APER 4.2.4E states that behaviour of the type referred in APER 4.2.3E (referred to in paragraph 2.9 above) would include, but is not limited to, failing to explain the risks of an investment to a customer and/or failing to disclose details of the charges or surrender penalties on investment products to customers.
- 2.11. APER 4.2.13E states that continuing to perform a controlled function despite having failed to meet the standards of the knowledge and skill set out in the Training and Competency sourcebook for that controlled function does not comply with Statement of Principle 2.

- 2.12. APER 4.7 lists types of conduct which, in the opinion of the FSA, do not comply with Statement of Principle 7.
- 2.13. APER 4.7.3E states that failing to take reasonable steps to implement (either personally or through a compliance department or other departments) adequate and appropriate systems of control to comply with the relevant requirements and standards of the regulatory system in respect of its regulated activities is conduct that does not comply with Statement of Principle 7.
- 2.14. APER 4.7.4E states that failing to take reasonable steps to monitor (either personally or through a compliance department or other departments) compliance with the relevant requirements and standards of the regulated system in respect of its regulated activities is conduct that does not comply with Statement of Principle 7.

Conduct of Business Rules

- 2.15. Guidance on the Conduct of Business Rules is set out in the Conduct of Business manuals of the FSA handbook.

Conduct of Business

- 2.16. Conduct of Business Rules (“COB”) applied to firms for part of the relevant period (until 31 October 2007).
- 2.17. COB 5.2.5R requires that before a firm gives a personal recommendation concerning a designated investment to a private customer, it must take reasonable steps to ensure that it is in possession of sufficient personal and financial information about that customer relevant to the services that the firm has agreed to provide.
- 2.18. COB 5.2.9R requires that a firm must make and retain a record of a private customer’s personal and financial circumstances that it has obtained in satisfying COB 5.2.5R.
- 2.19. COB 5.2.12R requires a firm to provide the client with a statement of his demands and needs if he makes a recommendation of a life policy or arranges for the client to enter into a life policy. Unless the client asks for such a statement to be made orally (of if immediate cover is required) the statement of demands and needs must be in writing and made as soon as practicable, and in any event, before the conclusion of the contract for the life policy.
- 2.20. COB 5.3.5R requires that a firm must take reasonable steps to ensure that a personal recommendation concerning a designated investment to a private customer business is suitable for the client.
- 2.21. COB 5.3.16R requires that the suitability letter must: (1) explain why the firm has concluded that the transaction is suitable for the customer, having regard to his personal and financial circumstances; and (2) contain a summary of the main consequences and any possible disadvantages of the transaction.

- 2.22. COB 5.3.18R requires that a firm must provide a suitability letter when or as soon as possible after the transaction is effected.
- 2.23. COB 5.3.21R requires that if a firm makes a recommendation about a pension transfer or pension opt out by an individual who is not a pension transfer specialist it must have established procedures for checking, amongst other things, the merits of the proposed transaction and the suitability of the recommendation.
- 2.24. COB 5.4.3R requires that a firm must not, amongst other things, make a personal recommendation of a transaction to a private customer unless it has taken reasonable steps to ensure that the private customer understands the nature of the risks involved.
- 2.25. COB 5.7.3R requires that before a firm conducts investment business with a private customer it must disclose in writing the basis or amount of its charges for conducting that business and the nature or amount of any other income receivable by it.
- 2.26. COB 5.7.5R requires that when a firm recommends or arranges the sale of a packaged product the firm must disclose to the customer in cash terms any commission receivable by it in connection with the transaction.

Conduct of Business Sourcebook

- 2.27. Conduct of Business Sourcebook (“COBS”) applied to firms for part of the relevant period (with effect from 1 November 2007).
- 2.28. COBS 4.2.1R requires a firm to ensure that a communication is fair, clear and not misleading.
- 2.29. COBS 4.5.2R requires that information is accurate and, in particular, does not emphasise any potential benefits of an investment without also giving a fair and prominent indication of any relevant risks.
- 2.30. COBS 4.5.6R requires that if information compares investments a firm must ensure that the comparison is meaningful and presented in a fair and balanced way.
- 2.31. COBS 9.2.1R (assessing suitability) requires that a firm must take reasonable steps to ensure that a personal recommendation or decision to trade, is suitable for its client.
- 2.32. COBS 9.2.2R requires that a firm must obtain from the client such information as is necessary for the firm to understand the essential facts about him.
- 2.33. COBS 9.2.6R requires that if a firm does not obtain the necessary information to assess suitability it must not make a personal recommendation to the client.
- 2.34. COBS 9.4.7R requires that the suitability report must at least specify the client’s demands and needs; explain why the firm has concluded that the recommended transaction is suitable for the client having regard to the information provided by the client; and explain any possible disadvantages of the transaction for the client.

Insurance Conduct of Business

- 2.35. The FSA's Insurance Conduct of Business Rules ("ICOB") applied to firms for part of the relevant period (until 5 January 2008).
- 2.36. Guidance on ICOB is set out in the Insurance Conduct of Business manuals of the FSA handbook.
- 2.37. ICOB 2.2.3R requires that when a firm communicates information to a customer it must take reasonable steps to communicate in a way that is clear, fair and not misleading.
- 2.38. ICOB 4.2.2R requires a firm to set out its status disclosure in a durable medium at any time before the conclusion of the contract.
- 2.39. ICOB 4.2.8R requires the firm to provide certain information listed in the rule to the client before the conclusion of the contract or immediately following its conclusion.
- 2.40. ICOB 4.2.11R requires that a firm cannot hold itself out as giving information or advice to clients on the basis of a fair analysis of the market unless it has considered a sufficiently large number of non investment contracts available in the relevant sector of the market.
- 2.41. ICOB 4.3.1R requires that a firm must take reasonable steps to ensure the personal recommendation is suitable for the customer's demands and needs at the time the personal recommendation is made.
- 2.42. ICOB 4.3.2R requires that a firm must seek such information about the customer's circumstances and objectives as might reasonably be expected to be relevant in enabling the firm to identify the customer's requirements.
- 2.43. ICOB 4.3.6R requires that a firm in assessing whether a non investment insurance contract is suitable to meet a customer's demands and needs must take into account whether the level of cover is sufficient for the risks the customer wishes to insure, the cost of the contract and the relevance of any exclusions in the contract.
- 2.44. ICOB 4.4.1R requires that a firm must, before the conclusion of the contract, provide the customer with a statement that sets out the customers demands and needs.

Insurance Conduct of Business Sourcebook

- 2.45. The Insurance Conduct of Business Sourcebook ("ICOBS") applied to firms for part of the relevant period (with effect from 6 January 2008).
- 2.46. ICOBS 2.2.2R requires that when a firm communicates information to a customer it must take reasonable steps to communicate it in a way that is clear, fair and not misleading.
- 2.47. ICOBS 4.1.2R requires that before the conclusion of a contract of insurance a firm must provide the customer with status disclosure.

- 2.48. ICOBS 4.1.6R requires that prior to the conclusion of an initial contract of insurance a firm must tell the customer whether it gives advice on the basis of a fair analysis of the market.
- 2.49. ICOBS 5.2.2R requires that prior to the conclusion of a contract a firm must specify the demands and the needs of the customer as well as the underlying reasons for any advice given to the customer on that policy.
- 2.50. ICOBS 5.2.3R requires that a statement of demands and needs must be communicated on paper or other durable means and in a clear and accurate manner.
- 2.51. ICOBS 5.3.1R requires that a firm must take reasonable care to ensure the suitability of its advice for any customer who is entitled to rely upon its judgment.
- 2.52. ICOBS 5.3.3R requires that if a firm informs a customer that it gives advice on the basis of a fair analysis it must give advice on the basis of an analysis of a sufficiently large number of contracts of insurance available on the market to enable it to make a recommendation which would be adequate to meet the customer's needs.
- 2.53. ICOBS 6.1.5R requires that a firm must take reasonable steps to ensure that a customer is given appropriate information about a policy in good time and in a comprehensible form so that the customer can make an informed decision about the arrangements proposed.

Decision Procedure and Penalties Manual ("DEPP")

- 2.54. Guidance on the imposition and amount of penalties is set out in Chapter 6 of DEPP.
- 2.55. DEPP 6.1.2G provides that the principal purpose of imposing a financial penalty is to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches, and demonstrating generally the benefits of compliant behaviour. Financial penalties are therefore tools that the FSA may employ to help it to achieve its regulatory objectives.
- 2.56. DEPP 6.5.1G(1) provides that the FSA will consider all the relevant circumstances of a case when it determines the level of financial penalty (if any) that is appropriate and in proportion to the breach concerned.
- 2.57. DEPP 6.5.2 sets out a non-exhaustive list of factors that may be relevant to determining the appropriate level of financial penalty to be imposed on a person under the Act. The following factors are relevant to this case:

Deterrence: DEPP 6.5.2G(1)

- 2.58. When determining the appropriate level of financial penalty, the FSA will have regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other

persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business.

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

- 2.59. The FSA will consider the seriousness of the breach in relation to the nature of the rule, requirement or provision breached, which can include considerations such as the duration and frequency of the breach, whether the breach revealed serious or systemic weaknesses in the person's procedures or of the management systems or internal controls relating to all or part of a person's business, the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the breach and the loss or risk of loss caused to consumers, investors or other market users.

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

- 2.60. The FSA will regard as more serious a breach which is deliberately or recklessly committed, giving consideration to factors such as whether the person has given no apparent consideration to the consequences of the behaviour that constitutes the breach. If the FSA decides that the breach was deliberate or reckless, it is more likely to impose a higher penalty on a person than would otherwise be the case.

Whether the person on whom the penalty is to be imposed is an individual: DEPP 6.5.2G(4)

- 2.61. When determining the amount of penalty to be imposed on an individual, the FSA will take into account that individuals will not always have the resources of a body corporate, that enforcement action may have a greater impact on an individual, and further, that it may be possible to achieve effective deterrence by imposing a smaller penalty on an individual than on a body corporate. The FSA will also consider whether the status, position and/or responsibilities of the individual are such as to make a breach committed by the individual more serious and whether the penalty should therefore be set at a higher level.

Conduct following the breach: DEPP 6.5.2G(8)

- 2.62. The FSA may take into account the degree of co-operation the person showed during the investigation of the breach by the FSA.

Other action taken by the FSA (or a previous regulator): DEPP 6.5.2G(10)

- 2.63. The FSA seeks to apply a consistent approach to determining the appropriate level of penalty. The FSA may take into account previous decisions made in relation to similar misconduct.

FSA guidance and other published materials: DEPP 6.5.2G(12)

- 2.64. The FSA will consider the nature and accessibility of the guidance or other published materials when deciding whether they are relevant to the level of penalty and, if they are, what weight to give them in relation to other relevant factors.