
FINAL NOTICE

To: **Simon Richard Hughes**

IRN: **SRH00007**

Date: **22 September 2023**

1. ACTION

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

- (1) publishes a statement of Simon Richard Hughes' ("Mr Hughes") misconduct for failing to comply with Statement of Principle 2, Statement of Principle 6 and Statement of Principle 7, pursuant to section 66 of the Act;
- (2) makes an order, pursuant to section 56 of the Act, prohibiting Mr Hughes from performing:
 - a) any Senior Management Function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm; and
 - b) any function in relation to the regulated activity of advising on Pension Transfers and Pension Opt-outs carried on by an authorised person, exempt person or exempt professional firm; and

(3) withdraws, pursuant to section 63 of the Act, the approvals granted to Mr Hughes to perform the SMF3 (Executive Director), the SMF16 (Compliance Oversight), and SMF17 (Money Laundering Reporting Officer) Senior Management Functions at S & M Hughes Limited (in liquidation) ("S & M Hughes").

1.2. The Authority would have imposed a financial penalty of £226,600 on Mr Hughes (reduced to £158,600 as Mr Hughes agreed to settle at an early stage of the Authority's investigation and therefore qualified for a 30% (stage 1) discount under the Authority's executive settlement procedures). However, the Authority recognises that there is a significant liability for redress for S & M Hughes' customers which has fallen to the Financial Services Compensation Scheme ("FSCS"). As at 28 July 2023, the FSCS has paid out £8,415,317 in compensation to customers of S & M Hughes. Had it not been for the compensation limit of £85,000, the total compensation available to customers would have been £10,482,437. In these circumstances, the Authority has agreed with Mr Hughes that in lieu of the imposition of a financial penalty, the sum of £158,600 be paid direct to the FSCS to contribute towards any redress due to S & M Hughes' customers. This is in furtherance of the Authority's consumer protection objective. In light of the above and taking into account the exceptional circumstances of the British Steel Pension Scheme ("BSPS"), the Authority hereby publishes a statement of Mr Hughes' misconduct.

2. SUMMARY OF REASONS

Background

2.1. Between 28 April 2015 and 31 May 2019 ("the Relevant Period") Mr Hughes was a qualified Pension Transfer Specialist ("PTS") and was approved by the Authority to perform the CF1 (Director), CF10 (Compliance Oversight), CF11 (Money Laundering Reporting) and CF30 (Customer) functions at S & M Hughes. During the Relevant Period Mr Hughes demonstrated a high degree of incompetence and was grossly negligent in providing unsuitable Pension Transfer advice to customers to transfer out of their occupational Defined Benefit Pension Schemes ("DBPS"), also known as a final salary pension, therefore giving up guaranteed retirement benefits against their best interests. Most of these customers were members of the BSPS.

- 2.2. A PTS is an individual who has passed the required examinations, as specified in the Authority's Training and Competence Sourcebook, and is employed by a firm to give advice, or to provide a second-level review and check on advice to customers in respect of Pension Transfers.
- 2.3. The Authority expects Pension Transfer Specialists to understand the regulatory requirements of the role, which include checking the entirety and completeness of the Personal Recommendation to the client; ensuring and confirming that any Personal Recommendation is suitable for the client; and checking that they are in agreement with the advice given by the primary adviser. In this case, Mr Hughes was the sole adviser and PTS at the firm and therefore his function was not to perform a second-level check. As a PTS the Authority would have expected Mr Hughes to have an added level of knowledge and expertise.
- 2.4. In his role as CF1 (Director) Mr Hughes failed to ensure that he implemented an adequate Pension Transfer advice process and failed to take reasonable steps to ensure compliance with the relevant requirements and standards of the regulatory system.
- 2.5. As CF10 (Compliance Oversight), the Authority expected Mr Hughes to understand the regulatory requirements of the role. Mr Hughes needed to ensure that there was routine compliance checking of the entirety and completeness of files and the Personal Recommendation, as well as that all the relevant information had been included in the file to enable the customer to be provided with suitable Pension Transfer advice. It was important that he carried out his CF10 (Compliance Oversight) role with due skill, care and diligence given the high-risk nature of the workstream and given that failings would put customers' valuable DBPS benefits at risk leading to actual or potential consumer detriment.
- 2.6. As a CF30 (Customer) Mr Hughes was responsible for ensuring that the Pension Transfer advice he provided complied with the relevant rules and requirements of the regulatory system and accordingly that he acted with due skill, care and diligence as an approved person carrying out his controlled function. This included ensuring that he adopted a Defined Benefit Pension Transfer advice process which mitigated against the risk of customers receiving unsuitable advice which would lead them to make irreversible decisions in respect of their valuable pension benefits, against their best interests.

- 2.7. During the Relevant Period, Mr Hughes advised 287 customers on whether to transfer out of their Defined Benefit Pension Schemes. Of these customers, 222 (approximately 77%) were members of the BSPS. Notwithstanding the Authority's guidance, which created as a starting point a presumption of unsuitability in respect of advising a client to transfer out of their DBPS, Mr Hughes advised 188 (approximately 85%) of these BSPS customers to complete a Pension Transfer, against their best interests.
- 2.8. As a result, Mr Hughes' unsuitable Pension Transfer advice disproportionately affected BSPS members. Many of these individuals were in a vulnerable position due to the uncertainty surrounding the future of the BSPS and it was therefore critical that they could depend on Mr Hughes to provide them with suitable advice that was fair, clear and not misleading. For many of Mr Hughes' customers, their pension was their most valuable asset, and many had limited additional resources or other pension provisions. It was therefore crucial that the advice provided by Mr Hughes was in their best interests. Unfortunately, in the case of many of Mr Hughes' BSPS customers, they did not receive the advice they needed to be able to make a sufficiently informed decision about their Pension Transfer. This was because Mr Hughes did not have a reasonable understanding of the alternative options available to BSPS customers and gave undue weight to customers' stated desire to transfer their pension. In advising his customers, Mr Hughes demonstrated a serious lack of competence which meant he failed to act with due skill, care and diligence, in breach of Statement of Principle 2.
- 2.9. One British Steel customer who was married with two financially dependent children was advised by Mr Hughes to transfer out of their DBPS in circumstances where the customer had no other savings or investments, was paying a mortgage and had a low attitude to risk, having never invested before. Key objectives for the customer were to retire in 5 years' time and to ensure benefits for their family upon their death. Their Defined Benefit Pension was central to the customer being able to meet their income needs during retirement. Notwithstanding this, the customer was given unsuitable advice by Mr Hughes to transfer out of their DBPS into another arrangement.
- 2.10. As of 28 July 2023, the FSCS has upheld 146 claims against the firm and paid out £8,415,317 in compensation to customers of S & M Hughes. In 49 cases, the FSCS awarded the claimant the maximum compensation available of £85,000. Had it not been for the compensation limit of £85,000, the total compensation available to customers would have been £10,482,437.

- 2.11. The Authority has carried out significant work in response to the harm, or prospective harm, caused to members of the BPS by authorised firms and their advisers. The Authority has taken intervention action in the form of requirements to vary the permissions of relevant authorised firms to mitigate the risk of ongoing harm to consumers. The Authority has also commenced enforcement investigations into particular firms and individuals, including the investigation into Mr Hughes.
- 2.12. The Authority undertook a detailed review of a statistically representative sample of the Pension Transfer advice files which Mr Hughes had personally completed during the Relevant Period. The Authority found that all of the customer files reviewed were not compliant with the relevant regulatory Rules and requirements relating to the suitability of Pension Transfer advice.

S & M Hughes Limited (in liquidation)

- 2.13. S & M Hughes is an Independent Financial Adviser firm based in Swansea, Wales which has been authorised by the Authority since 4 September 2012. During the Relevant Period Mr Hughes was the firm's sole Director. Mr Hughes was one of the two shareholders in the firm.
- 2.14. During the Relevant Period, the firm was authorised by the Authority (amongst other permitted activities) to advise on Pension Transfers and Pension Opt-outs and to arrange (bring about) deals in investments. The firm went into voluntary liquidation on 4 September 2019.

Regulatory failings

- 2.15. During the Relevant Period the Authority considers that Mr Hughes breached Statement of Principle 2 in that he failed to act with due skill, care and diligence by providing unsuitable Pension Transfer advice in his capacity as a CF30 (Customer) adviser and Pension Transfer Specialist, to customers regarding the transfer of funds out of their Defined Benefit Pensions.
- 2.16. In particular, he:
- (1) failed to obtain the necessary information relating to the customer's financial situation including their anticipated income and expenditure during retirement when assessing whether it was suitable for them to transfer out of their DBPS. As a result, he did not adequately consider the customer's

financial situation, retirement needs, attitude to risk and alternatives to transfer, when assessing whether the customer was reliant on the Ceding Arrangement and therefore if the transfer out of their DBPS was suitable for them;

- (2) failed to properly assess, on the basis of the information obtained, or give due consideration to, whether the customer would be reliant on the income from their DBPS and could financially bear the risks associated with the Pension Transfer. He did this despite knowing that, following the recommended transfer, customers' retirement income would be dependent on the performance of the new scheme's investments;
- (3) failed to properly take into consideration the alternative options available to members of the BPS to transferring out of the scheme due to a fundamental lack of understanding of these options;
- (4) failed to provide suitable advice to customers and in particular advised customers with cautious risk appetites, who had no source of retirement income other than their DBPS and the state pension, to give up their guaranteed benefits without sufficient justification;
- (5) recommended Pension Transfers to customers without adequate consideration as to whether the transfer met the customer's objectives or whether the customer had the necessary knowledge and experience to understand the risks involved in the transfer. When he assessed that they did not have the required knowledge and experience to understand the attendant risks, he did not give due consideration to this in any event;
- (6) failed to undertake any, or any adequate, Transfer Value Analysis (TVAS) to compare the benefits likely to be paid under the DBPS with the benefits afforded by the Proposed Arrangement or other personal pension. Errors, which included calculating the Critical Yields to the wrong retirement age, meant that the TVAS was not always accurate. On some files where the Critical Yields were correctly calculated, these then revealed that the required growth was inconsistent with the customer's attitude to risk;
- (7) failed to record sufficient information on customer files to demonstrate why his advice was suitable and to demonstrate why he had made the recommendation to transfer out of the DBPS; and

- (8) failed to ensure Suitability Reports he issued to customers were clear, fair and not misleading by issuing generic reports with templated wording to describe the customers' objectives with the result that the Personal Recommendations issued to customers were not sufficiently tailored to their individual circumstances.

2.17. Mr Hughes failed in breach of Statement of Principle 6, to exercise due skill, care and diligence as CF10 (Compliance Oversight) in managing the business of the firm for which he was responsible in his controlled function. In particular, he failed:

- (1) to implement adequate procedures to ensure that at the fact-finding stage he gathered all necessary information regarding the customer, including details of their financial situation, investment and retirement objectives, and risk appetite;
- (2) to adequately monitor, assess and identify deficiencies in his files by ensuring frequent routine compliance checking, in particular taking into account the high volume of Defined Benefit Pension Transfer advice work at the firm during the second half of 2017;
- (3) to ensure that the firm's advice process was compliant and failed to identify deficiencies in compliance by, for example, requesting external reviews of his Pension Transfer advice files before undertaking a high volume of DBPS advice work in the second half of 2017;
- (4) to ensure that the firm had adequate compliance resources in place to manage the increased volume of Defined Benefit Pension Transfer advice work whilst also complying with regulatory Rules and requirements; and
- (5) to ensure that documents issued to customers were drafted with sufficient care and precision so as to be free of serious and misleading errors, resulting in the customer not being placed in a sufficiently informed position.

2.18. The Authority also considers that Mr Hughes breached Statement of Principle 7 during the Relevant Period, because he failed to take reasonable steps to ensure, in respect of his performance of the CF1 (Director) function, that S & M Hughes complied with Principles 3, 7 and 9 of the FCA's Principles for Businesses, and the relevant COBS Rules, as a result of the deficiencies in the firm's Pension Transfer advice process and recommendations. In particular Mr Hughes:

- (1) failed to monitor and facilitate effective scrutiny of the reasons why the firm recommended almost all of its customers to transfer out of their Defined Benefit Pension;
- (2) failed to monitor and allocate additional and appropriate resources to respond to the significant increase in Defined Benefit Pension Transfer work, which was largely driven by the influx of BPS members seeking Pension Transfer advice, particularly during the second half of 2017;
- (3) failed to take reasonable steps to ensure that the firm adequately assessed the suitability of the Pension Transfer for the customer, including adequately assessing customers' objectives, attitude to risk and knowledge and experience in relation to Pension Transfers, and that the firm's customers fully understood the information provided to them in relation to their Pension Transfer;
- (4) failed to take reasonable steps to ensure that the customer fact find processes used by the firm were adequate and appropriate meaning that insufficient customer information was gathered to assess suitability;
- (5) failed to respond to a 2018 external review and carry out a risk review of the firm's Defined Benefit Pension Transfer advice in a timely manner as well as failing to ensure the effective oversight of the firm's compliance function;
- (6) failed to ensure that the firm maintained adequate customer files and business records; and
- (7) failed to ensure that the firm communicated with customers in a way that was clear, fair and not misleading, such that customers were not placed in an adequately informed position. In particular, in purporting to explain why a recommendation to transfer out of a DBPS was suitable, generic standardised reasons were listed, that were not sufficiently tailored to the customer.

2.19. These failings led to unsuitable Defined Benefit Pension Transfer advice being issued that was not in customers' best interests. Accordingly, customers were not placed in a sufficiently informed position when making difficult and critical choices, often under time pressure, regarding their pension arrangements.

Seriousness

2.20. The combined effect of Mr Hughes' failings created a significant risk of unsuitable Pension Transfer advice being provided to the firm's customers. Accordingly, the Authority considers Mr Hughes' breach to be particularly serious because:

- (1) Defined Benefit Pensions are a financial investment for which a customer's advice needs are high in respect of the decision to transfer out of the Ceding Arrangement;
- (2) the decision to transfer out of a DBPS can affect customers, and sometimes their dependants, for the rest of their lives;
- (3) Mr Hughes' unsuitable Pension Transfer advice, and the advice he signed off as PTS, caused a significant risk of loss, as well as causing actual loss, to customers who transferred out of their DBPS as a result of that advice. For some customers, their DBPS was their only retirement provision other than their state pension;
- (4) the total value of transferred funds was £61,613,687. The average completed transfer value was £261,070.93;
- (5) Mr Hughes' breaches disproportionately affected BSPS members, who made up the majority of S & M Hughes' Pension Transfer advice customers during the Relevant Period and many of whom were in a vulnerable position due to the uncertainty surrounding the future of the BSPS; and
- (6) the weaknesses in the firm's Pension Transfer monitoring and checking procedures, management systems and internal controls, for which Mr Hughes was responsible, were systemic.

Sanction

2.21. The Authority considers that Mr Hughes' breaches in respect of the unsuitable Pension Transfer advice that he provided to customers demonstrate a serious lack of competence and accordingly a lack of fitness and propriety. The Authority hereby makes a prohibition order in respect of Mr Hughes, prohibiting him from performing:

- (1) any Senior Management Function in relation to any regulated activities carried on by an authorised person, exempt person or exempt professional firm; and
 - (2) any function in relation to the regulated activity of advising on Pension Transfers and Pension Opt-outs carried on by an authorised person, exempt person or exempt professional firm.
- 2.22. The Authority hereby withdraws Mr Hughes' approval to perform the SMF3 (Executive Director), SMF16 (Compliance Oversight) and SMF17 (Money Laundering Reporting Officer) Senior Management Functions at S & M Hughes.
- 2.23. The Authority would have imposed a financial penalty of £226,600 on Mr Hughes (reduced to £158,600 as Mr Hughes agreed to settle at an early stage of the Authority's investigation and therefore qualified for a 30% (stage 1) discount under the Authority's executive settlement procedures). However, the Authority recognises that there is significant liability for redress for S & M Hughes' customers which has fallen to the FSCS. As at 28 July 2023, the FSCS has paid out £8,415,317 in compensation to customers of S & M Hughes. Had it not been for the compensation limit of £85,000, the total compensation available to customers would have been £10,482,437. In these circumstances, the Authority has agreed with Mr Hughes that in lieu of the imposition of the financial penalty the sum of £158,600 be paid direct to the FSCS to contribute towards any redress due to S & M Hughes' customers. In light of the above and taking into account the exceptional circumstances of the BSPS, the Authority hereby publishes a statement of Mr Hughes' misconduct for failing to comply with Statement of Principle 2, Statement of Principle 6 and Statement of Principle 7.

3. DEFINITIONS

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

"Accountable function" means an FCA controlled function that is a significant-influence function, as set out in the Handbook at SUP 10A.4.4R.

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

"the Authority" means the Financial Conduct Authority.

"the Authority's Rules" means the Authority's Conduct of Business Sourcebook as applicable during the Relevant Period.

"British Steel Pension Scheme" or "BSPS" means the British Steel Defined Benefit Pension Scheme that was in place during the period 25 April 2015 to 31 May 2019.

"Ceding Arrangement" means the customer's existing pension arrangement with safe guarded benefits.

"CETV" means Cash Equivalent Transfer Value, which is a lump sum available to the member upon transferring their pension benefits into an alternative pension. It is calculated according to actuarial principles.

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

"Critical Yield" means an illustration of the annual growth rate (net of charges) that the customer would need to obtain upon investment of the CETV in order to replicate the benefits provided by the Defined Benefit Pension Scheme.

"Defined Benefit Pension Scheme", "Defined Benefit Pension" or "DBPS", also known as a final salary pension, means an occupational pension that pays out a defined benefit or guaranteed specified amount to the pension holder based on factors such as the number of years worked and the customer's salary.

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

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

"EG" means the Authority's Enforcement Guide.

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

"Insistent Client" means a client who has been given a personal recommendation by a firm in relation to the transfer of their safeguarded benefits, but who has decided to enter a transaction different from that which was recommended and wishes the firm to facilitate this.

"Pension Protection Fund" or "PPF" means a statutory public corporation which protects people with a Defined Benefit Pension when an employer becomes insolvent. If an employer does not have sufficient funds to pay the pension they were promised, the PPF will provide compensation instead. However, some reduction may apply.

“Pension Transfer” has the meaning given in the Glossary to the Handbook and means a transfer payment made in respect of any safeguarded benefits with a view to obtaining a right or entitlement to flexible benefits under another pension scheme.

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

“Personal Recommendation” means advice on the transfer of Defined Benefit Pension Scheme benefits into an arrangement with flexible benefits, explaining amongst other things why the firm has concluded that the recommended transaction is suitable for the customer.

“the Principles” means the Authority’s Principles for Businesses set out in the Authority’s Handbook.

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

“Relevant Period” means the period of 28 April 2015 to 31 May 2019.

“S & M Hughes” or “the firm” means S & M Hughes Limited.

“Statements of Principle” mean the Authority’s Statements of Principle and Code of Practice for Approved Persons issued under section 64A(1)(a) of the Act.

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

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

“TVAS” means “Transfer Value Analysis” and is the comparison that a firm was required to carry out in accordance with COBS 19.1.2R prior to 1 October 2018, when

a firm gave advice or a Personal Recommendation about, amongst other things, a Pension Transfer.

“TVAS Report” means a document that sets out for the customer a comparison of the benefits likely (on reasonable assumptions) to be paid under the Ceding Arrangement with the benefits afforded by the Proposed Arrangement, which firms were required to carry out in accordance with COBS 19.1.2R (and prepare in accordance with COBS 19.1.3R and 19.1.4R) prior to 1 October 2018.

4. FACTS AND MATTERS

Background

S & M Hughes Limited (in liquidation)

- 4.1. S & M Hughes was a small independent financial adviser firm based in Swansea which traded under the name “Crescent Financial”. The firm was authorised by the Authority on 4 September 2012. During the Relevant Period, the firm had permissions to carry on regulated activities including advising on Pension Transfers and Opt-outs, advising on investments and arranging (bringing about) deals in investments.
- 4.2. The Authority monitored the Defined Benefit Pension Transfer advice market and identified firms that had advised on a significant volume of BPS transfers. S & M Hughes was one such firm identified by the Authority and on 31 May 2019, the Authority visited the firm’s offices. Due to concerns noted by the Authority at the time of the visit in connection with its Defined Benefit Pension Transfer business, the firm was immediately asked to cease all regulated activity. The firm agreed to sign a voluntary requirement to cease undertaking all regulated activities, effective from 31 May 2019, including in relation to its Defined Benefit Pension Transfer business.
- 4.3. During the Relevant Period the firm advised 235 customers to transfer out of their DBPS. All but 3 of these customers were advised by Mr Hughes.
- 4.4. The firm entered into a Creditors Voluntary Liquidation on 4 September 2019.

Mr Hughes

- 4.5. Mr Hughes began working in financial services in 1985 and has been an approved PTS since December 2001. From 1996 onwards Mr Hughes set up various

independent financial adviser businesses where he held the CF24 (Pension Transfer Specialist) controlled function as well as various other controlled functions. By the time of the Relevant Period, Mr Hughes therefore had significant experience of advising on Pension Transfers.

- 4.6. Mr Hughes' position at the firm was one of sole director and 50% shareholder. He was also the sole PTS at the firm. During the Relevant Period Mr Hughes was authorised to perform the controlled functions of CF1 (Director), CF10 (Compliance Oversight), CF11 (Money Laundering Reporting) and CF30 (Customer) at the firm. Mr Hughes informed the Authority that he was responsible for all aspects of the firm's business.
- 4.7. Following the introduction on 9 December 2019 of the Senior Managers and Certification Regime for all firms authorised by the Authority, the controlled functions Mr Hughes was approved to perform at the firm were replaced by the SMF3 (Executive Director), SMF16 (Compliance Oversight) and SMF17 (Money Laundering Reporting Officer) Senior Management Functions.

Defined Benefit Pension Transfers

- 4.8. Pensions are generally understood to be a traditional and tax-efficient way of saving money for retirement. The value of an individual's pension can have a significant impact on their quality of life during retirement and will determine how early they can afford to retire. Pensions are, in most cases, a primary resource for ensuring financial stability in retirement. For some people, they are the only means of funding retirement.
- 4.9. Pensions can be structured in a variety of ways. However, a DBPS is particularly valuable because an employer sponsor carries the financial burden associated with offering a secure, guaranteed income for life to members, which typically increases each year in line with inflation. This is in contrast to, for example, a Defined Contribution ("DC") pension scheme where employer and employee capital contributions are invested, but the investment and mortality risk are borne by the member. The Authority expects that for the majority of customers it is in their best interests to remain in their DBPS because of the guarantees and protections it offers.
- 4.10. 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 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. This is particularly so in the case of Defined Benefit Pension Transfer advice where it is critical that customers are provided with suitable advice on transferring their valuable benefits out of the scheme, taking a holistic and sufficiently detailed view of their individual circumstances.

- 4.11. It is important that firms and their advisers exercise reasonable care when advising customers regarding their pensions, ensuring that suitable advice is provided, having regard to all the relevant circumstances. This is even more important when customers have no option but to make a decision regarding their pension (often under time pressure), as was the case with the firm's BSPS customers.
- 4.12. Transferring out of a DBPS involves giving up valuable guaranteed benefits in exchange for a CETV which is typically invested in a Defined Contribution pension. If a customer leaves a DBPS, they may have to purchase an annuity to obtain a particular level of income. Alternatively, they may rely on income from investments. However, there is often no guarantee as to the amount or duration of that income.
- 4.13. The introduction of pension freedoms in April 2015 for Defined Contribution pensions made transferring out of a DBPS an attractive option for some people. However, Authority guidance provides that, given the valuable nature of the guaranteed benefits provided under a DBPS, an adviser's starting point should be the assumption that transferring out and giving up those benefits is unlikely to be suitable for a customer. That is the default position unless the adviser can clearly demonstrate, on contemporary evidence, that the Pension Transfer, conversion or Opt-out is in the customer's best interests.
- 4.14. During the Relevant Period, Mr Hughes advised 287 customers on whether to transfer out of their DBPSs before the firm agreed to cease providing Pension Transfer advice following the Authority's intervention. Of these customers, 222 (approximately 77%) were members of the BPS. Notwithstanding FCA guidance which created as a starting point a presumption of unsuitability in respect of transferring out of a DBPS, Mr Hughes advised 232 customers to complete a Pension Transfer (188 were BPS customers).

The British Steel Pension Scheme

- 4.15. The BSPS was one of the largest DBPSs in the UK, with approximately 125,000 members and £15 billion in assets as of 30 June 2017. In March 2017, the BSPS was closed to future accruals, which meant that no new members could join it and existing members could no longer build up their benefits. The BSPS also had an ongoing funding deficit.
- 4.16. In early 2016, various options were being explored in relation to the BSPS as a result of insolvency concerns relating to one of its sponsoring employers. These options included seeking legislative changes which would have allowed pension increases available under the BSPS to be reduced to the statutory minimum levels, and the sale of one of the sponsoring employers. However, it was concluded that the only way to avoid insolvency would be to enter into a Regulated Apportionment Arrangement ("RAA").
- 4.17. On 11 August 2017, the Pensions Regulator gave its clearance for the RAA. Under the RAA, the BSPS would receive £550 million and a 33% equity stake in one of the sponsoring employers and the BSPS would transfer into the PPF. In addition, a new DBPS ("BSPS 2") was proposed by the sponsoring employers in combination with the RAA proposal. The RAA received formal approval on 11 September 2017, which resulted in the BSPS being separated from the sponsoring employers.
- 4.18. The effect of the RAA was that members of the BSPS were required to make a choice between two options offered by the BSPS, namely to either:
- (1) remain in the BSPS and therefore move into the PPF; or
 - (2) transfer their benefits into BSPS 2.
- 4.19. Alternatively, BSPS members could obtain a CETV and transfer their pension benefits into an alternative pension arrangement (for example a personal pension scheme or another occupational pension scheme held by the member). The CETV was reduced by 5% (that is to 95%) reflecting the underfunding of the BSPS.
- 4.20. On 11 and 21 September 2017, the BSPS announced that it would separate from the sponsoring employer. Information about the options for members was available on the BSPS website from 11 August 2017. In October 2017 the BSPS distributed information packs to members about these options. Members were required to choose their preferred option by 22 December 2017. Those who

wanted to transfer their pension benefits from the BSPS to a personal pension were required to submit the required paperwork to execute the transfer by 16 February 2018.

- 4.21. BSPS 2 was designed to provide transferring members with 100% of their starting pension value. An alternative pension arrangement would be dependent on the performance of underlying investments and, unlike the other schemes, did not provide a guaranteed income.
- 4.22. As a result, it was essential for any advisor making a recommendation to a BSPS member to have a detailed understanding of each of the options available as well as a detailed understanding of their customer's personal circumstances.
- 4.23. On 31 March 2022 the Authority launched a consultation paper CP 22/6 for a redress scheme under section 404 of the Act for BSPS members who suffered financially as a result of unsuitable Pension Transfer advice. The paper estimates the average amount lost per consumer to be about £60,000.
- 4.24. The Rookes Review, an independent review of the support given to BSPS members during restructuring and 'Time to Choose', stated that BSPS members experienced, and were influenced by, a set of unique circumstances. These included the following:
 - (1) Distrust of their employer;
 - (2) Limited information on alternative options;
 - (3) Tight timescales to make a decision; and
 - (4) Limited support.

S & M Hughes' Pension Transfer advice business and Mr Hughes' role

Increase in DBPS advice work

- 4.25. Before receiving enquiries from BSPS members in mid-2017, Pension Transfer advice was a less significant part of the firm's business and revenue. In the period between April 2015 to August 2017, for example, the firm advised on only 46 Pension Transfers whereas the firm provided advice in 213 cases in the 5 month period from August 2017 until December 2017.

- 4.26. In interview with the Authority, Mr Hughes stated that the increase in Pension Transfer advice as a result of approaches from members of the BPS meant that he went from seeing approximately two customers per day to between 8-10 customers per day and that he often worked 15 hour days, 7 days per week, to meet the increasing workload.
- 4.27. The firm was located a short distance from a British Steelworks plant, and this significant increase in the volume of Pension Transfer customers was driven by demand from BPS members. For example, records indicate that on a single day in this period (13 November 2017) Mr Hughes advised on 11 separate BPS Pension Transfers. Capacity therefore became an issue because Mr Hughes took on a large number of the customers who approached him for advice over a short period of time with insufficient resources in place to ensure that the firm was able to comply with the requirements and standards of the regulatory system.

The firm's advice process

- 4.28. Customers seeking Pension Transfer advice from the firm met or spoke with Mr Hughes on several occasions. An initial meeting took place at which the customer was advised about the general advantages and disadvantages of remaining within their DBPS rather than transferring out. A 'fact find' document was also completed in which questions were asked about the customer's circumstances, aims and objectives.
- 4.29. If the customer wished to proceed with the Pension Transfer, a second, and sometimes a third, meeting would take place with Mr Hughes at which the investment options were presented and the customer's attitude to risk was assessed via a questionnaire. Following these meetings, the customer would be provided with a Suitability letter.
- 4.30. In response to the increased demand for Pension Transfer advice, Mr Hughes stated, when interviewed by the Authority, that he did not assign additional resources to manage the increased volume of work but simply "*worked harder*".

Initial and ongoing transfer fees

- 4.31. The firm operated a semi contingent charging model, whereby customers were charged £500 for advice, which was waived if the customer went ahead with the Pension Transfer. The firm then charged its customers a fee of 1% of the value of the transferred fund along with an ongoing advice charge of 0.5% per annum.

During the Relevant Period, customer payments for initial advice fees for Pension Transfer advice totalled £613,516.69. In circumstances where Mr Hughes demonstrated a high degree of incompetence and was grossly negligent, this meant customers not only received unsuitable Pension Transfer advice but paid unnecessary fees, when in fact they should not have been advised to transfer out of their DBPS.

Mr Hughes' oversight as CF10 (Compliance Oversight)

- 4.32. Mr Hughes was required to exercise due skill, care and diligence in ensuring adequate routine compliance checking of the Pension Transfer advice he provided to his customers. This included putting in place and maintaining adequate policies and procedures sufficient to ensure the firm's compliance with its obligations under the regulatory system, including compliance with the Authority's Rules. This was especially important given the high volume of Pension Transfer advice being provided to customers between August to December 2017.

External Compliance Review

- 4.33. In 2018, Mr Hughes commissioned an external review of a number of the firm's Defined Benefit Pension Transfer advice files. In interview, Mr Hughes stated that he requested this because *"I wanted confirmation that what I was doing was correct"*. He stated *"[...] I think I just thought, do you know what? I've done a lot of these. I'd better [...] get them checked just to make sure I'm doing okay."* Mr Hughes conceded that he did not engage in any external review prior to 2018 and in particular did not do so either before, or at the point of, undertaking the high volume of DBPS advice he carried out in the second half of 2017. Given the risks associated with taking on a significant volume of cases, Mr Hughes was negligent in failing to commission a compliance review either before, or at the point of the significant influx of DBPS advice customers.
- 4.34. The external review identified a number of failings in the firm's Defined Benefit Pension Transfer advice process. These included in particular:
- (1) insufficient consideration of alternative options to transfer, such as the PPF and BSPS 2, including that these were not discussed in full with the customer in order for them to fully consider these options;
 - (2) failure to obtain necessary information in respect of anticipated income and expenditure during retirement. For example, in one file that was reviewed

the fact find was noted as not providing any specific indication of the customer's anticipated income needs or retirement age and was said to be "of a very poor quality";

- (3) use of a template TVAS which did not facilitate sufficient analysis to comply with the Authority's requirements as it did not contain standard information that is generally covered in a TVAS;
 - (4) no Cash Flow Analysis was recorded on some files; and
 - (5) failure to explain in the Suitability Report why the Pension Transfer met the customer's needs. For example, in one case the Pension Transfer was considered by Mr Hughes to be in the customer's best interests despite the pension being their biggest asset and likely to provide a substantial part of their retirement income. The customer was also recorded as having a small capacity for loss, a relatively cautious risk profile and little investment experience.
- 4.35. Following the external review in 2018, Mr Hughes agreed that there were gaps in the firm's fact-finding process and that it could have been more robust. However, despite accepting some of the findings of the external review, Mr Hughes negligently failed to implement any remedial measures at the firm in response to the results of the review. In fact, Mr Hughes considered that a number of the findings were incorrect.
- 4.36. For example, despite the external review concluding that Mr Hughes had given insufficient consideration to the alternative options such as BSPS 2, Mr Hughes remained of the view that it was impossible for him to give advice that included the option of BSPS 2 when it was not known if it would come into force and if so, in what format. Mr Hughes' negligence in failing to adequately consider all the options available to a customer created a risk of unsuitable advice being provided to customers.

Mr Hughes' failure to provide advice with due care, skill and diligence

Background to the Authority's Review of Mr Hughes' advice

- 4.37. The Authority monitored the Defined Benefit Pension Transfer advice market and identified firms that had advised on a significant volume of BSPS transfers. S & M Hughes was one such firm identified by the Authority. On 31 May 2019, the

Authority visited the firm's offices and reviewed the processes adopted by the firm in respect of this workstream.

- 4.38. During this visit Mr Hughes admitted that the Defined Benefit Pension Transfer advice process that he had followed previously for his BSPS clients was less robust than the advice process that the firm had in place at the time of the visit. Mr Hughes conceded that the firm had started to receive complaints in respect of its BSPS transfer advice, with four received within the month preceding the Authority's visit. He also said that it was expected that further BSPS complaints would be received and that it would be difficult for the firm to defend any complaints it received.
- 4.39. The Authority also identified at the time of the visit that Mr Hughes had made the decision not to recommend any of his BSPS clients to enter the PPF and that BSPS 2 was not considered to be a viable option because it was Mr Hughes' belief that there was no guarantee it was going to happen. As a result, all of the firm's 170 BSPS clients at the time had been recommended to transfer out of the BSPS into a personal arrangement.
- 4.40. Due to concerns held by the Authority at the time of the visit which included the robustness of the firm's Defined Benefit Pension Transfer advice process as well as the BSPS complaints already received, and likely to be received, the firm was immediately asked to cease all regulated activities. The firm agreed to sign an undertaking to cease all regulated activities, effective from 31 May 2019.

Review by the Authority of a representative sample of Mr Hughes' files

- 4.41. Following the onsite visit, the Authority then requested 20 files and were able to assess 19 files against the applicable rules found in the Authority's Conduct of Business Sourcebook (COBS) relating to suitability. Of the 19 files assessed, six contained multiple customer advice files, therefore 26 advice files were reviewed in total.
- 4.42. Mr Hughes was the adviser on all of these files and in every case, he advised the client to transfer out of their DBPS, against their best interests. The vast majority of the files related to former BSPS members.
- 4.43. The results of the file review exercise conducted by the Authority demonstrated that Mr Hughes gave advice in which he had:

- (1) failed to collect the necessary information to give Pension Transfer advice in 24 of the 26 files reviewed (92%). In 9 of these cases (35%) the absence of information was so significant that the Authority was unable to assess whether the firm's advice was suitable (see "Information Collection" below);
- (2) failed to provide suitable Pension Transfer advice in 94% of the remaining customer files where there was sufficient information for the Authority to make an assessment (see "Unsuitable Pension Transfer advice" below); and
- (3) failed to provide all the information required to be provided to clients in 100% of cases reviewed. He therefore failed to communicate with customers in a manner that was fair, clear and not misleading.

4.44. The failings identified throughout the files reviewed by the Authority indicated that the advice provided by Mr Hughes fell far short of what would be expected of an experienced PTS in the circumstances and did not comply with regulatory requirements and standards.

Information collection failures

- 4.45. The overarching suitability requirement, in COBS 9.2.1R, in force at the time, was for a firm to take reasonable steps to ensure that a Personal Recommendation, (which included, in this context, a recommendation to transfer or not to transfer a pension), is suitable for its customer. To do so, a firm must obtain the necessary information regarding the customer's (a) knowledge and experience in the investment field relevant to the Pension Transfer; (b) the customer's financial situation; and (c) the customer's investment objectives (COBS 9.2.1R(2)(a)-(c)).
- 4.46. Making a personal recommendation without the necessary information increases the risk of providing unsuitable advice and is in breach of the Authority's Rules. If a firm does not obtain the necessary information to assess suitability such that there are material information gaps, it must not proceed to make a Personal Recommendation (COBS 9.2.6R).
- 4.47. In 9 of the 26 files reviewed by the Authority (35%), Mr Hughes had collected insufficient information, such that he should not have proceeded to make a recommendation to transfer out of the customer's DBPS, as a full suitability assessment could not be made. This therefore put the customer at risk of receiving unsuitable Pension Transfer advice. In all 9 cases, there was a failure to capture information regarding the customer's financial situation as well as their

anticipated expenditure during retirement, therefore making it impossible to assess their reliance on the Defined Benefit Pension fund.

Failure to gather information on retirement expenditure

- 4.48. During the course of its file review exercise, the Authority found that there was a pervasive failure to obtain and discuss the customer's anticipated income needs and expenditure during retirement, including their basic cost of living, lifestyle expenditure and discretionary expenditure. Of the files reviewed by the Authority, 23 did not include full details of anticipated retirement income needs and expenditure details.
- 4.49. In a significant number of files reviewed by the Authority Mr Hughes only captured high level information regarding the customer's anticipated expenditure, usually consisting only of a total figure and sometimes a mortgage repayment amount. The Authority found examples where, based on this high-level information, customers were said to have a surplus at the end of the month. However, the information on file did not support this assertion.
- 4.50. Customer A, for example, was recorded by Mr Hughes as having a surplus of income over expenditure despite having no savings and having £105,000 outstanding in loan and credit card debts. Mr Hughes did not investigate or question this apparent lack of assets further and therefore failed to collect the necessary information.
- 4.51. Further, the Authority's review revealed a common failure to clearly capture customer and spouse state pension and additional pension details. For example, in the case of Customer B, information about other DBPS benefits held by the customer were not on file and their spouse's pension scheme benefits were not recorded on file either. Without this information, Mr Hughes was not in a position to determine the level of the customer's reliance on the DBPS or evaluate whether these other potential resources could be used to achieve customer objectives, either as an alternative, or notwithstanding a transfer out of the BPS. In the Authority's view, Mr Hughes' actions in proceeding to advise customers to transfer out of their DBPS having failed to capture such information was grossly negligent.
- 4.52. Mr Hughes himself acknowledged during interview with the Authority that his fact find notes did not contain as much detail on income in retirement as they could have done.

Failure to Gather Information on the Customer's financial situation

- 4.53. Information about a customer's wider financial situation, including their additional resources (if any) and current expenditure details, is key to assessing the extent of their reliance on the income provided by their DBPS, as well as their capacity for loss (COBS 9.2.2R, see Annex A).
- 4.54. In 16 of the files reviewed by the Authority, information as to the source and extent of the customer's assets including liquid assets and their regular financial commitments was missing. This meant that Mr Hughes provided the advice in breach of regulatory requirements, in particular COBS 9.2.2R(3), therefore putting customers at risk of receiving unsuitable Pension Transfer advice.
- 4.55. The impact of the failure to accurately capture detailed financial information is illustrated by the Pension Transfer advice that Mr Hughes provided to Customer C, whose circumstances were due to change significantly as they were expecting the birth of their first child. Mr Hughes failed to address this by, for example, enquiring of the customer whether they or their partner intended to take a break from employment once the child was born.
- 4.56. Mr Hughes also failed to collect information about the customer's, or their partner's pension benefits, with their current employer. He also failed to collect any details about the term of the customer's mortgage, and whether it was likely payment would still fall due during retirement. These information collection failures meant that Mr Hughes was not in a position to be able to estimate the client's future income needs and anticipated expenditure during retirement. Despite this, Mr Hughes nonetheless negligently advised the customer to transfer out of their DBPS.

Failure to Gather Information about the Ceding Arrangement

- 4.57. In order to comply with regulatory requirements, Mr Hughes was required to obtain the necessary information about his customers to assess whether a Pension Transfer was suitable. This included obtaining information about the customer's DBPS in order to be able to carry out a comparison between the benefits likely to be paid under the Ceding Arrangement with those afforded by the Proposed Arrangement. This information was also necessary in order for Mr Hughes to be able to understand the key issues arising out of the Ceding Arrangement, as well as what alternative options to the scheme might be available.

- 4.58. Mr Hughes needed this information in order to be able to assess how loss of the guaranteed DBPS benefits available under the customer's Ceding Arrangement might impact the customer's objectives and overall financial situation during retirement. This information was also necessary in order to be able to determine, by carrying out a transfer analysis, whether a Pension Transfer was in the customer's best interests.
- 4.59. The Authority considers that Mr Hughes demonstrated a high degree of incompetence in failing to properly inform himself regarding the issues impacting the BSPS and its members and in also failing to properly consider the alternative options available to members of the BSPS, such as the new DBPS proposed by the sponsoring employers (BSPS 2). In particular:
- (1) in 8 of the files reviewed by the Authority (31%), Mr Hughes failed to obtain the necessary information regarding the benefits payable under the Ceding Arrangement so as to be able to undertake an accurate transfer analysis. In two of the files reviewed, the Authority found that a TVAS had not even been compiled, making it impossible for Mr Hughes to advise on whether a Pension Transfer was suitable for the customer and therefore in their best interests;
 - (2) although Mr Hughes was aware of the options available to BSPS members following the approval of the RAA, he accepted in interview with the Authority that he discounted BSPS 2 because the scheme was not yet approved at the time of his advice. He additionally accepted that he did not discuss the option of customers moving into the PPF because, in his opinion, it was not a 'good option'; and
 - (3) as Mr Hughes did not properly inform himself of the options available to Scheme members, he failed to give due consideration to, or advise customers on, whether it was in their best interests to transfer into the new DBPS proposed by the sponsoring employers, or to remain in the Scheme and enter the PPF.
- 4.60. Mr Hughes should have given serious consideration to customers retaining their guaranteed benefits under BSPS 2 given the risks and uncertainty of a Defined Contribution scheme, or other flexible arrangement. Further, by October 2017 at the latest (where Mr Hughes' Pension Transfer advice business was at its peak) sufficient information would have been available to enable him to reasonably

assess the benefits afforded by BSPS 2. Nonetheless, Mr Hughes incompetently failed to properly take this option into consideration.

Unsuitable Pension Transfer Advice

- 4.61. The overarching suitability requirement (COBS 9.2.1R) is for a firm to take reasonable steps to ensure that a Personal Recommendation (which includes, in this context, a recommendation to transfer or not to transfer a pension) is suitable for its customer.
- 4.62. The starting point for Pension Transfer advice is the guidance in COBS 19.1.6G(3) (or, from 8 June 2015 to 1 April 2018, in COBS 19.1.6G) that a firm should only consider a transfer, conversion or Opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the Pension Transfer, conversion or Opt-out is in the customer's best interests. These provisions indicate that if the firm cannot clearly demonstrate this, then it should assume the transaction will not be suitable. There is a direct correlation between a loss of guaranteed benefits and harm, or risk of harm, to consumers. This is due to the risks associated with surrendering a valuable, guaranteed resource for ensuring a stable income during retirement.
- 4.63. The Authority's file reviews found that of those cases where there was sufficient information for the Authority to make a suitability assessment, 16 of these 17 customer files (94%) contained unsuitable Pension Transfer advice. Of these, all but one were former BPS members. The advice given to transfer was unsuitable for a variety of reasons (see below). Many recommendations were unsuitable for multiple reasons.

Reliance on the Defined Benefit Scheme and inability to bear transfer risk

- 4.64. Mr Hughes assessed customers as being reliant on their Defined Benefit Pension in 12 out of the 16 cases which contained unsuitable Pension Transfer advice. These customers did not have significant assets available to them which could be used to supplement any shortfalls in their income needs. A customer is deemed to be reliant on income from their DBPS in retirement if it is their primary income source with no capacity to bear the risk of losing it; for example, because without it they would be unable to meet non-discretionary expenditure.
- 4.65. Mr Hughes' advice to these customers to transfer out of their DBPS exposed them to a risk of not being able to meet their income needs during retirement because

their income would become dependent on the performance of the Proposed Arrangement. The Authority considers that Mr Hughes did not have a reasonable basis for believing that these customers could financially bear any investment risks associated with the Pension Transfers he recommended to them.

- 4.66. Customer D, for example, was 48 and married at the time Mr Hughes provided Pension Transfer advice. The customer's spouse was in ill-health and they had two dependent children. Customer D also had no savings. Mr Hughes failed to obtain a detailed breakdown of the customer's expenditure. Customer D's financial situation and personal circumstances were such that the Authority assessed them to be an individual who could not withstand losses. Notwithstanding this, Mr Hughes recommended Customer D to transfer out of their DBPS.
- 4.67. The firm was required by COBS 19.1.2R to carry out a comparison of the benefits likely (on reasonable assumptions) to be paid under a DBPS with those afforded by the Proposed Arrangement, before it advised a customer to transfer out of their DBPS. However, in the case of Customer D, the transfer analysis undertaken by Mr Hughes did not support a recommendation to transfer out of their DBPS. The Critical Yield required to replicate the benefits of the scheme was 7.5% which Mr Hughes stated in the Suitability Report was unlikely to be achieved. Mr Hughes failed to demonstrate why he nonetheless considered it suitable for Customer D to make a Pension Transfer when it was likely they would be worse off during retirement if the Critical Yield was not achieved.

Lack of evidence to support customer objectives

- 4.68. Mr Hughes failed to provide sufficient evidence to demonstrate that specific objectives which drove the Pension Transfer, for example maximising death benefits for dependents, flexibility and protecting the pension fund from a further decrease in value, were in the customer's best interests. This was seen in all 16 cases assessed by the Authority as being unsuitable for transfer.
- 4.69. Whilst it was appropriate for Mr Hughes to have regard to a customer's stated objectives, he was also required to take reasonable steps to ensure that he explained the benefits of the valuable, guaranteed DBPS income and provided suitable advice to customers taking into account all their circumstances. If he was of the view that a transfer out of their DBPS was not in the best interests of the customer, even if that meant certain of the customer's stated objectives could not be achieved, then that advice should have been made clear to them.

- 4.70. The Authority considers that the primary purpose of a pension is to meet the income needs of an individual during retirement. However, by treating maximisation of a customer's death benefits, or seeking flexibility via alternative pension arrangements, as a high priority, there is an increased risk that this is at the expense of the primary income purpose. There may therefore be a trade-off that must be resolved in the best interests of the customer given their individual circumstances (COBS 9.2.1R(1) and 9.2.2R(1)(b)).
- 4.71. Among the 26 files reviewed by the Authority, there were many examples where the customer expressed a wish to maximise their death benefits and/or a need for increased flexibility, with the result that they were given advice to complete a Pension Transfer. However, the information contained in those files did not adequately demonstrate that those wishes, and needs had been properly tested, or that this outcome was in the customer's best interests overall. In some cases, death benefits were cited as a justification for transfer despite the customers still being employed and covered by death in service. In other cases, flexible benefits in retirement were recorded as the reason for transferring, yet for some their retirement was 15-20 years away.
- 4.72. The Authority considers that an adviser who provides advice on a Pension Transfer, has a responsibility to explore whether any concerns expressed by a customer which may drive a customer to consider a transfer out of their DBPS are reasonable concerns in all the circumstances. The Authority also considers that an adviser should ensure that the customer is properly informed about their options in view of those concerns.
- 4.73. In several of the 26 files reviewed, customers expressed concerns relating to the new BPS 2 scheme, primarily due to a lack of trust in anything arranged by their employer, in whom they had lost confidence. Instead of exploring those concerns with the customer, Mr Hughes often simply accepted the customer's concerns and repeated the customer's views when providing his reasons for the recommendation to transfer. In doing so, Mr Hughes provided advice without a reasonable understanding of the risks to his customers.
- 4.74. The Authority considers that it was incumbent on Mr Hughes, as the expert advisor, not to rule out BPS 2, despite a customer's concerns, and to provide full information to the customer on the range of possible options, including BPS 2, in order for the customer to be able to make an informed decision as to how to

proceed. This was particularly important given the potential benefits to them of remaining in their DBPS and the disadvantages to them of leaving that scheme.

- 4.75. In all of the files reviewed, the Suitability Reports described the customers' objectives in the same generic terms, using a template such that the wording was often almost identical. The generic wording recorded that the customer was "adamant" that they wished to transfer their paid up scheme away from their employer. Despite the customer being described as "adamant", in none of these cases was the customer treated as an Insistent Client by Mr Hughes.

Lack of necessary attitude to transfer risk, insufficient knowledge and experience

- 4.76. Mr Hughes was required to obtain sufficient information to provide a reasonable basis for believing that the customer had the necessary experience and knowledge to understand the risks involved in the transfer (COBS 9.2.3R). He was also required to obtain information on the customer's preferences regarding risk taking and their risk profile (COBS 9.2.2R), to ensure that the customer was prepared to exchange the guaranteed benefits of the DBPS for non-guaranteed benefits which are subject to customer-borne investment risk. Mr Hughes was required to obtain sufficient information to provide a reasonable basis for believing that the customer had the necessary experience and knowledge to understand the risks involved in the Pension Transfer.
- 4.77. Mr Hughes failed to demonstrate that the customer had sufficient knowledge to understand the risks of a Pension Transfer in 9 of the cases reviewed by the Authority. In those 9 cases, Mr Hughes found that the customer either had no investment knowledge or experience, or had basic knowledge or experience. Despite this, the customer was still recommended to transfer out of their DBPS without any explanation as to how Mr Hughes satisfied himself that the customer had understood the benefits they were foregoing, given their lack of prior knowledge and experience.

Transfer analysis not supportive of transfer

- 4.78. In order to provide Pension Transfer advice which was suitable to the customer, Mr Hughes was required to carry out a comparison between the benefits likely to be paid under the Ceding Arrangement with those afforded by the Proposed Arrangement. The TVAS document facilitated this comparison as required by COBS 19.1.2R(1), in force at the time.

- 4.79. The main output from this document is a series of percentages, known as "Critical Yields". These illustrate the annual growth rate (net of charges) that the customer would need to obtain on an investment of the CETV in order to replicate the benefits provided by the DBPS. The higher the Critical Yields required, the more likely it is that the Proposed Arrangement will not match the benefits payable under the DBPS unless a customer invests in higher risk assets. The adviser must ensure that the comparison includes enough information for the customer to be able to make an informed decision, drawing the customer's attention to factors that both support and detract from the adviser's advice.
- 4.80. In order to complete the Transfer Value Analysis, under the Rules the firm was required to collect information on the benefits payable and options available under the Ceding Arrangement, the benefits payable and options available under the Proposed Arrangement, and the effect of replacing the former with the latter, taking into account the customer's relevant circumstances.
- 4.81. Mr Hughes failed to follow this requirement in 8 cases. Mr Hughes failed to fairly present the comparison or take into account the customer's objectives, so as to make the comparison clear, fair and accurate for the customer. Common errors included calculating the comparison analysis to a different retirement age to that requested by the customer, and failure to consider the client's attitude to risk.
- 4.82. Where Mr Hughes calculated the transfer analysis to a higher retirement age than that requested by the customer, the Critical Yield figure was lower, suggesting that the Proposed Arrangement did not need to perform as well to match their DBPS. Critical Yields, where correctly calculated in these cases, were so high as to be unlikely to be achievable and exceeded what was likely to be achieved taking into consideration the customer's attitude to risk. However, this was not communicated to the customer.
- 4.83. All 16 cases that failed the assessment for suitability of Pension Transfer advice were found to have failed to meet the Authority's Rules in more than one way.
- 4.84. Customer X, for example, was aged 48 and divorced with two children at the time they received Pension Transfer advice from Mr Hughes. The customer was a BPS member but also had access to a Defined Contribution workplace pension. The customer owned their own home and had a mortgage of £55,000. The customer's objectives were recorded as being to retire early at age 60, to transfer away from their employer's DBPS, flexibility and control of their pension fund and

maximisation of death benefits. The customer was recorded as having a lack of trust in their current employer.

- 4.85. Mr Hughes recommended Customer X to transfer out of their DBPS, notwithstanding that the information recorded on file demonstrated that the customer would be reliant on their DBPS pension funds in order to achieve their retirement income objectives. No cashflow analysis was recorded on the customer's file and therefore it was not clear whether the customer had considered this issue at the time Mr Hughes provided the advice.
- 4.86. The need for flexibility was not explained or explored and even though there was evidence to suggest this objective could be met by entering the BSPS 2 or the PPF, Mr Hughes did not appear to consider these options with the customer.
- 4.87. The file recorded that the customer had never invested before but it was not explained how in those circumstances, Mr Hughes had satisfied himself that the customer understood the risks arising from a Pension Transfer.

Poor Quality Communication with Customers

- 4.88. The Authority's Rules about the provision of information to customers require that customers have all the necessary information to make an informed decision and are, ultimately, treated fairly. Mr Hughes failed to comply with the Authority's Rules in all 26 cases reviewed.
- 4.89. Although the files reviewed by the Authority usually met the basic requirements for initial disclosure and specific disclosure of the firm's charges, there were significant disclosure and communications failings identified in many cases including for example that:
- (1) the SIPP Application and BSPS Discharge Form were signed and dated before the date the Suitability Report was provided to the customer; and
 - (2) the customer signed the paperwork to proceed with the Pension Transfer before the Key Features Illustration was issued.
- 4.90. The effect of these failings was that Mr Hughes appeared to commit many of his customers to a Pension Transfer before providing the required advice and information to the customer.

Suitability Report failures

- 4.91. The firm was obliged to provide each of its Pension Transfer advice customers with a Suitability Report. The firm was obliged to set out in that report, as a minimum, the customer's demands and needs; why the firm had concluded that the Pension Transfer was suitable for the customer having regard to the information provided by the customer; and an explanation of any possible disadvantages of the transaction for the customer. Therefore, the Suitability Report was a written record of the customer's circumstances, the adviser's Personal Recommendation and the reasons for that recommendation.
- 4.92. The Authority found numerous failings in the Suitability Reports prepared by Mr Hughes. Overall, it found that the reports failed to meet the fair, clear and not misleading requirements of COBS 4.2.1R in 20 of the 26 customer files reviewed. Examples included reports being overly complex with a significant amount of information such that there was a lack of clarity around the recommendation, not providing calculations and comparisons for the client to make an informed decision and not explaining any alternatives.
- 4.93. The Authority also observed a pattern of Mr Hughes recording the clients' objectives in the same generic terms and in some cases, using templated language such that the wording was identical, for example: "*you are adamant that you wish to transfer your paid up [scheme] away from your employer*". These reports therefore failed to meet the fair, clear and not misleading requirements of COBS 4.2.1R, with important elements of the rationale for transfer being generic. Despite this, Mr Hughes negligently proceeded to provide such reports to his customers.

Transfer analysis failings

- 4.94. The adviser must take reasonable steps to ensure that the customer understands the transfer analysis report and to ensure that it contains sufficient information for the client to make an informed decision. This was important, given the limited knowledge and experience of many of the customers in the sample.
- 4.95. The Authority found that the transfer analysis prepared by Mr Hughes in 19 of the files reviewed did not meet the requirements set out in the Authority's Rules. The majority of files were non-compliant due to a failure to conduct a transfer analysis to the customer's preferred retirement age meaning that the customer was unlikely to have been provided with sufficient information in the comparison

document, to be able to make a sufficiently informed decision. Other transfer analyses were deficient due to a failure to compare benefits based on the customer taking a tax-free Pension Commencement Lump Sum when this was stated as one of their objectives and in two advice files, there was no evidence a transfer analysis had been conducted.

5. FAILINGS

- 5.1. The regulatory provisions relevant to this Notice are referred to in Annex A.
- 5.2. Based on the facts and matters above, the Authority finds that, by reason of the matters described in section 4 of this notice, Mr Hughes breached:
- (1) Statement of Principle 2, in that he failed to exercise due skill, care and diligence in carrying out his CF30 (Customer) function;
 - (2) Statement of Principle 6, in that he failed to exercise due skill, care and diligence in managing the business of the firm for which he was responsible in his CF10 (Compliance Oversight) function; and
 - (3) Statement of Principle 7, in that he failed to take reasonable steps to ensure, in respect of his performance of the CF1 (Director) function, that S & M Hughes complied with Principles 3, 7 and 9 of the FCA's Principles for Business, and COBS 2.1.1R, 9.2.1R, 9.2.2R, 9.2.6R and 19.1.2R, as a result of the deficiencies in the firm's Pension Transfer recommendations.

Breach of Statement of Principle 2

- 5.3. The Authority considers that Mr Hughes breached Statement of Principle 2 during the Relevant Period by failing to act with due skill, care and diligence in his role as CF30 (Customer) when advising customers on Pension Transfers. His failings meant that the advice he provided did not comply with regulatory requirements and standards, which created a significant risk (as well as causing actual harm when this risk crystallised) that his advice that a customer should transfer out of their DBPS would not be suitable for them. In particular, Mr Hughes:
- (1) failed to ensure that at the fact-finding stage he gathered and appropriately assessed the necessary information regarding a customer's financial situation including their anticipated income and expenditure during retirement, and details of the Ceding Arrangement and the Proposed Arrangement. As a result, he failed to adequately consider the customer's

financial situation, retirement needs, attitude to risk and alternatives to transfer, when assessing whether the customer was reliant on the Ceding Arrangement and therefore if the transfer out of their DBPS was suitable for them;

- (2) failed to properly assess, on the basis of the information obtained, or give due consideration to, whether the customer would be reliant on the income from their DBPS and could financially bear the risks associated with the Pension Transfer. He did this despite knowing that, following the recommended transfer, customers' retirement income would be dependent on the performance of the new scheme's investments;
- (3) failed to take into consideration the alternative options available to members of the BSPS to transferring out of the Scheme following the RAA due to a fundamental lack of understanding of these options. As a result, he failed to give due consideration to whether it would be in the customer's best interests to transfer into the new DBPS proposed by the sponsoring employers (BSPS 2), or to remain in the Ceding Arrangement and enter the PPF;
- (4) failed to provide suitable advice to customers and in particular advised customers with no source of retirement income other than their DBPS and the state pension (with cautious attitudes to risk) to give up their guaranteed benefits without sufficient justification;
- (5) failed to properly assess whether the customer had the necessary knowledge and experience to understand the risks involved in the recommended Pension Transfer and failed to give due consideration to the customer's lack of knowledge and experience in that context. When he assessed that they did not have the required knowledge and experience to understand the attendant risks, he failed to give due consideration to this in any event;
- (6) failed to undertake any, or any adequate transfer analysis and in some cases failed to undertake any transfer analysis at all. This was required in order to compare the benefits likely to be paid under the DBPS with the benefits afforded by the Proposed Arrangement. Mr Hughes made errors, such as calculating the Critical Yield to the wrong retirement age. This meant that comparisons were not accurate and, where they were correctly calculated,

Critical Yields revealed that the required growth was sometimes inconsistent with the attitude to risk of the customer. Nevertheless, he recommended that the customer transfer out of their DBPS;

- (7) failed to record sufficient information on customer files to evidence why his advice was suitable and to demonstrate why he had recommended a Pension Transfer out of the Ceding Arrangement; and
 - (8) failed to communicate with his customers in a way that was fair, clear and not misleading such that customers were not placed in an adequately informed position. In particular, in purporting to explain why a recommendation to transfer out of a DBPS was suitable, generic standardised reasons were listed as well as templated objectives that were not sufficiently tailored to the customer.
- 5.4. The Authority considers that as a result, a significant number of customers received unsuitable Pension Transfer advice. As a consequence, they then made the decision to proceed with a Pension Transfer when this was not in their best interests.

Breach of Statement of Principle 6

- 5.5. The Authority considers that Mr Hughes breached Statement of Principle 6 during the Relevant Period because he failed, in performing the CF30 (Compliance Oversight) function, to exercise due skill, care and diligence in managing the business of the firm for which he was responsible.
- 5.6. In particular, in breach of Statement of Principle 6, Mr Hughes:
- (1) failed to implement adequate procedures at the firm to ensure that the necessary customer information was gathered prior to customers being advised in relation to Pension Transfers. He also failed to ensure that record keeping was adequate to demonstrate compliance with regulatory requirements;
 - (2) failed to ensure the adequate routine compliance checking of the firm's Pension Transfer advice, including undertaking management information analysis and adequate monitoring and oversight of compliance;
 - (3) failed to ensure that the firm's advice process was compliant and failed to identify deficiencies in compliance by, for example, requesting external

reviews of his Pension Transfer advice files before undertaking a high volume of DBPS advice work in the second half of 2017;

- (4) failed to ensure that the firm had adequate compliance resources in place to manage the increased volume of Defined Benefit Pension Transfer advice work whilst also complying with regulatory Rules and requirements; and
- (5) failed to ensure that documents to be issued to customers were drafted with sufficient care and precision so as to be free of serious and misleading errors, resulting in the customer not being placed in a sufficiently informed position.

Breach of Statement of Principle 7

5.7. The Authority considers that Mr Hughes breached Statement of Principle 7 during the Relevant Period because he failed to take reasonable steps to ensure that the business of the firm for which he was responsible as CF1 (Director) complied with the relevant requirements and standards of the regulatory system. In particular, Mr Hughes:

- (1) failed to monitor and facilitate effective scrutiny of the reasons why the firm recommended almost all of its customers to transfer out of their Defined Benefit Pension;
- (2) failed to monitor and allocate additional and appropriate resources to respond to the significant increase in DBPS work, which was largely driven by the influx of BPS members seeking Pension Transfer advice, particularly during the second half of 2017;
- (3) failed to take reasonable steps to ensure that the firm adequately assessed the suitability of the Pension Transfer for the customer, including adequately assessing customers' objectives, attitude to risk and knowledge and experience in relation to Pension Transfers, and that the firm's customers fully understood the information provided to them in relation to their Pension Transfer;
- (4) failed to take reasonable steps to ensure that the customer fact find processes used by the firm were adequate and appropriate meaning that insufficient customer information was gathered to assess suitability;

- (5) failed to ensure that the firm maintained adequate customer files and business records; and
 - (6) failed to ensure that the firm communicated with customers in a way that was fair, clear and not misleading such that customers were not placed in an adequately informed position. In particular, in purporting to explain why a recommendation to transfer out of a DBPS was suitable, generic standardised reasons were listed, that were not sufficiently tailored to the customer.
- 5.8. The Authority considers that by reason of the matters referred to in paragraph 5.7 above Mr Hughes failed to ensure that S & M Hughes complied with Principles 3, 7 and 9 of the FCA's Principles for Businesses, and the relevant COBS rules.
- 5.9. The Authority therefore considers that by virtue of his lack of competence and capability Mr Hughes is not fit and proper to perform any Senior Management Function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm, or any function in relation to the regulated activity of advising on Pension Transfers and Pension Opt-outs carried on by an authorised person, exempt person and exempt professional firm.

6. SANCTION

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

Step 1: Disgorgement

- 6.2. 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.
- 6.3. The Authority has not identified any financial benefit that Mr Hughes derived directly from his breaches.
- 6.4. Step 1 is therefore £0.

Step 2: the seriousness of the breach

- 6.5. 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.
- 6.6. The period of Mr Hughes' breach of Statements of Principle 2, 6 and 7 was from 28 April 2015 to 31 May 2019. The Authority considers Mr Hughes' relevant income for this period to be £755,440.
- 6.7. 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:
- Level 1 – 0%
- Level 2 – 10%
- Level 3 – 20%
- Level 4 – 30%
- Level 5 – 40%
- 6.8. In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and the nature of the breach and whether it was committed deliberately or recklessly.

Impact of Breach

- 6.9. DEPP 6.5.2G(8) lists factors relating to the impact of a breach committed by an individual.
- 6.10. Mr Hughes' breach caused a significant risk of loss, as a whole, to consumers who transferred out of their DBPS as a result of his advice. Completed transfers had a total CETV of £61,613,687.

- 6.11. Mr Hughes' breach caused a significant risk of loss to individual consumers who transferred out of their DBPS as a result of advice given to them by S & M Hughes. (DEPP 6.5B.2G(8)(c)).
- 6.12. Mr Hughes' breach disproportionately affected BSPS members, who made up the majority of S & M Hughes' Pension Transfer advice customers during the Relevant Period and many of whom were in a vulnerable position due to the uncertainty surrounding the future of the BPS (DEPP 6.5B.2G(8)(d)).

Nature of Breach

- 6.13. DEPP 6.5B.2.2G(9) lists factors relating to the nature of the breach committed by an individual.
- 6.14. The breach was a continuous one during the Relevant Period, although the harm caused was concentrated in the period from September 2017 to December 2017 (DEPP 6.5B.2G(9)(b)).
- 6.15. Mr Hughes is an experienced industry professional having worked in financial services since 1985, progressing through to managing 150 financial advisers, senior branch managers and their supporting managers throughout his employment. From 1996 onwards Mr Hughes set up various independent financial adviser businesses where he was the PTS along with holding various other controlled functions. By the time of the Relevant Period, Mr Hughes therefore had a long history of advising on Pension Transfers (DEPP 6.5B.2G(9)(j)). He held Senior Management Functions at S & M Hughes (DEPP 6.5B.2G(9)(k)). As the Compliance Officer at S & M Hughes, who had responsibility for designing and implementing the compliance process, he had significant responsibility for non-compliant advice issued by the firm (DEPP 6.5B.2G(9)(l)).
- 6.16. Although Mr Hughes took some steps to meet his responsibilities, these were inadequate (DEPP 6.5B.2G(9)(n)).

Whether the breach was deliberate and/or reckless

- 6.17. The breaches committed by Mr Hughes were as a result of his serious lack of competence, rather than deliberate or reckless acts (DEPP 6.5B.2G(11)).

Level of Seriousness

6.18. DEPP 6.5B.2G(12) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the Authority considers the following factor to be relevant:

(1) Mr Hughes' breach caused a significant loss, or risk of loss, to individual consumers (DEPP 6.5B.2G(12)(a)).

6.19. DEPP 6.5B.2G(13) lists factors likely to be considered 'level 1, 2 or 3 factors'. Of these, the Authority considers the following factors to be relevant:

(1) Mr Hughes' breach was committed negligently (DEPP 6.5B.2G(13)(d)).

6.20. Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 4 and so the Step 2 figure is 30% of £755,440.

6.21. Step 2 is therefore £226,632.

Step 3: mitigating and aggravating factors

6.22. 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.

6.23. The Authority has considered whether any of the aggravating or mitigating factors listed in DEPP 6.5B.3G, or any other such factors, apply in this case and has concluded that none applies to a material extent, such that the penalty ought to be increased or decreased.

6.24. Step 3 is therefore £226,632.

Step 4: adjustment for deterrence

6.25. 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.

6.26. The Authority considers that the Step 3 figure of £228,468 represents a sufficient deterrent to Mr Hughes and others, and so has not increased the penalty at Step 4.

6.27. Step 4 is therefore £226,632.

Step 5: Settlement Discount

6.28. 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.

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

6.30. Step 5 is therefore £158,642. This is to be rounded down to £158,600.

Conclusion as to financial penalty

6.31. Having applied the five-step framework set out in DEPP, the appropriate level of financial penalty to be imposed on Mr Hughes is £158,600.

6.32. The Authority would have imposed a financial penalty of £226,600 on Mr Hughes (reduced to £158,600 as Mr Hughes agreed to settle at an early stage of the Authority's investigation and therefore qualified for a 30% (stage 1) discount under the Authority's executive settlement procedures). However, the Authority recognises that there is significant liability for redress for S & M Hughes' customers which has fallen to the FSCS. As of 28 July 2023, the FSCS has paid out £8,415,317 in compensation to customers of S & M Hughes. Had it not been for the compensation limit of £85,000, the total compensation available to customers would have been £10,482,437. In these circumstances, the Authority has agreed with Mr Hughes that in lieu of the imposition of a financial penalty, the sum of £158,600 be paid direct to the FSCS to contribute towards any redress due to S & M Hughes' customers. This is in furtherance of the Authority's consumer protection objective. In light of the above and taking into account the exceptional circumstances of the BPS, the Authority hereby publishes a statement of Mr Hughes' misconduct.

Statement of misconduct

6.33. The Authority's policy in relation to the imposition of a public censure is set out in Chapter 6 of DEPP. DEPP sets out non exhaustive factors that may be of particular

relevance in determining whether it is appropriate to issue a public censure rather than impose a financial penalty. DEPP 6.4.2G (5) includes that it may be a factor (depending on the nature and seriousness of the breach) in favour of a public censure rather than a financial penalty including but not limited to where a person has taken steps to ensure that those who have suffered loss due to the breach are fully compensated for those losses. Whilst the full amount of any losses due to Mr Hughes' breach are not yet quantified, they may be significant. In light of this, and the FSCS having already paid out £8,415,317 to S & M Hughes' customers, the Authority has agreed that the sum of £158,600 should be paid direct to the FSCS.

- 6.34. The Authority has had regard to the fact that Mr Hughes has agreed to pay direct to the FSCS assets that would otherwise be used to satisfy any financial penalty imposed by the Authority to be used towards any redress due to S & M Hughes' customers. On that basis, the Authority has not imposed a financial penalty on Mr Hughes but instead hereby publishes on its website this Notice as a statement of Mr Hughes' misconduct under section 66 of the Act. The public censure will be issued on 22 September 2023 and will take the form of this Final Notice, which will be published on the Authority's website on 3 October 2023.

Withdrawal of Approval and Prohibition Order

- 6.35. The Authority has had regard to the guidance in Chapter 9 of EG in considering whether to withdraw Mr Hughes' approval to perform controlled functions and whether to impose a prohibition order on him. The Authority has the power to prohibit individuals under section 56 of the Act.
- 6.36. The Authority hereby withdraws Mr Hughes' approval to perform the SMF3 (Executive Director), SMF16 (Compliance Oversight), and SMF17 (Money Laundering Reporting Officer) Senior Management Functions at S & M Hughes.
- 6.37. The Authority hereby prohibits Mr Hughes from performing the following functions because he is not a fit and proper person to perform such functions due to his lack of competence and capability:
- (1) any Senior Management Function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm, and

- (2) any function in relation to the regulated activity of advising on Pension Transfers and Pension Opt-outs carried on by an authorised person, exempt person or exempt professional firm.

7. PROCEDURAL MATTERS

7.1. This Notice is given to Mr Hughes under and in accordance with the section 390 of the Act and to S & M Hughes as an interested party.

7.2. The following statutory rights are important.

Decision maker

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

Publicity

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

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

Authority contacts

7.6. For more information concerning this matter generally, contact Kingsley Moore at the Authority (direct line: 0207 066 0401/email: Kingsley.moore2@fca.org.uk).

Nicholas Hills

Head of Department

Financial Conduct Authority, Enforcement and Market Oversight Division

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

The Financial Services and Markets Act 2000 (“the Act”)

The Authority’s operational objectives

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

Section 56 of the Act

2. Section 56 of the Act provides that the Authority may make an order prohibiting an individual from performing a specified function, any 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, a person who is an exempt person in relation to that activity 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

Section 63 of the Act

3. Section 63 of the Act provides that the Authority may withdraw an approval under section 59 given by the Authority in relation to the performance by a person of a function if the Authority considers that the person is not a fit and proper person to perform the function.

Section 66A of the Act

4. Under section 66A of the Act, the Authority may take action against a person if it appears to the Authority that he is guilty of misconduct and the Authority is satisfied that it is appropriate in all the circumstances to take action against him, including the imposition of a penalty of such amount as it considers appropriate.
5. Under section 66A of the Act a person is guilty of misconduct if, inter alia, he at any time failed to comply with rules made by the Authority under section 64A of the Act and at that time was an approved person, or had been knowingly

concerned in a contravention of relevant requirement by an authorised person and at that time the person was an approved person in relation to the authorised person.

RELEVANT REGULATORY PROVISIONS

The Authority's Handbook of Rules and Guidance

6. In exercising its powers to impose a financial penalty, the Authority must have regard to the relevant regulatory provisions in the Authority's Handbook of rules and guidance (the "Handbook"). The main provisions that the Authority considers relevant are set out below.

Principles for Businesses ("PRIN")

7. The Principles are a general statement of the fundamental obligations of firms under the regulatory system and are set out in the Handbook. They derive their authority from the Authority's rulemaking powers as set out in the Act and reflect the Authority's regulatory objectives. They can be accessed here:

<https://www.handbook.fca.org.uk/handbook/PRIN/2/1.html>

8. Principle 3 of the FCA's Principles for Businesses states that:

"A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems".

9. Principle 7 of the FCA's Principles for Businesses states that:

"a firm must pay due regard to the information needs of its clients, and communicate information to them in a way that is clear, fair and not misleading".

10. Principle 9 of the FCA's Principles for Businesses states that:

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

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

11. The part of the Authority's handbook known as APER sets out the Statements of Principle issued under section 64 of the Act as they relate to approved persons

and descriptions of conduct which, in the opinion of the Authority, do not comply with a Statement of Principle.

12. APER further describes factors which, in the opinion of the Authority, are to be taken into account in determining whether or not an approved person's conduct complies with particular Statements of Principle.

13. Statement of Principle 2 states that:

"An approved person must act with due skill, care and diligence in carrying out his accountable functions".

14. Statement of Principle 6 states that:

"An approved person performing an accountable higher management function must exercise due skill, care and diligence in managing the business of the firm for which they are responsible in their accountable function".

15. Statement of Principle 7 states that:

"an approved person performing an accountable higher management function must take reasonable steps to ensure that the business of the firm for which they are responsible in their accountable function complies with the relevant requirements and standards of the regulatory system."

16. 'Accountable higher management functions' includes any accountable function that is an Authority controlled function that is a significant influence function. Significant influence functions include the following controlled functions: CF1 (Director), CF3 (Chief Executive), CF10 (Compliance Oversight) and CF11 (Money Laundering Reporting).

17. APER 3.1.8AG provides, in relation to applying Statements of Principle 5 to 7, that the nature, scale and complexity of the business under management and the role and responsibility of the individual performing an accountable higher management function within the APER employer (in place from 7 December 2020, previously "the firm") will be relevant in assessing whether an approved person's conduct was reasonable.

18. APER 3.3.1G states that in determining whether or not the conduct of an approved person performing an accountable higher management function complies with

Statements of Principle 5 to 7, the following are factors which, in the opinion of the Authority, 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 APER employer's (in place from 7 December 2020, previously "the firm's") business;
 - (4) their role and responsibility as an approved person performing an accountable significant influence (in place until 6 March 2016) or higher management (in place from 7 March 2016) function; and
 - (5) the knowledge he had, or should have had, of regulatory concerns, if any, arising in the business under his control.
19. APER 4.6 describes conduct which in the opinion of the Authority does not comply with Principle 6.
 20. APER 4.6.2G provides that in the opinion of the Authority, conduct of the type described in APER 4.6.3G, APER 4.6.5G, APER 4.6.6G or APER 4.6.8G does not comply with Statement of Principle 6.
 21. APER 4.6.3G provides that failing to take reasonable steps to adequately inform themselves about the affairs of the business for which they are responsible falls within APER 4.6.2G.
 22. APER 4.6.4G provides that Behaviour of the type referred to in APER 4.6.3 G includes, but is not limited to:
 - (1) permitting transactions without a sufficient understanding of the risks involved;
 - (2) permitting expansion of the business without reasonably assessing the potential risks of that expansion;
 - (3) inadequately monitoring highly profitable transactions or business practices or unusual transactions or business practices; [...]

23. APER 4.6.5G provides that delegating the authority for dealing with an issue or a part of the business to an individual or individuals (whether in-house or outside contractors) without reasonable grounds for believing that the delegate had the necessary capacity, competence, knowledge, seniority or skill to deal with the issue or to take authority for dealing with part of the business, falls within APER 4.6.2G (see APER 4.6.13G).
24. APER 4.6.6G provides failing to take reasonable steps to maintain an appropriate level of understanding about an issue or part of the business that they have delegated to an individual or individuals (whether in-house or outside contractors) falls within APER 4.6.2G (see APER 4.6.14G).
25. APER 4.6.7G provides that behaviour of the type referred to in APER 4.6.6 G includes but is not limited to:
 - (1) disregarding an issue or part of the business once it has been delegated;
 - (2) failing to require adequate reports once the resolution of an issue or management of part of the business has been delegated; [...]
26. APER 4.6.8G provides that failing to supervise and monitor adequately the individual or individuals (whether in-house or outside contractors) to whom responsibility for dealing with an issue or authority for dealing with a part of the business has been delegated falls within APER 4.6.2G.
27. APER 4.6.9G provides that behaviour of the type referred to in APER 4.6.8G includes, but is not limited to:
 - (1) failing to take personal action where progress is unreasonably slow, or where implausible or unsatisfactory explanations are provided;
 - (2) failing to review the performance of an outside contractor in connection with the delegated issue or business.
28. In determining whether or not the conduct of an approved person performing an accountable higher management function under APER 4.6.5G, APER 4.6.6G and APER 4.6.8G complies with Statement of Principle 6, the following are factors which, in the opinion of the FCA, are to be taken into account:
 - (1) the competence, knowledge or seniority of the delegate; and

(2) the past performance and record of the delegate.

29. APER 4.6.13G (Delegation) provides, amongst other provisions, that:

(1) An approved person performing an accountable higher management function may delegate the investigation, resolution or management of an issue or authority for dealing with a part of the business to individuals who report to them or to others.

(2) The approved person performing an accountable higher management function should have reasonable grounds for believing that the delegate has the competence, knowledge, skill and time to deal with the issue. For instance, if the compliance department only has sufficient resources to deal with day-to-day issues, it would be unreasonable to delegate to it the resolution of a complex or unusual issue without ensuring it had sufficient capacity to deal with the matter adequately. [...].

30. APER 4.7 describes conduct which in the opinion of the Authority does not comply with Principle 7.

31. APER 4.7.2G provides that in the opinion of the Authority, conduct of the type described in APER 4.7.3G, APER 4.7.4G, APER 4.7.5G, APER 4.7.7G, APER 4.7.9G, APER 4.7.10G or APER 4.7.11AG does not comply with Statement of Principle 7.

32. APER 4.7.3G provides 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 the regulated activities of the [APER employer] (in place from 7 December 2020, previously "the firm") firm in question (as referred to in Statement of Principle 7) falls within APER 4.7.2G. [In the case of an approved person who is responsible, under SYSC 4.4.5R(2), with overseeing the firm's obligation under SYSC 4.1.1R, failing to take reasonable care to oversee the establishment and maintenance of appropriate systems and controls falls within APER 4.7.2G. (in place until 8 December 2019)].

33. APER 4.7.4G provides 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 regulatory system in respect of the regulated activities of the [APER employer] (in place from 7 December

2020, previously “the firm”) in question (as referred to in Statement of Principle 7) falls within APER 4.7.2G.

34. APER 4.7.11G provides that the Authority expects an approved person performing an accountable higher management function to take reasonable steps both to ensure their [APER employer’s] (in place from 7 December 2020, previously “firm’s”) compliance with the relevant requirements and standards of the regulatory system and to ensure that all staff are aware of the need for compliance.
35. APER 4.7.12G provides that an approved person performing an accountable higher management function need not themselves put in place the systems of control in their business (APER 4.7.4G). Whether he does this depends on his role and responsibilities. He should, however, take reasonable steps to ensure that the business for which he is responsible has operating procedures and systems which include well-defined steps for complying with the detail of relevant requirements and standards of the regulatory system and for ensuring that the business is run prudently. The nature and extent of the systems of control that are required will depend upon the relevant requirements and standards of the regulatory system, and the nature, scale and complexity of the business.

Conduct of Business Sourcebook (“COBS”)

36. The following rules and guidance in COBS (as were in place during the Relevant Period) are relevant to assessing suitability of Pension Transfer advice given to customers:

The client’s best interest rule

37. 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).

Communication is fair clear and not misleading

38. COBS 4.2.1R:

(1) A firm must ensure that a communication or a financial promotion is fair, clear and not misleading.

Assessing suitability: the obligations

39. 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; and

(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.

40. 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.

41. COBS 9.2.3 R:

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.

42. COBS 9.2.4 R:

A firm must not encourage a client not to provide information for the purposes of its assessment of suitability.

43. COBS 9.2.5 R:

A firm is entitled to rely on the information provided by its clients unless it is aware that the information is manifestly out of date, inaccurate or incomplete.

Insufficient information

44. COBS 9.2.6R:

If a firm does not obtain the necessary information to assess suitability, it must not make a personal recommendation to the client or take a decision to trade for him.

Suitability reports

45. During the Relevant Period COBS 9.4 set out the following rules and guidance concerning Suitability reports.

46. COBS 9.4.1 R:

A firm must provide a suitability report to a retail client if the firm makes a personal recommendation to the client and the client:

[...]

(2) buys, sells, surrenders, converts or cancels rights under, or suspends contributions to, a personal pension scheme or a stakeholder pension scheme; or

(3) elects to make income withdrawals or purchase a short-term annuity; or

(4) enters into a pension transfer or pension opt-out

47. COBS 9.4.7R:

The suitability report must, at least:

(1) specify the client's demands and needs;

(2) explain why the firm has concluded that the recommended transaction is suitable for the client having regard to the information provided by the client; and

(3) explain any possible disadvantages of the transaction for the client.

48. COBS 9.4.8 G:

A firm should give the client such details as are appropriate according to the complexity of the transaction.

Pension transfers, conversions, and opt-outs

49. COBS 19.1 applies, with some exclusions, to a firm that gives advice or a personal recommendation about a pension transfer, a pension conversion or a pension opt-out. The following provisions of COBS 19.1 are set out as they applied during the Relevant Period.

50. COBS 19.1.2R:

A firm must:

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

51. COBS 19.1.3G:

In particular, the comparison should:

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

52. COBS 19.1.6G:

When advising a retail client who is, or is eligible to be, a member of a defined benefits occupational pension scheme or other scheme with safeguarded benefits whether to transfer, convert or opt-out, a firm should start by assuming that a

transfer, conversion or opt-out will not be suitable. A firm should only then consider a transfer, conversion or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the client's best interests

53. COBS 19.1.7G:

When a firm advises a retail client on a pension transfer, pension conversion or pension opt-out, it should consider the client's attitude to risk including, where relevant, in relation to the rate of investment growth that would have to be achieved to replicate the benefits being given up.

54. COBS 19.1.7AG:

When giving a personal recommendation about a pension transfer or pension conversion, a firm should clearly inform the retail client about the loss of the safeguarded benefits and the consequent transfer of risk from the defined benefits pension scheme or other scheme with safeguarded benefits to the retail client, including:

- (1) the extent to which benefits may fall short of replicating those in the defined benefits pension scheme or other scheme with safeguarded benefits;
- (2) the uncertainty of the level of benefit that can be obtained from the purchase of a future annuity and the prior investment risk to which the retail client is exposed until an annuity is purchased with the proceeds of the proposed personal pension scheme or stakeholder pension scheme; and
- (3) the potential lack of availability of annuity types (for instance, annuity increases linked to different indices) to replicate the benefits being given up in the defined benefits pension scheme.

55. COBS 19.1.8G:

When a firm prepares a suitability report it should include:

- (1) a summary of the advantages and disadvantages of its personal recommendation;
- (2) an analysis of the financial implications (if the recommendation is to opt-out); and

(3) a summary of any other material information.

Fit and Proper test for Employees and Senior Personnel (“FIT”)

56. Guidance on the question whether an individual is a fit and proper person is given in the part of the Handbook called the Fit and Proper Test for Employees and Senior Personnel (FIT). 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 to perform a particular controlled function. The most important considerations will be the person’s:

(1) honesty, integrity and reputation;

(2) competence and capability; and

(3) financial soundness.

57. For the purposes of this notice the only relevant consideration is (2) competence and capability.

Enforcement Guide (“EG”)

58. The Authority’s policy for exercising its power to make a prohibition order is set out in Chapter 9 of EG.

59. 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 the range of regulated activities to which the individual’s lack of fitness and propriety is relevant. Depending on the circumstances of each case, the Authority may seek to prohibit an individual from performing any class of function in relation to any class of regulated activity, or it may limit the prohibition order to specific functions in relation to specific regulated activities. The Authority may also make an order prohibiting an individual from being employed by a particular firm, type of firm or any firm.

60. EG 9.2.3 states that the scope of the prohibition order will depend on the range of functions which the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of risk which he poses to consumers or the market generally. At EG 9.3.5(4) the Authority gives a serious lack of competence as an example of the type of behaviour which has previously resulted in the Authority deciding to issue a prohibition order.

61. EG sets out the Authority's approach to taking disciplinary action. The Authority's approach to financial penalties is set out in Chapter 7 of EG, which can be accessed here:

<https://www.handbook.fca.org.uk/handbook/EG/7/?view=chapter>

Decision Procedures and Penalties Manual ("DEPP")

62. Chapter 6 of DEPP, which forms part of the Authority's Handbook, sets out the Authority's policy for imposing a financial penalty. 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 to financial penalties imposed on individuals in non-market abuse cases, which can be accessed here:

<https://www.handbook.fca.org.uk/handbook/DEPP/6/5B.html>