
FINAL NOTICE

To: **Stephen Edward Bell**

Individual
Reference
Number: **SEB01115**

Date **13 March 2015**

ACTION

1. For the reasons given in this notice, the Authority hereby:
 - a) imposes on Mr Bell a financial penalty of £33,800; and
 - b) makes an order prohibiting Mr Bell from performing the CF10 (Compliance oversight) function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm. This order takes effect from 13 March 2015.

2. Mr Bell agreed to settle at an early stage of the Authority's investigation and qualified for a 30% (stage 1) discount under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £48,389 on Mr Bell.

SUMMARY OF REASONS

3. Between 20 August 2008 and 16 January 2013 (the "Relevant Period"), Mr Bell was responsible for the compliance systems and controls at Financial and Investments ("the Firms").
4. The Firms are both subsidiary companies of Standard Financial Group Ltd ("the Group"), which does not itself trade but acts as a holding company. Together, the Firms form an adviser network. Financial is currently responsible for approximately 250 ARs and 300 RIs and Investments is currently responsible for four ARs and six RIs. The Firms' ARs and RIs advise customers on pensions, investments (including UCIS), mortgages and general insurance/protection products. Investments also holds permission for dealing in investments enabling it to offer DIM services to its customers. During the Relevant Period, the Firms' ARs and RIs provided advice to over 60,000 customers.
5. On the basis of the facts and matters set out below, the Authority considers that Mr Bell, as the Firms' Compliance Director, who had knowledge of and responsibility for the compliance systems and controls at the Firms - and designed and implemented those systems and controls - was knowingly concerned in the Firms' breaches of Principle 3. Those breaches have been set out in Final Notices issued against the Firms on 23 July 2014 finding that, between 20 August 2008 and 30 April 2013 ("the Firms' Relevant Period"), there were systemic weaknesses in the design and execution of the Firms' systems and controls and risk management framework.
6. Mr Bell was responsible for compliance oversight generally and, specifically, was responsible for and implemented the following:
 - a) the application process for prospective ARs and RIs seeking to join the Firms;
 - b) the Firms' procedures to determine the competence of RIs to advise customers;
 - c) the Firms' training and competency scheme encompassing the design and delivery of the initial training for the ARs and RIs;
 - d) the supervisory processes and procedures for ARs and RIs, setting up a structure of Supervisory Staff to provide field supervision of the ARs that operated in the Firms' network; and
 - e) the file checking processes and procedures that were operated by the Firms.

7. The Authority acknowledges that Mr Bell took significant steps during the Relevant Period to introduce and improve the Firms' compliance systems and controls. However, these were ultimately insufficient to ensure that the Firms complied with the relevant regulatory requirements.
8. Mr Bell was knowingly concerned in the Firms' breaches of Principle 3 insofar as they related to compliance systems and controls because he failed to ensure that the Firms:
 - a) took sufficient steps, as part of the recruitment process, to assess appropriately prospective ARs' business models and business practices to determine whether they were suitable to act for the Firms;
 - b) carried out a suitable assessment, upon an RI joining the Firms, of an RI's knowledge and skills, in order to determine their competence before they began advising customers;
 - c) appropriately and effectively supervised their ARs and RIs at all times; and
 - d) established and maintained adequate compliance and file checking procedures, appropriate to the size and types of business conducted by the Firms.
9. The Authority acknowledges that throughout the Relevant Period Mr Bell was working within the context of the Firms' business model (which afforded ARs and RIs a high degree of flexibility) and cultural focus (which viewed the ARs and RIs, rather than the customers of the ARs and RI, as the end customer who received the advice). Nevertheless, the Authority views Mr Bell's failings as serious because:
 - a) Mr Bell was Compliance Director at the Firms prior to and during the Authority's previous investigation into the Firms' misconduct and the subsequent Final Notice issued to Mr Palmer. He had therefore been put on notice of the need for significant improvements in the Firms' systems and controls and compliance framework to ensure they complied with the relevant regulatory requirements; and
 - b) the failings exposed customers to the risk that the Firms' ARs and RIs would make personal recommendations which were not suitable, therefore creating a risk of consumer detriment.
10. As a result of these failings, the Authority considers that Mr Bell has demonstrated a lack of competence and capability and is therefore not fit and proper to perform the CF10 (Compliance oversight) function in relation to any regulated activities carried on

by any authorised persons, exempt persons or exempt professional firm, and that he should be prohibited from doing so.

11. The Authority therefore makes an order prohibiting Mr Bell from performing the CF10 (Compliance oversight) function (with effect from the date of the Final Notice) pursuant to section 56 of the Act, and imposes a financial penalty on Mr Bell in the amount of £33,800 pursuant to section 66 of the Act.
12. This action supports the Authority's regulatory objective of securing an appropriate degree of protection for consumers and is consistent with the importance placed by the Authority on the accountability of senior management in the operation of their business.
13. The Authority acknowledges that Mr Bell has from an early stage co-operated with the Authority's investigation.

DEFINITIONS

14. The definitions below are used in this Final Notice:

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

"AR" means Appointed Representative;

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

"CEO" means chief executive officer;

"CMT" means the Firms' Central Monitoring Team;

"the Committees" means the sub-committees of the Group Board as set out in paragraph 30;

"Compliance Director" means the role set out in the Job Profile referred to at paragraph 36;

"Compliance Visits" means annual visits to the Firms' ARs and RIs conducted by the field Supervisory Staff;

"Database" means the Firms' comprehensive web-based management information database;

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

“Desk-based Monitoring” means the Firms’ periodic desk-based reviews of adviser performance management information;

“DIM” means Discretionary Investment Management;

“Financial” means Financial Limited;

“File Checker” means a member of the File Checking team within Financial’s CMT which reviewed individual files against a single generic File Check Form. They are in addition to the Supervisory Staff, who conducted the Desk-Based Monitoring and Compliance Visits;

“the Firms” means Financial Limited and Investments Limited;

“Firms’ Boards” means Investments Limited’s and Financial Limited’s boards of executive and non-executive directors;

“the Firms’ Relevant Period” means 20 August 2008 to 30 April 2013;

“Form A” means the Authority’s application form for approved status;

“Group” means Standard Financial Group Ltd;

“Group Board” means Standard Financial Group Ltd’s board of executive and non-executive directors;

“Guide to Supervision” means Financial’s guide, provided to the Supervisory Staff, on the process and purpose of supervising ARs and RIs;

“Handbook” means the Authority’s Handbook of Rules and Guidance;

“Investments” means Investments Limited;

“Job Profile” means the document headed “Job Profile” and “Job Title: Compliance Director” as set out in paragraph 36;

“KPIs” means Key Performance Indicators;

“MI” means Management Information;

“Mr Bell” means Stephen Bell;

“Mrs Grigg” means Paivi Grigg;

“MSA” means the Minimum Standards Achieved;

“NBR” means New Business Register;

“PBR” means Past Business Review;

“Principle” means a principle of the Authority’s Principles for Businesses;

“RI” means Registered Individual, a natural person employed by an AR and approved by the Authority under s.59 of the Act as a CF30 of Financial;

“Relevant Period” means 20 August 2008 to 16 January 2013;

“Skilled Person’s Report” means the report, dated 11 September 2013, referred to at paragraphs 23 and 24 of this Notice;

“Specialist Licence” has the meaning set out in paragraph 44;

“Supervisory Staff” means the Firms’ supervisory oversight team;

“TCF” means Treating Customers Fairly;

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

“UCIS” means unregulated collective investment scheme (as defined in Part XVII, Chapter I and II of the Act).

FACTS AND MATTERS

The Firms

15. The Firms are subsidiaries of the Group, a holding company which is not authorised and does not actively trade. Together, the Firms form an adviser network based in Cheltenham, Gloucestershire. As part of the Group, Financial is currently responsible for approximately 250 ARs and 300 RIs and Investments is currently responsible for four ARs and six RIs.
16. Both of the Firms’ permissions allow their ARs and RIs to advise customers on pensions, investments (including UCIS), mortgages and general insurance/protection products. Investments’ permission is broader than Financial’s as it also includes the regulated activity of dealing in investments, enabling Investments and its ARs and RIs to provide DIM services to customers.
17. Historically, the ARs and RIs were split across three of the Group’s subsidiaries but, following a Group restructuring in February 2010, the majority of ARs and RIs were transferred to Financial, with the exception of those RIs who wanted to be able to offer

DIM activity, who remained as RIs of Investments. The systems and controls and risk management framework operated across the Firms rather than separately, so that during the Relevant Period the advisory standards the ARs and RIs were required to meet, and the operating procedures they had to follow, were identical for both the Firms.

18. During the Relevant Period, the Firms' ARs and RIs provided advice to over 60,000 customers.

Previous Investigation at the Firms and subsequent Enforcement Action

19. The Firms have previously been investigated by the Authority, in connection with the Authority's thematic review of pension-switching recommendations and firms' management, oversight and compliance monitoring of such advice. Following the Authority's specific findings regarding the Firms, the Authority commenced an investigation in to the Firms' conduct in January 2009, which ultimately resulted in enforcement action against Mr Charles Palmer, the CEO and majority shareholder of the Group.
20. On 24 February 2010 the Authority imposed a financial penalty on Mr Palmer for breaching Statements of Principle 5 and 7 in performing the significant influence functions of CF1 (Director) and CF8 (Apportionment and Oversight) between 6 April 2006 and 19 August 2008. While performing the significant influence functions the Authority concluded that Mr Palmer failed to:
 - a) establish and maintain clear and appropriate reporting structures to ensure that Financial's senior managers understood and carried out its specific responsibilities to oversee and monitor Financial's ARs and RIs so that it could be controlled effectively, in breach of Statement of Principle 5;
 - b) take reasonable steps to ensure that the business of Financial was organised so that, during a period of rapid expansion of Financial's network of advisers (under the business model that he established), it could be controlled effectively as it expanded, in breach of Statement of Principle 5; and
 - c) take reasonable steps to ensure that Financial complied with the relevant requirements and standards in respect of advising on pension switching, in breach of Statement of Principle 7.
21. Mr Palmer was responsible for overseeing the establishment and maintenance of systems and controls. As Mr Palmer was also found to be the controlling mind behind

the establishment and subsequent expansion of the Group, a financial penalty was imposed on him rather than any of the Group's subsidiaries.

The Firms' Principle 3 breaches

22. In April 2012, as a follow-up to a previous assessment relating to the Firms' pension switching advice, the Authority reviewed a random sample of the Firms' pension switching recommendations. The Authority conducted a risk assessment visit in May 2012, and in July 2012 visited the Firms in connection with the Authority's thematic review of the Firms' practices in respect of the promotion and sale of UCIS.
23. As a result of concerns raised by these assessments, on 11 February 2013 the Authority required the Firms to commission a skilled person's report under section 166 of the Act to review the effectiveness of the Firms' systems and controls and risk management framework.
24. The Skilled Person's Report was issued on 11 September 2013 and identified:
 - a) material deficiencies with both the design and implementation of the Firms' systems and controls and the application of appropriate standards; and
 - b) that the Firms had not implemented a robust risk management framework that enabled the Firms' senior management to identify and manage risk proactively.
25. The Skilled Person's Report attributed this to the inherent risks of the Firms' business model which afforded ARs and RIs a high degree of flexibility, and to the cultural focus at the Firms which resulted in the ARs being treated as the customers rather than the end customers who received the advice.
26. The Authority considered that the Firms posed a high risk of consumer detriment as a result of the weaknesses identified, namely that the Firms' ARs and RIs would make personal recommendations to customers which were not suitable. Accordingly, the Authority conducted an investigation.
27. On 23 July 2014, the Authority issued Final Notices against the Firms finding that, between 20 August 2008 and 30 April 2013, the Firms breached Principle 3 because:
 - a) the Firms failed to establish and operate effective systems and controls sufficient to ensure that the Firms' ARs and RIs met applicable requirements and standards under the regulatory system; namely:

- i. recruitment processes which assessed prospective ARs' business models and business practices to determine whether they were suitable to act for the Firms;
 - ii. effective training and suitability assessments which would have determined the competence of RIs before they began advising customers;
 - iii. effective supervisory processes which would have ensured that the Firms' ARs and RIs were appropriately and effectively supervised at all times; and
 - iv. adequate compliance and file checking arrangements appropriate to the size and types of business conducted by the Firms.
 - b) the Firms failed to implement effective processes to enable senior management to identify, measure, manage and control the risks that the Firms were, or might be, exposed to in that:
 - i. the scope and quality of MI provided to the Firms' Boards and the Committees was not sufficient to enable the Firms' senior management to identify and monitor risk effectively;
 - ii. the Firms' Boards and the Firms' senior management team focused on dealing with incidents and issues that had already materialised, rather than proactively identifying and monitoring on-going risks; and
 - iii. the absence of an internal audit function meant that there was no robust mechanism for assessing the effectiveness of the Firms' internal systems and controls.
28. The Authority found that the Firms' failings were directly attributable to the Firms' cultural focus which viewed the ARs and RIs, rather than their customers, as the end consumer. This culture created an environment which allowed poor standards of business to continue for a significant period of time.
29. For breaching Principle 3, the Authority publicly censured the Firms and imposed restrictions preventing the Firms from appointing any ARs or RIs for a period of 126 days commencing on 23 July 2014. Were it not for the Firms' financial positions, the Authority would have imposed penalties of £12,589,134 on Financial and £621,583 on Investments respectively.

The Firms' senior management

30. While the Firms had their own boards, these met at the same time as part of the Group Board meetings. The Group Board had three sub-committees (the Risk Committee, the Audit & Compliance Committee and the Nominations and Remunerations Committee, collectively "the Committees"). The Committees considered matters relevant to both of the Firms. The Risk Committee and Audit & Compliance Committee met on a bi-annual basis and ran consecutively on the same day as the Group Board meeting.
31. In addition to Mr Bell, the Firms' senior management included Mr Charles Palmer (Group CEO, who acted as de facto CEO of the Firms) and Mrs Paivi Grigg (initially the Operations Director, then Managing Director of Asset Management at Investments and finally Risk Management Director of the Firms, responsible for the Firms' risk management framework).
32. At all times throughout the Relevant Period, Mr Palmer was the majority shareholder and the primary controlling influence of the Group and all subsidiaries of the Group. Mr Palmer was understood by senior management, and was held out by the Group, to be the CEO of the Group. As the Firms were managed at Group level, Mr Palmer acted as de facto CEO of each of Financial and Investments whilst acting as CF1 (Director) at the Firms. Mr Palmer was responsible for setting the management culture, focus and future plans of the Group.
33. At all times throughout the Relevant Period, Mr Palmer was the line manager of Mr Bell and Mrs Grigg. He had responsibility for their job roles within the Firms and their performance, in that Mr Palmer was responsible for the performance management and assessment of Mr Bell and Mrs Grigg.

Mr Bell's role as Compliance Director

34. Mr Bell's role at the Firms changed over time, as set out below:
 - a) at the beginning of the Relevant Period, Mr Bell held the role of Compliance Director at the Firms and was approved to perform controlled functions at the Firms, including the CF1 (Director), CF10 (Compliance oversight) and CF11 (Money laundering reporting) functions at the Firms. In March 2010, Mr Bell took on the role of Managing Director of the Firms' network business. At this time, he was approved to perform the CF28 (Systems and controls) function at Financial, and he ceased to perform the CF10 (Compliance oversight) function at Investments. As part of this role, Mr Bell continued to oversee the Firms'

compliance functions (except in relation to DIM activities at Investments, which were the responsibility of Mrs Grigg); and

- b) in August 2011, Mr Bell's role reverted to Compliance Director of the Firms and he remained in this role until he left the Firms on 16 January 2013 (the end of the Relevant Period).

35. Despite these role changes, Mr Bell remained responsible for the compliance systems and controls of the Firms (other than in respect of DIM activities at Investments) throughout the entirety of the Relevant Period.

Mr Bell's Job Profile as the Firms' Compliance Director

36. Mr Bell had compliance oversight responsibilities at the Firms during the Relevant Period, as set out in the Compliance Director Job Profile. Mr Bell confirmed during interview that the role of Compliance Director applied across the Firms. The "Job Purpose" set out in the Job Profile was: *'To maintain a strong Compliance function within the firm as a key independent governance and oversight function for the advisory process.'*

37. Mr Bell's duties as Compliance Director included:

- a) identifying and advising the Firms on compliance risks and how to manage them;
- b) setting compliance objectives in accordance with the Firms' risk profile and regulatory requirements;
- c) maintaining effective compliance systems and controls;
- d) developing and overseeing a risk-based compliance monitoring programme;
- e) providing compliance training;
- f) acting as the TCF champion for the Firms;
- g) developing, documenting and maintaining compliance policies and procedures; and
- h) ensuring regular and effective reporting of compliance matters to the Firms' Boards.

Mr Bell's knowledge of the Firms' compliance systems and controls

38. Mr Bell had knowledge of, and responsibility for, the compliance systems and controls that the Firms implemented. He established the majority of these systems and controls, including:
- a) the application process for ARs and RIs seeking to join the Firms;
 - b) supervision of the ARs and RIs; and
 - c) file checking processes and procedures, including the template file checking forms and the file review methodology.
39. Mr Bell also introduced to the Firms the Database system, to drive predominantly the maintenance of effective systems and controls in order to discharge the Firms' compliance obligations. These systems and controls were inadequate to comply with the relevant requirements of the regulatory system.

The application process for prospective ARs and RIs

Determining whether prospective ARs and RIs were suitable to act for the Firms

40. The decision whether or not to permit a new AR or RI to join the Firms was based primarily on the outcome of the Firms' limited AR and RI recruitment processes:
- a) the Firms' procedures set out a list of documentation that needed to be submitted by applicants (e.g. bank statements, credit reports, employment and character references and an assets and liabilities statement) but did not provide any defined criteria or standards for assessing a prospective AR's or RI's fitness and propriety;
 - b) the Firms required prospective RIs to complete Form A together with an internal application form and to provide supporting documentation. Before the Firms submitted Form A to the Authority, they reviewed the application and supporting documentation and required prospective RIs to take and pass a technical knowledge test. The Skilled Person's review of a small sample of the Firms' recruitment files identified examples where there was insufficient evidence to show that the Firms had carried out an appropriate critical evaluation of the information obtained in order to determine a prospective AR's or RI's fitness and propriety;

- c) the Firms might in certain situations, on the instruction of Mr Bell, carry out a “pre-joining visit” before allowing an AR and/or RI to join the Firms. However, given its scope, this was not a sufficiently rigorous risk assessment and it did not provide sufficient insight into an AR’s or RI’s business standards; and
- d) once the Firms had received approval from the Authority for the RI to perform the CF30 (Customer) function, the RI was notified that they were permitted to advise customers without any further skills assessment (unless they were an inexperienced RI).

41. Mr Bell had both knowledge of, and responsibility for, the above processes and procedures. Mr Bell introduced the application process set out above and has confirmed during interview that, as Compliance Director at the Firms, he was responsible for the systems and controls in relation to the recruitment of ARs and RIs.

Determining RIs’ competence to advise customers

Initial training and development

42. The Firms did not take sufficient steps to identify an RI’s training and development needs at the outset or before an RI was permitted to provide advice to customers:
- a) new RIs determined to have at least two years’ relevant experience were classified as experienced; otherwise RIs were classified as inexperienced. However, due to the absence of a detailed application form, curriculum vitae or a structured interview process, the Firms did not have sufficient details of the applicant’s relevant experience in order to make this judgement. The Skilled Person’s review of a small sample of the Firms’ recruitment and training files identified that RIs’ skills were only assessed at the outset if the RI was categorised as inexperienced;
 - b) for those new RIs categorised as experienced, the initial assessment of their knowledge and skills was generally based upon limited information of previous experience set out in Form A, an applicant’s qualifications, two character references and employment references for the previous five years (which did not elicit sufficiently comprehensive information as a result of the standard reference request template). This process was insufficient to assess initial training requirements;
 - c) there was no formal documented gap analysis of the RI’s knowledge, skills and experience and there was no evidence that the Firms used the results of the

technical knowledge test to identify any initial development needs and produce a development plan. Many RIs did not have a development plan; and

- d) the Firms delivered induction training for new RIs, followed by further training on assessing suitability. The validation of learning was insufficient to test the RI's knowledge and understanding of the course content, which focused on procedure rather than advisory standards. In any event, prior to February 2012 it was not compulsory for RIs to attend either course before they gave advice.

43. Mr Bell was involved in, and had oversight of, the creation and implementation of the procedures set out above, including the information gathered to determine the classification of an RI as experienced or inexperienced, the induction training and the technical knowledge test. Mr Bell confirmed during interview that, as Compliance Director, he was responsible for the systems and controls in relation to the training and competency regime at the Firms, including the design and delivery of training for ARs and RIs.

Attaining competence

44. The Firms operated a two-tiered internal licensing process. The Firms awarded a "General Licence" to RIs in respect of certain generic product groups (i.e. pensions, investments, mortgages and general insurance/protection) and a Specialist Licence in respect of high-risk products (i.e. transfers from occupational pension schemes, income drawdown, equity release and long term care).

45. The award of a licence indicated that the Firms regarded the RI as competent in advising on a particular product group and the type of licence held determined the timing and type of file checking. However:

- a) the licensing process did not limit the types of product that an RI could recommend. Upon joining the Firms, RIs could recommend all types of product, provided that they held the appropriate qualifications and a Statement of Professional Standing;
- b) the decision to grant a licence was not based on the File Checker's initial assessment but on the final grade awarded after material intervention by the Firms' CMT (by which time any required remedial action had been taken);
- c) there was no defined policy which applied to those RIs who had failed to obtain a licence, so RIs could continue to make recommendations to customers having failed to obtain a licence over a long period of time; and

d) prior to an RI receiving a Specialist Licence, they were permitted to give advice/arrange new business in respect of high-risk products without any pre-sale checking by Financial. This was not sufficiently robust to prevent unsuitable advice being given, as the recommendation had already been made by the time the post-sale check took place.

46. Mr Bell introduced the licence programme, established the file checking team and created the file checking process. Mr Bell confirmed during interview that, as Compliance Director, he was responsible for the systems and controls in relation to determining RIs' competence to advise customers.

The supervisory processes and procedures in respect of ARs and RIs

Supervision of ARs

47. The Firms employed eight field Supervisory Staff during the Relevant Period, who each supervised ARs and RIs within a defined geographical region.

Supervisor Competence

48. Whilst Supervisory Staff were accompanied on initial Compliance Visits by more experienced Supervisory Staff when they first joined the Firms, there was no formal training of Supervisory Staff documented in the Firms' compliance processes and procedures. To ensure their ongoing competency, the Firms required Supervisory Staff to pass an annual supervisory competency course. However, these had not been attended by the Supervisory Staff since January 2011. A Supervisory Staff training workshop was held in January 2012 but this only covered their understanding of the rules for business stationery disclosure, the Firms' customer file record keeping requirements and the content of annual visits. It did not include any coaching or other assessment of supervisory skills.

49. Mr Bell established the structure of Supervisory Staff to provide supervision of the ARs on a regional basis, introduced the annual accreditation course and created the Standard Operating Procedure Manual (which set out the Firms' procedures with respect to the recruitment, training and supervision of ARs and RIs). Mr Bell approved all members of the Supervisory Staff through the annual supervisory competence course. Ensuring the competence of Supervisory Staff was within Mr Bell's responsibilities as Compliance Director. He confirmed during interview that he was responsible for the supervision of the conduct of ARs and RIs, and that he supervised the Supervisory Staff.

Frequency of AR and RI Supervision

50. The frequency of the supervision by the Firms was not driven by the actual risk an AR or RI posed to consumers. The metrics used to determine the risk rating of ARs and RIs did not take into account all relevant performance factors and were not sufficiently based on recent performance information. For example, the results of pre-sale checking did not influence the risk rating and the results of post-sale file checking were not given sufficient weighting. This meant that ARs or RIs could exhibit poor results but not be rated as high-risk. Furthermore, aspects of the risk score allocated to the AR's or RI's business were calculated over the whole period since the AR or RI joined the Firms. Consequently, an AR's or RI's risk rating did not necessarily reflect the risk they actually posed, which meant the ARs might be subject to lower levels of supervision by the Firms than they should be.
51. Mr Bell introduced the risk based monitoring function to the Firms' Database system, which was intended to review the risk profile of each AR and RI, and this was within his responsibilities as Compliance Director.

Desk-based Monitoring and Compliance Visits

52. The Supervisory Staff supervised the Firms' ARs by periodic Desk-based Monitoring and annual Compliance Visits, in addition to file checking.
53. Desk-based Monitoring comprised an assessment of an AR's or RI's performance against KPIs, the spread of the AR's or RI's new business by risk and product category and the AR's or RI's file checking scores. The Skilled Person's review of a small sample of Desk-based Monitoring conducted by the Firms for high-risk ARs and RIs identified that:
 - a) the frequency of Desk-based Monitoring was determined by the risk rating of the AR or RI, the calculation of which was not sufficiently robust;
 - b) the Supervisory staff only analysed available information to identify underlying file quality problems where the AR's or RI's average file check score was below the benchmark (itself too low);
 - c) the Supervisory Staff's assessment record was insufficient to determine whether the Supervisory Staff were concerned or not about AR or RI performance and the nature of the action required was unclear; and
 - d) any issues noted were not fed through to an AR's or RI's development plan for subsequent monitoring and completion.

54. Compliance Visits, conducted annually, were designed to assess five broad areas: AR Overview and Stability, Compliance, Training and Competence, Advice Procedures and TCF. The visit also included a competency assessment. The Skilled Person's review of relevant procedural documentation and live observation of a number of Compliance Visits identified that the Firms' methodology and approach to Compliance Visits was not sufficiently challenging to enable the identification, monitoring and/or management of material risks associated with giving financial advice.
55. Mr Bell had knowledge of, and responsibility for the Firms' processes and procedures in respect of Desk-based Monitoring and Compliance Visits. He created the Desk-based review template and the Compliance Visits procedure and had responsibility for these controls in his role as Compliance Director.

AR and RI compliance and file checking

56. Once an RI had obtained a relevant licence, the Firms conducted post-sale file checks at a rate of one in every eight new business transactions. It is acknowledged that during the Relevant Period Mr Bell increased the number of File Checkers and improved the quality of the File Checking team. However, weaknesses in the file review methodology meant that file checking would not deliver a sufficiently robust assessment of suitability. In particular, there was inconsistency in the guidance provided to ARs and RIs regarding the documents that needed to be submitted for file checking and the documents requested were not sufficient to assess fully the suitability of advice in all cases. Deficiencies in the generic file checking form meant that file checking was not carried out to a consistent standard and the Firms' grading system for post-sale file checks was not effective, largely because there was no clear definition of unsuitable advice.
57. The Firms' file checking processes did not adequately identify and assess risk:
 - a) pre-sale checking was limited to certain categories such as new RIs who did not hold an MSA licence, RIs who held a licence but for whom Supervisory Staff considered removal of that licence might be appropriate and for pension switching and occupational transfer files. The Firms did not undertake pre-sale checking for all transactions requiring a Specialist Licence, despite the Firms considering such transactions to be high-risk;
 - b) after the recommendation had been made, the Firms did not follow up on pre-sale checks in order to establish whether the recommendation which was approved was the same as that ultimately presented to the customer;

- c) where the RIs did not hold the relevant Specialist Licence, they might submit the suitability report for the first advice before the recommendation was made to the customer for a 'pre-scrutiny check', though this was not mandatory. However, this check was not sufficient to allow a comprehensive assessment of suitability. Moreover, files which were submitted for a pre-scrutiny check were not submitted until after the advice had been presented to the customer;
- d) post-sale checking was determined solely by the risk presented by the product, resulting in insufficient levels of checking for RIs who performed poorly; and
- e) the number of high risk transactions subject to file checking was not sufficient to ensure that a spread of high-risk business for each AR and RI would be reviewed over time. The level of post-sale checking was essentially the same for all ARs and RIs regardless of their ongoing performance.

58. The Firms' Database automatically selected files for checking from the entries in the AR's or RI's NBR. The effectiveness of the file selection process in respect of post-sale checking was heavily dependent on the AR or RI accurately inputting data into their NBR on the Database. Similarly, as new business was not administratively processed by the Firms, the pre-sale file checking process was dependent on an RI submitting the advice for review before the personal recommendation was made to the customer.
59. No comprehensive training on the Database was provided to ARs and RIs before they began to give advice and the Firms did not have a robust way of retrospectively checking that AR's and RIs' entries into the NBR were accurate.
60. The Firms' procedures stated that a quarterly assessment would be carried out of a sample (one for each business area) of post-sale file checks for each individual File Checker. However, these assessments focused on post-sale checking only and none were carried out between May 2012 and January 2013.
61. Mr Bell developed the file checking process, established the Central Monitoring Team, developed the file checking form and the file checking guides, introduced the pre-scrutiny checks and developed the risk based file checking system within the Firms' Database. Mr Bell has confirmed to the Authority that he was responsible for oversight of the file checking processes.

FAILINGS

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

Knowing concern in the Firms' breaches of Principle 3

63. On the basis of the facts and matters described above, Mr Bell was knowingly concerned in the Firms' breaches of Principle 3, insofar as they relate to the management of compliance risks, because he had knowledge of, and was responsible for, the compliance systems and controls that the Firms implemented. These systems and controls were inadequate to comply with the relevant requirements of the regulatory system.

The application process for prospective ARs and RIs

Determining whether prospective ARs and RIs were suitable to act for the Firms:

64. The Firms failed to take sufficient steps, as part of the recruitment process, to determine whether ARs and RIs were suitable to act for the Firms. The Firms failed to assess appropriately prospective ARs' business models and business practices, or to ensure the integrity of the technical knowledge test they required RIs to undertake. As described at paragraph 41 above, as Compliance Director at the Firms Mr Bell was knowingly concerned in this misconduct during the Relevant Period.

Determining RIs' competence to advise customers:

65. Upon an RI joining the Firms, the Firms did not carry out a suitable assessment of their knowledge and skills to determine their competence before they began advising customers. Training and development needs might have been identified over time, as a result of file checking (including initial pre-sale monitoring) and annual visits from the Supervisory Staff, but due to the Firms' failings in those areas there was an increased risk of consumer detriment as a result of the Firms' failure to carry out a suitable assessment at the outset. As described at paragraphs 43 and 46 above, as Compliance Director at the Firms Mr Bell was knowingly concerned in this misconduct during the Relevant Period.

The supervisory processes and procedures for ARs and RIs

Supervision of ARs and RIs:

66. The Firms failed to ensure that its ARs and RIs were appropriately and effectively supervised at all times. There was insufficient contact between ARs and RIs and the Supervisory Staff, the Firms did not adequately analyse information on RI performance to ensure that those RIs remained competent for their role, the Firms' field supervision was not sufficiently risk-based and the annual visits carried out by the Supervisory Staff were not sufficiently challenging to enable the identification of material risks. As

described at paragraphs 49, 51 and 55 above, as Compliance Director at the Firms Mr Bell was knowingly concerned in this misconduct during the Relevant Period.

The file checking processes and procedures:

67. The Firms failed to establish and maintain adequate compliance and file checking arrangements, appropriate to the size and types of business conducted by the Firms. The file checking processes and the methodology used did not adequately identify and assess risks. The Firms had been aware for some time of significant risks relating to the accuracy and quality of new business information input into the Database but had failed to take appropriate steps to control this risk effectively. As described at paragraph 61 above, as Compliance Director at the Firms Mr Bell was knowingly concerned in this misconduct during the Relevant Period.

SANCTION

68. As a consequence of Mr Bell being knowingly concerned in the Firms' breaches, the Authority considers that it is appropriate to impose a financial penalty upon him.

Financial penalty

69. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. In determining the financial penalty, the Authority has had regard to this guidance.

70. Changes to DEPP were introduced on 6 March 2010. Given that Mr Bell's misconduct took place both before and after that date, the Authority has had regard to the provisions of DEPP in force before and after that date.

71. The application of the Authority's penalty policy is set out in Annex B to this Notice in relation to:

- a) Mr Bell's knowing concern in the Firms' breaches of Principle 3 prior to 6 March 2010; and
- b) Mr Bell's knowing concern in the Firms' breaches of Principle 3 on or after 6 March 2010.

72. In determining the financial penalty to be attributed to Mr Bell's misconduct prior to and on or after 6 March 2010, the Authority has had particular regard to the following matters as applicable during each period:

- a) the need for credible deterrence;

- b) the nature, seriousness and impact of the breach;
- c) the risk of consumer detriment as a result of Mr Bell's failings (namely that the Firms' ARs and RIs would make personal recommendations that were not suitable, thereby causing loss). Although Mr Bell took significant steps to improve the Firms' compliance systems and controls, ultimately he did not adequately manage or mitigate that risk during the Relevant Period;
- d) the extent to which the breach was deliberate or reckless. The Authority has not identified any evidence to suggest that Mr Bell acted deliberately or recklessly in his knowing concern in the Firms' breaches of Principle 3; and
- e) any applicable settlement discount for agreeing to settle at an early stage of the Authority's investigation.

73. The Authority therefore imposes a total financial penalty of £33,800 on Mr Bell, comprising:

- a) a penalty of £17,500 relating to Mr Bell's knowing concern in the Firms' breaches of Principle 3 under the old penalty regime; and
- b) a penalty of £16,300 relating to Mr Bell's knowing concern in the Firms' breaches of Principle 3 under the current penalty regime.

Prohibition Order

74. It is appropriate and proportionate in all the circumstances to prohibit Mr Bell from performing the CF10 (Compliance oversight) function in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm because he is not a fit and proper person in terms of his competence and capability.

75. The Authority has had regard to the guidance in Chapter 9 of the Enforcement Guide in proposing that Mr Bell be prohibited from performing the CF10 (Compliance oversight) function.

76. Given the nature and seriousness of Mr Bell's misconduct, having been knowingly concerned in the Firms' breaches of Principle 3, the Authority considers that Mr Bell's conduct demonstrated a lack of competence and capability such that he is not fit and proper to perform the CF10 (Compliance oversight) function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm. In the interests of consumer protection, it is appropriate and proportionate in all

the circumstances to impose the Prohibition Order on Mr Bell in the terms set out above.

Conclusion

77. The Authority considers that it is appropriate to impose a financial penalty of £33,800 on Mr Bell in respect of his misconduct throughout the Relevant Period.
78. The Authority also considers that it is appropriate to impose a Prohibition Order prohibiting Mr Bell from performing the CF10 (Compliance oversight) function in relation to any regulated activity carried on by any authorised persons, exempt persons or exempt professional firm.

PROCEDURAL MATTERS

Decision maker

79. The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.
80. This Final Notice is given under, and in accordance with, section 390 of the Act.

Manner of and time for Payment

81. The financial penalty must be paid in three instalments by Mr Bell to the Authority, as follows:
- a) £11,266 to be paid by no later than 27 March 2015, 14 days from the date of the Final Notice; and
 - b) £11,267 to be paid on each of 6 April 2016 and 6 April 2017.

If the financial penalty is not paid

82. If any, or any part of, an instalment is outstanding on the day after it is due to be paid to the Authority (in accordance with paragraph 81 above), the Authority may recover the full outstanding amount of the financial penalty as a debt owed by Mr Bell and due to the Authority.

Publicity

83. 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.

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

Authority contacts

85. For more information concerning this matter generally, contact Paul Howick (direct line: 020 7066 7954 / email: paul.howick@fca.org.uk) of the Enforcement & Market Oversight Division of the Authority.

Bill Sillett

Head of Department

Financial Conduct Authority, Enforcement and Market Oversight Division

ANNEX A
RELEVANT STATUTORY AND REGULATORY PROVISIONS

1 RELEVANT STATUTORY PROVISIONS

- 1.1 The Authority's statutory objective, set out in section 1B(3) of the Act, include the consumer protection objective.
- 1.2 Section 66 of the Act provides that 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. A person is guilty of misconduct if, while an approved person, he has failed to comply with a statement of principle issued under section 64 of the Act, or has been knowingly concerned in a contravention by a relevant authorised person of a relevant requirement imposed on that authorised person.
- 1.3 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, exempt person or a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities.

2 RELEVANT REGULATORY PROVISIONS

Principles for Businesses (the "Principles")

- 2.1 The Principles are a general statement of the fundamental obligations of firms under the regulatory system and are set out in the Authority's Handbook. They derive their authority from the Authority's rule-making powers set out in the Act. The relevant Principles are as follows:
- (i) Principle 3 (Management and Control) provides that a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

The Fit and Proper Test for Approved Persons

- 2.2 The part of the Authority's Handbook entitled "The Fit and Proper Test for Approved Persons" ("FIT") sets out the criteria that the Authority will consider when assessing the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an approved person.
- 2.3 FIT 1.3.1G states that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person. The most important considerations will be the person's honesty, integrity and reputation, competence and capability and financial soundness.

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

- 2.4 The Authority's policy in relation to prohibition orders is set out in Chapter 9 of the Enforcement Guide ("EG").
- 2.5 EG 9.1 states that the Authority may exercise this power where it considers that, to achieve any of its regulatory objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities or to restrict the functions which he may perform.

DEPP

- 2.6 Chapter 6 of DEPP sets out the Authority's statement of policy with respect to the imposition and amount of financial penalties under the Act.

ANNEX B
PENALTY ANALYSIS

1. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. In determining the financial penalty, the Authority has had regard to this guidance.
2. Changes to DEPP were introduced on 6 March 2010. Given that Mr Bell's misconduct took place both before and after that date, the Authority has had regard to the provisions of DEPP in force before and after that date.
3. The application of the Authority's penalty policy is set out below in relation to:
 - 3.1 Mr Bell's misconduct prior to 6 March 2010; and
 - 3.2 Mr Bell's misconduct on or after 6 March 2010.

4. **MISCONDUCT PRIOR TO 6 MARCH 2010**

- 4.1 In determining the financial penalty to be attributed to Mr Bell's misconduct prior to 6 March 2010, the Authority has had particular regard to the following:

Deterrence - DEPP 6.5.2G(1)

- 4.2 When determining the level of penalty, the Authority has regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory and market conduct.
- 4.3 The Authority considers that the financial penalty imposed will deter Mr Bell and other approved persons holding the CF10 (Compliance oversight) function from committing similar breaches and demonstrate generally that it is not acceptable to be knowingly concerned in a firm's failure to establish and operate effective compliance systems and controls in respect of a network of ARs and RIs engaged in regulated activities. The penalty will reinforce the importance of senior management's responsibility for embedding effective, risk-focused systems and controls.

The nature, seriousness and impact of the breach - DEPP 6.5.2G(2)

- 4.4 While recognising that Mr Bell took significant steps during the Relevant Period to improve the Firms' systems and controls, these were ultimately insufficient and failed to ensure that the Firms complied with the relevant regulatory requirements. The Authority therefore considers Mr Bell's misconduct to be serious in that the failings

impacted all categories of the Firms' business and persisted for a significant and continuous period of time.

- 4.5 There was a significant risk of consumer detriment resulting from Mr Bell being knowingly concerned in the Firms' breaches of Principle 3, in that as a result of the Firms' failure to establish and operate effective compliance systems and controls, there was a real risk that the Firms' ARs and RIs would make personal recommendations to customers which were not suitable. Although Mr Bell took significant steps to improve the Firms' systems and controls, the Firms did not adequately manage or mitigate that risk during the Relevant Period and Mr Bell had knowledge of and responsibility for this in his role as Compliance Director.

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

- 4.6 The Authority has not identified any evidence to suggest that Mr Bell acted deliberately or recklessly in his knowing concern in the Firms' breaches of Principle 3.

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

- 4.7 The Authority recognises that the financial penalty imposed on Mr Bell is likely to have a significant impact on him. However, the Authority considers that it is proportionate in relation to the seriousness of Mr Bell's misconduct.

Past action taken by the Authority - DEPP 6.5.2G(10)

- 4.8 In determining the level of financial penalty under the old regime, the Authority has taken into account penalties imposed on other approved persons for similar misconduct.

Conclusion on the financial penalty for misconduct prior to 6 March 2010

- 4.9 Having considered all the circumstances set out above, the Authority considers that £25,000 is an appropriate financial penalty to impose on Mr Bell under the old penalty regime.
- 4.10 Mr Bell agreed to settle at an early stage of the Authority's investigation. Mr Bell therefore qualified for a 30% (stage 1) discount under the Authority's executive settlement procedures. The financial penalty for Mr Bell's misconduct under the old penalty regime is therefore £17,500.

5. **MISCONDUCT ON OR AFTER 6 MARCH 2010**

5.1 In respect of any misconduct 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

5.2 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 (DEPP 6.5B.1G). The Authority's investigation did not identify any personal financial benefit that Mr Bell derived directly from his misconduct.

5.3 Step 1 is therefore £0.

Step 2: The seriousness of the breach

5.4 At Step 2 the Authority determines a figure that reflects the seriousness of the breach (DEPP 6.5B.2G). 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.

5.5 The period of Mr Bell's misconduct in relation to the current penalty regime was from 6 March 2010 to 16 January 2013. The Authority considers Mr Bell's relevant income to be £212,628.

5.6 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%

5.7 In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly. The Authority considers that the following factors are relevant:

Impact of the breach

- (1) The Authority has not identified any direct or indirect benefit to Mr Bell, or loss avoided, as a result of his misconduct;
- (2) There was a significant risk of loss to customers as a result of Mr Bell's failings, namely that the Firms' ARs and RIs would make personal recommendations that were not suitable, thereby causing loss. Although Mr Bell took significant steps to improve the Firms' compliance systems and controls, ultimately he did not adequately manage or mitigate that risk during the Relevant Period;
- (3) Loss to individual consumers has not been identified or quantified at this stage but the Authority has required the Firms to conduct PBRs in relation to pension switching recommendations and is supervising the Firms' internal review of their promotion and sale of UCIS. Both the ongoing PBRs and the internal review may result in redress being paid to consumers; and
- (4) The Authority has not identified any actual or potential effects on the orderliness of, or confidence in, markets as a result of Mr Bell's misconduct.

Nature of the breach

- (5) No financial crime, or significant risk of financial crime, was facilitated, occasioned or otherwise attributable to Mr Bell's misconduct;
- (6) The Authority has not identified anything which suggests that Mr Bell failed to conduct himself with integrity or abused a position of trust;
- (7) Mr Bell did not hold a prominent position within the industry;
- (8) Mr Bell held senior positions at the Firms throughout the Relevant Period and is an experienced industry professional with over 20 years' experience in financial services. He has specialised in compliance since 2005 and, prior to that, held management roles within the retail divisions of major high-street banks;
- (9) As Compliance Director at the Firms, throughout the Relevant Period Mr Bell was solely responsible for oversight of the Firms' compliance functions; and

- (10) As Compliance Director, responsible for maintaining "...a strong Compliance function within the firm[s] as a key independent governance and oversight function for the advisory process", although he made improvements to the Firms' compliance systems and controls, Mr Bell failed to discharge a number of his specific responsibilities to an appropriate standard, including:
- (a) identifying and advising the Firms' Boards on the compliance risks and how best to manage them;
 - (b) maintaining effective systems and controls within the compliance function;
 - (c) developing, maintaining and overseeing a risk-based monitoring programme to effectively supervise the Firms' ARs and RIs; and
 - (d) providing compliance training and tracking completion of such training.

Whether the breach was deliberate or reckless

- (11) The Authority has not identified any evidence to suggest that Mr Bell acted deliberately or recklessly in his misconduct. The Authority considers Mr Bell's misconduct to have been committed negligently.

5.8 Taking all of these factors into account, the Authority considers the seriousness of Mr Bell's misconduct to be level 2 and so the Step 2 figure is 10% of £212,628.

5.9 Step 2 is therefore £21,263.

Step 3: mitigating and aggravating factors

5.10 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 disgorged at Step 1, to take into account factors which aggravate or mitigate the breach (DEPP 6.5B.3G(2)).

5.11 The Authority considers that the following factor aggravates the breach:

- (1) the Authority issued guidance to network firms regarding a principal's responsibilities to its ARs, in particular the Authority's factsheet on 'Controlling Appointed Representatives for general insurance, mortgage and investment networks' published in December 2005 and the Authority's factsheet for senior management of small firms that have appointed representatives.

5.12 Having taken into account the above aggravating factor, the Authority considers that the Step 2 figure should be increased by 10%.

5.13 Step 3 is therefore £23,389 (110% of £21,263).

Step 4: adjustment for deterrence

5.14 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 (DEPP 6.5B.4G).

5.15 The Authority considers the Step 3 figure of £23,389 represents a sufficient deterrent to Mr Bell and others, and so has not increased the penalty at Step 4.

5.16 Step 4 is therefore £23,389.

Step 5: settlement discount

5.17 If the Authority and Mr Bell, the individual on whom a penalty is to be imposed, agree (pursuant to DEPP 6.5B.5G) 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 Mr Bell reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.

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

5.19 Step 5 is therefore £16,300.

6. CONCLUSION

6.1 The Authority therefore imposes a total financial penalty of £33,800 on Mr Bell for being knowingly concerned in the Firms' breaches of Principle 3, comprising:

- (1) a penalty of £17,500 relating to Mr Bell's knowing concern in the Firms' breaches of Principle 3 under the old penalty regime; and
- (2) a penalty of £16,300 relating to Mr Bell's knowing concern in the Firms' breaches of Principle 3 under the current penalty regime.