FINANCIAL CONDUCT AUTHORITY

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FINAL NOTICE

To: **Susan Mary Jones**

Individual Refence Number: **SXJ01502**

Date: **24 November 2023**

1. ACTION

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

(1) publishes a statement of Susan Mary Jones's ("Ms Jones") misconduct for failing to comply with Statement of Principle 2; and

(2) makes an order, pursuant to section 56 of the Act, prohibiting Ms Jones from performing 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.

1.2. The Authority would have imposed a financial penalty on Ms Jones of £64,614. However, the Authority recognises that there is significant liability for redress for West Wales Financial Services Limited's ("WWFS" or "the Firm") customers which has fallen to the Financial Services Compensation Scheme ("FSCS"). As at 21 November 2023, the FSCS has paid out £758,725.55 in compensation to customers of WWFS. Had it not been for the compensation limit of £85,000, the total compensation available to customers would have been £972,197.28. In these circumstances, the Authority has agreed with Ms Jones that in lieu of the imposition of a financial penalty, the sum of £40,888 be paid direct to the FSCS to contribute towards any redress due to WWFS's customers. This is in furtherance of the Authority's consumer protection objective. In light of the above and taking into account all the exceptional circumstances of the British Steel Pension Scheme ("BSPS"), the Authority hereby publishes a statement of Ms Jones's misconduct.

2. SUMMARY OF REASONS

Overview

2.1. Ms Jones was a financial adviser who was qualified to provide defined benefit Pension Transfer advice at WWFS. She acted without due skill, care and diligence in giving unsuitable Pension Transfer advice to customers, most of whom were BSPS members, to transfer away from schemes which offered important guarantees, resulting in customers' retirement funds being unnecessarily put at risk, against their best interests.

Ms Jones

2.2. Between 16 March 2017 and 14 December 2017 ("the Relevant Period"), Ms Jones was approved by the Authority to perform the CF30 (Customer) controlled function at WWFS, where she worked as a self-employed financial adviser and Pension Transfer Specialist. She held no senior management functions at the Firm.

WWFS

2.3. WWFS was an Independent Financial Adviser firm based in Llanelli, Wales.

2.4. During the Relevant Period, WWFS was authorised by the Authority to undertake Pension Transfers and Pension Opt-Outs and to arrange deals in investments. It is now in liquidation.

2.5. During the Relevant Period, WWFS advised 27 of 28 customers to transfer out of their Defined Benefit Pension Schemes ("DBPS") before WWFS agreed to cease providing Pension Transfer advice following the Authority's intervention. All 27 customers followed this recommendation, and the customer who was advised by WWFS not to transfer out of their DBPS also transferred out. Ms Jones was the adviser in all these cases. Although the Authority published guidance which created a presumption against advising a customer to transfer out of their DBPS, Ms Jones provided regulated advice to these 27 customers to complete a Pension Transfer, 25 of whom were members of the BSPS. Ms Jones also had initial discussions about possible Pension Transfers with 73 Potential Customers during the Relevant Period. These Potential Customers did not return to WWFS to receive regulated advice after an initial discussion with Ms Jones (see paragraph 4.23).

2.6. On 14 December 2017, following feedback from the Authority, and at its request, WWFS applied for the imposition of requirements by the Authority, whereby WWFS agreed to cease all regulated activity, including from advising further in relation to the transfer of 141 Pipeline Customers of WWFS, all of whom were members of the BSPS, who had received advice from WWFS to complete a Pension Transfer. 85 of these Pipeline Customers had been advised by Ms Jones.

2.7. The Authority reviewed 19 of WWFS's completed Pension Transfer advice files from the Relevant Period ("the 19 Files"). All of these customers had been advised by Ms Jones. For a significant proportion of these customers, their pension fund was their most valuable asset and many had limited additional resource or other pension provision. In summary, the Authority found that 74% of the 19 Files were not compliant with regulatory rules and guidance relating to the suitability of Pension Transfer advice.

<u>Statements of Principle for Approved Persons</u>

2.8. During the Relevant Period, Statement of Principle 2 stated that an approved person must act with due skill, care and diligence in carrying out their accountable functions.

<u>Ms Jones's failings in the performance of her CF30 (Customer) function</u>

2.9. The Authority considers that, during the Relevant Period, by reason of the matters described below in Section 4 of this Notice, Ms Jones breached Statement of Principle 2, in that she failed to act with due skill, care and diligence when advising customers on Pension Transfers.

2.10. In particular, Ms Jones:

a) gave unsuitable advice to customers to transfer out of their DBPS. This was because she:

   i. based her recommendation on the incorrect assumption that a transfer to meet a customer's stated objectives was in the customer's best interests. In reality, many customers' objectives were either not realisable or financially viable, or could have been met by the existing scheme;

   ii. failed to assess, or give due consideration to, whether customers would be reliant on the income from their DBPS or whether they could financially bear the risks involved in a Pension Transfer. She did this despite knowing that, following the recommended transfer, customers' retirement income would be dependent on the performance of the new investment;

iii. failed to assess whether the customer had the necessary attitude to risk, as well as the experience and knowledge to understand the risks involved in the Pension Transfer recommended and failed to give due consideration to this where they did not; and

iv. failed to undertake adequate transfer analysis to compare the benefits likely to be paid under the DBPS with benefits afforded by the personal pension or other pension scheme into which it was proposed that the customer should transfer; and

b) made Personal Recommendations to her customers despite having failed to obtain from them information that was necessary for her properly to assess whether a Pension Transfer was suitable. Making a Personal Recommendation without the necessary information increases the risk of providing unsuitable advice.

<u>Seriousness</u>

2.11. Ms Jones did not exploit, or seek to exploit, Pension Transfer customers. Nevertheless, the Authority considers Ms Jones's failings to be serious because:

a) they caused a significant risk of loss to customers who transferred out of their DBPS as a result of Ms Jones's advice. The total value of transferred funds was £9,769,550. The average completed transfer value was £361,835;

b) had it not been for the Authority's intervention, a further large number of customers may have transferred out of their DBPS as a result of her advice. The transfer value of the 85 Pipeline Cases that Ms Jones advised on, a large proportion of which may have been at a significantly increased risk of loss but for the Authority's intervention, was £25,896,984;

c) the average loss by consumers was estimated by the Financial Ombudsman Service to be 12% of the transfer value, resulting in an estimated average risk of loss of £47,160 for the 19 Files sample and £37,210 for the 85 Pipeline Cases); and

d) her advice disproportionately affected BSPS members, who made up the majority of WWFS's Pension Transfer advice customers during the Relevant

Period, many of whom were in a vulnerable position due to the uncertainty surrounding the future of the BSPS.

Sanction

2.12. The Authority would have imposed a financial penalty on Ms Jones of £64,614. However, the Authority recognises that there is significant liability for redress for WWFS' customers which has fallen to the FSCS. As at 21 November 2023, the FSCS has paid out £758,725.55 in compensation to customers of WWFS. Had it not been for the compensation limit of £85,000, the total compensation available to customers would have been £972,197.28. In these circumstances, the Authority has agreed with Ms Jones that in lieu of the imposition of a financial penalty, the sum of £40,888 be paid direct to the FSCS to contribute towards any redress due to WWFS's customers. This is in furtherance of the Authority's consumer protection objective. In light of the above and taking into account all the exceptional circumstances of the BSPS, the Authority has decided to publish a statement of Ms Jones's misconduct for failing to comply with Statement of Principle 2.

2.13. The Authority considers that Ms Jones has demonstrated a lack of competence and capability to advise on Pension Transfers and Pension Opt-Outs.

2.14. The Authority considers that, as a result of the facts and matters set out in this Notice, Ms Jones is not a fit and proper person to carry out the regulated activity of advising on Pension Transfers and Pension Opt-Outs carried on by an authorised person, exempt person or exempt professional firm. The Authority hereby prohibits Ms Jones from performing any such function.

3. DEFINITIONS

3.1. The definitions below are used in this Notice:

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

"the Authority" means the Financial Conduct Authority;

"British Steel Defined Benefit Pension Scheme" or "BSPS" means the British Steel Defined Benefit Pension Scheme that was in place from 8 June 2015 to 13 December 2017;

"BSPS 2" means the scheme which replaced the BSPS after 13 December 2017;

"CETV" means cash equivalent transfer value, which is the cash value of benefits which have been accrued to, or in respect of, a member of a pension scheme at a particular date. The CETV represents the expected costs of providing the member's benefits within the scheme and, in the case of a Defined Benefit Pension Scheme, the CETV is determined using actuarial assumptions;

"COBS" means the Conduct of Business Sourcebook, part of the Handbook;

"Defined Benefit Pension Scheme" or "DBPS" means an occupational pension scheme as defined by Article 3(1) of the Financial Services and Markets Act (Regulated Activities) Order 2001, namely where the amount paid to the beneficiary is based on how many years the beneficiary has been employed and the salary the beneficiary earned during that employment (rather than the value of their investments);

"Defined Contribution" or "DC" is a common type of pension where contributions are held in investments until the holder reaches their chosen retirement age;

"DEPP" means the Decision Procedure and Penalties Manual, part of the Handbook;

"EG" means the Enforcement Guide, part of the Handbook;

"the 19 Files" means the 19 completed Pension Transfer advice files provided by WWFS and reviewed by the Authority;

"FIT" means the Fit and Proper test for Approved Persons and specified significant-harm functions, part of the Handbook;

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

"Insistent Client" is a customer to whom the firm has given a personal recommendation, but where the customer has decided to enter into a transaction which was different from that recommended by the firm in the personal recommendation and the customer wanted the firm to facilitate that transaction (COBS 9.5A.2G defined this on 3 January 2018, after the end of the Relevant Period);

"the Interview" means Ms Jones's interview with the Authority on 9 February 2021;

"Pension Opt-Out" has the meaning given in the Handbook and includes a transaction resulting from the decision of a retail client who is an individual to opt out of an occupational pension scheme to which his employer contributes and of which he is a member;

"Pension Protection Fund" or "PPF" is a statutory public corporation which protects people who belong to Defined Benefit Pension Schemes, if the employer responsible for funding the scheme they have paid into becomes insolvent;

“Pension Transfer” has the meaning given in the Handbook and includes the transfer of deferred benefits from an occupational pension scheme (with safeguarded benefits, such as a DBPS) to a personal pension scheme (all such references in this Notices are to transfers from a DBPS);

“Pension Transfer Specialist” has the meaning given in 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 a recommendation that is advice on transfer of pension benefits into a personal pension or Self-Invested Personal Pension, and is presented as suitable for the customer to whom it is made, or is based on a consideration of the customer’s circumstances;

“Pipeline Cases/Customers” means customer files on which WWFS had provided a Personal Recommendation, but which had not yet been executed;

“Potential Customers” means persons who attended the offices of WWFS to consider obtaining regulated advice on a possible Pension Transfer but who decided, after an initial discussion(s), not to obtain such advice from WWFS;

“RDC” means the Regulatory Decisions Committee of the Authority (see further under Procedural Matters below);

“Regulated Apportionment Arrangement” or “RAA” means the statutory mechanism that can be used in corporate restructuring situations where a sponsoring employer of a DBPS stops participating in the pension scheme (thereby 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;

“the Relevant Period” means the period from 16 March 2017 to 14 December 2017;

“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" stands for 'transfer value analysis' and is the comparison that a firm must carry out in accordance with COBS 19.1.2R when a firm gives advice or a Personal Recommendation about, amongst other things, a Pension Transfer;

"TVAS Report" means a document that reports to the customer in respect of the comparison firms are required to carry on in accordance with COBS 19.1.2R;

"Warning Notice" means the Warning Notice given to Ms Jones dated 10 February 2023; and

"WWFS" or "the Firm" means West Wales Financial Services Limited.

4. FACTS AND MATTERS

Background

WWFS

4.1. WWFS was an independent financial adviser firm based in Llanelli, Carmarthenshire, authorised since 12 December 2016. WWFS had permission to carry on the regulated activities of, amongst other things, advising on Pension Transfers, advising on investments, and arranging deals in investments, which it held throughout the Relevant Period.

4.2. On 13 December 2017, the Authority visited WWFS's offices. An assessment of the defined benefit Pension Transfer work identified certain customer files which did not contain sufficient information to assess whether suitable advice had been given. Problems were also identified with the advice process. The next day, following feedback from the Authority, and at its request, WWFS applied for the imposition of requirements by the Authority, whereby WWFS agreed to a requirement to cease all regulated activities relating to defined benefit Pension Transfer business. The requirement meant that the Personal Recommendations made by Ms Jones to customers to Pension Transfer were not executed in the Pipeline Cases.

4.3. During the Relevant Period, 27 of 28 WWFS's customers transferred out of their DBPS, all of whom were advised to do so by Ms Jones. One customer who was advised by Ms Jones not to transfer out of their DBPS did transfer out.

4.4. WWFS entered creditors' voluntary liquidation on 23 July 2021.

Ms Jones

4.5. Ms Jones began working in the financial services industry in 1996. She has worked as a financial adviser since 2013, and has been qualified as a Pension Transfer Specialist since 2016 as part of her qualification as a Chartered Financial Planner.

She was one of two Pension Transfer Specialists at WWFS and was therefore responsible for giving or checking any Pension Transfer advice provided to customers.

4.6. Ms Jones held the CF30 (Customer) controlled function at WWFS from 29 December 2016 to 8 December 2019. She held no senior management function at WWFS. Prior to joining WWFS, she had advised on only a small number of Pension Transfers. At WWFS, she was responsible for all of the completed Pension Transfers and 85 (60%) of the Pipeline Cases in progress at the time of the Authority's visit to the Firm.

Pension Transfers

4.7. Pensions are a traditional and tax-efficient way of saving money for retirement. The value of someone's pension can have a significant impact on their quality of life during retirement and, in some circumstances, may affect whether they can afford to retire at all. Pensions are, in most cases, a primary resource for ensuring financial stability in retirement. For some people, they are the only way of funding retirement. 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.

4.8. 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 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.

4.9. Customers who engage advisers and authorised firms to provide them with advice in relation to their pensions therefore place significant trust in them. It is important that firms and their advisers exercise due skill, care and diligence when advising customers regarding their pensions, ensuring that the advice given to a customer is suitable for them, having regard to all of their relevant circumstances. This is even more important when customers have no option but to make a decision regarding their pension.

4.10. Transfer out of a DBPS involves giving up the guaranteed benefits in exchange for a cash-equivalent transfer value which is typically invested in a DC pension. If a customer leaves a DBPS, they will have to buy an annuity to obtain a guaranteed level of income. Alternatively, they may rely on income from investments, but investments will have to be managed in such a way as to produce ongoing income; and even then, there is no guarantee as to the amount or duration of that income.

4.11. The introduction of pensions freedoms (introduced in April 2015) for DC pensions made transferring out of a DBPS an attractive option for some people. For example, a customer who will not be reliant on the DBPS income in retirement and who wishes to achieve a realistic objective attainable only once transfer has been effected may be an example of a suitable candidate. However, as referenced in COBS 19.1.6G, the Authority considers that, given the nature of the guaranteed benefits provided under a DBPS, advisers' default assumption should be that transferring out and giving up those benefits is unlikely to be suitable for a customer unless they can clearly show, based on a customer's specific circumstances, that it is in their best interests.

<u>The British Steel Pension Scheme</u>

4.12. The BSPS was one of the largest DBPS in the UK, with approximately 125,000 members and £15 billion in assets as at 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.

4.13. 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 a Regulated Apportionment Arrangement.

4.14. 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.

4.15. As a consequence of the RAA, members of the BSPS were required to make a choice between two options offered by the BSPS, namely to either:

a) remain in the BSPS and therefore move into the PPF (suffering a 10% drop in the value of their fund in doing so); or

b) transfer their benefits into BSPS 2.

4.16. Alternatively, BSPS members could take 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).

4.17. On 11 and 21 September 2017, the BSPS announced that it would separate from the sponsoring employers, including the principal sponsor, Tata Steel UK. Information about the options available to members was available on the BSPS' website from 11 August 2017, and in October 2017, the BSPS distributed information packs to members about these options. There were over 20 different packs to take account of the different categories of members. The pack contained individual estimates of BSPS 2 entitlements, generic information about PPF compensation and comparisons between the two schemes. On the basis of this, members were asked to decide whether they wanted to transfer their pension rights to the new pension scheme, BSPS 2, which would be less generous than the old scheme but more generous than PPF compensation for the majority of members, or stay with the old scheme and move into the PPF. 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.

4.18. 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. This included the following:

a) distrust of their employer;

b) limited information on alternative options;

c) tight timescales to make a decision; and

d) limited support.

4.19. Some BSPS members were in vulnerable circumstances. For example, BSPS members tended to have no other assets and relied more on income from the DB scheme than members of other schemes.

WWFS's Pension Transfer advice business and Ms Jones's role

Increase in DBPS work at WWFS

4.20. When WWFS sought permission to provide Pension Transfer advice, it was anticipated that the Firm would advise about one customer per month. Having acquired that permission on 16 March 2017, WWFS advised its first customer to transfer on 30 March 2017. Between March and July 2017, WWFS advised 8 customers in total, all of whom were advised by Ms Jones.

4.21. Over a relatively short period of time, this element of WWFS's business grew rapidly as a result of the influx of BSPS customers seeking advice. Between 1 August 2017 and 14 December 2017, WWFS advised 160 Pension Transfer customers. Ms Jones advised 104 of these 160 customers.

4.22. WWFS's office was located a short distance from a Tata Steelworks plant, and this significant increase in the volume of Pension Transfer customers was driven by demand from BSPS members. Apart from several cases where customers were introduced to WWFS by introducers, WWFS was approached directly by BSPS members to provide defined benefit Pension Transfer advice. From August 2017 onwards, Ms Jones's day to day activities predominantly involved the provision of Pension Transfer advice to BSPS members. WWFS was not prepared for the dramatic increase in requests for transfer advice and agreed to take on a large number of customers over a short period with insufficient resource in place to manage the volume whilst complying with the expected standards. Ms Jones did not take active steps to increase the volume of the Pension Transfer business and the volume of work Ms Jones took on was partly motivated by a desire to assist as many BSPS members as possible. Ms Jones was under significant pressure during this period. However, Ms Jones had control over her own workload as she was self-employed.

The Advice Process

4.23. Customers seeking Pension Transfer advice from WWFS met or spoke with their adviser on several occasions. An initial meeting was undertaken at which an introductory discussion took place about the customer's aims and objectives, and the options available. Customers were also provided with terms of engagement and an advisory pack of documents produced by WWFS about pensions and retirement. No pressure was exerted by Ms Jones and customers were given time and space to consider their position. 73 Potential Customers did not return to receive regulated advice after an initial discussion with Ms Jones.

4.24. Where a customer wished to proceed, key information was then sought from them to provide a basis for advice. The content of the Suitability Report and the recommendation itself were presented thereafter, either in person or by telephone.

4.25. In response to the significantly increased demand for Pension Transfer advice, Ms Jones relied increasingly on an administration team of three staff, and a paraplanner who would undertake tasks including the preparation of TVAS documents and Suitability Reports.

Initial and ongoing transfer fees

4.26. In most cases, WWFS charged its customers a fee of 1% to 1.5% of the value of the transferred fund along with an ongoing advice charge of 0.5% for the basic level of service. However, the Firm set out the typical initial fee range of 1% to 3% for occupational pension transfers depending on the size of the investment and the work involved.

4.27. The Authority reviewed 19 of WWFS's completed Pension Transfer advice files from the Relevant Period. Of the 19 Files, the total advice fees charged was £83,578, with an average of £4,398 per customer. During the Relevant Period, customer payments for initial advice fees for Pension Transfer advice totalled £63,832.

4.28. WWFS's Terms of Engagement stated that payment would be due from a customer if advice was given which was not followed or if the advice was not to transfer, albeit in the latter scenario the fee was capped at £1,000. However, Ms Jones stated in the Interview that unless the Pension Transfer was complete, no fee would be paid by the customer.

4.29. WWFS set out the precise fees to be charged to the customer for the advice and offered several methods of how payment could be taken. Most customer files reviewed by the Authority showed customers opting to have payment taken from the invested fund.

4.30. All of the 19 Files reflected the fact that the customer had opted for an ongoing review service for which the pension holder would be charged. Whilst the ongoing advice charge was an optional service for customers, were it not for the Authority's intervention, the sharp rise in WWFS's Pension Transfer customers over this period would have translated into future additional income from this service for WWFS and Ms Jones.

4.31. WWFS paid 82.5% of the initial and ongoing transfer fee for Ms Jones's services on a case-by-case basis to a third party limited company connected to Ms Jones. £52,252 was paid in fees for Ms Jones's services for initial Pension Transfer advice during the Relevant Period. The total fees paid by WWFS to the third party limited company for defined benefit transfer advice provided by Ms Jones during the Relevant Period, but which was paid during or after the Relevant Period, was £133,024.

WWFS's compliance arrangements

Internal compliance

4.32. In most cases, suitability letters were sent for approval to WWFS's co-director and Head of Compliance, Nigel Lewis. However, Mr Lewis was not a Pension Transfer Specialist, and he was not qualified to assess the suitability of the recommendations. Whilst Mr Lewis identified some mistakes within the documentation, such as where an error had been made regarding the customer's date of birth, he did not comment on, or challenge, the advice.

4.33. Nevertheless, in most of the cases on which Ms Jones provided advice and which completed prior to the Authority's intervention, Mr Lewis identified certain inaccuracies. For example, mandatory information, including fact find information, was found to be missing and TVAS and Suitability Report errors were found.

4.34. Advice provided to eight customers by Ms Jones was reviewed by her more experienced Pension Transfer Specialist colleague. In each case, remedial action was required due to risk profile and report errors albeit the Pension Transfer and investment advice passed the colleague's review. None of the reviews by Ms Jones's colleague were of advice forming part of the sample reviewed by the Authority.

4.35. Despite feedback from both Mr Lewis and the other Pension Transfer Specialist requiring changes to be made in all of the 27 cases which went on to be transferred, Ms Jones made no discernible change to her practices and continued to make these same mistakes which the Authority's own review later identified.

External Compliance Review

4.36. WWFS also engaged external compliance consultants, at Ms Jones's expense, to provide ongoing compliance advice to assist Mr Lewis in discharging his compliance obligations. The consultants were asked by Mr Lewis, in March, April and August 2017 respectively, to undertake reviews of three DBPS files on which Ms Jones advised. In each case, significant failings were identified.

4.37. These failings included:

a) failures to capture information around expected expenditure in retirement; for example, one file review stated it was difficult to tell if the customer could afford the pension transfer;

b) unclear customer objectives: one file stated it was unclear why the customer had a need to repay their debts;

c) the risk of the investment not matching the customer's capacity for loss: clarification was needed to address the discrepancy between capacity for loss and attitude to risk;

d) inaccurate illustrations and models: for example, early retirement and commutation factors were incorrectly stated and the CETV was out of date and therefore should not be used;

e) numerical errors; and

f) a failure to explain why the transfer met the customer's needs in the Suitability Report. For example, the need of one customer to repay the mortgage was not demonstrated given a large monthly income surplus.

4.38. The three reviews by the external consultants were sent to Mr Lewis. He met with Ms Jones to provide oral feedback and suggest what further action was needed. Ms Jones stated to the Authority that she was not told by Mr Lewis that there were significant failings. Ms Jones then undertook the additional work which was checked by Mr Lewis. No further cases were submitted by Mr Lewis to the external consultants for review.

Ms Jones's approach to Pension Transfer advice

4.39. Once Ms Jones had explained the benefits of the DBPS to the customer and a decision had been made to proceed with the Pension Transfer advice process, she provided advice designed to achieve the customer's stated objectives rather than engage in an objective assessment of what was in their best interests and whether those objectives were realistic.

4.40. In the Interview Ms Jones stated:

> "*we looked at the options for them. We looked at what they wanted to achieve, and we took lots of things into consideration, and if they couldn't achieve what they wanted to, then the option was the transfer out.'*

4.41. The Pension Transfer advice that she gave was therefore overly influenced by the aims of customers.

4.42. Although Ms Jones stated that options were not ruled out prior to assessment of a customer's circumstances, she was of the view that the reduction in the value of a BSPS customer's funds, on entering the PPF, was a very significant factor for many of them, making a Pension Transfer more likely. She stated that the 10% drop in the value of their fund from the BSPS, when entering the PPF, was a '*big thing'* for those customers.

4.43. Further, many customers did not like the option of joining BSPS 2 because its terms did not retain some of the benefits that had been available under the BSPS. For example, under its "high-low" option, some members of the BSPS had been able to obtain a full BSPS pension income when they reached 60, rather than wait until they were 65, albeit the BSPS pension income then reduced once they became entitled to a state pension at age 65. Thereby those customers enjoyed a higher income in those earlier years. Early retirement was a very common objective for BSPS customers.

4.44. This benefit was valued by many of Ms Jones's customers because they had told her about friends and family who had been steel workers, some of whom had suffered from various health conditions, who had died soon after retirement, or just before they were due to retire. But this benefit was not available under BSPS 2.

The Authority's review of Ms Jones's advice

<u>Background</u>

4.45. In November and December 2017, the Authority visited and reviewed the processes of firms active in the Pension Transfer advice market. On 13 December 2017, WWFS was visited and assessed by the Authority who reviewed a sample of six of WWFS's customer files involving Pension Transfer advice, all of whom had been advised by Ms Jones. The Authority found almost identical customer objectives recorded, insufficient personal detail captured, and insufficient supporting soft facts noted. This suggested Ms Jones did not ask sufficient questions or gather enough personalised information about each customer to advise each customer based on their own personal circumstances, aims and objectives. The Authority found that two files contained suitable transfer advice, and four files did not contain sufficient information to make an assessment of suitability.

4.46. The review found that in most files:

a) customers were recorded as wanting control and flexibility in respect of their pension. There were few supporting facts recorded to demonstrate their rationale and to demonstrate the customer had the financial capability to understand the implications;

b) customers were recorded as stating that they had lost faith in the sponsoring employer. However, there seemed little evidence that Ms Jones had discussed with the customer the implications of not taking up the PPF and BSPS 2 options and the investment risk which would need to be accepted;

c) customers were recorded as wanting to retire early and work part-time. There was insufficient evidence to show that the PPF and BSPS 2 options permitted customers to retire early and had been properly compared to the option of taking benefits early through a transfer and this had been appropriately discussed; and

d) most Suitability Reports used identical, or near identical, bullet points setting out the key reasons for the recommendation to transfer.

4.47. Following intervention by the Authority, the 19 Files were requested from WWFS and assessed. All of these customers had been advised by Ms Jones. All but two of them were former BSPS members. No files were requested for assessment in respect of the Potential Customers.

4.48. The review of the 19 Files demonstrated that, amongst other failings, Ms Jones had:

a) given non-compliant unsuitable Pension Transfer advice in 10 cases (and had given suitable advice in five cases) (see "*Unsuitable Pension Transfer advice*" below); and

b) made Personal Recommendations to its customers despite having failed to obtain from them information that was necessary for Ms Jones properly to assess whether a Pension Transfer was suitable in nine cases. In four of these cases the absence of necessary information was so significant that the Authority was unable to assess whether the Firm's advice was suitable (see "*Making Personal Recommendations without the necessary information*" below).

4.49. Nine of the 10 customers who received unsuitable Pension Transfer advice were members of the BSPS.

4.50. The average transfer value for the customers within the 19 Files who received unsuitable transfer advice was £393,006. The majority of customers within the 19 Files had transfer values similar to this figure, albeit these ranged from £86,294 to £600,172.

Unsuitable Pension Transfer advice

4.51. All 10 of the 19 Files that failed the assessment for suitability of transfer advice did so for multiple reasons.

4.52. For example, Customer E was married and a BSPS member with nearly 37 years pensionable service, and a current gross salary of £40,000 per annum (£30,479 net). The customer also had access to a DC workplace arrangement that he joined in April 2017 and was eligible for full state pension from age 67. The couple owned their own home, valued at £70,000, with no mortgage. They had joint savings of £22,000. Their combined expenditure was recorded as £1,157 per month. Ms Jones had not obtained the information for their expenditure in retirement. Ms Jones assessed Customer E as having 'lowest medium' attitude to investment risk and medium capacity for loss. Customer E's objectives were to have flexible income, retire early and to remove the fund from the BSPS:

a) Ms Jones recommended transfer out when there was strong reliance on the BSPS, particularly between early retirement and state pension age;

b) no sustainability assessment was completed showing how his lifestyle could be affected by transfer, or how crystallising some of the benefits in an unplanned way may impact the funds over time. Ms Jones did not show the customer could bear the risk of transfer;

c) the need for flexibility is not self-evident, explained or scrutinised in the file;

d) despite Customer E's concern about the fund reduction on entering the PPF, the receiving scheme would have to achieve a critical yield of 6.6% to match these benefits which was a challenge for the 'lowest medium' attitude to risk rating. The critical yield to match the BSPS' benefits was 12% (without tax-free cash taken) and highly unlikely to be achievable given Customer E's risk profile;

e) Customer E's only investment experience was entering into his employer's new DC scheme shortly before the advice, such that there was nothing to suggest he would understand the risks noted above.

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

4.53. The customer was assessed as being reliant on the ceding scheme in all 10 of the 19 Files which contained unsuitable Pension Transfer advice. These customers did not have significant assets which could be used to supplement any shortfalls in their income needs.

4.54. A customer is considered by the Authority to be reliant on income from the ceding scheme in retirement if it would be 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.

4.55. Ms Jones's advice to these customers to complete a Pension Transfer exposed them to the risk of not being able to meet their income needs throughout retirement because their income would be dependent on the performance of the recommended investment. The Authority considers that the Firm did not have a reasonable basis for believing that these customers could financially bear the investment risks related to the Pension Transfers recommended in their cases.

4.56. In five of the 10 files, Ms Jones recommended transfer away from the ceding scheme when there was insufficient evidence to suggest that the customer could bear the transfer risk. There was a pattern of the Firm not completing a detailed sustainability analysis to illustrate the potential for customers to run out of money; rather this was dealt with by a warning or illustration which lacked context and analysis and did not adequately reflect how the customer wanted to access their fund.

4.57. For example, Customer D was 53 and married at the time of the advice and was due to start a new job. The CETV was £86,294. Although the customer had another pension, the fund under consideration was her only defined benefit pension. She wanted to retire at 60 and provide her family with a lump sum on her death. Customer D had no investments and had £2,000 in savings. Information concerning the customer's long-term expenditure was not obtained by Ms Jones. She had little financial experience, appearing to spend the net household income on living expenses. Customer D's financial situation was such that she could not withstand losses:

a) although Customer D and her spouse had other pension provision, the Suitability Report suggested that the customer was likely to deplete the transfer fund in her 70s. Without the required information obtained about Customer D's retirement needs, it appeared likely the customer would be reliant on the DB income given the level of expenditure at the time of the fact find;

b) Ms Jones had not demonstrated the basis for believing that Customer D was able financially to bear the risk of transfer consistent with her objectives. The objectives of providing for her family with a lump sum on her death may have come at the expense of giving up guaranteed income; and

c) Customer D’s aim of retiring at the age of 60 had not been assessed for affordability, given that retirement expenditure information had not been recorded on file.

It therefore could not be demonstrated that transferring out of her pension was in the best interests of Customer D.

Lack of evidence to support customer objectives

4.58. Ms Jones failed to provide sufficient evidence to demonstrate that specific customer objectives, for example, family benefits on death, flexibility, maximising tax-free cash and protecting the pension fund from decrease in value, which drove the Pension Transfer were in the customer’s best interests. This was seen in all 10 cases assessed by the Authority as being unsuitable for transfer.

4.59. The Authority considers that the primary purpose of a pension is to meet the income needs of an individual in retirement. Where a customer expresses a strong wish to maximise their death benefits, or to increase the flexibility of alternative arrangements, there is an increased risk that this will undermine the primary purpose of their pension. A balance therefore needs to be achieved between these objectives, which is in the best interests of the customer given their circumstances.

4.60. Amongst the 10 files there were several 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. But the information in those files did not adequately demonstrate that those wishes and needs had been properly tested, or this outcome was in the customer’s best interests.

4.61. Instead, Ms Jones set out, in generic terms, the customer’s acceptance of the disadvantages of transfer, such as lower pension income and increased risk, and the customer’s apparent knowledge of their options, risk and investments. As a result:

a) the implication, whether intended by Ms Jones or not, was that the customer, from an apparent informed and knowledgeable position, was responsible for the advice (not the decision) to transfer out; and

b) Ms Jones failed to analyse and present findings of why, for the customer in question, weighing the competing factors, to transfer out was in the best interests of the customer.

4.62. The Authority considers that a firm which provides advice on a Pension Transfer, has a responsibility to explore whether any concerns expressed by a customer are legitimate, and to ensure that the customer is properly informed about those concerns.

4.63. In several of the 10 files, customers expressed concerns relating to the possibility that the BSPS would enter the PPF. But when explaining the reasons for the recommendation to complete a Pension Transfer, instead of exploring those concerns and considering what weight should be attached to them given the customer's particular circumstances, Ms Jones repeated the customer's views on the instability of the BSPS and stated that it was under-funded.

4.64. In some of the 10 files, the Suitability Reports for BSPS members were very similar, often stating that the customer had the objectives of wanting their pension reviewed along with control and flexibility without explaining the need underlying the aim. Similar vague or templated wording was also seen in the section listing the reasons for the recommendation.

4.65. Instead of engaging in an assessment of transfer, the reasons for transfer sometimes consisted of different ways of restating the desire for an objective, or made general assertions without personalisation such as, '*the current BSPS rules do not allow you to take full advantage of new pension freedom rules*…' Ms Jones accepted in the Interview that she should have '*formulated [the reasons] in a different way'.* In some cases, the driver for transfer as explained by Ms Jones in the Interview was not articulated in the Suitability Report at all, and Ms Jones explained that she would have '*gone down a different route'* with the customer if giving advice again.

Lack of necessary attitude to transfer risk and knowledge and experience

4.66. WWFS was obliged 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 investment risk borne by the customer. WWFS was also 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). Ms Jones failed to ensure WWFS met these requirements.

4.67. Ms Jones failed to demonstrate the customer had sufficient knowledge to understand the risks of transfer in six cases. Despite the fact find form asking for detail around current and previous investments, Ms Jones often recorded only that the customer had little experience but some understanding without explaining how this satisfied the adviser as to this factor in determining suitability. Where the customer had asserted a level of knowledge when their occupation and investments suggested this was not the case, there was no evidence of Ms Jones challenging or scrutinising these answers on file. Ms Jones relied on her own impression of the customer's understanding even when the customer had no investment experience at all, with very limited savings yet, post-transfer, went on to manage the pension himself. This exposed the customer to significant risk.

4.68. In five cases, the customer did not have the necessary attitude to transfer risk. Customer files lacked evidence of discussions around risk, depletion of the fund and customer responses/rationale as regards their views. The general lack of investment experience indicates that Ms Jones could not have been informed by the customer's investment history. Ms Jones failed to properly evaluate the attitude to risk questionnaires. She stated in the Interview that the answers provided by the customer were a tool to prompt discussion, and that the outcome of that discussion could have been better documented. She accepted that the answers were not used to assess whether the customer had an appetite to give up guarantees offered by Defined Benefit schemes, and that, with hindsight, they should have been used in that way. Where a customer had stated that they wanted a guaranteed rate of return rather than uncertainty, this should have been a clear signal that the customer enjoyed the guaranteed benefits of the BSPS. Low/medium risk profiles within the sample suggested a preference for safe returns.

Transfer analysis not supportive of transfer

4.69. In order to provide Pension Transfer advice, Ms Jones was obliged to carry out a comparison between the benefits likely to be paid by the ceding DBPS with the benefits afforded by a personal pension. The TVAS document facilitates this comparison as required by COBS 19.1.2R(1). 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 ceding DBPS. The firm must ensure that the comparison included 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 firm's advice.

4.70. Ms Jones failed to follow this guidance in seven cases. Ms Jones failed to fairly present the comparison or take into account the customer's objectives so as to make the comparison useful for the customer. Common errors include calculating the comparison to the incorrect retirement age, and not reflecting a desire to take tax-free cash. Where calculated to a higher retirement age than desired by the customer, the critical yield figure will be lower, suggesting the receiving fund does not need to perform as well. Critical yields, where correctly calculated in these cases, were so high as to be unlikely to be achieved and exceeded what was likely to be achieved with the customer's attitude to risk grading.

4.71. Ms Jones failed to explain why despite the required growth rate, transfer was in the best interests of the customer. 17 suitability reports stated that, '*Even though it is unlikely the critical yield required to match the benefits that could be provided by your existing defined benefit pension can be achieved, I have still recommended that you transfer for all the other reasons stated'*. As stated above, the other reasons were often not personalised.

Customer objectives can be met by the Defined Benefit Pension Scheme

4.72. In several cases, Ms Jones recommended transfer away from the ceding DBPS, in these instances the BSPS, in circumstances where the customer had the objective of early retirement, or had stated a preference for guaranteed returns, when this could be met by BSPS 2 or the PPF. When transfer away from a DBPS is not necessary to achieve customer objectives, or results in the loss of a benefit which is important to the customer, the risk materialises that transfer is highly unlikely to be in the customer's best interests. This was the case in four customer files reviewed by the Authority.

<u>Making Personal Recommendations without the necessary information</u>

4.73. During the Relevant Period, COBS 9.2.1R stated that a firm must take reasonable steps to ensure that a Personal Recommendation (which included, in this context, a recommendation to transfer or not to transfer a pension) was suitable for its customer (COBS 9.2.1R, see Annex A).

4.74. When making the Personal Recommendation, 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) financial situation; and (c) investment objectives.

4.75. COBS 9.2.2R stated that a firm must obtain from the customer 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.

4.76. COBS 9.2.6R stated that if a firm did not obtain the necessary information to assess suitability, it must not make a Personal Recommendation. Making a Personal Recommendation without the necessary information increases the risk of providing unsuitable advice.

4.77. In four of the 19 Files there was an absence of necessary information, such that Ms Jones was required not to make a Personal Recommendation on behalf of WWFS, as an assessment as to suitability could not properly be made. The customer was therefore at risk of receiving unsuitable advice. In all of those four cases, there was a failure to obtain information about the customer's retirement needs and/or spousal pension or other income entitlement such that a proper and accurate assessment of reliance on the fund could not be undertaken.

<u>Additional breaches found in the review of the 19 Files</u>

4.78. In addition to the four files where the absence of necessary information meant that an assessment could not properly be made, and therefore suitability could not be demonstrated by Ms Jones, there was a failure to collect necessary information in a further five files. However, despite the absence of this information, the Authority was able to assess transfer suitability by making reasonable assumptions or inferences as to the missing information. All five of these files were assessed by the Authority as containing unsuitable transfer advice.

4.79. The suitability requirement in COBS 9.2.1R extends to the investment advice into which the firm has recommended the customer should transfer their pension funds (COBS 9.2.1R(1)(a) and COBS 9.2.2R(1)(b)). Ms Jones failed to ensure that WWFS, through her advice, complied with these rules in four files with some of them failing on multiple areas of assessment.

4.80. The Authority's rules about the provision of information to customers require that consumers are given all the necessary information to enable them to make an informed decision and are, ultimately, treated fairly.

4.81. Ms Jones was unable to demonstrate WWFS's compliance with rules set out in COBS in 15 of the 19 Files. Objectives, priorities, and recommendations were insufficiently tailored to the customer's circumstances. Ms Jones stated in the Interview that, *'I have fallen down on the…to be able to adequately articulate [the reason for the recommendation] in writing'.* Suitability Reports were not compliant with rules set out in COBS in 10 cases. The effect of this was exacerbated where the report did not engage in a meaningful assessment of the alternatives to transfer. Some reports included incorrect, complex information and repetitive content with little attempt to clearly explain how options might meet retirement needs. Others did not bring important information to the attention of the customer. Similarly, in eight cases, the transfer analysis reports contained numerous tables and figures, making their significance hard to understand, particularly in light of the Suitability Report failings.

5. FAILINGS

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

5.2. The Authority considers that Ms Jones breached Statement of Principle 2 during the Relevant Period, in that she failed to act with due skill, care and diligence when advising customers on Pension Transfers. Her failings meant that the Pension Transfer advice she provided did not comply with regulatory requirements and standards, and created a significant risk that her advice that a customer should transfer out of their DBPS would not be suitable for them.

5.3. In particular, Ms Jones:

a) gave unsuitable advice to customers to transfer out of their DBPS. This was because she:

i. based her recommendation on the incorrect assumption that a transfer to meet a customer's stated objectives was in the customer's best interests. In reality, many customers' objectives were either not realisable or financially viable, or could have been met by the existing scheme;

ii. failed to assess, or give due consideration to, whether customers would be reliant on the income from their DBPS or whether they could financially bear the risks involved in a Pension Transfer. She did this despite knowing that, following the recommended transfer, customers' retirement income would be dependent on the performance of the new investment;

iii. failed to assess whether the customer had the necessary attitude to risk, as well as the experience and knowledge to understand the risks involved in the Pension Transfer recommended and failed to give due consideration to this where they did not; and

iv. failed to undertake adequate transfer analysis to compare the benefits likely to be paid under the DBPS with benefits afforded by the personal pension or other pension scheme into which it was proposed that the customer should transfer; and

b) provided advice to customers to transfer out of their DBPS when there was missing information, without which the suitability of transfer advice could not be determined. Making a Personal Recommendation without the necessary information increases the risk of providing unsuitable advice.

5.4. As a consequence of her actions, Ms Jones failed to meet the regulatory standards applicable to a Pension Transfer Specialist performing the CF30 (Customer) controlled function. The Authority therefore considers that she is not fit and proper to perform 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.

6. SANCTION

Financial penalty

6.1. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. 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. Based on the 19 Files, the Authority considers that 74% of WWFS's completed Pension Transfers following advice given by Ms Jones were non-compliant with the Authority's rules (53% unsuitable transfer advice plus 21% missing information such that advice should not have been given).

6.4. The Authority considers that Ms Jones received a financial benefit of £31,388 as a result of her non-compliant Pension Transfer advice in breach of Statement of Principle 2.

6.5. The Authority has charged interest on Ms Jones's benefit at 8% per year from the end of the Relevant Period to the date of this Notice, amounting to £14,226.

6.6. Step 1 is therefore £45,614 (rounded down to the nearest £1).

Step 2: the seriousness of the breach

6.7. Pursuant to DEPP 6.5B.2 G, 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.

6.8. The period of Ms Jones's breach of Statement of Principle 2 was from 16 March 2017 to 14 December 2017. Pursuant to DEPP 6.5B.2G(2), in cases where the breach lasted less than 12 months, the relevant income will be that earned by the individual in the 12 months preceding the end of the breach. The Authority considers Ms Jones's relevant income for this period to be £47,626, which sum is calculated by taking her relevant income during the Relevant Period and pro-rating that sum to an annual equivalent.

6.9. 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%

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

Impact of the Breach

6.10. DEPP 6.5B.2.2G(8) lists factors relating to the impact of a breach committed by an individual.

6.11. Ms Jones's breach caused a significant risk of loss, as a whole, to consumers who transferred out of their DBPS as a result of her advice. Completed transfers had a total CETV of £9,769,550. The total CETVs of completed cases and the Pipeline Cases stopped for which Ms Jones was responsible was £35,666,534. Ms Jones's breaches may have placed a large proportion of those funds at significantly increased risk of loss had it not been for the Authority intervening, which stopped her advice on the Pipeline Cases from being executed (DEPP 6.5B.2G(8)(b)).

6.12. Ms Jones's breach caused a significant risk of loss to individual consumers who transferred out of their DBPS as a result of her advice. For many customers, their DBPS was their most valuable asset (average CETV of the file sample was £393,006, average CETV for Pipeline Cases was £310,090) and was their main retirement provision (DEPP 6.5B.2G(8)(c)). The average loss by consumers was estimated by the Financial Ombudsman Service to be 12% of the transfer value, resulting in an estimated average risk of loss of £47,160 for the 19 Files sample and £37,210 for the 85 Pipeline Cases.

6.13. Ms Jones's breach disproportionately affected BSPS members, who made up the majority of her 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 (DEPP 6.5B.2G(8)(d)).

Nature of the Breach

6.14. DEPP 6.5B.2.2G(9) lists factors relating to the nature of a breach committed by an individual.

6.15. The breach was a continuous one during the Relevant Period (DEPP 6.5B.2G(9)(b)).

6.16. Ms Jones has worked in financial services for several years. However, she had only worked as a Pension Transfer Specialist for a short period prior to the Relevant Period (DEPP 6.5B.2G(9)(j) and (k)). As a Pension Transfer Specialist, she had responsibility for the Pension Transfer advice issued by the Firm where the failings arose.

6.17. However, the Compliance oversight in place at WWFS was wholly inadequate and failed properly to identify and address poor reasoning and errors evident from Ms Jones's work as a Pension Transfer Specialist towards the beginning of the Relevant Period thereby potentially contributing to her continuing to give non-compliant Pension Transfer advice throughout the Relevant Period ((DEPP 6.5B.2G(9)(l)).

6.18. Ms Jones did not exploit, or seek to exploit, Pension Transfer customers. The greater than anticipated number of such customers who sought advice from WWFS, during the busy Relevant Period, was largely a consequence of the Firm's location, rather than active steps taken by Ms Jones to increase the volume of such business (for example the use of introducers).

Whether the breach was deliberate and/or reckless

6.19. DEPP 6.5B.2G(10) and (11) list factors tending to show whether the breach was deliberate or reckless. The Authority considers that the breaches committed by Ms Jones were as a result of her serious lack of competence, rather than deliberate or reckless acts (DEPP 6.5B.2G(11)).

Level of Seriousness

6.20. DEPP 6.5B.2G(12) lists factors likely to be considered 'level 4 or 5 factors'. The Authority considers that the fact that Ms Jones's breach caused a significant risk of loss to customers is particularly relevant (DEPP 6.5B.2G(12)(a)).

6.21. DEPP 6.5B.2G(13) lists factors likely to be considered 'level 1, 2 or 3 factors'. The Authority considers that Ms Jones's breach of Statement of Principle 2 was committed negligently (DEPP 6.5B.2G(13)(d)).

6.22. Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 3 and so the Step 2 figure is 20% of £47,626.

6.23. Step 2 is therefore £9,525.

Step 3: mitigating and aggravating factors

6.24. 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.

6.25. The Authority has considered whether any of the mitigating or aggravating 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.

6.26. Step 3 is therefore £9,525.

Step 4: adjustment for deterrence

6.27. 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.

6.28. The Authority considers that the Step 3 figure of £9,525 does not represent a sufficient deterrent to Ms Jones and others, and so has increased the penalty at

Step 4 by a factor of two to meet its objective of credible deterrence (DEPP 6.5B.4G(a)).

6.29. Step 4 is therefore £19,050.

Step 5: settlement discount

6.30. The Authority and Ms Jones did not reach agreement to settle at Stage 1, so no discount applies. The Step 5 figure is therefore £19,000 (rounded down to the nearest £100, in accordance with the Authority's usual practice).

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 Ms Jones is £64,614.

6.32. The Authority would have imposed a financial penalty on Ms Jones of £64,614. However, the Authority recognises that there is significant liability for redress for WWFS's customers which has fallen to the FSCS. As at 21 November 2023, the FSCS has paid out £758,725.55 in compensation to customers of WWFS. Had it not been for the compensation limit of £85,000, the total compensation available to customers would have been £972,197.28. In these circumstances, the Authority has agreed with Ms Jones that in lieu of the imposition of a financial penalty, the sum of £40,888 be paid direct to the FSCS to contribute towards any redress due to WWFS's 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 BSPS, the Authority hereby publishes a statement of Ms Jones' 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 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 Ms Jones's breaches are not yet quantified, they may be significant. In light of this, and the FSCS having already paid out £758,725.55 to WWFS's customers, the Authority has agreed that the sum of £40,888 should be paid direct to the FSCS.

6.34. The Authority has had regard to the fact that Ms Jones has agreed to transfer 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 WWFS's customers. On that basis, the Authority has decided not to impose a financial penalty on Ms Jones but instead hereby publishes on its website the Notice as a statement of Ms Jones's misconduct under section 66 of the Act.

Prohibition Order

6.35. The Authority has had regard to the guidance in Chapter 9 of EG in considering whether to impose a prohibition order on Ms Jones. The Authority has the power to prohibit individuals under section 56 of the Act.

6.36. The Authority considers that Ms Jones lacks fitness and propriety in all the circumstances, in particular relating to her lack of competence and capability for the reasons set out above. Therefore, the Authority considers it appropriate and proportionate in all the circumstances to prohibit Ms Jones from performing any functions 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 Ms Jones under and in accordance with section 390 of the Act.

7.2. The following statutory rights are important.

Decision maker

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

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: 020 7066 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

RELEVANT STATUTORY PROVISIONS

The Financial Services and Markets Act 2000

The Authority's operational objectives

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

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.

Sections 66 and 66A of the Act

3. Under section 66 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.

4. 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 Handbook

5. The Authority must have regard to the relevant regulatory provisions in the Handbook. The main provisions that the Authority considers relevant are set out below.

Statements of Principle and Code of Practice for Approval Persons[1]

6. The part of the Handbook entitled the Statements of Principle and Code of Practice for Approval Persons, and known as APER, sets out the Statements of Principle issued under section 64A 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.

7. 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 a particular Statements of Principle.

8. Statement of Principle 2 states that:

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

9. During the Relevant Period, accountable functions are in summary: the Authority's controlled functions; the Prudential Regulatory Authority's controlled functions; and any other functions in relation to the carrying on a regulated activity; in relation to the authorised persons in relation to which that person is an approved person.

10. APER 3.2.1E states that:

> In determining whether or not the particular conduct of an approved person within their accountable function complies with the Statements of Principle, the following are factors which, in the opinion of the Authority, are to be taken into account:
>
> > (1) whether that conduct relates to activities that are subject to other provisions of the Handbook;

[1] Where APER or COBS have been the subject of subsequent amendment they are stated as applicable during the Relevant Period.

(2) whether that conduct is consistent with the requirements and standards of the regulatory system relevant to his firm.

11. Those descriptions and factors relevant to Statement of Principle 2 include:

APER 4.2.2G which states:

In the opinion of the Authority conduct of the type described in […] APER 4.2.5G, […] does not comply with Statement of Principle 2.

APER 4.2.5G which states:

Recommending an investment to a customer, or carrying out a discretionary transaction for a customer, where the approved person does not have reasonable grounds to believe that it is suitable for that customer, falls within APER 4.2.2G.

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12. COBS applies to a firm with respect to designated investment business carried on from an establishment maintained by it, or its appointed representative, in the United Kingdom and activities connected with them.

13. The following provisions of COBS applied to WWFS during the Relevant Period.

The client's best interest rule

14. 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).

15. COBS 9.2.1R:

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

(2) When making the personal recommendation or managing his investments, the firm must obtain the necessary information regarding the client's:

(a) knowledge and experience in the investment field relevant to the specific type of designated investment or service;

(b) financial situation; and

(c) investment objectives;

so as to enable the firm to make the recommendation, or take the decision, which is suitable for him.

16. 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.

17. COBS 9.2.3R:

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

(1) the types of service, transaction and designated investment with which the client is familiar;

(2) the nature, volume, frequency of the client's transactions in designated investments and the period over which they have been carried out;

(3) the level of education, profession or relevant former profession of the client.

18. 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.

19. During the Relevant Period COBS 9.4 set out the following rules and guidance concerning Suitability Reports.

20. COBS 9.4.1R:

> A firm must provide a suitability report to a retail client if the firm makes a personal recommendation to the client and the client (4) enters into a pension transfer or pension opt-out.

21. COBS 9.4.7 R:

> 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.

22. 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.

23. COBS 19.1.2 R:

> A firm must:
>
> (1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme or other pension with safeguarded benefits with the benefits afforded by a personal pension, 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.

24. COBS 19.1.3 G:

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.

25. COBS 19.1.4R:

When a firm compares the benefits likely 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 (COBS 19.1.2R (1)), it must: (1) [make certain listed assumptions in its calculations, or use more cautious assumptions]; (2) calculate the interest rate in deferment; and (3) have regard to benefits which commence at difference times.

26. COBS 19.1.6 G:

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.

27. COBS 19.1.7 G:

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.

28. COBS 19.1.7A G:

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.

29. COBS 19.1.7B G:

In considering whether to make a personal recommendation, a firm should not regard a rate of return which may replicate the benefits being given up from the defined benefits pension scheme or other scheme with safeguarded benefits as sufficient in itself.

30. COBS 19.1.8 G:

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

31. The part of the 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.

32. 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. FIT 1.3.1BG states that the most important considerations will be the person's:

(1) honesty, integrity and reputation,

(2) competence and capability and

(3) financial soundness.

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

34. FIT 2.2.1G provides guidance in that in determining a person's competence and capability, the Authority in accordance with FIT 1.1.2G, will have regard to all relevant matters including but not limited to (2) whether the person has demonstrated by experience and training that they are suitable, or will be suitable if approved, to perform the controlled function.

The Enforcement Guide

35. The Authority's policy for exercising its power to make a prohibition order is set out in Chapter 9 of the Enforcement Guide ("EG").

36. 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.

37. EG 9.2.3 states that the scope of a 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.

38. EG 9.3.5(4) gives a serious lack of competence, as an example of a type of behaviour which has previously resulted in the Authority deciding to issue a prohibition order.

39. 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

40. Chapter 6 of the Decision Procedures and Penalties Manual ("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/?view=chapter