
FINAL NOTICE

To: **Wheatcroft Fox & Company**

Of: **Newhall House
204-206 Newhall Street
Birmingham
West Midlands
B3 1SH**

FRN: **172764**

Date: **29 June 2011**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives Wheatcroft Fox & Company final notice about the issue of a public censure

1. THE ACTION

- 1.1. The FSA gave Wheatcroft Fox & Company (“Wheatcroft Fox”) a Decision Notice on 29 June 2011 which notified it that, for the reasons listed below and pursuant to section 205 of the Financial Services and Markets Act 2000 (“the Act”), the FSA has decided to issue a public censure of Wheatcroft Fox. This public censure is for failing to comply with Principles 3 and 9 of the FSA’s Principles for Businesses (“the Principles”), between 1 June 2004 and 30 May 2009 (“the relevant period”) and Principle 11 from 31 August 2010.

- 1.2. Were it not for the financial position of the partners of Wheatcroft Fox, the FSA would have imposed a financial penalty of £45,000 in respect of the breaches identified.
- 1.3. Wheatcroft Fox has agreed that it will not be referring the matter to the Upper Tribunal (Tax and Chancery Chamber).
- 1.4. Accordingly, for the reasons set out below, the FSA issues this public statement of Wheatcroft Fox's misconduct.

2. REASONS FOR THE ACTION

- 2.1. On the basis of the facts and matters described below, the FSA issues a public censure of Wheatcroft Fox in respect of breaches of Principles 3, 9 and 11. These breaches relate to failings in the adequacy of Wheatcroft Fox's systems and controls and failing to ensure that it demonstrated the suitability of its advice. They also relate to its failure to deal openly and co-operatively with the FSA.
- 2.2. In summary, Wheatcroft Fox failed to:
 - (1) record sufficient information about its customers' personal and financial circumstances for assessing the suitability of its recommendations, in contravention of Principle 9;
 - (2) demonstrate that it had conducted adequate research into alternative products and providers, in contravention of Principle 9;
 - (3) issue suitability reports, which contained sufficient detail to enable customers to make an informed decision, in contravention of Principle 9;
 - (4) demonstrate that it had taken reasonable care to ensure the suitability of its advice to customers, in contravention of Principle 9;
 - (5) ensure that its systems and controls were adequate to demonstrate and monitor the suitability of the advice it gave to customers and ensure compliance with regulatory requirements and standards, in contravention of Principle 3; and
 - (6) comply adequately or at all with the requirement notice imposed by the FSA under section 166 of the Act, in contravention of Principle 11.

2.3. The FSA regards these failings as serious because:

- (1) a number of these failings related to pension products, which the FSA has publicised as being a high risk product;
- (2) in 2006, Wheatcroft Fox's external compliance consultant first identified failings in the sales and advice processes and brought these to the firm's attention. Despite this, and the fact that the external compliance consultant raised similar concerns in subsequent years, there is little evidence that Wheatcroft Fox made substantive changes to its procedures as a result;
- (3) Wheatcroft Fox could not demonstrate the suitability of its recommendations;
- (4) Wheatcroft Fox could not demonstrate that it provided its customers with adequate information to ensure that they were in a position to make an informed decision; and
- (5) Wheatcroft Fox has failed to address adequately the potential consumer detriment that may arise from its inability to demonstrate the suitability of its advice and its failure to comply with the requirement notice imposed by the FSA under section 166 of the Act.

2.4. As a result of the failings described at paragraph 2.2(1) to 2.2(5) above, Wheatcroft Fox exposed customers to the risk of receiving unsuitable advice.

2.5. The FSA has taken into account the fact that, although the customer files did not include sufficient "know your customer" ("KYC") information, Wheatcroft Fox was able to demonstrate knowledge of its customers' personal and financial circumstances, which the FSA regards as a mitigating factor.

2.6. Subject to paragraph 1.2 above, were it not for the breach of Principle 11, which the FSA considers to be an aggravating factor in this case and sufficiently serious to warrant an increase in the financial penalty, the FSA would have imposed on Wheatcroft Fox a financial penalty of £30,000.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

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

4. FACTS AND MATTERS RELIED ON

Background

- 4.1. Wheatcroft Fox is a small independent financial adviser based in Birmingham. Until 31 March 2010, the majority of its business comprised the provision of investment advice, but it also conducted some insurance intermediary business. Wheatcroft Fox has been authorised since 1 December 2001 and, until 31 March 2010, was permitted by the FSA to carry on the following regulated activities:
- (1) advising on pension transfers and pension opt outs;
 - (2) advising on investments (except on pension transfers and pension opt outs);
 - (3) agreeing to carry on a regulated activity;
 - (4) arranging (bringing about) deals in investments;
 - (5) assisting in the administration and performance of a contract of insurance; and
 - (6) making arrangements with a view to transactions in investments.
- 4.2. Wheatcroft Fox has two partners who are its sole customer advisers.
- 4.3. The FSA carried out a Treating Customers Fairly (“TCF”) assessment of Wheatcroft Fox, as part of the FSA’s assessment programme for small firms in October 2008 and identified concerns regarding the adequacy of Wheatcroft Fox’s systems and controls and its ability to demonstrate that it was treating its customers fairly. The FSA conducted a TCF follow up visit in November 2008 in the course of which Wheatcroft Fox’s partners were interviewed and a sample of customer files were reviewed.
- 4.4. Following the TCF assessment and follow up visit, the FSA conducted an investigation into Wheatcroft Fox to review its compliance with relevant regulatory requirements and standards in connection with its business during the relevant period.
- 4.5. As a result of this investigation, the FSA identified deficiencies in Wheatcroft Fox’s systems and controls and advice and sales processes, including a number of failings in relation to the recording of KYC information, suitability of advice and communications with its clients.

Failure to demonstrate suitability of advice

4.6. As part of its investigation, the FSA reviewed 32 of Wheatcroft Fox's investment sales, including investment bonds and personal pension plans. Of these sales, 6 recommendations were made after the FSA's visit in November 2008. The FSA identified that Wheatcroft Fox had significant failings in its advice and sales processes which led to customers being put at risk of receiving unsuitable advice. Wheatcroft Fox was unable to demonstrate that it had taken reasonable care to ensure the suitability of its advice. Specifically, Wheatcroft Fox failed to:

- (1) demonstrate that it had obtained and recorded sufficient personal and financial information about its customers to assess the suitability of its recommendations to enter into investment contracts. In 30 of the 32 sales reviewed by the FSA there was insufficient information held on the customer file (such as limited KYC information), or incomplete or non-existent fact finds, to justify the recommendations made. In particular;
 - (a) there was no fact find on the customer files in five sales;
 - (b) in 17 out of 32 sales reviewed, the customer files only contained historic and/or limited or incomplete fact finds or blank fact finds, which were signed by the customer; and
 - (c) in 6 out of 32 sales reviewed, there were specific issues relating to the timing of the completion of the fact find on the customer files. For example, in one sale Wheatcroft Fox gathered information about the customer's personal and financial circumstances, and obtained the customer's signature on the customer agreement, after the application form for the investment had been completed and the suitability letter, including the recommendation, had been issued; and
 - (d) in 21 out of 32 sales reviewed, the customer file did not clearly and fully identify the customers' investment objectives, either because there was no fact find on the file relevant to the transaction reviewed or because the objectives detailed on the fact find were inadequate and not sufficiently tailored to the individual customer.
- (2) demonstrate that it had adequately assessed and described the customer's attitude to risk. In 16 of the 32 sales reviewed, the fact find did not include an assessment of the customers' attitude to risk. In 22 of the sales, there was no

description of the rating or examples of the type of product falling within each category;

- (3) demonstrate that it had undertaken adequate or independent product research to support its recommendations. In 16 of the 32 sales reviewed there was no evidence of research into alternative products or providers;
 - (4) communicate with clients in a way that was clear, fair and not misleading. In 17 of the 32 sales reviewed, Wheatcroft Fox issued suitability reports which contained insufficient detail to enable customers to make an informed decision. For example, they were not individually tailored to the particular customer, nor did they adequately explain why, having regard to the customer's personal and financial circumstances, Wheatcroft Fox had concluded that the recommended investment was suitable for that customer. In addition, suitability reports did not include appropriate risk warnings in 18 of the 32 sales reviewed;
 - (5) demonstrate that it had provided adequate information relating to alternative products or providers to customers. In 26 of the 32 sales reviewed, the suitability reports for customers either did not include, or contained limited information about, alternative products and providers and the reason for discounting them; and
 - (6) demonstrate that it had explained the main consequences, including costs, charges and risks, associated with its recommendations. In 18 of the 32 sales reviewed, the suitability reports did not contain sufficient detail of the costs and charges associated with the advice.
- 4.7. By failing to record sufficient and accurate information about its customers and the product research conducted, and by providing inadequate suitability reports, Wheatcroft Fox could not demonstrate that its recommendations were made on the basis of an adequate assessment of customers' needs and circumstances. Wheatcroft Fox has therefore failed to take reasonable care to ensure the suitability of its advice, in breach of Principle 9.

Systems and controls

- 4.8. Wheatcroft Fox did not have adequate and appropriate systems and controls, compliance arrangements and risk management systems over its business to ensure it complied with regulatory requirements and standards. Specifically, Wheatcroft Fox;

- (1) had significant failings in its advice and sales processes which led to customers being put at risk of receiving unsuitable advice; and
 - (2) failed to implement an adequate process for monitoring the quality and suitability of its advice.
- 4.9. The FSA reviewed 32 investment sales relating to 22 customers and identified significant failings in the advice and sales process, as detailed in paragraphs 4.6 and 4.7 above. Wheatcroft Fox failed to;
 - (1) demonstrate that it had obtained and retained sufficient personal and financial information to demonstrate the suitability of its recommendations;
 - (2) demonstrate that it had conducted an adequate assessment of customers' attitude to risk;
 - (3) demonstrate that it had conducted research into alternative products or providers;
 - (4) demonstrate that it had explained the main consequences, including costs, charges and risks, associated with its recommendations; and
 - (5) issue suitability reports containing adequate information about alternative products and providers and the reason for discounting them and sufficient detail to enable customers to make an informed decision.
- 4.10. Wheatcroft Fox's TCF action plans for the period between July 2006 and June 2009 identified that, although its advisers gathered information about customers' personal and financial circumstances, this was not always evidenced on the customer files. Wheatcroft Fox's annual compliance review for the period from August 2007 to July 2008, completed by its external compliance consultant, identified that customer files did not always contain an up-to-date fact find and emphasised the importance of Wheatcroft Fox being able to demonstrate that it had gathered and retained sufficient KYC information. There was no evidence to demonstrate that Wheatcroft Fox took any steps to address this issue after it was brought to its attention.
- 4.11. Wheatcroft Fox failed to implement an adequate process for monitoring the quality and suitability of advice. In all 32 sales reviewed, there was no evidence that advice had been reviewed or monitored by Wheatcroft Fox. The compliance plans for the period from January 2006 to December 2009 stated that an external compliance consultant would check a 10% sample of customer files and that Wheatcroft Fox's

own compliance officer would also conduct a sample file check. However, there was no evidence on the files to demonstrate that Wheatcroft Fox had conducted its own internal checks on the quality and suitability of its advice and had instead relied heavily on its external compliance consultant in this respect.

- 4.12. By failing to take reasonable steps to establish and implement effective compliance procedures and sales processes over its business, Wheatcroft Fox failed to control its business with adequate and appropriate systems and controls, compliance arrangements and risk management systems, in breach of Principle 3.

Failure to co-operate

- 4.13. On 30 March 2010, the FSA advised Wheatcroft Fox that, in accordance with section 166 of the Act, it would be issuing a notice requiring Wheatcroft Fox to appoint a skilled person to conduct a review of its past business (“the section 166 requirement notice”). The FSA also invited Wheatcroft Fox voluntarily to vary its Part IV permission to cease to accept all new regulated business and retain sufficient funds to meet the costs of the section 166 requirement notice and any redress payable to consumers.
- 4.14. On 31 March 2010, Wheatcroft Fox applied to the FSA voluntarily to vary its Part IV permission to the effect that:
- (1) it would cease to accept all new regulated business for which it had Part IV permission with immediate effect; and
 - (2) it would retain sufficient funds (to be reviewed on an ongoing basis but initially not less than £50,000) to meet the costs of the section 166 skilled persons’ report imposed by the FSA to review past regulated sales and any redress payable to clients identified by the skilled person as ones which may have suffered loss.
- 4.15. On 31 March 2010, the FSA sent Wheatcroft Fox a draft section 166 requirement notice setting out the terms of the review of past regulated sales and asked for comments in respect of the proposed timescales for carrying out the required review, together with the names of three nominees to be considered for the appointment as skilled person to conduct the review of past regulated sales. Despite repeated requests, Wheatcroft Fox did not provide this information or comments on the proposed timescales.

- 4.16. Wheatcroft Fox's application voluntarily to vary its Part IV permission was accepted by the FSA with effect from 31 March 2010, on terms broadly the same as those set out in paragraph 4.14 above.
- 4.17. In the absence of Wheatcroft Fox providing the information requested by the FSA in relation to the draft section 166 requirement notice, the FSA formally imposed the section 166 requirement notice on Wheatcroft Fox on 31 August 2010. Despite the imposition of the section 166 requirement notice, Wheatcroft Fox failed to provide the information requested by the FSA and stated that it did not have the funds available to meet the cost of a past business review under the section 166 requirement notice.
- 4.18. By failing to comply with the section 166 requirement notice Wheatcroft Fox failed to deal with its regulator in an open and cooperative way, and disclose to the FSA appropriately anything relating to it of which the FSA would reasonably expect notice, in breach of Principle 11.

5. ANALYSIS OF THE BREACHES

- 5.1. By reason of the facts and matters referred to in paragraphs 4.6(1) to 4.6(6) above, the FSA considers that Wheatcroft Fox failed to take reasonable care to ensure the suitability of its advice to its customers in breach of Principle 9 and the associated Conduct of Business rules listed in Annex A. Specifically, Wheatcroft Fox failed to demonstrate that it obtained and retained sufficient personal and financial information about its customers and undertook adequate or independent product research. Wheatcroft Fox also failed to ensure that suitability reports were clear, fair and not misleading and that they explained the suitability, as well as the main consequences and risks, of its recommendations.
- 5.2. By reason of the facts and matters referred to in paragraphs 4.8 to 4.11 above, the FSA considers that Wheatcroft Fox failed to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems in breach of Principle 3 and the associated Conduct of Business rules listed in Annex A. Specifically, Wheatcroft Fox failed to maintain adequate systems, processes and controls to demonstrate and monitor the suitability of the advice it gave to customers and ensure compliance with regulatory requirements and standards.
- 5.3. By reason of the facts and matters referred to in paragraphs 4.13 to 4.17 above, the FSA considers that Wheatcroft Fox failed to deal with its regulator in an open and co-operative way and disclose to the FSA appropriately anything relating to the firm of which the FSA would reasonably expect notice in breach of Principle 11.

Specifically, Wheatcroft Fox failed to comply with the section 166 requirement notice imposed on it.

6. ANALYSIS OF THE SANCTION

- 6.1. The FSA's policy in relation to the imposition of a public censure is set out in Chapter 6 of the Decision Procedure and Penalties Manual (“DEPP”), which forms part of the FSA Handbook. DEPP sets out the factors that may be of particular relevance in determining whether it is appropriate to issue a public censure rather than impose a financial penalty. The criteria are not exhaustive and all relevant circumstances of the case will be taken into consideration. Relevant extracts from DEPP are set out in Annex A.
- 6.2. In addition, the FSA has had regard to the corresponding provisions of Chapter 13 of the Enforcement Manual (“ENF”) in force during the relevant period until 27 August 2007 and Chapter 7 of the Enforcement Guide (“EG”), in force thereafter.
- 6.3. In determining whether a financial penalty or a public censure is appropriate the FSA is required to consider all the relevant circumstances of a case.
- 6.4. The factors in this case would ordinarily merit the imposition of a financial penalty. However, the FSA considers that, in accordance with DEPP 6.4.2(8)G, there are exceptional circumstances under which conduct by a firm which would ordinarily attract a financial penalty, may be dealt with by way of a public censure. In this case, there is verifiable evidence that the partners of Wheatcroft Fox have insufficient resources to pay a financial penalty, such that the application of the FSA’s policy on serious financial hardship (set out in DEPP 6.5D) would result in the financial penalty being reduced to zero. Wheatcroft Fox’s breaches are such that the FSA would have otherwise imposed a financial penalty of £45,000.
- 6.5. The principal purpose of a public censure is to promote high standards of regulatory conduct by deterring firms which have committed breaches from committing further breaches, and helping to deter other firms from committing similar breaches, as well as demonstrating generally the benefits of compliant behaviour. A public censure is a tool that the FSA may employ to help it achieve its regulatory objectives.

- 6.6. The FSA considers that a public censure, rather than a financial penalty, is appropriate.
- 6.7. Additionally, DEPP 6.4.2 sets out a list of factors that may be of relevance in determining whether to issue a public censure or a financial penalty. The factors are not exhaustive and the FSA will consider all the relevant circumstances of the case. The FSA considers that the following factors are particularly relevant in this case.

Deterrence (DEPP 6.4.2G(1))

- 6.8. In determining whether to publish a statement of Wheatcroft Fox's misconduct, the FSA has had regard to the need to ensure those who are authorised persons must act in accordance with regulatory requirements and standards. The FSA considers that a public censure should be imposed to demonstrate to Wheatcroft Fox and others the seriousness with which the FSA regards its behaviour.

The seriousness of the breach in question (DEPP 6.4.2G(3))

- 6.9. In determining the appropriate sanction, the FSA has had regard to the seriousness of the breaches, including the nature of the requirements breached, the duration and frequency of the breaches, whether the breaches revealed serious failings in Wheatcroft Fox's systems and controls and the number of customers who were affected and/or placed at risk of loss.
- 6.10. Wheatcroft Fox's failings covered the period from 1 June 2004 to 30 May 2009 and from 31 August 2010 and are viewed as being serious because Wheatcroft Fox:
- (1) could not demonstrate the suitability of its recommendations;
 - (2) could not demonstrate that it provided customers with adequate information in respect of its recommendations to ensure that they were in a position to make an informed decision;
 - (3) failed to ensure that it had adequate systems and controls to ensure compliance with regulatory standards and requirements;

- (4) failed to make any substantive changes to its procedures despite being made aware by its external compliance consultant of failings in the sales and advice processes at Wheatcroft Fox; and
- (5) failed to address adequately the potential consumer detriment that may arise from its inability to demonstrate the suitability of its advice and its failure to comply with the requirement notice imposed by the FSA under section 166 of the Act.

Conduct following the breach (DEPP 6.4.2G(5))

- 6.11. While Wheatcroft Fox has taken some steps to rectify its shortcomings, the remedial action has not been sufficient to address fully the failings that have been identified. On 31 March 2010, Wheatcroft Fox applied voluntarily to vary its Part IV permission to the effect that it would cease all new regulated business with immediate effect. By agreeing to vary Wheatcroft Fox's Part IV permission, Wheatcroft Fox has allayed the FSA's immediate concern that it might pose an ongoing risk to consumers.

Previous action taken by the FSA (DEPP 6.4.2G(7))

- 6.12. In determining the appropriate sanction, the FSA has taken into account sanctions imposed by the FSA on other authorised persons for similar behaviour. This was considered alongside the deterrent purpose for which the FSA imposes sanctions.

The financial impact on the person concerned (DEPP 6.4.2G(8))

- 6.13. Wheatcroft Fox has breached Principle 3, 9 and 11. The breaches are serious and the FSA would have imposed a financial penalty of £45,000 on Wheatcroft Fox as a result. However, the partners in Wheatcroft Fox have provided verifiable evidence that imposing such a financial penalty would cause them serious financial hardship. Under these exceptional circumstances, the FSA has decided to publish a statement of Wheatcroft Fox's misconduct and censure it publicly instead.

7. CONCLUSION

- 7.1 On the basis of the facts and matters described above, the FSA issues a public censure of Wheatcroft Fox for failing to comply with Principle 3, Principle 9 and Principle 11.

8. DECISION MAKERS

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

9. IMPORTANT

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

Publicity

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

- 9.3. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contact

- 9.4. For more information concerning this matter generally, Wheatcroft Fox should contact Rachel West of the Enforcement and Financial Crime Division at the FSA (direct line: 0207 066 0142 / fax: 0207 066 0143).

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Tom Spender
Head of Department
FSA Enforcement and Financial Crime Division

RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE

1. Statutory provisions

- 1.1. The FSA's regulatory objectives are set out in section 2(2) of the Act and include market confidence, public awareness, the protection of consumers and the reduction of financial crime.
- 1.2. Section 138 of the Act provides that the FSA may make such rules applying to authorised persons as appear to it to be necessary or expedient for the purpose of protecting consumers.
- 1.3. The FSA has the power, pursuant to section 205 of the Act, to issue a public censure where it considers an authorised person has contravened a requirement imposed on him by or under the Act.

2. Relevant Handbook provisions

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

Principles for Businesses

- 2.2. Under the FSA's rule-making powers as referred to above, the FSA has published in the FSA Handbook the Principles for Businesses ("Principles") which apply either in whole, or in part, to all authorised persons.
- 2.3. The Principles are a general statement of the fundamental obligations of firms under the regulatory system and reflect the FSA's regulatory objectives. A firm may be liable to disciplinary sanction where it is in breach of the Principles.
- 2.4. The Principles relevant to this matter are:
 - (1) Principle 3 (management and control) which states that "a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems."

- (2) Principle 9 (customers: relationships of trust) which states that “a firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.”
- (3) Principle 11 (relations with regulators) which states that “a firm must deal with its regulators in an open and co-operative way and must disclose to the FSA appropriately anything relating to the firm of which the FSA would reasonably expect notice.”

Conduct of Business Rules

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

Conduct of Business

- 2.6. Conduct of Business Rules (“COB”) applied to firms until 31 October 2007.
- 2.7. COB 5.2.5R requires that before a firm gives a personal recommendation concerning a designated investment to a private customer, it must take reasonable steps to ensure that it is in possession of sufficient personal and financial information about that customer relevant to the services that the firm has agreed to provide.
- 2.8. COB 5.2.9R requires that a firm must make and retain a record of a private customer’s personal and financial circumstances that it has obtained in satisfying COB 5.2.5R.
- 2.9. COB 5.2.12R requires a firm to provide the client with a statement of his demands and needs if he makes a recommendation of a life policy or arranges for the client to enter into a life policy. Unless the client asks for such a statement to be made orally (or if immediate cover is required) the statement of demands and needs must be in writing and made as soon as practicable, and in any event, before the conclusion of the contract for the life policy.
- 2.10. COB 5.3.5R requires that a firm must take reasonable steps to ensure that a personal recommendation concerning a designated investment to a private customer is suitable for the client.
- 2.11. COB 5.3.16R requires that the suitability letter must: (1) explain why the firm has concluded that the transaction is suitable for the customer, having regard to his personal and financial circumstances, (2) contain a summary of the main consequences and any possible disadvantages of the transaction, and (3) in the case of

a personal pension scheme which is not a stakeholder pension scheme, explain the reasons why the firm considers the personal pension scheme to be at least as suitable as a stakeholder pension scheme.

- 2.12. COB 5.3.18R requires that in the case of a pension contract or stakeholder scheme, where the cancellation rules require notification of the right to cancel, a firm must provide a suitability letter no later than the fourteenth day after the contract is concluded, and in any other case, when, or as soon as possible after, the transaction is effected.
- 2.13. COB 5.3.21R requires that if a firm makes a recommendation about a pension transfer or pension opt out by an individual who is not a pension transfer specialist it must have established procedures for checking, amongst other things, the merits of the proposed transaction and the suitability of the recommendation.
- 2.14. COB 5.4.3R requires that a firm must not, amongst other things, make a personal recommendation of a transaction to a private customer unless it has taken reasonable steps to ensure that the private customer understands the nature of the risks involved.
- 2.15. COB 5.7.3R requires that before a firm conducts investment business with a private customer it must disclose in writing the basis or amount of its charges for conducting that business and the nature or amount of any other income receivable by it.
- 2.16. COB 5.7.5R requires that when a firm recommends or arranges the sale of a packaged product the firm must disclose to the customer in cash terms any commission receivable by it in connection with the transaction.

Conduct of Business Sourcebook

- 2.17. Conduct of Business Sourcebook (“COBS”) applied to firms, with effect from 1 November 2007.
- 2.18. COBS 4.2.1R requires a firm to ensure that a communication is fair, clear and not misleading.
- 2.19. COBS 4.5.2R requires that information is accurate and, in particular, does not emphasise any potential benefits of an investment without also giving a fair and prominent indication of any relevant risks.
- 2.20. COBS 4.5.6R requires that if information compares investments a firm must ensure that the comparison is meaningful and presented in a fair and balanced way.

- 2.21. COBS 9.2.1R requires that a firm must take reasonable steps to ensure that a personal recommendation or decision to trade, is suitable for its client.
- 2.22. COBS 9.2.2R requires that a firm must obtain from the client such information as is necessary for the firm to understand the essential facts about him.
- 2.23. COBS 9.2.6R requires that if a firm does not obtain the necessary information to assess suitability it must not make a personal recommendation to the client.
- 2.24. COBS 9.4.1R requires that a firm must provide a suitability report to a retail client if the firm makes a personal recommendation to the client and the client buys, sells, surrenders, converts or cancels rights under, or suspends contributions to, a personal pension scheme or a stakeholder pension scheme or elects to make income withdrawals or enters into a pension transfer or pension opt-out.

3. Other relevant regulatory provisions

- 3.1. In exercising its power to issue a public censure, the FSA must also have regard to relevant regulatory provisions and guidance. The guidance that the FSA considers relevant to this case is set out below.

Decision Procedure and Penalties Manual (“DEPP”)

- 3.2. The FSA's policy in relation to the issue of public censures is set out in Chapter 6 of DEPP, which forms part of the FSA Handbook. The principal purpose of issuing a public censure is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour.
- 3.3. DEPP 6.4.1G(1) provides that the FSA will consider all the relevant circumstances of a case when deciding whether to impose a penalty or issue a public censure.
- 3.4. DEPP 6.4.2G sets out a non-exhaustive list of factors that may be relevant to determining whether it is appropriate to issue a public censure. The following factors are relevant to this case

Deterrence: DEPP 6.4.2G(1)

- 3.5. When determining whether to issue a public censure, the FSA will have regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business.

The seriousness of the breach in question: DEPP 6.4.2G(3)

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

Conduct following the breach: DEPP 6.4.2G(5)

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

Previous action taken by the FSA: DEPP 6.4.2G(7)

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

The financial impact on the person concerned: DEPP 6.4.2G(8)

- 3.9. In exceptional circumstances, if the person concerned has inadequate means to pay the level of financial penalty which their breaches would otherwise attract this may be

a factor in favour of a lower penalty or a public statement. Examples of circumstances where this might be appropriate include whether the person concerned has provided verifiable evidence that they would suffer serious financial hardship if the FSA imposed a financial penalty