

Warning Notice Statement 17/2

The Financial Conduct Authority (the FCA) gave an individual a Warning Notice on 17 January 2017 proposing to take action in respect of the conduct summarised in this statement.

IMPORTANT: A warning notice is not the final decision of the FCA. The individual has the right to make representations to the Regulatory Decisions Committee (RDC) which, in the light of those representations, will decide on the appropriate action and whether to issue a decision notice. The RDC is a Committee of the FCA board which decides whether the FCA should give certain statutory notices described as within its scope by the FCA's Handbook.

If a decision notice is issued, the individual has the right to refer the matter to the Upper Tribunal which would reach an independent decision on the appropriate action for the FCA to take, if any.

If either the RDC or the Upper Tribunal decides that no further action should be taken, the FCA will publish a notice of discontinuance provided it has the individual's consent.

The following is a summary of the reasons why the FCA gave the individual a Warning Notice.

- The individual was approved to perform the CF10 (Compliance oversight) controlled function at two authorised firms.
- These firms, between them, provided advice to over 700 members of defined benefit schemes ('DB schemes') about the merits of transferring out of their DB schemes to defined contribution schemes ('DC schemes') as part of enhanced transfer value ('ETV') pension transfer exercises. Approximately 500 DB scheme members who received advice transferred out of their DB schemes to DC schemes, between them transferring a total of about £12.7 million.
- The FCA considers that, between 1 February 2006 and 30 April 2009, the individual breached Statement of Principle 6 of the FCA's Statement of Principles for Approved Persons by failing to use due skill, care and diligence in carrying out the compliance oversight function. The individual failed to:
 - take reasonable steps adequately to inform himself about his obligations as a CF10 and about the specific nature and risks of the ETV advice business;
 - take reasonable steps to ensure that the ETV advice process complied with, and was capable of providing advice that complied with, applicable regulatory requirements. In particular, the individual failed to:
 - (i) obtain appropriate independent expert opinion and advice to ensure that the ETV advice process complied with, and was capable of providing advice that complied with, applicable regulatory requirements; and

- (ii) take reasonable steps to ensure that an external compliance consultant that he appointed to review the ETV advice process was suitably qualified, that it was instructed to, and did, undertake an adequate review, and that its recommendations were properly implemented;
 - identify obvious flaws in the ETV advice process which he should have identified either from his own review of the process, or from the limited file reviews that he undertook, or from engaging an external compliance consultant to undertake a proper review;
 - take reasonable steps to monitor the ETV advice process to ensure that it was compliant and that suitable advice was being given. In particular, the individual:
 - (i) failed to give any or sufficient consideration to the compliance of the ETV advice process and of the advice given in his interactions with the pension advisers; and
 - (ii) approved the appointment of a further external compliance consultant to review the ETV advice business, despite knowing the consultant was not in a position to carry out an effective review, and took no interest in the outcome of the consultant's review;
 - take reasonable steps to identify and manage adequately potential conflicts of interest in relation to:
 - (i) the payment of commission to the firms by the pension provider to whom customers transferred; and
 - (ii) the payment to one of the pension advisers of a proportion of the proceeds from the ETV advice business that he conducted; and
 - undertake any review of the processes and documentation in place at one of the firms in light of the impending implementation of MiFID in the form of the COBS rules.
- As a result of the individual's failings, DB scheme members were at serious risk of receiving unsuitable advice. This risk crystallised, resulting in a serious risk of unsuitable customer outcomes. The FCA considers it likely that a significant proportion of the approximately 500 members who transferred from a DB scheme to a DC scheme would have decided not to transfer had they received suitable advice.