

**Alec Cuthbert has agreed to settle this matter and therefore has not made a reference to the Upper Tribunal of the Authority's decision to take action. This Final Notice has not been the subject of any judicial finding. It includes criticisms of Frank Oxberry who has been given a Decision Notice in relation to the same matter. Mr Oxberry disputes that Decision Notice and has referred it to the Upper Tribunal for determination. The Tribunal will determine whether to dismiss the reference or remit the reference to the Authority with a direction to reconsider and reach a decision in accordance with the findings of the Tribunal. The Tribunal's decision in respect of the reference will be made public on its website.**



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## FINAL NOTICE

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To: **Alec John Cuthbert**

Individual  
Reference  
Number: **AJC00024**

Date: **30 August 2024**

### 1. ACTION

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

- (1) imposes on Mr Alec Cuthbert a financial penalty of £91,693 pursuant to section 66 of the 2000 Act; and
- (2) makes an order, pursuant to section 56 of the 2000 Act, prohibiting Mr Cuthbert from performing any function in relation to any regulated activity carried on by an authorised person, exempt person, or exempt professional firm.

1.2. Mr Cuthbert agreed to resolve this matter and qualified for a 30% (stage 1) discount under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £121,893 on Mr Cuthbert.

## **2. SUMMARY OF REASONS**

- 2.1. Mr Cuthbert was approved by the Authority to perform the CF4 (Partner), CF10 (Compliance Oversight), CF11 (Money Laundering Reporting) and CF30 (Customer) controlled functions at St Martin's Partners LLP ("SMP" or "the Firm") during the Relevant Period (1 October 2015 to 31 July 2016). SMP was a small financial advice firm based in Essex which was authorised by the Authority during the Relevant Period with permission to conduct regulated activities, including advising on Pension Transfers and Pension Opt Outs.
- 2.2. During the Relevant Period, SMP partnered with Introducer A, an introducer firm which was not authorised by the Authority, to design and operate the Pension Transfer Model. Introducer A had a material financial interest in promoting investments offered by its parent company, the Overseas Property Developer, which offered investment opportunities in overseas hotel developments. These investments were high risk, illiquid and unregulated property investments and unlikely to be covered by FOS or FSCS protection and therefore unlikely to be suitable for retail clients. The Authority considers that Introducer A designed the Pension Transfer Model, in conjunction with SMP, with a view to bringing about investments of SMP clients' pension funds into the Overseas Property Developer. SMP, as a firm authorised by the Authority, had a critical role in that process, namely to provide advice to those clients and thereby provide the statutory basis upon which the trustees of the ceding pension schemes were permitted to authorise the release of members from their schemes.
- 2.3. Under the Pension Transfer Model, SMP failed to gather sufficient information before advising clients on the appropriateness of transferring out of their Defined Benefit Pension Schemes. SMP did not properly take account of clients' financial circumstances and objectives, their attitude to risk and their capacity for loss. Additionally, SMP did not take into account the nature, risks and fees of the actual onward investment and instead based its analysis and advice on a generic onward investment across those clients who were subject to the Pension Transfer Model. Investment advice was intended to be subsequently provided to the clients by the Overseas Adviser Firm, a financial advisory group based in Cyprus and not authorised by the Authority, and which was a business partner of Introducer A and the Overseas Property Developer.

- 2.4. This meant that SMP was not in a sufficiently informed position to give its clients appropriate advice on the nature of the risks or benefits associated with transferring their pensions. Although SMP cautioned its clients that its advice was subject to limited information and in the majority of cases advised them not to transfer, the fact that its clients had obtained advice from SMP, a firm authorised by the Authority, nevertheless provided the statutory basis upon which the trustees of the ceding pension schemes were permitted to authorise the release of those members from their schemes. This was not the case for a very small number of SMP's clients whose CETV was below the minimum threshold of £30,000, and for whom the trustees were not under a statutory obligation to check that they had received appropriate independent advice prior to making a transfer.
- 2.5. In addition to Introducer A, at least 16 other introducers introduced clients who were advised by SMP during the Relevant Period. SMP advised at least 547 clients under the Pension Transfer Model during the Relevant Period, of which 440 clients were introduced to SMP by Introducer A. The total value of the Defined Benefit Pension Schemes on which SMP advised under the Pension Transfer Model was just under £60 million, with an average value of approximately £104,000.
- 2.6. SMP retained 30% of the fees charged to clients under the Pension Transfer Model, after paying 70% of the fees to SMP's Advisers, who provided advice under the model. In total, Mr Cuthbert received £14,317 in respect of the financial benefit from the fees generated from the Pension Transfer Model.
- 2.7. On 14 June 2019, SMP entered liquidation. The FSCS declared SMP in default on 23 September 2019 and is investigating claims made by SMP's clients who were advised under the Pension Transfer Model. As at 26 May 2022, the FSCS had paid over £9 million in compensation to SMP's clients as a result of loss they had suffered following advice they had received from SMP<sup>1</sup>.

### **Mr Cuthbert's misconduct**

- 2.8. The Authority considers that Mr Cuthbert failed to comply with Statement of Principle 1 during the Relevant Period in that he failed to act with integrity in

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<sup>1</sup> **As of 10 July 2024, this figure had increased to over £13.4 million.**

carrying out his accountable functions as CF4 (Partner) and CF10 (Compliance Oversight) at SMP. Mr Cuthbert's actions in relation to SMP's design and operation of the Pension Transfer Model were reckless. In particular, Mr Cuthbert:

- (a) failed to assess the obvious deficiencies in the Pension Transfer Model before permitting the expansion of SMP's business model to include this advice process, notwithstanding that it constituted a significant departure from SMP's usual advice model. The obvious deficiencies included that (i) it failed to take into account the client's attitude to risk, meaning SMP was unable to ascertain whether a Pension Transfer was suitable in accordance with the client's risk tolerance, and (ii) confirmation of advice letters would be issued to the trustees of the ceding schemes at a point where clients had received very limited advice. In doing so, he unreasonably exposed the Firm's clients to a significant risk that they would proceed with a Pension Transfer without receiving complete advice. This risk would have been obvious to Mr Cuthbert in light of his experience as a financial adviser and his senior positions as CF4 (Partner) and CF10 (Compliance Oversight) at SMP;
- (b) failed to ensure that SMP performed sufficient and adequate due diligence on its partner introducers and the investments which they promoted to clients. This was particularly important as SMP was partnering with a large number of introducers. In doing so, he unreasonably exposed the Firm's clients to a significant risk that their pension funds would be transferred into investments which were unsuitable for them;
- (c) failed to ensure that SMP obtained independent, expert opinion from SMP's Compliance Consultant to verify the compliance of the Pension Transfer Model, prior to, during, and after its implementation, notwithstanding the novelty of the advice model for SMP's business and the obvious risks of detriment it posed to SMP's clients;
- (d) failed to ensure that SMP obtained sufficient information from clients in order to make Personal Recommendations which were suitable for them, considering clients' financial situation, their attitude to risk, and their knowledge and experience of the relevant investment;
- (e) failed to ensure that SMP collected sufficient information which was required to generate an accurate TVAS Report and critical yield analysis, upon which

SMP's Personal Recommendations were based (notwithstanding the flaws of advising clients solely based on a TVAS Report);

- (f) failed to monitor the advice provided under the Pension Transfer Model by SMP's Advisers when advising clients under the Pension Transfer Model, notwithstanding the reduced effectiveness of SMP's compliance function in light of Mr Cuthbert's reduced office hours in advance of his planned retirement, and the lack of experience and relevant qualification of SMP's Compliance Manager, to whom day-to-day compliance responsibilities had been delegated; and
- (g) failed to respond to a variety of warning signs he received during the operation of the Pension Transfer Model in respect of the obvious deficiencies of the advice process and the obvious risks of detriment it posed to SMP's clients.

2.9. The Authority considers Mr Cuthbert's failure to comply with Statement of Principle 1 to be serious because:

- (a) it related to a large number of clients whom he took no steps to protect;
- (b) his failure to monitor the work of SMP's Advisers meant that a large number of clients were exposed to the risks of transferring out of their Defined Benefit Pension Schemes into high risk, illiquid and unregulated property investments offered by the Overseas Property Developer;
- (c) in failing to ensure that sufficient and adequate due diligence was performed on SMP's partner introducers, Mr Cuthbert's misconduct unreasonably exposed the Firm's clients to a significant risk that their pension funds would be transferred into investments which were unsuitable for them;
- (d) the deficiencies of the Pension Transfer Model would have been obvious to Mr Cuthbert as an experienced financial adviser and a senior manager at SMP; and
- (e) Mr Cuthbert obtained substantial financial benefits as a result of his failings.

2.10. The Authority hereby imposes on Mr Cuthbert a financial penalty of £91,693 for his breach of Statement of Principle 1.

2.11. As a result of Mr Cuthbert's failure to have regard to the obvious risks described in paragraph 2.8 above, of which he must have been aware, and to take appropriate action in light of them, Mr Cuthbert was reckless and failed to act with integrity. For this reason, the Authority considers he is not fit and proper to perform any function in relation to any regulated activity carried on by an authorised person, exempt person, or exempt professional firm. The Authority hereby makes an order prohibiting Mr Cuthbert from performing any such functions at an authorised person, exempt person, or exempt professional firm. The Authority considers that doing so is necessary in order to secure an appropriate degree of protection for consumers.

### **3. DEFINITIONS**

3.1. The definitions below are used in this Notice:

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

"the 2001 Order" means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

"the 2015 Act" means the Pension Schemes Act 2015;

"the 2015 Regulations" means the Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015;

"the Authority" means the Financial Conduct Authority;

"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, representing the expected costs of providing the member's benefits within the scheme;

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

"Compliance Consultant" means the independent, third-party compliance consultancy engaged by SMP during the Relevant Period;

“Compliance Manager” means SMP’s compliance manager to whom Mr Cuthbert delegated compliance responsibilities throughout the Relevant Period;

“Defined Benefit Pension Scheme” means an occupational pension scheme as defined by Article 3(1) of the 2001 Order, 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);

“DEPP” means the Authority’s Decision Procedure and Penalties Manual, part of the Handbook;

“EG” means the Authority’s Enforcement Guide set out in the Handbook;

“Firm A” means a firm not authorised by the Authority, one of whose Directors was Individual A;

“the Firm A Introducers Agreement” means a partially executed agreement dated 23 November 2015 between Firm A and SMP for Firm A to introduce third party introducers to SMP;

“FOS” means the Financial Ombudsman Service;

“FSCS” means the Financial Services Compensation Scheme;

“Full Advice Model” means a Pension Transfer advice model where a single adviser gives defined benefit transfer advice and investment advice on the proposed onward investment, in order for the Pension Transfer to proceed;

“the Handbook” means the Authority’s Handbook of rules and guidance;

“Individual A” means an individual who was a Director of Firm A, who introduced SMP to third party introducers including Introducer A;

“Introducer A” means an introducer firm not authorised by the Authority whose parent company from the start of the Relevant Period until mid-2016 was the Overseas Property Developer;

“Mr Cuthbert” means Alec Cuthbert;

“Mr Oxberry” means Frank Oxberry, who held the CF4 (Partner) and CF30 (Customer) functions at SMP during the Relevant Period;

“the Overseas Adviser Firm” means a financial advisory group based in Cyprus which was not authorised by the Authority, and which was a business partner of Introducer A and the Overseas Property Developer;

“the Overseas Property Developer” means a property developer which offered investment opportunities in overseas hotel developments;

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

“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 Defined Benefit Pension Scheme) to a personal pension scheme;

“Pension Transfer Model” means the Pension Transfer advice model operated by SMP during the Relevant Period characterised by advice provided solely on the basis of critical yield values of the ceding scheme against a generic scheme with no consideration of the client’s final investment;

“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 SIPP, and is presented as suitable for the client to whom it is made, or is based on a consideration of the client’s circumstances;



"QROPS" means qualifying recognised overseas pension scheme, which is a pension scheme established outside the UK which fulfils certain criteria by HM Revenue & Customs to receive transfers from pension schemes registered in the UK;

"Relevant Period" means 1 October 2015 to 31 July 2016;

"SMP" or "the Firm" means St Martin's Partners LLP;

"SMP's Advisers" means certain qualified Pension Transfer Specialists who held the CF30 (Customer) function at SMP during the Relevant Period;

"Statements of Principle" mean the Authority's Statements of Principle and Code of Practice for Approved Persons;

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

"the Tribunal" means the Upper Tribunal (Tax and Chancery Chamber);

"TVAS" means '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 client in respect of the comparison firms are required to carry on in accordance with COBS 19.1.2R; and

"Two-Adviser Model" means a Pension Transfer advice model operated by some firms where one firm gives defined benefit transfer advice and another firm, acting as an introducer, gives investment advice on the proposed onward investment, in order for the Pension Transfer to proceed.

## **4. FACTS AND MATTERS**

### **Background**

#### *Mr Cuthbert and SMP*

- 4.1. Mr Cuthbert was approved by the Authority to perform the CF4 (Partner) and CF30 (Customer) functions at SMP from July 2011, and the CF10 (Compliance Oversight) and CF11 (Money Laundering Reporting) functions at SMP from June 2012, and held these functions throughout the Relevant Period. Mr Cuthbert was also SMP's designated specialist for Pension Transfer advice during the Relevant Period. Prior to his approval as CF4 (Partner), CF10 (Compliance Oversight), CF11 (Money Laundering Reporting) and CF30 (Customer) at SMP, Mr Cuthbert was approved by the Authority as a CF21 (Investment Adviser) and as a CF24 (Pension Transfer Specialist) at other firms authorised by the Authority.
- 4.2. SMP was a small financial advice firm based in Chelmsford, Essex which was authorised by the Authority during the Relevant Period to, amongst other things, advise on Pension Transfers and Pension Opt Outs. SMP was formed as a partnership between Mr Cuthbert and Mr Oxberry. SMP went into liquidation on 14 June 2019.
- 4.3. Throughout the Relevant Period, Mr Cuthbert and Mr Oxberry were the only two CF4 Partners at SMP and were both considered the owners of the Firm.
- 4.4. During the Relevant Period, Mr Cuthbert reduced his office hours at SMP in preparation for his retirement. Mr Cuthbert was also largely absent from SMP's offices, sometimes not coming in for weeks. Mr Cuthbert delegated responsibility for day-to-day compliance oversight to the Compliance Manager. The Compliance Manager, unlike Mr Cuthbert, was not a qualified Pension Transfer Specialist, nor did he hold compliance related controlled functions.
- 4.5. SMP's Advisers, who were employees of a company which they owned jointly, were brought into SMP as consultants prior to the Relevant Period and provided advice to Pension Transfer clients at SMP. SMP's Advisers provided advice to SMP's clients under the Pension Transfer Model throughout the Relevant Period.

### *Pension transfers*

- 4.6. Pensions are a traditional and tax-efficient way of saving money for retirement. The benefits someone obtains from their pension, particularly under a Defined Benefit Pension Scheme, can have a significant impact on their quality of life during retirement and, in some circumstances, can affect when an individual is able to retire. A Defined Benefit Pension Scheme is particularly valuable because it offers a secure, guaranteed income for life to members, which typically increases each year in line with inflation.
- 4.7. It is possible to “transfer out” of a Defined Benefit Pension Scheme. This involves the scheme member giving up the guaranteed benefits associated with membership in exchange for a CETV, which is typically then invested in a defined contribution pension. Pursuant to section 48 of the 2015 Act, where the value of the assets in a Defined Benefit Pension Scheme exceeds £30,000, pension providers must ensure members take “appropriate independent advice” before allowing a transfer to proceed. Pension Transfer Specialists are suitably qualified individuals with permission to advise on such Pension Transfers in accordance with the Authority’s rules.
- 4.8. Unlike a Defined Benefit Pension Scheme, a defined contribution pension does not provide a guaranteed income for its members but sets the payments that are required to be paid into the fund to provide a pension benefit, and is itself highly dependent on the performance of the underlying investment. Pursuant to COBS 19.1.6G, the Authority sets out a general starting assumption for an authorised firm that transferring out of a Defined Benefit Pension Scheme will not be suitable for a retail client, unless the firm can clearly demonstrate, on contemporaneous evidence, that the transfer is in the client’s best interests. This is in light of the valuable guaranteed benefits offered by Defined Benefit Pension Schemes.
- 4.9. Pension Transfer Specialists such as SMP’s Advisers must also be overseen by senior managers like Mr Cuthbert, who take appropriate practical responsibility for their firms’ arrangements in accordance with relevant regulatory requirements. This ensures robust governance arrangements, well-defined lines of responsibility, effective internal control mechanisms to monitor and report risks as well as orderly record-keeping to enable the Authority to monitor the firm’s compliance with requirements.

- 4.10. Authorised firms and Pension Transfer Specialists act as gatekeepers between clients and the transfer of their pension. Accordingly, clients place significant trust in them to provide advice on Defined Benefit Pension Scheme transfers. It is the responsibility of the Pension Transfer Specialist to understand the client's needs and account for all the relevant individual circumstances and how these might affect the advice provided when advising on the suitability of any Pension Transfer.

*Introducer A/the Overseas Property Developer/the Overseas Adviser Firm*

- 4.11. Introducer A was a UK firm which was not authorised by the Authority. The Overseas Property Developer was the parent company of Introducer A from the start of the Relevant Period until mid-2016. Introducer A was dissolved in the second half of 2017.
- 4.12. Towards the end of the Relevant Period, a BBC Panorama programme aired which focused on Introducer A's close connections to the Overseas Property Developer, which offered investments in overseas hotel developments, and how Introducer A was said to have solicited pension reviews and encouraged pension transfers into the Overseas Property Developer's investments.
- 4.13. The property investments offered by the Overseas Property Developer were: (1) illiquid as they could only be sold upon completion and potentially lacked a viable secondary market; and (2) unlikely to be covered by FOS or FSCS protection. These investments were high risk and were unlikely to be suitable for retail clients. Further, a Final Notice published by The Pensions Regulator during the Relevant Period and publicly available on The Pensions Regulator's website described the Overseas Property Developer's investments as being in a class of investments which had been highlighted by Action Fraud as "*potentially fraudulent*".
- 4.14. According to one of SMP's Advisers, Introducer A was a business partner of the Overseas Adviser Firm, a financial advisory group based in Cyprus which was not authorised by the Authority and which did not have the relevant permissions to advise on Pension Transfers in the UK.

## **Design of the Pension Transfer Model**

- 4.15. In October 2015, one of SMP's Advisers was introduced through another SMP Adviser to Individual A, a Director of Firm A, a firm not authorised by the Authority. Individual A introduced introducers to SMP, including Introducer A. Individual A was seeking a partner for Introducer A, which itself was seeking a firm authorised by the Authority to assist with providing the transfer advice component of advice under an advisory model which was similar to a Two-Adviser Model.
- 4.16. In October 2015, discussions took place between SMP, Introducer A and Individual A, following which it was agreed that an advice model, the Pension Transfer Model, would be established at SMP. Mr Cuthbert led SMP's Compliance Manager to consider the proposals together as SMP's compliance function. Mr Oxberry and Mr Cuthbert then agreed that SMP would establish an advice process which would become the Pension Transfer Model.
- 4.17. Preliminary discussions within SMP were conducted, on an informal basis, on how advising the Overseas Adviser Firm's clients would work in practice. The proposals were drafted by SMP's Compliance Manager in conjunction with SMP's Advisers. The extent of the Compliance Manager's contribution was to assist with the drafting of SMP's template advice letter to refer to "TVAS-only" advice, which in any case was further "*pared down*" by one of SMP's Advisers once they deemed it unnecessary to gather full client information when issuing a TVAS Report based on a critical yield analysis alone.
- 4.18. All clients advised using the Pension Transfer Model were brought to SMP via introducers or financial advisers. Mr Cuthbert was responsible for ensuring that agreements between introducers and the Firm were documented, which he delegated to SMP's Compliance Manager to arrange. SMP received the Firm A Introducers Agreement which was signed on behalf of Firm A and dated 23 November 2015, to be countersigned by Mr Cuthbert or Mr Oxberry on behalf of SMP, in which Introducer A and the Overseas Property Developer were referred to together as "*3rd Party Introducer 1: [Introducer A] / [the Overseas Property Developer]*". This agreement provided that SMP would pay to Firm A £200 or £250 for each client introduced to SMP via these entities. This agreement also provided that Firm A would introduce other third-party introducers to SMP (having already introduced Introducer A to SMP in October 2015).

- 4.19. During the development of the Pension Transfer Model, SMP had access to an external compliance consultancy. However, at no time during the establishment of the Pension Transfer Model was the Compliance Consultant contacted by Mr Cuthbert or the Compliance Manager to verify or comment on the Firm's proposals. Further, Mr Cuthbert had specific opportunities to include clients advised under the Pension Transfer Model when client files were audited by the Compliance Consultant in November 2015 and January 2016. However, Mr Cuthbert did not take the opportunity to verify SMP's assumptions about the Pension Transfer Model's compliance or the adequacy of the client files. The Compliance Consultant was not made aware of the existence of the Pension Transfer Model during its visits, and ultimately not until June 2016.
- 4.20. Further, no due diligence or prior research was conducted by Mr Cuthbert or SMP's Compliance Manager on novel advice models similar to the Pension Transfer Model before it was implemented by SMP. Mr Cuthbert did not question SMP's Advisers on where this advice model originated from. No additional due diligence was performed on Introducer A, or other introducers involved in the Pension Transfer Model, to ascertain the details of the proposed onward investments and any potential conflicts of interest.
- 4.21. At least 547 clients were advised by SMP using the Pension Transfer Model during the Relevant Period, of which 440 were introduced to SMP via Introducer A. The total value of the Defined Benefit Pension Schemes of these 547 clients was just under £60 million, with an average value of approximately £104,000. Introducer A gave its assurances to SMP that it would ensure that all clients would be fully advised by the Overseas Adviser Firm prior to those clients proceeding with Pension Transfers. In reality, the confirmation of advice letters provided by SMP, as an authorised independent adviser, satisfied the requirement under section 48 of the 2015 Act that the trustees of the member's defined benefit scheme must check that those members had received "appropriate independent advice" before proceeding with a Pension Transfer, thereby providing the legal authority to the trustees of clients' ceding schemes to release members from their schemes.

*Remuneration arrangements and fees received by SMP*

- 4.22. The arrangement with Introducer A as set out in the relevant introducer agreement was that SMP would be paid £795 by Introducer A for every client referral which SMP advised. Other introducers paid similar fees to SMP. There was

an arrangement for 70% of these fees to be paid to SMP's Advisers into their jointly owned company, with SMP retaining 30% of the fees, and with a further percentage pay-away received by the individual who introduced the relevant introducer to SMP (as negotiated in the introducers agreement).

### **SMP's Pension Transfer Model as compared with the Full Advice and Two-Adviser Model**

#### *The Full Advice Model*

- 4.23. During the Relevant Period, SMP's Advisers provided advice on Defined Benefit Pension Scheme transfers to clients using the Full Advice Model. The Full Advice Model differed from SMP's Pension Transfer Model and operated as follows:
- (a) a range of information would be gathered from the client by an adviser, including information about the client's financial goals and circumstances, their attitude to risk and their capacity for loss;
  - (b) a letter and report would be sent to the client and a meeting arranged to discuss its findings. A TVAS Report would set out, amongst other things, a comparison relating to specific benefits (for example, death benefits) and a critical yield calculation. The critical yield offers guidance based on set assumptions (expressed as a percentage) on the level of return the client's proposed onward investment will need to achieve, up to the point they start drawing from the pension, to match the benefits they would receive from their Defined Benefit Pension Scheme. The timing from the initial client contact through to the provision of the TVAS Report would usually take three to four weeks;
  - (c) the adviser would also advise on the onward investment product into which the client's Defined Benefit pension funds would be released. To advise the client, the adviser would compare the client's ceding scheme against the proposed onward investment. This would provide the client with a clear understanding of their existing benefits and their projected entitlements if they were to transfer their pension. The adviser would assess the suitability of the proposed transfer in light of the client's circumstances, objectives and risk tolerance; and

(d) if the adviser's personal recommendation was for a client to proceed with a Pension Transfer, SMP would provide a confirmation of advice letter to the trustee of the client's occupational pension scheme, authorising the trustee to release the client's funds from their occupational pension.

4.24. In summary, the Full Advice Model consisted of one adviser giving two separate pieces of advice: (1) whether to give up the safeguarded Defined Benefit Pension Scheme; and (2) how the client's pension funds should be invested, should the Pension Transfer proceed. It is critical that the advice covers both parts of the Pension Transfer, which cannot be advised on in isolation. This is because, in order to determine the suitability of a Pension Transfer, the adviser must assess the proposed investment against the projected performance of the ceding scheme and consider whether that proposed investment is suitable in accordance with the client's circumstances and attitude to risk.

4.25. At SMP, each Full Advice Model case took several months from initial contact to completion with the transfer of funds. Instead of earning a flat fee (as for advice under the Pension Transfer Model), SMP would charge the client its normal rates which would be significantly greater. In some cases, clients who were referred for advice under the Pension Transfer Model were switched to the Full Advice Model. No criticism of the Full Advice Model as operated by the Firm is made by the Authority.

#### *The Two-Adviser Model*

4.26. In contrast, a Two-Adviser Model differs in that one firm provides defined benefit transfer advice (paragraphs 4.23(a), (b) and (d) above) and another firm provides investment advice on the proposed onward investment (paragraph 4.23(c) above), if the Pension Transfer were to proceed.

4.27. It is common for clients who use a Two-Adviser Model to have the process of their Pension Transfers managed by introducers who manage the client's end-to-end journey on the client's behalf. Using this model, the introducers can organise two separate advisers to provide advice on the separate parts of the client's Pension Transfer.

4.28. However, the Two-Adviser Model introduces additional risks over the Full Advice Model because the Pension Transfer advisers may have limited oversight over how



onward investment advice is provided to the client, meaning clients may not receive complete advice on all the necessary aspects of the transfer. These risks need to be appropriately managed by Pension Transfer advisers.

### **SMP's Pension Transfer Model**

- 4.29. SMP's Pension Transfer Model was more akin to the Two-Adviser Model, in that SMP only advised on the Pension Transfer out of the ceding scheme and did not advise on aspects relating to the onward investment of the pension funds.
- 4.30. Mr Cuthbert permitted SMP's Pension Transfer Model to operate during the Relevant Period notwithstanding its significant and obvious deficiencies, which are set out at paragraphs 4.31 to 4.62 below.

#### *SMP's advice constituted a Personal Recommendation*

- 4.31. Mr Cuthbert stated that he understood the Pension Transfer Model to constitute the first step in a "triage" process, where clients were directed to receive full Pension Transfer advice by a separate independent financial adviser later in the advice process.
- 4.32. Until May 2016, SMP's client advice letters were provided only to SMP's partner introducers, who were trusted to send these letters to clients and to arrange for the client to receive full advice from a third-party independent financial adviser if they were to proceed with a Pension Transfer. From 13 May 2016, however, SMP's internal processes were changed to mandate that clients should receive these advice letters directly from SMP. Mr Cuthbert stated that he did not believe SMP was providing Personal Recommendations to clients on the grounds that:
  - (a) SMP was dealing directly with partner introducers (and not the client) and received all client information via their partner introducers; and
  - (b) SMP's client advice letters contained caveats that its advice was based solely on a TVAS Report and that clients should first receive full advice and the necessary Personal Recommendation from a third-party independent financial adviser before proceeding with a Pension Transfer.

- 4.33. Further, SMP was remunerated by its partner introducers per case (rather than being paid a fee directly from the client being advised).
- 4.34. Mr Cuthbert stated that he believed that SMP's advice, which the Firm directed towards its partner introducers (and not the client) and which was based solely on a TVAS Report, did not constitute a Personal Recommendation to clients. Mr Cuthbert further stated that he believed SMP's advice did not give rise to various regulatory requirements, such as the need to fully consider the client's circumstances and their suitability for a Pension Transfer.
- 4.35. The Authority considers that, notwithstanding the caveats contained within SMP's client advice letters, SMP was always, during the Relevant Period, providing Personal Recommendations to its clients when issuing advice letters to introducers. The Authority considers that the giving of advice solely based on a TVAS Report constituted the provision of Pension Transfer advice and a Personal Recommendation, an arrangement which could not escape from the regulatory requirements to consider fully the client's circumstances and suitability for a Pension Transfer. The Authority considers that this would have been obvious to Mr Cuthbert during the Relevant Period, in light of his experience as a financial adviser and his senior positions as both CF10 (Compliance Oversight) and CF4 (Partner) at SMP, and that he closed his mind to the risks of SMP's clients receiving very limited advice in failing to check the regulatory obligations required for the Pension Transfer Model. It was irrelevant that, prior to May 2016, the client advice letter was directed to SMP's partner introducers and not the clients themselves.

*Limited information obtained from clients*

- 4.36. Under SMP's Pension Transfer Model, SMP's Advisers sought very limited information from clients. The extent of the information provided was limited to contact information and general information on their ceding scheme. This information was commonly provided by introducers and not directly by the clients themselves. Further, SMP did not meet any of the clients who used the Pension Transfer Model and the Firm's primary point of contact was introducers, rather than clients themselves.
- 4.37. During the early stages of the Relevant Period, SMP removed the requirement to obtain client fact-finds and risk profile questionnaires under the Pension Transfer Model. This requirement was removed because this information was deemed

unnecessary when issuing a TVAS Report based solely on a critical yield analysis. SMP's Advisers did not gather full information from clients in order to determine independently the client's best interests. Instead, they received from introducers very limited client details, which did not include the client's full financial or personal circumstances (such as their possession of life cover and information on their total assets and liabilities), attitude to transfer or investment risk or capacity for financial loss. When the client's details were required as inputs to generate a TVAS Report to issue a Personal Recommendation, much of the inputted information was assumed (including the client's employment status and estimated retirement age).

- 4.38. Initial scoping and information gathering discussions between SMP and the client did not take place, and in most instances, the advisers did not have any contact from the client directly. SMP's primary point of contact was the introducers, rather than clients themselves. On the occasions where SMP conversed with clients directly, this was on an ad hoc basis to address client queries, and was not to receive the client's full financial or personal circumstances with a view to providing complete transfer advice.
- 4.39. Mr Cuthbert failed to implement appropriate systems to ensure the Firm gathered sufficient client information. Mr Cuthbert stated that he believed SMP's advice constituted the first step in a triage process and therefore did not constitute a Personal Recommendation to clients. Mr Cuthbert accepted that SMP's advice did in fact constitute a Personal Recommendation and the advice model's failure to gather client information would not therefore have been approved by SMP's external Compliance Consultant.
- 4.40. SMP's processes of fully relying on introducers to gather sufficient client information were inappropriate because SMP's Advisers were required to gather client information themselves in the act of advising on, and facilitating, Pension Transfers when issuing a Personal Recommendation. Mr Cuthbert failed to address the risk that, notwithstanding the failures of giving advice based solely on a TVAS Report, that the issuing of advice solely based on a TVAS Report nonetheless constituted the provision of Pension Transfer advice and a Personal Recommendation, which did not escape from the regulatory requirement to fully consider the client's circumstances and suitability for a Pension Transfer. SMP was required to give appropriate independent advice by obtaining the necessary information from clients and it could not delegate its regulatory responsibilities to third parties.

4.41. The Authority assessed a sample of 21 advice files of the clients who were advised by SMP under the Pension Transfer Model during the Relevant Period. The Authority found that all 21 advice files were non-compliant with relevant regulatory requirements because of material information gaps in the collection of client information. Due to these material information gaps, the Authority was unable to assess the suitability of the transfer advice given by SMP. In particular, SMP's Advisers failed to gather:

- (a) information on the client's knowledge and experience relevant to the specific investment, as required by COBS 9.2.1R(2)(a) and 9.2.3R;
- (b) information on the client's financial situation, including information on the source and extent of their regular income, their assets and regular financial commitments, as required by COBS 9.2.1R(2)(b) and 9.2.2R(3); and
- (c) information about the client's investment objectives, including their preferences regarding risk taking and their risk profile, as required by COBS 9.2.1R(2)(c) and 9.2.2R(2).

*Reliance on introducers to perform regulatory obligations with minimal contact with other financial advisers*

4.42. SMP placed full reliance on introducers, or other financial advisers, to fulfil the regulatory requirements of obtaining client information before making Personal Recommendations. However, SMP had little or no direct contact with other advisers who needed to be part of the advice process (such as financial advisers who supposedly provided investment advice on the proposed onward investment). The majority of SMP's contact was with the introducers, and therefore, nothing was in place to ensure the client information obtained by introducers was accurate.

4.43. With regard to SMP's relationship with the Overseas Adviser Firm, for example, the financial adviser was fully relied upon to perform the necessary client fact-find and risk profile. However, SMP's Advisers did not have contact with the Overseas Adviser Firm directly, and only corresponded with it via Introducer A. SMP's reliance on others to fulfil regulatory requirements and protect the best interests of clients is reflected in the Firm's template advice letter, which states:

*“Taking the critical yield in isolation, based on the above, we would not recommend that you transfer your FS pension benefits away from [the relevant pension plan].*

*This recommendation does not take into account your personal circumstances, attitude to risk and objectives. If you have a low attitude to risk the transfer may not be suitable for you [...] If you still intend to proceed with the transfer it is recommended that you seek full advice that takes into account the above areas.”*

4.44. Despite SMP’s reliance on introducers and minimal contact with other financial advisers who supposedly offered full advice later in the transfer process, no process was in place to monitor client outcomes or verify whether clients had received full advice at any stage in the process. Further:

- (a) no due diligence was conducted to consider properly whether financial advisers, such as the Overseas Adviser Firm, were suitable to give advice. Had meaningful due diligence been conducted, SMP would have ascertained that certain financial advisers and introducers were connected entities with a shared financial interest in promoting high-risk investments (as was the case with the Overseas Adviser Firm and Introducer A, which had a shared financial interest in promoting investments in the Overseas Property Developer); and
- (b) Mr Cuthbert stated that he assumed that introducers would refer clients to fully authorised financial advisers. Mr Cuthbert also stated that he assumed SMP’s partner introducers had their own regulatory permissions to provide the TVAS Reports generated by SMP. The Authority does not accept this explanation, given that Mr Cuthbert took insufficient steps to ascertain the extent to which introducers or financial advisers were authorised or supervised to perform an appropriate standard of Pension Transfer advice which fulfilled information gathering requirements, or to ascertain the extent to which non-UK introducers were obliged to follow such standards.

*Use of a model portfolio within the TVAS Report*

4.45. During the Relevant Period, COBS 19.1.2R(1) required that a firm preparing and providing a transfer analysis had to compare the benefits likely (on reasonable assumptions) to be paid under a Defined Benefit Pension Scheme with the benefits

afforded by a personal pension scheme, stakeholder pension scheme or other pension scheme with flexible benefits, before advising a retail client to transfer out of a Defined Benefit Pension Scheme. COBS 19.1.3G(1) required that this comparison should take into account all of the client's relevant circumstances, and COBS 19.1.3G(4) required that this comparison should be illustrated on rates of return which take into account the likely expected returns of the assets in which the retail client's funds would be invested.

- 4.46. However, since SMP did not receive from the introducer for the purposes of the TVAS any information regarding the onward investment or the likely expected returns of the assets into which the client's funds would be invested, each client's TVAS Report had to be generated based on limited information.
- 4.47. Instead, when client TVAS Reports were produced, the advisers made assumptions for each client that they would be investing into a generic personal pension scheme. The TVAS calculation for all clients advised under the Pension Transfer Model was therefore entirely unreliable, in failing, amongst other things, to account for the reality of the proposed onward investment.
- 4.48. In reality, certain of the onward investments were linked to high-risk, illiquid and unregulated property investments offered by the Overseas Property Developer, the details of which SMP's Advisers did not disclose to clients, and of which Mr Cuthbert did not take steps to investigate.

*Personal Recommendation to transfer based solely on TVAS calculation*

- 4.49. COBS 9.2.1R required that, when making a Personal Recommendation, an authorised firm must obtain information regarding the client's knowledge and experience relevant to the specific type of investment, financial situation and investment objectives. Instead, SMP, through its advisers, based its advice solely on a TVAS Report and a critical yield calculation. This placed its clients at risk because it issued Personal Recommendations and facilitated Pension Transfers without fully considering the client's circumstances or suitability.
- 4.50. SMP's template advice letter included a statement that the recommendation provided within the advice letter considered "*the critical yield in isolation*" and that its recommendation "*does not take into account... personal circumstances or attitude to risk and objectives*".

- 4.51. Further, if SMP's TVAS Report generated a critical yield above a certain threshold (initially 7.5%, and later 6%), SMP would not recommend the client to transfer out of their current scheme. The critical yield percentage threshold was therefore not a figure individually applied to each client's circumstances in accordance with, for example, their individual attitudes to investment risk. These thresholds were based on what Mr Cuthbert stated he deemed to be typical investment returns achievable at that time, but no formal document or procedure recorded the Firm's processes of deciding, or amending, the threshold.
- 4.52. 83 of the (at least) 547 clients advised by SMP under the Pension Transfer Model, or approximately 15% of clients, were recorded as being advised a Pension Transfer may be in their interest. 459, or approximately 83% of clients, were recorded as being advised not to transfer (and the remaining outcomes were unrecorded).

*Confirmation of advice letter issued to the ceding scheme trustee*

- 4.53. Following the generation of a TVAS Report, SMP's Advisers issued confirmation of advice letters which were addressed to the ceding scheme trustee. These letters were provided to the client's introducers and would be forwarded to the ceding scheme trustee as the basis of the authority to transfer the client's pension funds.
- 4.54. The template confirmation of advice letters issued by SMP contained the following declarations:
- (a) SMP was "*authorised and regulated by the Financial Conduct Authority, FCA No 537804 [...] to carry on the regulated activity in 53E [sic] of the Regulated Activities Order*" to advise on Pension Transfers;
  - (b) confirmation that SMP's Advisers held "*the appropriate permission under Part 4A of the Financial Services and Markets Act 2000 [...] to carry on the regulated activity (advising on conversion or transfer of pension benefits) in Article 53E of the FCA Regulated Activities Order*";
  - (c) confirmation that SMP's Advisers had advised the client, with the following templated statement: "*I, [SMP Adviser's name] can confirm that I have given*

*advice solely in relation to a Transfer Valuation Advice Report in respect of [the client's] benefits in [the client's Defined Benefit Pension Scheme]"; and*

(d) depending on whether the client's critical yield lay above or below SMP's critical yield threshold (see paragraph 4.51), a recommendation regarding whether the client should transfer their pension benefits with the statement of either:

(i) *"Based on the TVAS only we do not recommend that [the client] transfers their pension benefits away from [the client's Defined Benefit Pension Scheme]"; or*

(ii) *"Taking the critical yield in isolation [...] we would normally recommend that [the client] considers transferring their pension benefits away from [the client's Defined Benefit Pension Scheme]."*

4.55. SMP's template confirmation of advice letters were also issued with a declaration that the client was advised solely on the basis of a critical yield analysis and that the Firm's advice *"does not take into account the client's personal circumstances, attitude to risk and objectives"*. Further, the letters contained a caveat that the adviser did not give advice regarding the receiving investment scheme. For the purposes of the trustees' legal position for releasing members from their schemes, it was immaterial as to whether SMP had advised the client whether to transfer out of their Defined Benefit Pension Scheme or not.

4.56. Although SMP's confirmation of advice letters were addressed to the client's ceding scheme trustees, they were provided to introducers. It was not necessary for the purposes of section 48 of the 2015 Act for trustees to have sight of the underlying advice given by the adviser once written confirmation of advice was received in the form prescribed by Regulation 7 of the 2015 Regulations, confirming that advice had been provided by an authorised independent adviser with permission to advise on Pension Transfers. Trustees were not responsible for verifying the adequacy of the advice obtained by clients and relied on the authorised independent adviser to have discharged its regulatory responsibilities to advise on Pension Transfers appropriately.

4.57. SMP provided confirmation of advice letters for the vast majority of clients it advised under the Pension Transfer Model (at least 484 out of 547 clients),



including those clients whom the Firm had advised should not proceed with a Pension Transfer. This included clients whom the Compliance Manager described as being in the category of "*definitely never transfer*", such as those with critical yield values of above 15%.

*Misleading 'Reasons to Transfer' letters directed to clients who wished to proceed with a Pension Transfer against advice*

- 4.58. From April 2016, SMP changed its internal processes to require clients who wished to proceed with a Pension Transfer against SMP's advice (in cases where the critical yield was above the 7.5% or 6% threshold and SMP's advice was not to transfer) to complete a 'Reasons to Transfer' letter confirming that they had not received full advice but still wished to proceed with a Pension Transfer based on the TVAS Report and critical yield. This was a template letter containing an empty box, which the client was expected to complete in their own words and handwriting, giving the reason for their transfer.
- 4.59. An example of SMP's failure to place such clients in an informed position is the case of Ms W, whose 'Reasons to Transfer' letter provided her reasons for deciding to transfer her fund and included a signed disclaimer stating:

*"I can confirm, that although I have not received full advice, as recommended in your letter, I still wish to go ahead based on the Transfer Value Analysis Report and the critical yield required of 8.1%.*

*Please, therefore confirm to the trustees that I have received the required level of advice in order for the funds to be released.*

*I understand that I will be losing all guarantees attached to my transferred plan."*

- 4.60. Ms W's file included no evidence that the Firm attempted to explain further the risks associated with the transfer, such as the loss of all Defined Benefit guarantees. The reason for transfer was purely based on the critical yield of 8.1%, which, as set out above, fails to consider the client's circumstances, financial objectives or attitudes, and applies an arbitrary critical yield threshold (of 6%), which ignores the client's investment risk tolerance.

- 4.61. Further, the template letter was also misleading because of the following statements: “[...] *although I have not received full advice [...] I still wish to go ahead based on the Transfer Value Analysis Report*” and “[...] *I have received the required level of advice in order for the funds to be released.*” SMP’s Advisers stated that the “*full advice*” was not provided by SMP, but the “*full*” and “*required level of advice*” was received from the relevant financial adviser, such as the Overseas Adviser Firm. However, the Authority considers that this communication is misleading and failed to treat clients fairly, because it assumed that clients understood the difference between SMP’s limited advice and the complete advice they could have received under a Full Advice Model. The statements imply that:
- (a) Ms W was placed in an informed position to understand SMP’s incorrect belief that its critical yield analysis did not constitute full advice, but was nonetheless sufficient to facilitate a Pension Transfer; and
  - (b) Ms W appreciated the difference between the limited advice she received from SMP, and the more extensive advice she could have received under a Full Advice Model, but nonetheless confirmed that SMP’s TVAS-only advice should form the basis of her decision.
- 4.62. No steps were taken to ensure clients fully understood the implications of the ‘Reasons to Transfer’ letter which, together with the confirmation of advice letter, facilitated Pension Transfers from Defined Benefit Pension Schemes based on limited advice. Therefore, SMP wrote to Ms W in an unclear and misleading way. Such conduct placed clients at risk, because clients were exposed to SMP’s seriously flawed advice process but were not given sufficient warning their pension funds would be better safeguarded through receiving full and comprehensive advice.

#### **Operation of the Pension Transfer Model under Mr Cuthbert**

*Failure to consider SMP’s regulatory obligations during the creation and operation of SMP’s advice model*

- 4.63. Mr Cuthbert’s failure to take reasonable steps to ensure SMP complied with regulatory requirements stemmed from his failure to consider or check whether SMP was issuing Personal Recommendations to clients under the Pension Transfer

Model. Mr Cuthbert's explanation as to why SMP was not issuing Personal Recommendations to clients was because:

- (a) the issuance of a TVAS Report to clients based solely on an analysis of critical yield values did not constitute a Personal Recommendation and therefore did not trigger relevant regulatory obligations (such as to assess fully the client's financial and personal circumstances and objectives);
- (b) SMP's clients and the intended recipient of SMP's advice letters were SMP's partner introducers, and not the client; and
- (c) SMP's TVAS Reports constituted the first step in a "trriage" arrangement, where SMP were "one link in the chain at the beginning" and with clients advised to then seek full advice through a separate regulated financial adviser. In circumstances where clients were advised by SMP not to proceed with a Pension Transfer (on the basis of a high critical yield), the client's advice process journey ended with no Personal Recommendation given.

4.64. Further, Mr Cuthbert stated that he assumed Pension Transfers would not be facilitated by SMP's involvement through its TVAS-only advice model, in that ceding scheme trustees, upon receiving a confirmation of advice letter which stated that SMP's advice was based solely on "the critical yield in isolation", would not proceed with the Pension Transfer. The Authority does not accept this explanation, and considers that it would have been obvious to Mr Cuthbert, in light of his experience as a financial adviser and his senior positions at SMP as CF4 (Partner) and CF10 (Compliance Oversight), that SMP's confirmation of advice letters fulfilled the requirements of section 48 of the 2015 Act and could be relied on by the trustees of ceding schemes to release members from their schemes, including clients who were advised by SMP not to transfer. In closing his mind to the risk that clients would be released from their schemes at the point when those clients had received very limited advice, Mr Cuthbert unreasonably exposed SMP's clients to a significant risk of financial detriment.

*Failure to ensure SMP's Compliance Consultant was consulted*

4.65. At no time during the establishment or operation of the Pension Transfer Model was SMP's Compliance Consultant approached by SMP to advise on the compliance of the Pension Transfer Model. The Compliance Consultant was also not made

aware of the Pension Transfer Model during its regular audits or visits to SMP's offices (in November 2015 and January 2016).

- 4.66. SMP only consulted the Compliance Consultant in respect of the Pension Transfer Model after the Relevant Period, in September and October 2016. The Compliance Consultant then listed to SMP its various concerns and recommendations for remedial action, including to review SMP's internal processes to evidence that it would only continue offering full advice on Defined Benefit Pension Transfers. Further, the Compliance Consultant, in its audit of SMP case files on 2 February 2017, assessed that none of the fourteen cases or two resubmissions of SMP's cases were suitable. The Compliance Consultant stated that had it been consulted regarding the Pension Transfer Model at the outset, it would not have recommended the advice model to go ahead. Mr Cuthbert accepted that he should have verified the Firm's advice model with the Compliance Consultant, who would have "*pulled the plug on it straight away*".
- 4.67. In failing to appropriately obtain an independent expert opinion, Mr Cuthbert closed his mind to the significant risks of detriment to SMP's clients inherent in the Pension Transfer Model. Mr Cuthbert's failure in this regard was serious because:
- (a) Mr Cuthbert knew that SMP would be engaging in a novel and untested advice process yet did not take steps to verify its advice model;
  - (b) SMP did not historically have any relationship with third-party introducers and the introduction of at least 17 new introducers to the Firm represented a major change in direction for SMP. Introducer A was amongst these introducers, who initially promoted the Pension Transfer Model with a view to bringing about transfers into unregulated overseas property investments offered by the Overseas Property Developer. Despite this major change to SMP's relationships, Mr Cuthbert closed his mind to the significant risks to SMP's clients that those unknown introducers might bring about investments of clients' pension funds into investments which were unsuitable for them; and
  - (c) Mr Cuthbert was presented with numerous warning signs regarding the risks of SMP's advice process throughout the Relevant Period (see paragraph 4.79), in addition to the Compliance Manager's concern that confirmation of advice letters were being sent to ceding scheme trustees regarding clients who

wished to proceed with a Pension Transfer against SMP's advice (see paragraph 4.76). However, Mr Cuthbert failed to take action in response by consulting the Compliance Consultant during the operation of the Pension Transfer Model.

*Failure to ensure that SMP conducted adequate due diligence on introducers*

- 4.68. SMP had not used introducers prior to the operation of the Pension Transfer Model. Upon joining SMP prior to the Relevant Period, SMP's Advisers introduced introducers and financial advisers for SMP to partner with under the Pension Transfer Model. SMP carried out minimal due diligence on those introducers or on whether those advisers were suitable to provide transfer advice, relying instead on the pre-existing relationship SMP's Advisers had with them and what SMP's Advisers said about them. Mr Cuthbert could not recall the number of introducers involved in the Pension Transfer Model, nor could he recall whether certain introducers were involved in the advice model; further, he had no knowledge of the details of the existing relationships they had with SMP's Advisers.
- 4.69. SMP's onboarding of introducers consisted of:
- (a) a high-level questionnaire which only requested basic information on the introducer, namely its name and address in addition to details on the type of introduction it would be making to SMP, its projected figures for the number of introductions it would make, and its fees. This questionnaire was not completed for every introducer, nor was the questionnaire consistently followed up on and no central record of introducers was kept; and
  - (b) a generic introducer agreement to be entered into between SMP and the introducer. However, in certain instances, the introducer agreement was signed many months after Pension Transfers were finalised.
- 4.70. No additional due diligence was undertaken on introducers and no formal process for carrying out meaningful due diligence was in place. Because the introducers had an existing relationship with third-party financial advisers, these introducers were treated by Mr Cuthbert as having been appropriately vetted; Mr Cuthbert stated that it was then a case of "*passporting them over*" to SMP's advice model. Further investigations did not take place to ascertain whether the existing relationship between the financial advisers and introducers were because they

were connected entities with a shared interest in promoting high-risk investment schemes (as was the case with the Overseas Adviser Firm and Introducer A, which had a shared financial interest in promoting investments in the Overseas Property Developer).

- 4.71. SMP's Advisers denied knowledge of the close links between the Overseas Adviser Firm, Introducer A and the Overseas Property Developer. However, the Authority considers that they received obvious indications that the Overseas Adviser Firm would advise clients to transfer their pension funds into the Overseas Property Developer's high-risk property investments. Although Introducer A introduced the vast majority of SMP's clients, Mr Cuthbert did not investigate whether a common interest existed between the Overseas Adviser Firm, Introducer A and the Overseas Property Developer to promote high risk investments. Mr Cuthbert also failed to investigate or carry out adequate due diligence on the other introducers which SMP's Advisers brought in to work alongside the Firm or adequately challenge them on their knowledge of the unregulated investments or the likely risks. Mr Cuthbert did not meet anyone from the Overseas Adviser Firm or Introducer A and all contact with them was via SMP's Advisers. Mr Cuthbert later admitted he should have been "*less trusting*", especially given the obvious indications SMP's Advisers received of the high-risk investments promoted by Introducer A and the Overseas Adviser Firm.
- 4.72. SMP's Compliance Consultant reached the conclusion, in September 2016, that "*it [was] unclear if due diligence has been completed on any of the introducers.*" The Compliance Consultant then recommended that SMP should review the introducers on file to ascertain the extent they held necessary regulatory permissions and qualifications.
- 4.73. It was suggested by Mr Cuthbert that it was sufficient, from a compliance perspective, that non-UK adviser and introducer firms were being passported into the UK by the Authority. Mr Cuthbert thereby closed his mind to the significant risks that SMP's clients would be encouraged by unauthorised firms which lacked the appropriate UK regulatory permissions to advise on Pension Transfers to invest into high-risk investments which were unsuitable for them, and failed to take steps to protect them.

*Failure to monitor the advice provided by SMP's Advisers adequately*

- 4.74. During the Relevant Period, Mr Cuthbert reduced his office hours and was also largely absent from the workplace, sometimes not coming in for some weeks, although he was contactable by telephone. Mr Cuthbert's limited involvement in SMP's affairs was a result of his planned retirement through the intended sale of SMP.
- 4.75. Mr Cuthbert delegated his day-to-day CF10 (Compliance Oversight) responsibilities to SMP's Compliance Manager, whom Mr Cuthbert did not provide with adequate support or guidance in light of his level of experience to ensure compliant advice was given.
- 4.76. When SMP's Compliance Manager realised SMP's Advisers' advice might present risks to clients, the Compliance Manager responded to these issues in an ad hoc manner. However, he was left unsupported by Mr Cuthbert with the result that his measures were inadequate. In particular:
- (a) on 1 October 2015, the Compliance Manager reminded SMP's Advisers of their obligations under relevant regulatory requirements when advising on and facilitating Pensions Transfers by listing the documents required on file, such as a client completed fact find and suitability report. The Compliance Manager's advice was however ignored, including by Mr Cuthbert, on the purported basis that SMP was not offering full advice on Pension Transfers and therefore did not require those documents on file. The Compliance Manager was unsupported by Mr Cuthbert, who failed to take steps to check SMP's regulatory obligations and whether it was necessary for SMP to receive a full client fact-find and attitude to risk capture if the confirmation of advice letter stated SMP's advice was based solely on TVAS Report;
  - (b) when SMP's Compliance Manager became concerned that SMP was facilitating transfers based on limited information, the confirmation of advice letter (received by ceding scheme trustees) was changed to state that the advice was based solely on a TVAS Report. This was, however, insufficient to prevent transfers where clients had been inadequately advised; in only one instance, Mr Cuthbert received a call from a trustee asking for further clarification as to the meaning of the TVAS-only advice letter. Instead, it was usual for trustees to consider that SMP's confirmation of advice letters fulfilled the requirements

of section 48 of the 2015 Act, which were used to release client funds from their Defined Benefit Pension Schemes. Mr Cuthbert stated that he assumed, without further investigation or due diligence, that ceding scheme trustees would reject SMP's confirmation of advice letters if they qualified the advice as being based solely on TVAS Report. Mr Cuthbert therefore failed to investigate how ceding scheme trustees would respond to SMP's confirmation of advice letters, or appropriately warn trustees, which therefore enabled SMP to facilitate hundreds of Pension Transfers;

- (c) in February 2016, when the Compliance Manager first realised that confirmation of advice letters were being sent to ceding scheme trustees for clients on almost every occasion, he raised this with Mr Cuthbert. This included for clients in the category of "*definitely never transfer*", such as those with a critical yield value of above 15%. The Compliance Manager also recommended to SMP's Advisers, via a compliance memorandum, that confirmation of advice letters should not be provided to trustees in relation to clients when it was not in their best interests to transfer. However, the Compliance Manager's suggestions were ignored by SMP's Advisers because Mr Cuthbert took no steps to enforce the recommendation or monitor whether it was being complied with. Mr Cuthbert stated that he assumed SMP's Advisers no longer sent confirmation of advice letters to trustees, which was not the case;
  
- (d) from April 2016, SMP's Advisers continued to send confirmation of advice letters to ceding scheme trustees, but instead asked for 'Reasons to Transfer' letters in relation to clients who wished to transfer against SMP's advice. As set out in paragraphs 4.58 to 4.62, the receipt of client 'Reasons to Transfer' letters was insufficient to safeguard the client's best interests because clients were not appropriately advised by SMP whether they should or should not transfer, and were provided with misleading communications regarding the quality of the advice they received. Mr Cuthbert stated that the intention of the 'Reasons to Transfer' letter was to "*make the [client] think more deeply about their reasons to transfer*". However, no steps were taken by SMP to appropriately and independently inform clients of their relevant reasons to transfer, especially considering SMP did not have sight of the client's full financial or personal circumstances; and



(e) in May 2016, SMP's advice process was further amended by SMP's Compliance Manager so that SMP would send its TVAS Reports and advice letters to clients directly, rather than only sending these to SMP's partner introducers (and then onto ceding scheme trustees). Mr Cuthbert stated that this measure would give clients greater awareness of the advice process, including that the advice they received was based purely on a critical yield value. These amendments were inadequate because no steps were taken by SMP to monitor or ensure that clients then proceeded to receive full investment advice by a regulated adviser before entering into their Pension Transfer.

4.77. Further, the Compliance Manager was delegated to lead on important compliance responsibilities when, in light of Mr Cuthbert's responsibilities as holder of the CF10 (Compliance Oversight) controlled function and the Compliance Manager's inexperience, it was inappropriate for Mr Cuthbert to leave the Compliance Manager unsupervised. For example:

(a) Mr Cuthbert delegated to the Compliance Manager the responsibility of discussing, in concert with SMP's Advisers, the proposals to create the Pension Transfer Model. As set out in paragraphs 4.67(a) and (b), the advice model was untested and involved SMP developing non-standard business relationships with unvetted third-party introducers, who were deemed trustworthy on the basis that they were already known by or introduced via SMP's Advisers. Given the major change in direction for SMP, it was clear that proposals should have been carefully considered by the holder of the CF10 (Compliance Oversight) function. In reality, Mr Cuthbert did not discuss the advice model before its inception, nor did he read the initial proposals (of November 2015) as he considered it "*common sense*". Instead, the Pension Transfer Model and its template documentation and reports were left to be mainly designed by SMP's Advisers, in conjunction with the Compliance Manager;

(b) in light of the novelty of the Pension Transfer Model and the various warning signs, it was also inappropriate for the Compliance Manager to be tasked with the ongoing monitoring and compliance management of the advice model. SMP's Compliance Manager "*kept an eye*" on the advice model in a very informal sense and no formal periodic reviews were undertaken on its operation. Where changes were made to the advice model, such as described

in paragraph 4.76, this was on an ad hoc basis and documentation was not made recording the Compliance Manager's rationale for those changes; and

- (c) Mr Cuthbert blamed the Compliance Manager for not having sufficient contact with the Compliance Consultant's representatives, who Mr Cuthbert stated was responsible for the ongoing relationship. This further demonstrates that Mr Cuthbert had insufficient regard to his CF10 (Compliance Oversight) responsibilities, particularly when it would have been clear that third party compliance advice should have been sought to verify SMP's assumptions.

*Failure to monitor client outcomes*

4.78. Mr Cuthbert also did not take reasonable steps to monitor client outcomes:

- (a) the extent to which the provision of advice under the Pension Transfer Model was monitored was a basic spreadsheet recorded by the Compliance Manager and the Compliance Manager was not instructed to conduct formal reviews of client outcomes. This spreadsheet was held out by Mr Cuthbert as being the extent of SMP's supervision, management and monitoring of the Pension Transfer Model. However, this spreadsheet did not track, for example, client outcomes, such as which clients who were advised to remain within their Defined Benefit Pension Scheme and which opted to proceed with a Pension Transfer against advice. Mr Cuthbert therefore failed to establish adequate risk management procedures or policies to record the extent SMP's clients were losing their guaranteed benefits under their Defined Benefit Pension Schemes;
- (b) at no point did SMP's Advisers receive any further information regarding the outcome of client funds, such as whether clients had even proceeded with the Pension Transfer, or where the funds released from the ceding scheme had been invested. In one email, it is stated that SMP has "*three boxes of correspondence from insurance companies*" regarding clients which had proceeded with a transfer which were unclaimed, demonstrated the Firm's complete lack of process for providing clients with ongoing monitoring or support;

- (c) SMP could not verify records of the client's final investment (such as if these investments were unregulated or contained non-mainstream pooled investments); and
- (d) Mr Cuthbert did not instruct SMP's Compliance Consultant to conduct regular file checks on clients advised under the Pension Transfer Model on the basis that these files did not require auditing. Mr Cuthbert therefore did not have in place adequate risk management systems to require its novel advice model, or the resulting client files, to be verified by third-party compliance experts.

*Warning signs in respect of the obvious deficiencies and risks of the Pension Transfer Model*

4.79. During the operation of the Pension Transfer Model, Mr Cuthbert was presented with a number of warning signs in respect of the obvious deficiencies of the model and the risks of detriment it posed to SMP's clients. In particular:

- (a) Mr Cuthbert stated that it was not deemed cost-effective by the Firm's partner introducers to engage SMP to provide full advice to clients, which was why SMP was approached to provide limited advice under the Pension Transfer Model. Mr Cuthbert closed his mind to the risks of introducers taking these cost-cutting shortcuts, or investigate the possibility that the introducers intended to use SMP who would provide a heavily caveated confirmation of advice letter, with no intention of ensuring clients were subsequently appropriately advised under the Full Advice Model;
- (b) on 1 April 2016, Mr Cuthbert was notified by the Compliance Manager that an introducer had written directly to a ceding scheme trustee using a Letter of Authority drafted by the introducer which purported to be SMP's Letter of Authority. This constituted a "*major concern*" and justified the immediate termination of the relevant introducer agreement. However, this did not lead Mr Cuthbert to question the suitability of SMP's partner introducers or their continuing involvement, nor did it lead to a wider review of SMP's relationship with third-party introducers or SMP's controls;
- (c) on 11 April 2016, the Compliance Manager indicated to Mr Cuthbert his distrust of SMP's partner introducers, including Introducer A. As a result of this distrust, the Compliance Manager changed SMP's processes in May 2016

to ensure clients received a copy of SMP's advice letter directly from SMP, rather than via the introducer. Despite knowing that the Firm's Compliance Manager did not trust Introducer A, Mr Cuthbert did not introduce further controls to protect clients and SMP therefore continued to facilitate Pension Transfers on the basis of its very limited advice; and

- (d) on 13 May 2016, SMP's Compliance Manager warned Mr Cuthbert that Introducer A, which constituted a "*fair proportion*" of SMP's fee income, appeared to be using an offshore trustee for their clients. The Compliance Manager had warned that the trustee only ran QROPS from offshore locations, which suggested that clients were being led by Introducer A to invest into overseas, unregulated and potentially high-risk investment schemes. In response to the Compliance Manager's concerns regarding the destination of client pension funds, the Compliance Manager took some ad hoc steps to terminate a small number of client cases which involved Introducer A's use of that offshore trustee. However, despite these warnings, Mr Cuthbert failed to instruct a meaningful response, such as undertaking comprehensive due diligence on the investments promoted by introducers and an assessment of whether they were appropriate destinations for clients' pension funds. This was despite Mr Cuthbert admitting that he did not hold any awareness of the offshore trustee, and that he understood that there was always a risk that client pension funds would end up in unregulated investment schemes.

- 4.80. These were clear warning signs that SMP's clients were being exposed to a significant risk of detriment arising from the practices of introducers. Despite these warning signs which Mr Cuthbert received, SMP continued to receive client introductions from introducers until the end of the Relevant Period.

*Significant volume of Pension Transfer advice*

- 4.81. The limited fact-find and accelerated provision of advice under the Pension Transfer Model allowed SMP to conduct a significant volume of transfer advice. At least 547 clients were advised in a 9 month period from November 2015 to July 2016, with at least 139 cases in April 2016, 76 cases in May 2016, and 137 cases in June 2016. In contrast, each Full Advice Model case took several months to complete (see paragraph 4.25).

- 4.82. The advice model operated on a high-volume basis, using administrative staff to assist with what one of SMP's Advisers described as "*cut and paste*" of highly templated work. The Authority considers that it would have been obvious to Mr Cuthbert, in his capacity as CF10 (Compliance Oversight), that the significant volume of Pension Transfers, which were predicated on inadequate advice, significantly increased the risks faced by a high number of clients. For example, approximately 42% of TVAS Reports were provided by SMP's administrative staff or paraplanners, and not SMP's two approved CF30s. These administrative staff were inadequately supervised by SMP's Advisers; in repeated instances, a single-life critical yield value was applied instead of a joint-life critical yield suitable for clients who were married, resulting in the Firm erroneously advising clients to proceed with Pension Transfers.
- 4.83. These failures occurred in circumstances where SMP, and its advisers, were financially incentivised to pursue higher client volumes.

## **5. FAILINGS**

- 5.1. The statutory and regulatory provisions relevant to this Notice are referred to in Annex A.
- 5.2. By reason of the facts and matters set out above, Mr Cuthbert failed to comply with Statement of Principle 1.

### **Statement of Principle 1**

- 5.3. The Authority considers that Mr Cuthbert failed to comply with Statement of Principle 1 during the Relevant Period in that he failed to show integrity in carrying out his accountable functions as CF4 (Partner) and CF10 (Compliance Oversight) at SMP. Mr Cuthbert must have been aware of the obvious risks arising in relation to SMP's design and operation of the Pension Transfer Model but failed to have regard to those risks and failed to take appropriate action in light of them. In particular, Mr Cuthbert:
- (a) failed to assess the obvious deficiencies in the Pension Transfer Model before permitting the expansion of SMP's business model to include this advice process, notwithstanding that it constituted a significant departure from SMP's usual advice model. This unreasonably exposed SMP's clients to a

significant risk that they would proceed with a Pension Transfer without receiving complete advice. This risk would have been obvious to Mr Cuthbert in light of his experience as a financial adviser and his senior positions as CF4 (Partner) and CF10 (Compliance Oversight) at SMP. The obvious deficiencies in the Pension Transfer Model included that:

- (i) it failed to take into account the client's attitude to risk, meaning SMP was unable to ascertain whether a Pension Transfer was suitable in accordance with the client's risk tolerance;
- (ii) it failed to gather information on the client's financial situation and income needs throughout retirement, meaning SMP was unable to determine whether a client could bear the risks of losing the guaranteed income they would otherwise receive during their retirement from their Defined Benefit Pension Scheme;
- (iii) it failed to gather information on the client's knowledge and experience of relevant investments, meaning SMP was unable to assess whether their clients fully understood the financial implications of their advice;
- (iv) personal recommendations were provided to clients on the basis of very limited information gathered from the client and solely on the basis of a TVAS Report;
- (v) the TVAS Report took no account of the onward investment scheme and instead used a generic personal pension scheme; and
- (vi) confirmation of advice letters were issued to the trustees of the ceding schemes at a point when SMP's clients had received this very limited advice, thereby enabling Pension Transfers.

In failing to assess these obvious deficiencies in the Pension Transfer Model, Mr Cuthbert closed his mind to the significant risk that SMP's clients would proceed with a Pension Transfer without receiving complete advice;

- (b) failed to ensure that SMP performed sufficient and adequate due diligence on its partner introducers and the investments which they promoted to clients. The Pension Transfer Model entailed a rapid expansion of SMP's business, with

the Firm partnering with numerous introducers to receive and advise significantly greater numbers of clients, therefore placing a significant number of clients at greater risk. SMP did not historically have any relationship with third-party introducers and the introduction of at least 17 introducers to the Firm represented a major change in direction regarding the methods in which clients would be introduced to SMP. Mr Cuthbert closed his mind to the risks that would arise from rapidly expanding SMP's business to advise clients introduced by unknown introducers using the Pension Transfer Model. In doing so, he unreasonably exposed the Firm's clients to a significant risk that their pension funds would be transferred into investments which were unsuitable for them, including the high-risk, illiquid and unregulated property investments offered by the Overseas Property Developer;

- (c) failed to ensure that SMP obtained independent, expert opinion from SMP's Compliance Consultant to verify the compliance of the Pension Transfer Model, both prior to its implementation and during its operation. This was despite there being two visits by SMP's Compliance Consultants to SMP during the Relevant Period, in November 2015 and January 2016, when Mr Cuthbert could have checked whether the Pension Transfer Model was compliant with relevant regulatory requirements. In failing to ensure that SMP obtained independent, expert opinion from SMP's Compliance Consultant, Mr Cuthbert closed his mind to the significant risks associated with the Pension Transfer Model;
- (d) failed to ensure that SMP obtained sufficient information from clients in order to make Personal Recommendations which were suitable for them, including the client's attitude to risk, financial situation, and knowledge and experience of the relevant investment. SMP's failures were systemic: the Firm failed to gather material information in 100% of advice files reviewed by the Authority, including on the client's risk profile and their retirement expenditure and financial circumstances. Therefore, SMP was unable to properly assess the client's income needs in retirement including their attitude to risk, the extent to which they relied on guaranteed retirement income provided by their respective Defined Benefit Pension Schemes, and their capacity for loss. The missing information went to the heart of whether a Pension Transfer was suitable for a client, but Mr Cuthbert failed to take steps to check whether the issuance of advice based upon a TVAS Report did indeed constitute a Personal Recommendation which triggered COBS obligations, which would have been

obvious to him in light of his experience as a financial adviser and his senior roles as CF10 (Compliance Oversight) and CF4 (Partner). In doing so, Mr Cuthbert unreasonably exposed SMP's clients to the risk that they would transfer out of their Defined Benefit Pension Schemes and lose their guaranteed benefits having received very limited advice;

- (e) failed to ensure that SMP obtained sufficient information which was required to generate an accurate TVAS Report and critical yield analysis, upon which SMP's Personal Recommendations were based (notwithstanding the flaws of advising clients solely based on a TVAS Report). SMP did not take into account the proposed investment, meaning that an accurate TVAS calculation, which accounted for the reality of the proposed investment and ongoing fees, could not be generated. Further, material information on the client, such as their employment status and intended retirement age, was missing from the data capture, meaning that the information was only assumed when generating a TVAS Report;
- (f) failed to monitor the advice provided under the Pension Transfer Model by SMP's Advisers when advising clients under the Pension Transfer Model. This was notwithstanding the reduced effectiveness of SMP's compliance function in light of Mr Cuthbert's reduced office hours in advance of his planned retirement, and the lack of experience and relevant qualification of SMP's Compliance Manager, to whom day-to-day compliance responsibilities had been delegated; and
- (g) failed to respond to warning signs he received during the operation of the Pension Transfer Model in respect of the obvious deficiencies of the advice process and the risks of detriment it posed to SMP's clients. Mr Cuthbert took no reasonable steps to rectify potential issues; instead, he permitted the model to keep operating until the end of the Relevant Period, during which time the numbers of clients advised under the model substantially increased.

## **6. SANCTION**

### **Financial Penalty**

- 6.1. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. In respect of conduct occurring on or after 6 March 2010, the Authority



applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5B sets out the details of the five-step framework that applies in respect of financial penalties imposed on individuals in non-market abuse cases.

### **Step 1: disgorgement**

- 6.2. Pursuant to DEPP 6.5B.1G, at Step 1 the Authority seeks to deprive an individual of the financial benefit derived directly from the breach where it is practicable to quantify this.
- 6.3. Mr Cuthbert derived direct financial benefit from the fees generated by the Pension Transfer Model. SMP received £463,766 from its partner introducers during the Relevant Period in connection with the Pension Transfer Model, of which it retained 30% (£139,129.80) following a 70% pay-away to a company jointly owned by SMP's Advisers. Of this sum of £139,129.80, the Authority considers that Mr Cuthbert received the benefit of £14,317 as one of the two partners at SMP, and that this stemmed directly from his breach.
- 6.4. The Authority has charged interest on Mr Cuthbert's benefits at 8% per year from the end of the Relevant Period to 30 June 2022, amounting to £6,776.
- 6.5. Step 1 is therefore £21,093.

### **Step 2: the seriousness of the breach**

- 6.6. Pursuant to DEPP 6.5B.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. That figure is based on a percentage of the individual's relevant income. The individual's relevant income is the gross amount of all benefits received by the individual from the employment in connection with which the breach occurred, and for the period of the breach.
- 6.7. The period of Mr Cuthbert's breach of Statement of Principle 1 was from 1 October 2015 to 31 July 2016. 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 Mr Cuthbert's relevant income for the 12 month period preceding 31 July 2016 to be £84,060.

6.8. In deciding on the percentage of the relevant income that forms the basis of the Step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 40%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach; the more serious the breach, the higher the level. For penalties imposed on individuals in non-market abuse cases there are the following five levels:

Level 1 – 0%

Level 2 – 10%

Level 3 – 20%

Level 4 – 30%

Level 5 – 40%

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

*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. Mr Cuthbert substantially benefitted from the breach (DEPP 6.5B.2G(8)(a)).

6.12. Mr Cuthbert's breach also caused a significant risk of loss to a very large number of consumers who transferred out of their Defined Benefit Pension Schemes (DEPP 6.5B.2G(8)(c)).

6.13. Mr Cuthbert's breach caused inconvenience and potential distress to pension holders who transferred out of their Defined Benefit Pension Schemes (DEPP 6.5B.2G(8)(e)).

*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. Mr Cuthbert's failings occurred over a sustained period (ten months) (DEPP 6.5B.2G(9)(b)).
- 6.16. Mr Cuthbert failed to act with integrity because he acted recklessly throughout the Relevant Period (6.5B.2G(9)(e)).
- 6.17. Mr Cuthbert, as the individual approved to perform the CF4 (Partner) and CF10 (Compliance Oversight) controlled functions, held senior positions in the Firm (DEPP 6.5B.2G(9)(k)) and was an experienced industry professional.

*Whether the breach was deliberate and/or reckless*

- 6.18. DEPP 6.5B.2G(10) and (11) list factors tending to show whether the breach was deliberate or reckless. The Authority considers that the factors tending to show the breach was reckless are present in this case (DEPP 6.5B.2G(11)).

*Level of seriousness*

- 6.19. DEPP 6.5B.2G(12) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the Authority considers the following factors to be relevant:
- (1) Mr Cuthbert's breach caused a significant loss or risk of loss to individual consumers, investors or other market users (DEPP 6.5B.2G(12)(a));
  - (2) Mr Cuthbert failed to act with integrity (DEPP 6.5B.2G(12)(d)); and
  - (3) Mr Cuthbert committed the breach recklessly (DEPP 6.5B.2G(12)(g)).
- 6.20. DEPP 6.5B.2G(13) lists factors likely to be considered 'level 1, 2 or 3 factors'. The Authority considers that none of these apply.
- 6.21. Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 4 and so the Step 2 figure is 30% of £84,060.
- 6.22. Step 2 is therefore £25,218.

### **Step 3: mitigating and aggravating factors**

- 6.23. 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.
- 6.24. 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 of these apply to a material extent, such that the penalty ought to be increased or decreased.
- 6.25. Step 3 is therefore £25,218.

### **Step 4: adjustment for deterrence**

- 6.26. 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.
- 6.27. The Authority considers that the Step 3 figure of £25,218 does not represent a sufficient deterrent to Mr Cuthbert and others, and so has increased the penalty at Step 4. The Authority therefore has increased the Step 3 figure by a multiple of 4.
- 6.28. Step 4 is therefore £100,872.

### **Step 5: settlement discount**

- 6.29. Pursuant to DEPP 6.5B.5G, if the Authority and the individual on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the individual reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.

- 6.30. The Authority and Mr Cuthbert reached agreement at Stage 1 and so a 30% discount applies to the Step 4 figure.
- 6.31. Step 5 is therefore £70,610. This is to be rounded down to £70,600.

### **Penalty**

- 6.32. The Authority hereby imposes a total financial penalty of £91,693 (the Step 1 and Step 5 figures added together) on Mr Cuthbert for breaching Statement of Principle 1.

### **Prohibition Order**

- 6.33. The Authority has the power to prohibit individuals under section 56 of the 2000 Act. The Authority has had regard to the guidance in Chapter 9 of EG and FIT 2 of the Handbook, including the criteria at EG 9.3.2 and FIT 2.1.3, in considering whether to impose a prohibition order on Mr Cuthbert.
- 6.34. In considering whether to impose a prohibition order, the Authority has had regard to all relevant circumstances of the case. In particular, in relation to EG 9.3.2 and FIT 2.1.3, the Authority has considered Mr Cuthbert's fitness and propriety, his reckless and knowing misconduct displaying a lack of integrity and disregard for customers' interests and the regulatory system, and the severity of the risk which Mr Cuthbert poses to consumers and to confidence in the financial system.
- 6.35. The Authority hereby makes an order prohibiting Mr Cuthbert from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm, on the grounds that his conduct during the Relevant Period demonstrates a reckless lack of integrity.

## **7. PROCEDURAL MATTERS**

- 7.1. This Notice is given to Mr Cuthbert under and in accordance with section 390 of the 2000 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.

### **Manner and time for payment**

- 7.4. The financial penalty must be paid in full by Mr Cuthbert to the Authority no later than 13 September 2024.

### **If the financial penalty is not paid**

- 7.5. If all or any of the financial penalty is outstanding after 13 September 2024, the Authority may recover the outstanding amount as a debt owed by Mr Cuthbert and due to the Authority.

### **Publicity**

- 7.6. Sections 391(4), 391(6) and 391(7) of the 2000 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 Mr Cuthbert or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

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

### **Authority contacts**

- 7.8. For more information concerning this matter generally, contact William Byrne (direct line: 020 7066 9821/email: [william.byrne@fca.org.uk](mailto:william.byrne@fca.org.uk)) at the Authority.

**Nicholas Hills**

**Head of Department**

**Financial Conduct Authority, Enforcement and Market Oversight Division**

## **ANNEX A**

### **RELEVANT STATUTORY AND REGULATORY PROVISIONS**

#### **1. RELEVANT STATUTORY PROVISIONS**

##### ***The 2000 Act***

- 1.1. The Authority's operational objectives, set out in section 1B(3) of the 2000 Act, 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).
- 1.2. Section 56 of the 2000 Act provides that the Authority may make an order prohibiting an individual from performing a specified function, any function falling within a specified description or any function, if it appears to the Authority that that individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, exempt person or a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities.
- 1.3. Section 66 of the 2000 Act<sup>2</sup> provides that the Authority may take action against a person if it appears to the Authority that he is guilty of misconduct and the Authority is satisfied that it is appropriate in all the circumstances to take action against him.
- 1.4. During the Relevant Period, under section 66(2) of the 2000 Act (in force until 6 March 2016) misconduct included failure, while an approved person, to comply with a Statement of Principle issued under section 64 of the 2000 Act or to have been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that approved person by or under the 2000 Act.
- 1.5. During the Relevant Period, under section 66A of the 2000 Act (in force from 7 March 2016) a person was guilty of misconduct if, inter alia, he at any time failed to comply with rules made by the Authority under section 64A of the 2000 Act and at that time was an approved person, or had been knowingly concerned in a

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<sup>2</sup> Section 66 was amended and section 66A added during the Relevant Period, but those changes are not material to the manner in which the Authority has exercised its powers as set out in this Notice.



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

### ***The 2015 Act and the 2015 Regulations***

- 1.6. Section 48(1) of the 2015 Act provides that trustees or managers of a defined benefit pension scheme are, and were during the Relevant Period, required to check that a member of the scheme had received appropriate independent advice before, amongst other things, making a transfer payment in respect of any of the benefit with a view to acquiring a right or entitlement to flexible benefits for the member under another pension scheme.
- 1.7. Section 48(8) of the 2015 Act provides that “appropriate independent advice” means advice that is given by an authorised independent adviser and meets any other requirement specified in regulations made by the Secretary of State. Regulation 3 of the 2015 Regulations provides that the advice must be specific to the type of relevant transaction proposed by the member.
- 1.8. Section 48(8) of the 2015 Act provides that “authorised independent adviser” means a person who has permission under Part 4A of the 2000 Act, or resulting from any other provision of the 2000 Act, to carry on a regulated activity specified in regulations made by the Secretary of State and meets such other requirements as may be specified in regulations made by the Secretary of State for the purpose of ensuring that the person is independent. Regulation 4 of the 2015 Regulations provides that the specified regulated activity is the activity described in article 53E of the 2001 Order, which is the activity of advising on the conversion or transfer of pension benefits.
- 1.9. Section 48(3) of the 2015 Act provides that the Secretary of State may by regulations create an exception to section 48(1) in the case of a member or survivor whose subsisting rights in respect of safeguarded benefits under the scheme, or safeguarded benefits under the scheme and any other schemes, are worth less than a specified amount. Regulation 5 of the 2015 Regulations provides that the trustee or members are not required to carry out the check required under section 48(1) of the 2015 Act if the total value of the member or survivor’s benefits under a defined benefit pension scheme is £30,000 or less on the valuation date.
- 1.10. Regulation 7 of the 2015 Regulations provides that confirmation from the member that appropriate independent advice has been received must be in the form of a

statement in writing from the authorised independent adviser providing the advice confirming:

- (a) that advice has been provided which is specific to the type of transaction proposed by the member;
- (b) that the adviser has permission under Part 4A of the 2000 Act to carry on the regulated activity in article 53E of the 2001 Order;
- (c) the firm reference number of the company or business in which the adviser works for the purposes of authorisation from the Authority to carry on the regulated activity in article 53E of the 2001 Order; and
- (d) the member's name, and the name of the scheme in which the member has subsisting rights in respect of safeguarded benefits to which the advice given applies.

## **2. RELEVANT REGULATORY PROVISIONS**

### ***Statements of Principle and Code of Practice for Approval Persons***

2.1. The Authority's Statements of Principle and Code of Practice for Approved Persons have been issued under section 64 of the 2000 Act.<sup>3</sup> The Code of Practice for Approved Persons sets out descriptions of conduct which, in the opinion of the Authority, do not comply with a Statement of Principle. It also sets out factors which, in the Authority's opinion, are to be taken into account in determining whether an approved person's conduct complies with a Statement of Principle.

2.2. During the Relevant Period, Statement of Principle 1 stated:

*"An approved person must act with integrity in carrying out his accountable functions."*

2.3. During the Relevant Period, accountable functions are in summary: the Authority's controlled functions; the Prudential Regulatory Authority's controlled functions; and

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<sup>3</sup> Section 64A of the 2000 Act from 7 March 2016.

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.

### ***Conduct of Business Sourcebook***

- 2.4. The following rules and guidance in COBS (as were in place during the Relevant Period) are relevant to assessing suitability of Pension Transfer advice given to clients:
- 2.5. COBS 2.1.1R stated that a firm must act honestly, fairly and professionally in accordance with the best interests of its client.
- 2.6. COBS 4.2.1R(1) stated that a firm must ensure that a communication or a financial promotion is fair, clear and not misleading.
- 2.7. COBS 9.2.1R stated that:
  - (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.
- 2.8. COBS 9.2.2R(1) stated that 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.
- 2.9. COBS 9.2.2R(2) stated that 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.
- 2.10. COBS 9.2.2R(3) stated that 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.
- 2.11. COBS 9.2.3R stated that 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.
- 2.12. COBS 9.2.6R stated that 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.

- 2.13. COBS 9.4.1R(4) stated 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 enters into a pension transfer, pension conversion or pension opt-out.
- 2.14. COBS 9.4.7R stated that 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.
- 2.15. COBS 19.1.1R stated that if an individual who is not a Pension Transfer Specialist gives advice or a personal recommendation about a pension transfer, a pension conversion or pension opt-out on a firm's behalf, the firm must ensure that the recommendation or advice is checked by a Pension Transfer Specialist.
- 2.16. COBS 19.1.2R stated that a firm must:
- (1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme or other pension scheme with safeguarded benefits with the benefits afforded by a personal pension scheme, stakeholder pension scheme or other pension scheme with flexible benefits, before it advises a retail client to transfer out of a defined benefits pension scheme or other pension scheme with safeguarded benefits;
  - (2) ensure that that comparison includes enough information for the client to be able to make an informed decision;
  - (3) give the client a copy of the comparison, drawing the client's attention to the factors that do and do not support the firm's advice, in good time, and in any case no later than when the key features document is provided; and
  - (4) take reasonable steps to ensure that the client understands the firm's comparison and its advice.

2.17. COBS 19.1.3G explained the information that should be contained within a comparison. 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.

2.18. COBS 19.1.6G stated that when advising a client who is, or is eligible to be, a member of a defined benefit pension scheme (as defined in the Handbook) 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 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.

2.19. COBS 19.1.7G stated that 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.

### ***The Fit and Proper Test for Approved Persons***

2.20. The part of the Authority's Handbook entitled "The Fit and Proper Test for Approved Persons" ("FIT") sets out the criteria that the Authority will consider when assessing the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an approved person.

- 2.21. FIT 1.3.1G states that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person. The most important considerations will be the person's honesty, integrity and reputation, competence and capability, and financial soundness.

### ***Enforcement Guide***

- 2.22. The Authority's policy in relation to prohibition orders is set out in Chapter 9 of the Enforcement Guide ("EG").
- 2.23. EG 9.1 states that the Authority may exercise this power where it considers that, to achieve any of its regulatory objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities or to restrict the functions which he may perform.
- 2.24. EG 9.3.1 provides that when the FCA has concerns about the fitness and propriety of an approved person, it may consider whether it should prohibit that person from performing functions in relation to regulated activities, withdraw its approval, or both.
- 2.25. EG 9.3.2 provides that when the Authority decides whether to make a prohibition order against an approved person and/or withdraw their approval the Authority will consider all the relevant circumstances of the case. These may include, but are not limited to:

(2) whether the individual is fit and proper to perform functions in relation to regulated activities;

(5) the relevance and materiality of any matters indicating unfitness;

(8) the severity of the risk which the individual poses to consumers and to confidence in the financial system.

- 2.26. EG 7 sets out the Authority's approach to exercising its power to impose a financial a penalty.

### ***Decision Procedure and Penalties Manual***

- 2.27. 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/6/5B.html>

2.28. 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>