FINAL NOTICE

To: **Steven Lawrence Hodgson**

Individual Reference Number: **SLH00001**

To: **Vintage Investment Services**
(as an interested party)

Firm Reference Number: **142806**

Date: **23 October 2024**

1. ACTION

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

(1) imposes on Steven Lawrence Hodgson ("Mr Hodgson") a financial penalty of £32,700 pursuant to section 66 of the Act. A penalty of £386,306 would have been imposed, however; the Authority has prioritised redress payments to the Financial Services Compensation Scheme (FSCS); and

(2) makes an order, pursuant to section 56 of the Act, prohibiting Mr Hodgson from performing:

(a) any function in relation to the regulated activity of advising on Pension Transfers and Pension Opt-outs carried on by an authorised person, exempt person or exempt professional firm;

(b) any Senior Management Function in relation to any regulated activities carried on by an authorised person, exempt person or exempt professional firm; and

(3) withdraws, pursuant to section 63 of the Act, the approval granted to Mr Hodgson by the Authority under section 59 of the Act to perform the SMF27 (Partner) Senior Management Function at Vintage Investment Services ("Vintage").

1.2. The Authority would have imposed a disgorgement figure of £245,691. The interest on this figure would have been £107,915. The punitive element of the penalty would have been £46,700. Mr Hodgson agreed to resolve all issues of fact and liability under the Authority's executive settlement procedure and he therefore qualified for a 30% (stage 1) discount to be applied to the punitive element of the penalty, reducing the punitive element of the penalty to £32,700.

1.3. The Authority recognises that there may be a significant liability for redress for Vintage's customers which will fall to be paid by the FSCS. The amount of any such liability is currently £917,716.65 and is likely to increase significantly as claims continue to be received. In these circumstances, and in furtherance of the consumer protection objective, in order to maximise funds available for consumer redress, the FCA will forgo any sum, otherwise owing by way of disgorgement, which has been made available to the FSCS by the partners of Vintage. The punitive element of the penalty is to be paid direct to the FSCS for the purpose of consumer redress.

2. SUMMARY OF REASONS

Background

2.1. The Authority takes this action against Mr Hodgson for breaches of Statement of Principle 2 and Statement of Principle 7 of the Authority's Statements of Principle and Code of Practice for Approved Persons (APER) that occurred between 26 January 2016 and 12 December 2017 (the Relevant Period).

2.2. The breaches relate to Mr Hodgson's failure to ensure that Vintage provided suitable Pension Transfer advice to its customers that complied with the relevant requirements and standards of the regulatory system, as well as his incompetent oversight of the firm's Defined Benefit Pension Transfer advice process. As a result, customers were advised to transfer funds out of their Defined Benefit Pension Scheme against their best interests and their retirement funds were unnecessarily put at risk.

2.3. The breaches also relate to advice provided by Mr Hodgson, as a Pension Transfer Specialist, to customers to transfer out of their occupational Defined Benefit Pension Scheme (including the British Steel Pension Scheme), into alternative pension arrangements.

2.4. Mr Hodgson was one of two partners at Vintage. Throughout the Relevant Period Mr Hodgson was approved by the Authority to perform the Controlled Functions of CF4 (Partner) and CF30 (Customer). Mr Hodgson was also a qualified Pension Transfer Specialist.

2.5. The Authority expects Pension Transfer Specialists to understand the regulatory requirements of the role, which include checking the entirety and completeness of the Personal Recommendation to the client and ensuring and confirming that any Personal Recommendation is suitable for the client. It is very important that DBPS customers receive suitable advice when deciding whether to make a Pension Transfer.

2.6. A Defined Benefit Pension, also known as a final salary pension, provides a guaranteed lifetime income that usually increases each year in order to protect against inflation. It may also continue to be paid to the partner of the recipient at a reduced rate when the recipient dies. A Defined Benefit Pension is particularly valuable because an employer sponsor carries the financial burden associated with offering a secure, guaranteed retirement income for life to members.

2.7. This is in contrast to a Defined Contribution pension, whereby employer and employee capital contributions are invested, so that a fund is built up which may be accessed after the age of 55; however, the investment and mortality risk are borne by the member. Defined Contribution Pension Schemes may be either occupational (work) or personal schemes.

Mr Hodgson's Misconduct

2.8. Mr Hodgson was responsible, in his performance of the CF4 (Partner) function, for taking reasonable steps to ensure the operation of a Defined Benefit Pension Transfer advice process that was compliant with the Authority's Rules, including ensuring that the process covered adequate compliance checking of customer files. However, he failed in his capacity as a partner to provide adequate oversight of the Pension Transfer advice process, including failing to implement an advice process that met the relevant requirements and standards of the regulatory system.

2.9. Mr Hodgson also failed to take reasonable steps to ensure that Vintage organised and controlled its affairs responsibly and effectively, with adequate risk management systems, in respect of ensuring that Vintage complied with the relevant Rules and requirements of the regulatory system.

2.10. Mr Hodgson also provided unsuitable Pension Transfer advice himself in his capacity as a Pension Transfer Specialist, against the best interests of customers. This resulted in customers' retirement funds being unnecessarily put at risk.

Consumer Harm

2.11. Vintage's customers who transferred out of their Defined Benefit Pension Schemes were at a significant risk of loss as a result of Vintage's unsuitable Pension Transfer advice. The total value of customer funds transferred out of their Defined Benefit Pension Schemes was £70,250,492. Of that figure, approximately £34,950,530 (or 49.8%) represents the sum transferred away from the BSPS.

2.12. The average completed transfer value was £420,662.63 (£375,812.15 for British Steel Pension Scheme members). 132 of Vintage's Pension Transfer clients continued to pay Vintage for ongoing advice which, in cases where a Pension Transfer was wrongly recommended, represented a further and ongoing loss to customers. For some customers, their Defined Benefit Pension Scheme was their only retirement provision other than their state pension.

2.13. During the Relevant Period, Vintage advised 165 customers (consisting of 167 instances of advice) on whether to transfer out of their Defined Benefit Pension Schemes into an alternative pension arrangement. Notwithstanding guidance from the Authority that set out as a starting point a presumption of unsuitability in respect of advising a client to transfer out of their Defined Benefit Pension

Scheme, Vintage advised 162 of these customers (approximately 97%) to complete a Pension Transfer. Of the 167 customers, 93 (56%), were members of the British Steel Pension Scheme.

2.14. One BSPS customer who was advised by Vintage to transfer out of their Defined Benefit Pension Scheme was going through a divorce, and their assets were yet to be split. There is no evidence that this was considered during Vintage's suitability assessment. Vintage assessed the customer's risk capacity as 'cautious to moderate', with low knowledge and experience. Other than company shares and their pension schemes, the customer had no other savings and investments, and was therefore reliant upon the income from their Defined Benefit Pension Scheme. Despite this, the customer was given unsuitable advice by Vintage to transfer out of their Defined Benefit Pension Scheme into another arrangement.

2.15. In another case, Mr Hodgson failed to collect sufficient information regarding the customer's prospective retirement expenditure, and details regarding their partner's retirement objects and retirement income. An adequate assessment of the customer's attitude to risk therefore could not be made, as he did not capture sufficient information to demonstrate that the customer had the necessary knowledge and experience to understand the transfer risk.

2.16. Although the firm created an expenditure spreadsheet, this did not factor in the customer's lack of savings and credit card debt. Its figures were therefore inconsistent with the customer's recorded expenditure. As a result, it was not possible to assess the suitability of the pension transfer advice. These information collection failings were particularly concerning given that the customer had no savings or investments other than their pension schemes.

British Steel Pension Scheme

2.17. The unsuitable Pension Transfer advice that Vintage provided to customers under the responsibility and oversight of Mr Hodgson disproportionately affected members of the British Steel Pension Scheme. Some of this advice was provided by Mr Hodgson himself in his capacity as a Pension Transfer Specialist. Members of the British Steel Pension Scheme made up 56% of Vintage’s Pension Transfer advice customers during the Relevant Period. Many of these individuals were in a vulnerable position due to the uncertainty surrounding the future of the British Steel Pension Scheme.

2.18. It was therefore critical that they could depend on Vintage to provide them with suitable Pension Transfer advice that was clear, fair and not misleading. It was also crucial that the advice was in their best interests. Unfortunately, many of the British Steel customers did not receive the suitable advice they needed from Vintage to be able to make a sufficiently informed decision about their Pension Transfer.

2.19. The Authority has carried out significant work in response to the harm caused to members of the British Steel Pension Scheme by authorised firms providing unsuitable Pension Transfer advice. The Authority has taken intervention action in the form of requirements to vary permissions to stop ongoing harm at relevant firms and has initiated enforcement action against culpable firms and individuals, including Mr Hodgson.

2.20. The Authority reviewed a statistically representative sample of 21 of Vintage's completed Pension Transfer advice files from the Relevant Period. For a significant proportion of these customers their Defined Benefit Pension was their most valuable asset and some customers had limited additional resource or alternative pension provision. During the course of its file review the Authority found that a large proportion of files reviewed were not compliant with regulatory Rules relating to the suitability of Pension Transfer advice. The Authority also reviewed files that contained material information gaps such that the adviser should not have proceeded to provide advice to the customer. Overall, the Authority assessed 11 of the files to contain unsuitable Pension Transfer advice, and three to contain material information gaps.

2.21. Mr Hodgson was responsible, in his performance of the CF4 (Partner) function, for ensuring that Vintage took reasonable steps to organise and control its affairs responsibly and effectively, with adequate risk management systems, in respect of the operation of a Defined Benefit Transfer advice process that was compliant with the Authority's rules.

2.22. In performance of his role as a CF30 (Customer) adviser, Mr Hodgson was required to act with due skill, care and diligence in providing Pension Transfer advice to customers regarding the transfer of funds out of their Defined Benefit Pensions. As a qualified Pension Transfer Specialist, he should have brought an added degree of expertise and knowledge to his role as a customer adviser, but he failed to do so.

2.23. The Authority considers that, during the Relevant Period Mr Hodgson failed to act with due skill, care and diligence in his capacity as a CF30 (Customer) adviser because he failed to obtain information that was necessary for him to assess whether a Pension Transfer was suitable for the customer. This information was necessary to be able to understand essential facts about the customer and to have a reasonable basis for believing that the transaction to be recommended was in the customer's best interests.

2.24. The Authority considers that Mr Hodgson breached Statement of Principle 2 during the Relevant Period by failing to exercise due skill, care and diligence when advising customers on Pension Transfers because the advice he provided did not comply with regulatory requirements. In particular, Mr Hodgson:

(1) failed to obtain sufficient information about the customers to be able to assess suitability;

(2) failed to properly assess whether the customers were reliant on the income from their DBPS and whether they could financially bear the risks involved in a Pension Transfer, despite knowing that following the recommended transfer, customers' retirement income would be dependent on the performance of the new investment;

(3) failed to properly assess whether the aims which drove the Pension Transfer recommendation were in the best interests of the customer. He based his recommendations on the flawed assumption that a Pension Transfer to meet the customers' stated objectives was in the customers' best interests, despite some customers' objectives being either unviable or capable of being met by the DBPS;

(4) failed to investigate whether alternative options to a Pension Transfer could meet the customers' objectives, while remaining in the DBPS;

(5) failed to obtain the necessary information from customers as to whether they had the appropriate knowledge, experience and attitude to risk to understand the risks involved in the Pension Transfer;

(6) failed to ensure that the transfer analysis supported a recommendation to transfer out of the Ceding Arrangement; and

(7) failed to ensure that the documentation issued to customers put them in a sufficiently informed position and was clear, fair and not misleading. For example, a Suitability Report issued to one customer did not specify that the benefits under the Pension Protection Fund would most likely meet the customer's needs. Further, the investment report misleadingly suggested unrealistic returns.

2.25. The Authority also considers that Mr Hodgson breached Statement of Principle 7 during the Relevant Period because he failed to take reasonable steps to ensure that Vintage complied with Principles 3, 7 and 9 of the Authority's Principles for Businesses and the relevant COBS Rules. In particular, Mr Hodgson:

(1) failed to undertake any analysis of management information regarding the Personal Recommendations produced by Vintage's Pension Transfer Specialists;

(2) failed to implement a process to challenge the reasons why almost all customers were recommended to transfer out of their Defined Benefit Pension Scheme, despite the starting point being the presumption that transferring out and giving up those benefits is unlikely to be suitable for a customer. That is the default position unless the adviser can clearly demonstrate, on contemporary evidence, that the transfer, conversion or Opt-out is in the customer's best interests;

(3) failed to arrange for an increased level of compliance support knowing of the limitations of the firm's compliance process; and

(4) failed to ensure that appropriate compliance resources were in place to deal with the increased demand for Pension Transfer advice during 2017.

Seriousness

2.26. The combined effect of Mr Hodgson's failings created a significant risk of unsuitable Pension Transfer advice being provided to the firm's customers.

Accordingly, the Authority considers Mr Hodgson's breaches of Statement of Principle 2 and Statement of Principle 7 to be particularly serious because:

(1) Defined Benefit Pensions and the decision to transfer out of the Ceding Arrangement concern financial investments for which a customer's advice needs are high;

(2) The decision to transfer out of a DBPS can affect customers, and sometimes their dependants, for the rest of their lives. For some of Vintage's customers, their Defined Benefit Pension was their only retirement provision other than their state pension;

(3) Vintage's unsuitable Pension Transfer advice caused a significant risk of loss, as well as causing actual loss, to consumers who transferred out of their Defined Benefit Pension Scheme as a result of that advice;

(4) 132 of Vintage's Pension Transfer customers continued to pay Vintage for ongoing advice which, in cases where a Pension Transfer was wrongly recommended, represents a further and ongoing loss to customers;

(5) The failings disproportionately impacted British Steel Pension Scheme clients, many of whom were in a vulnerable position due to the uncertainty surrounding the future of the scheme;

(6) Mr Hodgson benefited substantially from the breach. The high rate of non-compliance by the firm with the COBS Rules which characterised that advice means that a significant proportion of Mr Hodgson's total income from the advice is attributable to his breaches; and

(7) The weakness in Vintage's Pension Transfer advice process, as well as the monitoring and checking procedures, for which Mr Hodgson was responsible as a partner of the firm, were systemic.

Sanction

2.27. The Authority would have imposed a penalty of £386,306 but has prioritised FSCS recovery of funds over enforcement of the disgorgement amount. Mr Hodgson agreed to resolve this matter and qualified for 30% discount on the punitive element, amounting to £32,700.

2.28. The Authority considers that Mr Hodgson's misconduct during the Relevant Period demonstrates a serious lack of competence and capability and accordingly a lack of fitness and propriety.

2.29. The Authority hereby makes a prohibition order in respect of Mr Hodgson, prohibiting him from performing any function in relation to the regulated activity of advising on Pension Transfers and Pension Opt-outs carried on by an authorised person, exempt person or exempt professional firm, and any Senior Management Function in relation to any regulated activities carried on by an authorised person, exempt person or exempt professional firm.

2.30. The Authority hereby withdraws the approvals granted to Mr Hodgson to perform the SMF27 (Partner) Senior Management Function at Vintage.

3. DEFINITIONS

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

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

"the Authority" means the Financial Conduct Authority.

"the Authority's Rules" or "the Rules" means the Authority's Conduct of Business Sourcebook as applicable during the Relevant Period.

"British Steel Pension Scheme" or "BSPS" means the British Steel Defined Benefit Pension Scheme that was in place during the period 26 January 2016 to 13 December 2017.

"CETV" means cash equivalent transfer value, which is a lump sum available to the member upon transferring their pension benefits into an alternative pension. It is calculated according to actuarial principles.

"COBS" means the Conduct of Business Sourcebook in the Authority's Handbook.

“Defined Benefit Pension Scheme,” “Defined Benefit Pension” or “DBPS” means an occupational pension that pays out a defined benefit or guaranteed specified amount to the pension holder based on factors such as the number of years worked and the customer’s salary.

“Defined Contribution” or “DC” means a pension that pays out a non-guaranteed and unspecified amount depending on the defined contributions made and the performance of investments.

“DEPP” means the Authority’s Decision Procedure and Penalties Manual.

“EG” means the Authority’s Enforcement Guide.

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

“Insistent Client” means a client who has been given a personal recommendation by a firm in relation to the transfer of their safeguarded benefits, but who has decided to enter a transaction different from that which was recommended and wishes the firm to facilitate this.

“Normal Retirement Date” means the date (typically linked to the customer’s age, for example 65) on which the pension scheme is due to pay the customer their member benefits.

“Pension Protection Fund” or “PPF” means a statutory public corporation which protects people with a defined benefit pension when an employer becomes insolvent. If the employer does not have enough funds to pay the pension they promised, the PPF will provide compensation instead. However, some reduction may apply.

“Pension Transfer” means a transfer payment made in respect of any safeguarded benefits with a view to obtaining a right or entitlement to flexible benefits under another pension scheme.

“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 advice on transfer of Defined Benefit Pension Scheme benefits into an arrangement with flexible benefits, explaining amongst other things why the firm has concluded that the recommended transaction is suitable for the customer.

"Preferred Retirement Date" means the date when the customer plans to retire.

"the Principles" means the Authority's Principles for Businesses set out in the Authority's Handbook.

"Regulated Apportionment Arrangement" or "RAA" means the statutory mechanism that can be used in corporate restructuring whereby a sponsoring employer of a DBPS stops participating in the pension scheme (therefore freeing the sponsoring employer from its financial obligations to the pension scheme) in order to avoid insolvency, subject to certain conditions being met and the RAA being approved by The Pensions Regulator and the PPF.

"the Relevant Period" means the period of 26 January 2016 and 12 December 2017.

"SIPP" means Self-Invested Personal Pension.

"Statements of Principle" mean the Authority's Statements of Principle and Code of Practice for Approved Persons issued under section 64A(1)(a) of the Act.

"Suitability Report" means the report which a firm must provide to its customer under COBS 9.4.1R which, amongst other things, explains why the firm has concluded that a recommended transaction is suitable for the customer.

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

"TVAS" means "Transfer Value Analysis" and is the comparison that a firm was required to carry out in accordance with COBS 19.1.2R prior to 1 October 2018, when a firm gave advice or a Personal Recommendation about, amongst other things, a Pension Transfer.

"TVAS Report" means a document that sets out for the customer a comparison of the benefits likely (on reasonable assumptions) to be paid under the Ceding Arrangement with the benefits afforded by the Proposed Arrangement, which firms were required to carry out in accordance with COBS 19.1.2R (and prepare in accordance with COBS 19.1.3R and 19.1.4R) prior to 1 October 2018.

"Vintage" or "the firm" means Vintage Investment Services.

4. FACTS AND MATTERS

Background

4.1. Vintage is an Independent Financial Adviser firm based in Stockton-on-Tees and is an unlimited liability partnership. Vintage was authorised by the Authority on 1 December 2001, and by its predecessors since 1988. At the start of the Relevant Period, Vintage held permissions to carry on regulated activities which included advising on Pension Transfers, advising on investments and arranging (bringing about) deals in investments. There were several Pension Transfer Specialists at Vintage who provided Defined Benefit Pension Transfer advice, including the two partners.

4.2. During the Relevant Period, Vintage advised 165 customers on Pension Transfers from their Defined Benefit Pension Scheme to an alternative pension arrangement. Two customers had two Defined Benefit Pension Schemes, resulting in 167 instances of Pension Transfer advice.

4.3. The Authority's guidance states that, given the valuable nature of the guaranteed benefits provided by a Defined Benefit Pension Scheme, an adviser's starting point should be the assumption that transferring out and giving up those benefits is unlikely to be suitable for a customer. Notwithstanding that guidance, 162 customers were advised by Vintage to make a transfer, and 161 customers followed this advice.

4.4. On 12 December 2017, the Authority visited Vintage's offices to find out more about the process followed by Vintage when advising BSPS members. The Authority's assessment of Vintage's Defined Benefit Pension Transfer work identified concerns with the firm's Pension Transfer advice process. Following initial feedback from the Authority provided the same day, Vintage provided the

Authority with an immediate undertaking to cease all Defined Benefit Pension Transfer advice.

4.5. On 14 December 2017 following the Authority's intervention, Vintage then applied for the imposition of voluntary requirements that required it to cease all regulated activities relating to Defined Benefit Pension Transfer advice. As a result of engagement with the Authority and improvements made by Vintage to its business model and processes, the voluntary requirements were removed on 29 November 2018.

4.6. On 15 May 2020, following the completion of the Authority's file reviews, the Authority asked for an undertaking from Vintage to cease its provision of Defined Benefit Pension Transfer advice. On 1 June 2020 Vintage voluntarily applied to remove its permissions to carry out all regulated activities relating to Pension Transfers on a permanent basis, having ceased DB pension advice in February 2020. The partners agreed a Partners' Voluntary Agreement in June 2022.

Mr Hodgson

4.7. Mr Hodgson has worked in the financial services industry since 1994, having qualified as a financial adviser in 1996 and Pension Transfer Specialist in 1998. Mr Hodgson also holds an advanced diploma in Financial Planning. Throughout the Relevant Period, Mr Hodgson was approved to perform the Controlled Functions of CF4 (Partner) and CF30 (Customer) at Vintage.

4.8. Following the introduction of the Senior Managers and Certification Regime for all firms authorised by the Authority, the Controlled Functions Mr Hodgson was approved to perform were replaced by Senior Manager Functions. As a result, from 9 December 2019 Mr Hodgson was approved to perform the SMF27 (Partner) Senior Manager Function.

Defined Benefit Pension Transfers

4.9. Pensions are generally understood to be a traditional and tax-efficient way of saving money for retirement. The value of an individual's pension can have a significant impact on their quality of life during retirement and will determine how early they can afford to retire. Pensions are, in most cases, a primary resource for ensuring financial stability in retirement. For some people, they are the only way of funding retirement.

4.10. Customers who engage authorised firms to provide them with advice in relation to their pensions place significant trust in those providing the advice. Where an advice business fails to conduct its affairs in a manner that is compliant with the Authority's regulatory Rules and requirements, this exposes its customers to a significant risk of harm. This is particularly so in the case of Defined Benefit Pension Transfer advice where it is critical that customers are provided with suitable advice on transferring their valuable benefits out of the scheme, taking a holistic and sufficiently detailed view of their individual circumstances.

4.11. It is important that advisers and firms exercise reasonable care when advising customers regarding their pensions, ensuring that suitable advice is provided, having regard to all the relevant circumstances. This is even more important when customers have no option but to make a decision regarding their pension (often under time pressure), as was the case with Vintage's British Steel Pension Scheme customers.

4.12. Transfer out of a Defined Benefit Pension Scheme involves giving up valuable guaranteed benefits in exchange for a Cash Equivalent Transfer Value (CETV) which is typically invested in a Defined Contribution pension. If a customer leaves a Defined Benefit Pension Scheme, they may have to purchase an annuity to obtain a particular level of income. Alternatively, they may rely on income from investments. However, there is often no guarantee as to the amount or duration of that income.

4.13. The introduction of pension freedoms in April 2015 for Defined Contribution pensions made transferring out of a Defined Benefit Pension Scheme an attractive option for some people. However, Authority guidance provides that, given the valuable nature of the guaranteed benefits provided under a Defined Benefit Pension Scheme, a firm's starting point should be the assumption that transferring out and giving up those benefits is unlikely to be suitable for a customer. That is the default position set out in COBS 19.1.6R, unless the firm can clearly demonstrate, on contemporary evidence, that the Pension transfer, conversion or Opt-out is in the customer's best interests.

British Steel Pension Scheme

4.14. During the Relevant Period 93 (or approximately 56%) of Vintage's 165 Pension Transfer customers were members of the British Steel Pension Scheme.

4.15. The BSPS was one of the largest Defined Benefit Pension Schemes in the UK, with approximately 125,000 members and £15 billion in assets as of 30 June 2017. In March 2017, the BSPS was closed to future accruals, which meant that no new members could join it and existing members could no longer build up their benefits. The BSPS also had an ongoing funding deficit.

4.16. In early 2016, various options were being explored in relation to the BSPS as a result of insolvency concerns relating to one of its sponsoring employers. These options included seeking legislative changes which would have allowed pension increases available under the BSPS to be reduced to the statutory minimum levels, and the sale of one of the sponsoring employers. However, it was concluded that the only way to avoid insolvency would be to enter into a Regulated Apportionment Arrangement ("RRA").

4.17. On 11 August 2017, The Pensions Regulator gave its clearance for the RAA. Under the RAA, the BSPS would receive £550 million as well as a 33% equity stake in one of the sponsoring employers and the BSPS would transfer into the PPF. In addition, a new Defined Benefit Pension Scheme ("BSPS 2") was proposed by the sponsoring employers in combination with the RAA proposal. The RAA received formal approval on 11 September 2017, which resulted in the BSPS being separated from the sponsoring employer.

4.18. The effect of the RAA was that members of the BSPS were required to make a choice between two different options offered by the BSPS, namely to either:

(1) Remain in the BSPS and therefore move into the PPF; or
(2) Transfer their benefits into BSPS 2.

4.19. Alternatively, BSPS members could elect to take a CETV and transfer their pension benefits into an alternative pension arrangement such as a personal pension scheme or another occupational pension scheme held by the member.

4.20. On 11 and 21 September 2017, the BSPS announced that it would separate from the sponsoring employer. Information about the options available to members was available on the BSPS website from 11 August 2017 and in October 2017, the BSPS distributed information packs to members about these options. Members were required to choose their preferred option by 22 December 2017. Those who wanted to transfer their pension benefits from the BSPS to a personal pension were required to submit the required paperwork to execute the Pension Transfer by 16 February 2018.

4.21. The Rookes Review, an independent review of the support given to BSPS members during restructuring and 'Time to Choose', states that BSPS members experienced, and were influenced by, a set of unique circumstances. This included the following:

(1) distrust of their employer;
(2) limited information on alternative options;
(3) tight timescales to make a decision; and
(4) limited support.

4.22. Some BSPS members were in vulnerable circumstances. For example, BSPS members tended to have no other assets and relied more on income from their Defined Benefit Pension scheme than members of other schemes.

Vintage's Pension Transfer Advice Business and Mr Hodgson's Role

Increase in DBPS Work at Vintage in 2017

4.23. Vintage experienced a sharp increase in its Defined Benefit Pension Transfer advice business during the final quarter of 2017. This was largely due to an influx of BSPS customers seeking Pension Transfer advice. During 2016 Vintage provided only six customers with a Personal Recommendation. By contrast, in Quarter 4 of 2017, Vintage advised 98 customers on transfer out of their Defined Benefit Pension Scheme, 61 of whom were given Personal Recommendations in November 2017 alone.

4.24. Most customers proactively approached Vintage having been referred by a personal contact, although a small number were referred by other Independent

Financial Advisers who did not have the requisite permissions to provide advice on Defined Benefit Pension Transfers.

4.25. In October 2017 Vintage decided to temporarily cease accepting new British Steel Pension Scheme customers due to the high volume of customers at this time. Vintage took this step in an attempt to reduce new enquiries and ensure that the relationships with its existing clients were "not compromised". The firm's resources were said to have become stretched in the final quarter of 2017.

Vintage's Pension Transfer Advice Process

4.26. During the Relevant Period, Pension Transfer advice at Vintage was only provided by Pension Transfer Specialists.

4.27. Vintage operated a Pension Transfer advice process whereby customers seeking Defined Benefit Pension Transfer advice had a short initial conversation with a Pension Transfer Specialist, followed by two longer meetings. The first face-to-face meeting with the customer was held to discuss details of Vintage's services and charging structure, the options available to the client, and next steps. An initial fact find also took place at this stage. A TVAS report was prepared by a paraplanner along with an initial Key Fact Illustration.

4.28. Vintage's policy documents state that a second meeting was subsequently held between the customer and adviser, during which more detailed discussions took place around risk, capacity for loss, investment objectives and the advantages and disadvantages of a Pension Transfer. Following those meetings, a Suitability Report was prepared by a paraplanner. The adviser would then check and amend as necessary, before signing the document and presenting it to the customer.

Charges to Customers: Initial and Ongoing Transfer Fees

4.29. Vintage imposed a minimum fee of £3,500 for customers with Transfer Values of less than £100,000. Customers with Transfer Values of between £100,000 and £500,000 would be charged a fee of 2% (subject to a minimum fee of £3,500 and a maximum of £10,000). Customers with a Transfer Value of greater than £500,000 would be charged a fee of 1.5% (subject to a minimum fee of £7,500 and a maximum fee of £15,000).

4.30. In addition to charging advice fees, Vintage charged fees for arranging a Defined Benefit Pension Transfer on a transaction only basis. This meant that the investments would not be managed by Vintage on an ongoing basis. Vintage would charge 3% on the first £100,000, 2% of the next £300,000 and 1% on the remaining amount over £400,000, subject to a minimum fee of £3,500 and a maximum fee of £15,000.

4.31. Where customers retained Vintage to provide ongoing investment advice, a further charge of 0.5% to 1% was payable annually, subject to a minimum fee of between £500 and £3,000 depending on the value of the assets to be managed. Whilst the ongoing advice charge was an optional service for customers, were it not for the Authority's intervention, the sharp rise in Vintage's Pension Transfer customers over this period would have translated into future additional income from this service.

4.32. Vintage operated a contingent charging policy during the Relevant Period. This meant that Vintage would only be paid a fee if it advised the customer to transfer funds out of their DBPS and the Pension Transfer then took place.

4.33. Depending on the ongoing service option selected by the customer, in return for the payment of an ongoing advice fee, Vintage agreed to provide a financial planning review which included assessing the customer's overall financial position and providing them with a report which made recommendations and provide the customer with updated forecasts.

Mr Hodgson's Responsibilities as CF4 (Partner)

4.34. In his capacity as CF4 (Partner) of Vintage, Mr Hodgson was jointly responsible, with the other CF4 (Partner), for ensuring that the firm took reasonable care to organise and control its affairs responsibly and effectively with adequate risk management systems and controls to oversee and monitor the Pension Transfer advice business being conducted by Vintage. He was also responsible for ensuring that the firm took reasonable steps to ensure the suitability of its advice to its customers.

Mr Hodgson's Responsibilities as CF30 and Pension Transfer Specialist

4.35. As a Pension Transfer Specialist, Mr Hodgson was required to provide Defined Benefit Pension Transfer advice on behalf of Vintage which complied with the Authority's Rules and requirements. He was required to act with due skill, care and diligence in carrying out this role. In particular, he needed to ensure that he obtained all the necessary information from the customer to be able to make an assessment on suitability, as well as to ensure that the advice that he provided to the customer was suitable.

Background to the Authority's Review of Vintage's Defined Benefit Pension Transfer Advice

4.36. The Authority monitored the Defined Benefit Pension Transfer advice market and identified firms that had advised on a significant volume of British Steel Pension Scheme transfers. Vintage was one such firm identified by the Authority. The Authority visited Vintage's offices on 12 December 2017, reviewed the processes adopted by the firm in respect of this workstream and identified:

(1) Concerns, based on a review of a sample of files, that the Pension Transfer advice provided by Vintage was unsuitable, including because there was little evidence of assessment of customers' knowledge and experience, and customer information was not fully recorded;

(2) Concerns that there was an inconsistency and lack of rationale around the risk profiling of customers and how transfer risk was considered; and

(3) Concerns that there was an unjustified disregard of high Critical Yields.

4.37. On 12 December 2017 following intervention by the Authority, Vintage provided the Authority with an immediate undertaking to cease all Defined Benefit Pension Transfer advice. Vintage then applied for voluntary requirements to be imposed on it, whereby it was required to cease all regulated activities relating to Defined Benefit Pension Transfers.

4.38. The voluntary requirements were accepted by the Authority and came into force on 14 December 2017. As a result of engagement with the Authority and improvements made by Vintage to its business model and processes, the voluntary requirements were then removed from the firm's permissions on 29 November 2018.

4.39. On 15 May 2020, following the completion of the Authority's file reviews, the Authority asked for an undertaking from Vintage to cease its provision of Defined Benefit Pension Transfer advice. The firm applied to have its permissions removed on 26 May 2020, but confirmed that it had stopped providing Defined Pension Transfer advice in February 2020 due to inadequate PII cover.

Review by the Authority of a Sample of Vintage's Files

4.40. In April 2020, the Authority conducted a review of a statistically representative sample of 21 files against the applicable Rules found in the Authority's Conduct of Business Sourcebook (COBS) relating to Suitability. The 21 files related to 20 customers who were advised by the firm between November 2016 and December 2017. Upon invitation, Vintage then submitted further documents and information in connection with these files.

4.41. As a result of the further information provided by the firm, one file determination changed from an assessment that the file contained material information gaps (meaning that suitability could not be assessed) to an assessment that the Defined Benefit Pension Transfer advice was unsuitable. Two files changed from an assessment that the information gathering was non-compliant to an assessment that it was compliant.

4.42. Taking into account these amended determinations, the Authority's review of the files demonstrated that Vintage had:

(1) failed to collect the required information to give Pension Transfer advice in seven cases. In three of these cases material information gaps meant that the Authority was unable to assess whether the Firm's advice was suitable, and as such Vintage should not have issued advice to the customers (see *"Information collection"* below);

(2) failed to provide Suitable Pension Transfer advice in 11 cases (giving suitable advice in seven cases) (see "*Unsuitable Pension Transfer advice*" below); and

(3) provided poor quality communications to customers in 15 of the files reviewed (see *"Poor Communication"* below).

4.43. Seven of the 14 files which were assessed as containing either material information gaps or unsuitable Pension Transfer advice were members of the British Steel Pension Scheme. During the Relevant Period Vintage advised 93 BSPS customers to make Pension Transfers. The total value of funds in their Defined Benefit Pension Schemes was £34,950,530 (with an average value of £375,812.15).

4.44. The total Transfer Value of the Defined Benefit Pension Schemes in which the firm gave advice during the Relevant Period was £70,250,492, with an average value of £420,662.63. The average Transfer Value for the customers within the 14 files who did not receive suitable Pension Transfer advice was £353,918.79. The majority of customers within the 21 sample files had transfer values similar to this figure, albeit transfer values in the sample ranged from £130,280.47 to £931,490.

4.45. BSPS members who did not receive suitable Pension Transfer advice were generally less financially resilient than those customers who were members of other Defined Benefit Pension Schemes. These customers had limited financial resources available to protect them from any downturn in their finances, with limited alternative pension provision. Some BSPS customers had benefited from the replacement Defined Contribution scheme which commenced shortly before the advice was provided, and some customers, or their partners, had separate modest pensions.

4.46. Although, as for BSPS customers, the Transfer Value afforded by their Defined Benefit Pension was the most significant asset amongst non-BSPS customers, non-BSPS customers in the sample were more likely to have significant investments and cash reserves.

Information Collection Failures

4.47. During the Relevant Period, the overarching suitability requirement in COBS 9.2.1R was for a firm to take reasonable steps to ensure that a personal recommendation, (which in this context includes a recommendation to transfer or not to transfer a pension), is suitable for its customer. To do so, a firm must obtain the necessary information regarding the customer's (a) knowledge and experience in the investment field relevant to the pension transfer; (b) the customer's financial situation; and (c) the customer's investment objectives (COBS 9.2.1R(2)(a)-(c)).

4.48. Making a Personal Recommendation without the necessary information increases the risk of providing unsuitable advice and is in breach of the Authority's Rules. If a firm does not obtain the necessary information to assess suitability such that there are material information gaps, it must not proceed to make a Personal Recommendation (COBS 9.2.6R).

Failure to Gather Information on the Customer's Financial Situation

4.49. Information about a customer's wider financial situation, including their additional resource and current expenditure details, is key to assessing the extent of their reliance on the income provided by their Defined Benefit Pension Scheme, and their capacity for loss (COBS 9.2.2R).

4.50. In three of the 21 files reviewed by the Authority there was insufficient information captured to enable the adviser to make a Personal Recommendation. This therefore put the customer at risk of receiving unsuitable Pension Transfer advice. In one case, household finances were managed jointly between the customer and their partner, and the failure to obtain full details of the partner's expenditure, or pension entitlement, prevented the adviser from building an accurate picture of reliance on the DBPS and capacity for loss. It was therefore not possible to determine the extent of the customer's reliance on the income likely to be afforded by their DBPS during retirement.

4.51. The Authority's review also revealed information gaps on customer files where a suitability assessment could be made, but where the information gathering still failed to comply with the requirements of the Authority's Rules. For example, in one file reviewed by the Authority, information around the customer's mortgage was missing. Where information had been provided on another file in respect of the customer's anticipated income needs during retirement, there was no evidence that apparent unexplained gaps or discrepancies were investigated further by the adviser. The Authority also found that in these two files there was a failure to capture customer state pension forecasts.

Failure to Gather Income and Expenditure in Retirement details

4.52. In six of the cases reviewed by the Authority, there was no accurate, evidenced, clear breakdown of income and expenditure with the effect that realistic retirement income needs could not be determined. This also had an impact upon the assessment of whether the customer had the appropriate capacity for loss. For example, in the case of Customer A, it was unclear whether the expenditure figures took into account their partner's income needs. Further, there was a lack of consideration as to how an intended foreign property purchase would affect their income needs during retirement.

Unsuitable Pension Transfer Advice

4.53. The overarching suitability requirement under COBS 9.2.1R(1) is for a firm to take reasonable steps to ensure that a personal recommendation (which includes, in this context, a recommendation to transfer or not to transfer a pension) is suitable for its customer.

4.54. The Authority's file reviews of 21 customer files found that 11 of the customers received unsuitable Pension Transfer advice. Of these, five were former BSPS members. All 11 files failed for multiple reasons.

Customers Reliant on the Defined Benefit Scheme and Unable to Bear Transfer Risk

4.55. In eight of the 11 customer files which the Authority assessed to contain unsuitable Pension Transfer advice, the customer was considered by the Authority to be reliant on income from the Ceding Arrangement. These customers did not have significant assets which could be used to supplement any shortfalls in their income during retirement.

4.56. A customer is considered by the Authority to be reliant on income from their Ceding Arrangement during retirement if it would be their primary source of income with no capacity to bear the risk of losing it. For example, a customer would be reliant on their Ceding Arrangement during retirement if they would be unable to meet non-discretionary expenditure without the guaranteed income from their DBPS.

4.57. Vintage's Pension Transfer recommendations to these customers exposed them to the risk of not being able to meet their income needs throughout retirement because they would forgo the secure, guaranteed income that they would have received from their DBPS. The Authority considers that advisers did not have a reasonable basis for believing that these customers could financially bear the investment risks related to the Pension Transfers it recommended to them.

4.58. In seven of the 21 files reviewed by the Authority, Vintage recommended transfer away from the customer's Ceding Arrangement when there was insufficient evidence to suggest that the customer could bear the transfer risk required to achieve their investment objectives.

4.59. Customer J, for example, was 39 and married at the time he received Pension Transfer advice from Vintage. The CETV of the customer's fund was £240,864.70. The customer was a member of the BSPS 2 scheme, and their spouse was a member of the NHS pension scheme. Although Customer J was a member of a separate British Steel Defined Contribution pension scheme, the fund under consideration was their only Defined Benefit Pension. The customer's objective was to retire early at age 58. The customer had little financial knowledge, scoring low/medium on the Risk Profile Questionnaire. Despite the file containing incomplete information regarding Customer J's financial situation, the Authority determined that they could not withstand the risk associated with the Pension Transfer for the following reasons:

(1) The customer required £1,850 net per month to meet their required level of expenditure. This equated to £22,200 net per annum, which was in excess of the client's likely state pension entitlement at state pension age;

(2) Whilst the customer had a separate British Steel Defined Contribution pension, this was unlikely to grow to a substantial value. The British Steel Defined Benefit scheme was therefore the client's primary source of income during retirement;

(3) Vintage did not demonstrate a reasonable basis for believing that the customer was financially able to bear any risks associated with transferring out of their Defined Benefit Pension Scheme. This required the adviser to carry out an objective assessment. Further, the Authority assessed that the objective of improving death benefits appeared to come at the expense of giving up guaranteed income and the customer's objective of early retirement; and

(4) The customer's objective of retiring at age 58 had not been assessed for affordability, and Vintage did not explore alternative means of achieving this objective. Although early retirement was still a potential option within both the Pension Protection Fund and BSPS 2, these options were not properly investigated or discounted. It therefore could not be demonstrated that transfer out of the customer's DBPS was in their best interests.

Lack of Evidence to Support Customer Objectives

4.60. In all 11 cases assessed by the Authority as being unsuitable for transfer, Vintage failed to provide sufficient evidence to demonstrate that specific objectives underpinning the Pension Transfers were in the customer's best interests. These objectives included, for example: access to improved death benefits, withdrawal flexibility, accessing tax-free cash, early retirement and to address the customer's concerns about the viability of BSPS 2.

4.61. The primary purpose of a pension is to meet the income needs of an individual in retirement. By treating maximisation of a customer's death benefits, or seeking flexibility via alternative pension arrangements, as a high priority, there is an increased risk that this is at the expense of the primary income purpose. There may therefore be a trade-off that must be resolved in the best interests of the customer given their individual circumstances (COBS 9.2.1R(1) and 9.2.2R(1)(b)).

4.62. There were several examples where the customer expressed a wish to maximise their death benefits, a need for increased flexibility, or a desire to retire early, with the result that they were advised to complete a Pension Transfer. However, the information contained in those files and the recommendation itself did not adequately demonstrate that those objectives had been adequately tested and explored for viability, or that alternatives to transfer had been explored with the customer. Vintage therefore failed to demonstrate that the Pension Transfer was in the customer's best interests (COBS 9.2.1R(1) or COBS 9.2.2R(1)).

4.63. Instead, the objectives set out in the Suitability Reports were often generic. During the course of its review the Authority found examples of Suitability Reports listing vague objectives such as 'flexibility' and 'death benefits' without explaining the rationale behind the objective. Accordingly, alternatives to meeting these stated objectives were not explored. In some cases, alternatives to a Pension

Transfer that would not have put the customer’s retirement provision at risk were not fully considered.

4.64. In the case of customer C, for example, the customer’s aim was to raise £40,000 to fund a property purchase. However, they would be reliant on the income from their DBPS during retirement. The Pension Transfer Specialist did not consider alternative means of meeting the customer’s objectives, such as the sale of assets or shares, taking a Pension Commencement Lump Sum in the Defined Benefit Pension Scheme, or taking out a loan.

Lack of Necessary Attitude to Risk and Knowledge and Experience

4.65. Vintage was obliged to obtain information on the customer’s preferences regarding risk taking and their risk profile (COBS 9.2.2R), to ensure that the customer was prepared to exchange the guaranteed benefits of the Defined Benefit Pension Scheme for non-guaranteed benefits which are subject to customer-borne investment risk. Vintage was also required to obtain sufficient information to provide a reasonable basis for believing that the customer had the necessary knowledge and experience to understand the risks involved in the Pension Transfer (COBS 9.2.3R).

4.66. In four of the cases reviewed by the Authority there was a failure to demonstrate that the customer had sufficient knowledge and experience to understand the risks of the Pension Transfer. For example, in one case there was no specific assessment of attitude to risk, and the customer had a cautious attitude towards investment risk. There was no evidence to demonstrate that the Pension Transfer Specialist had scrutinised this further. Instead, they relied upon the client’s acceptance of their advice after receiving written warnings within the Suitability Report.

4.67. In seven cases reviewed by the Authority, the customer did not have the necessary attitude to risk to justify a Pension Transfer. For example, Customer B’s risk assessment highlighted the insufficiency of the firm’s risk profiling tool: the questions were not sufficiently detailed and the file did not properly consider the customer’s attitude to risk. In Customer I’s case, the risk assessment questionnaire focussed too heavily on the customer’s current financial circumstances, rather than considering their anticipated circumstances during retirement when the customer would not have surplus income.

Transfer Analysis Not Supportive of the Pension Transfer

4.68. In order to provide Pension Transfer advice, Vintage was obliged to carry out a comparison between the benefits likely to be paid by the Ceding Arrangement with the benefits afforded by the Proposed Arrangement (COBS 19.1.2R(1)). The TVAS document was the means of facilitating this comparison and the main output was a series of percentages, known as "Critical Yields." These illustrate the annual growth rate (net of charges) that the customer would need to obtain on an investment of the CETV in order to replicate the benefits provided by the Ceding Arrangement. The firm needed to ensure that the comparison included sufficient information regarding a Pension Transfer for the customer to be able to make an informed decision, drawing the customer's attention to factors that both supported and undermined the firm's advice.

4.69. The Authority's file review revealed that the firm failed to carry out accurate Transfer Value analysis in eight cases. Vintage frequently calculated high (and therefore likely unrealistic) Critical Yields, often exceeding what was likely to be achieved taking into account the customer's attitude to risk. The TVAS reports often failed to consider transfer risk as a distinct concept.

4.70. In several cases, the objective of improving death benefits payable for the customer's spouse was a key driver for the Pension Transfer. However, the TVAS report illustrated that the value of death benefits was greater under the Defined Benefit Pension Scheme in the short term but did not consider alternative means of achieving this aim in the long term.

4.71. In the case of Customer F, for example, the TVAS illustrated that on day one the capitalised value of their Defined Benefit Pension death benefits was £501,072.50 compared to the CETV of £324,754.75. There was no evidence to suggest that the firm drew this to the client's attention, or to show that the spouse favoured a lump sum death benefit over a guaranteed pension.

4.72. In another case, the TVAS report illustrated that a PPF pension was more generous for early retirement and would have been sufficient to meet the customer's basic retirement needs without exposing the fund to the uncertainty of market conditions. However, the customer was advised to effect a Pension Transfer, notwithstanding the contents of the report.

Customer Objectives Could be Met by the Defined Benefit Pension Scheme

4.73. When a transfer away from a Defined Benefit Pension scheme is not necessary to achieve customer objectives, or results in the loss of guaranteed benefits which are important to the customer, the risk that the Pension Transfer is not in the customer's best interests crystallises. This was the case in eight customer files reviewed by the Authority.

4.74. Customer K, for example, indicated that they wished to retire early at age 60. Their Defined Benefit Pension was set to pay £28,502 per annum at age 60 and this could have been supplemented by withdrawals from their Defined Contribution pension, or their spouse's Defined Benefit or Defined Contribution schemes, to meet their income need of £30,000 per annum before their state pension commenced. The customer could therefore have achieved their early retirement objective by remaining in their Defined Benefit Pension Scheme. However, they were advised by Vintage to transfer out of their DBPS.

4.75. Vintage also recommended Pension Transfers to seven members of the British Steel Pension Scheme, in part because the customer's objective was early retirement, despite the fact that this objective could have been met by remaining in BSPS 2 or the PPF.

Examples of Files with Multiple Failings

4.76. In all the cases where the Authority assessed the Pension Transfer advice to be unsuitable, the Pension Transfer Specialist failed to follow the guidance in more than one way.

4.77. Customer I, for example, was 56, a BSPS member, and married. Their salary was £32,000 per annum and their spouse was earning £45,000 per annum. Customer I's anticipated income from their British Steel Pension was calculated to be £27,835 per annum at age 65 and £19,974 at age 60. Their combined expenditure was recorded as £2,000 per month. In retirement, they were aiming for an income of £2,000 net per month. Customer I was planning to retire at age 60, and their spouse at age 55. Their other assets were £9,500 cash, a £15,000 Defined Contribution pension and a further private pension provision. The couple had no financial knowledge and experience and limited capacity for loss.

4.78. Vintage recommended that the customer transfer out of their BSPS despite the customer’s strong reliance on the guaranteed income it was likely to provide, and the fact that the customer did not have the capacity to forgo that guaranteed income. Customer I required £2,000 net per month to meet their anticipated level of expenditure, which was in excess of the customer’s likely state entitlement at state pension age. The combined value of the customer’s and their spouse’s pensions, including their DBPS, would have met the customer’s retirement income objectives. Further, the customer’s objectives of flexibility and access to death benefits were not sufficiently scrutinised and there was no explanation of how the tension was resolved in the customer’s best interests.

4.79. The customer’s objective of early retirement at age 60 was not sufficiently scrutinised. The Pension Transfer Specialist did not investigate whether the customer was able to retire early or explore alternative ways to achieve this objective while remaining in the Ceding Arrangement. In addition, the TVAS did not support the recommendation to transfer out of the customer’s DBPS. Given the customer’s risk profile, the Critical Yields of 20.17% to match BSPS scheme benefits by age 60, and 8.21% to match PPF benefits at age 60, were unattainable.

4.80. The risks were further compounded by Customer I’s low level of financial knowledge and experience, having stated in his fact find that he had “No previous experience whatsoever”. This, coupled with the customer’s reliance on their Defined Benefit Pension Scheme for retirement income, suggests that the customer did not have the appropriate attitude to risk or the ability to bear the transfer risk.

Poor Quality Communications with Customers

4.81. The Authority’s Rules about the provision of information to customers are designed to ensure that consumers are given all the necessary information to enable them to make an informed decision and are, ultimately, treated fairly.

4.82. In all 21 files reviewed by the Authority, the TVAS Report stated that “it is very important to understand that DB benefits are not guaranteed. The scheme only promises to pay the benefits, subject to there being sufficient assets in the fund.” Without sufficient explanation and appropriate context, this was potentially misleading, confusing and detrimental to customers, particularly for those who had stated a strong preference for certain returns or objectives.

4.83. Further, this gave a contrary message to the starting point in the Authority's Guidance that transferring out and giving up those benefits is unlikely to be suitable for a customer, unless the adviser can clearly demonstrate, on contemporary evidence, that the Pension Transfer, conversion or Opt-out is in the customer's best interests.

4.84. The advisers at Vintage did not comply with the Authority's Rules regarding provision of information to customers in 15 of the 21 files reviewed by the Authority.

4.85. Suitability Reports were not compliant with the Authority's Rules in 13 of the cases reviewed by the Authority. In six cases, the Suitability Report did not explain why a Pension Transfer met the best interests of the customer over the alternatives, nor did they give a balanced view of alternative options. In two cases reviewed by the Authority, the customers' objectives and priorities were insufficiently tailored to their circumstances.

4.86. In eight cases, the disadvantages of the Pension Transfer (such as the risk of the fund prematurely depleting if assumptions changed, and the need for ongoing management) were not brought to the customer's attention in the Suitability Report. The effect of this failing was then exacerbated where the report did not engage in a meaningful assessment of the alternatives to Pension Transfer.

4.87. COBS 4.2.1R required Suitability Reports and other communications, to be written in a way that is clear, fair and not misleading. Three customer files failed in this regard. For example, in the case of Customer B, the investment report misleadingly suggested returns of between 4% to 6% net per annum for the proposed investment, whereas the illustration on file showed this to be unrealistic, with mid-forecast returns negative after charges.

4.88. The Authority's file review revealed that there were Transfer Analysis report failings in seven cases reviewed. The firm did not fully present the investment risks to the customer, nor did it present the features of the Ceding Arrangement that were relevant to the customer's objectives. Unrealistic returns and Critical Yields which did not match with the customer's attitude to risk were included in reports, with no explanation of how these issues had been considered by the adviser. Some Suitability Reports did not reflect, or explore, the option of the customer taking a Pension Commencement Lump Sum, resulting in misleading comparisons being provided to customers.

Mr Hodgson's Performance of His Controlled Functions

Poor Monitoring and Oversight as a CF4 (Partner)

4.89. During the Relevant Period, Vintage advised 97% of its Defined Benefit Pension clients to transfer out of their DBPS, and 98.8% of those customers followed the firm's advice. Mr Hodgson failed to identify the risk of unsuitability indicated by a very high transfer rate, despite regular meetings between the partners to discuss business matters. He therefore failed to competently analyse management information, in his capacity as a CF4 (Partner), so as to be able to take reasonable steps to further investigate and effectively remediate failings in the Pension Transfer advice process.

4.90. Given that Defined Benefit Pension Transfer advice was identified as a high-risk business area, and in the context of the Authority's guidance which created as a starting point the presumption that a Pension Transfer was unsuitable, the failure to undertake high-level monitoring of advice trends was an unreasonable omission in respect of Mr Hodgson's oversight of the firm's Pension Transfer advice business.

4.91. Attempts were made to improve the quality of monitoring and oversight at Vintage following an external file assessment in August 2017. In September 2017, a senior paraplanner joined Vintage and introduced two checklists that were designed to improve and record the file review checks being undertaken by Mr Hodgson's partner. The first checklist recorded whether the required information was present on file, and the second was a spreadsheet recording information about the client meeting, relevant dates and the risk profile of the client.

4.92. Vintage also started using a new expenditure questionnaire aimed at obtaining full details of the client's requirements. Prior to the introduction of these checklists, the process of file checking was much more informal with no record of checks conducted on files.

4.93. The firm also introduced a Pension Transfer 'workflow system' following the August 2017 file review, which was designed to ensure that all steps in the Pension Transfer advice process were followed.

4.94. Despite the introduction of the two checklists, the Authority's file review established that the checklists were not used consistently after they were introduced. Seven of the files assessed by the Authority as unsuitable and three of the files with material information gaps related to advice provided during the period following 1 September 2017, indicating that the changes to the process did not materially improve the suitability of advice or remedy failings in this regard.

4.95. The August 2017 external review also identified flaws in Vintage's risk profiling system, including the following:

(1) The "attitude to risk" descriptors were unclear;

(2) There was a failure to resolve the tension between Attitude to Risk answers and the recommendation to transfer; and

(3) The capacity for loss scoring/mapping was unclear.

4.96. As a result of these findings, and under the oversight and direction of Mr Hodgson and his partner, Vintage started to research alternative risk profiling solutions with a view to adopting a new system. This exercise took five months to complete while Vintage was trialling alternative systems. The same points were also highlighted in two external file reviews in November 2017, demonstrating that the deficiencies had not been remedied by the time of the second external review.

4.97. The new risk profiling system was finally implemented in January 2018 (after the end of the Relevant Period). This was unduly delayed given the increase in Defined Benefit Pension Transfer customers during 2017 and the fact that Mr Hodgson did not take expeditious corrective action to mitigate the risks arising from the existing risk profiling system which had been identified as flawed.

Inadequate Internal File Checking

4.98. Despite the fact that there was no written Defined Benefit advice process in place during the Relevant Period, Vintage produced a Monitoring and Oversight process document in July 2018, after it had stopped advising on Defined Benefit Pension Transfers. This document set out the procedures it said were in place for checking Pension Transfer advice and clarified the oversight measures used during the Relevant Period. The document noted that Vintage considered Defined Benefit transfer advice to be a 'high-risk business' area. Mr Hodgson also personally recognised the high-risk nature of Defined Benefit Pension Transfers.

4.99. According to this procedure, Vintage had a system in place whereby all recommendations in favour of a Pension Transfer were checked by a further Pension Transfer Specialist. The process document states that once the recommendation report was prepared, the full file was passed to the checking Pension Transfer Specialist. Feedback was then provided to the Pension Transfer Specialist face-to-face, and any amendments required were made prior to the report being sent to the customer. However, the process document was produced retrospectively and the Authority has seen no evidence that the checks described in the process document were undertaken in practice.

4.100. Mr Hodgson's partner, who had the responsibility for Defined Benefit Pension file compliance checking at Vintage in his capacity as CF10, only compliance checked the advice provided by the non-partnered Pension Transfer Specialists. There was no compliance checking of Mr Hodgson's files and no compliance checking of his partner's files either. As a partner of the firm, Mr Hodgson was responsible for ensuring that there was adequate monitoring and oversight of the Pension Transfer process as well as ensuring there were sufficient compliance resources in place. He would have been aware that his own work, and that of his partner, was not being compliance checked.

4.101. There was therefore no system in place to ensure that the partners' Pension Transfer advice was compliance checked. When external file reviews were introduced in August 2017, these were not carried out in sufficient number and Mr Hodgson and his partner did not deploy adequate compliance resources to remedy this. Accordingly, as Mr Hodgson advised in 89 of 167 (52.3%) of the Personal Recommendations produced by the firm, all 89 cases were not compliance checked internally by the CF10, and only two of these cases were subject to external review. There was therefore no compliance check of any sort in 87 of 167 recommendations which was inadequate given the high-risk nature of this workstream and the risks to customers were they to receive unsuitable advice.

Failure to Provide Suitable Pension Transfer Advice as a CF30 and Pension Transfer Specialist

4.102. Of the 21 files reviewed by the Authority, 11 files contained advice provided by Mr Hodgson, which had not been subjected to any compliance checking procedure whatsoever. Of these 11 files, five were assessed as containing unsuitable Pension Transfer advice, and two (both relating to the same customer) were incapable of being reviewed due to material information gaps. This indicates the risks inherent in the compliance checking system in place at Vintage during the Relevant Period, but also demonstrates Mr Hodgson's failure to provide advice on behalf of the firm which met with the requirements of regulatory system.

Inadequate Compliance Resource

4.103. Despite the increase in Defined Benefit Pension Transfer advice after July 2017, Mr Hodgson and his partner failed to take reasonable steps to ensure that adequate additional compliance resource was available to mitigate the risks arising out of what had been identified by the firm itself as being high-risk business. The partners chose not to engage any external reviews of the firm's Defined Benefit Pension Transfer advice prior to August 2017. Between August 2017 and November 2017, three DBPS transfer advice files were then reviewed externally. It was not reasonable to maintain this insufficient level of support for the following reasons:

(1) Vintage regarded Defined Benefit Pension Transfer advice as being "high risk";

(2) Mr Hodgson knew that his Pension Transfer advice files and the Pension Transfer advice of his partner were not being compliance checked;

(3) The compliance checks that did take place were undertaken by Mr Hodgson's partner in his capacity as CF10, who failed to carry out those checks competently and whose own Pension Transfer advice was not being compliance checked;

(4) By not engaging in any external Defined Benefit Pension Transfer file reviews before August 2017, there was no way to challenge or determine how the compliance process was functioning;

(5) The first externally reviewed file in August 2017 was not assessed as containing suitable advice. Mr Hodgson, whose files were not compliance checked, was the Pension Transfer Specialist. This should have given rise to concerns with regard to his approach to Defined Benefit Pension Transfer advice; and

(6) The second and third reviews in November 2017 revealed consistent advice errors, despite the changes made to the oversight process from September 2017. This should have given rise to concerns of systemic failure such that further assessment of files was required.

4.104. The significant increase in Defined Benefit Pension Transfer advice business, given factors (1)-(6) above, should have prompted a proportionate allocation of external resource to Defined Benefit Pension Transfer file reviews. However, the partners failed to apply adequate resources to this business area.

5. FAILINGS

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

5.2. Based on the facts and matters above, the Authority finds that, by reason of the matters described in section 4 of this notice, Mr Hodgson breached:

(1) Statement of Principle 2, in that he failed to exercise due skill, care and diligence in carrying out his Accountable Function of CF30 (Customer adviser); and

(2) Statement of Principle 7, in that he failed to take reasonable steps to ensure, in respect of his performance of the CF4 (Partner) function, that Vintage complied with Principles 3, 7, and 9 of the Authority's Principles for Businesses, and COBS 2.1.1R, 9.2.1R, 9.2.2R, 9.2.6R and 19.1.2R as a result of the deficiencies in Vintage's Pension Transfer recommendations.

Breach of Statement of Principle 2

5.3. Mr Hodgson breached Statement of Principle 2, in that he failed to exercise due skill, care and diligence in providing Defined Benefit Pension Transfer advice on behalf of Vintage. Customers followed Mr Hodgson's recommendation to transfer out of their Defined Benefit Pension Scheme when this advice was not suitable for them, putting their retirement income at significant risk. In particular, this resulted in advice where:

(1) Insufficient information was obtained about the customer to enable Mr Hodgson to assess suitability;

(2) He did not properly assess whether:

(a) the customer was reliant on the income from their Defined Benefit Pension Scheme and whether they could financially bear the risks involved in a Pension Transfer;

(b) the aims which drove the recommended Pension Transfer were in the best interests of the customer;

(c) alternatives to a Pension Transfer could meet the customer's needs;

(d) the customer had the appropriate knowledge, experience and attitude to risk;

(e) the transfer analysis supported a recommendation to transfer out of the Ceding Arrangement; and

(f) the documentation issued to customers to put them in a sufficiently informed position and was not clear, fair and not misleading.

Breach of Statement of Principle 7

5.4 Mr Hodgson breached Statement of Principle 7, in that he failed to take reasonable steps to ensure, in respect of his performance of the CF4 (Partner) function, that Vintage complied with Principles 3, 7 and 9 of the Authority's Principles for Businesses, and COBS 2.1.1R, 9.2.1R, 9.2.2R, 9.2.6R and 19.1.2R, as a result of the deficiencies in Vintage's Pension Transfer recommendations in that he:

(1) failed to undertake any analysis of management information regarding the Personal Recommendations produced by Vintage's Pension Transfer

Specialists, despite the high volumes of customers who were recommended to effect a Pension Transfer;

(2) failed to challenge the reasons for why almost all customers were recommended to transfer out of their Defined Benefit Pension Schemes, despite the starting point of the presumption of unsuitability in the Authority's guidance;

(3) failed to arrange for an increased level of external compliance support in the context of the deficiencies in the internal compliance checking process and the increased volume of Defined Benefit Pension Transfer advice work after July 2017; and

(4) failed to allocate appropriate resources, as part of his oversight role, to ensure that sufficient routine compliance checking of the work of all four of the Pension Transfer Specialists took place. In particular, none of his Pension Transfer advice was compliance checked by the firm's CF10 during the Relevant Period.

5.5 The Authority therefore considers that Mr Hodgson is not fit and proper to perform any function in relation to the regulated activity of advising on Pension Transfers and Pension Opt-outs carried on by an authorised person, exempt person or exempt professional firm. The Authority also considers that Mr Hodgson is not fit and proper to perform any Senior Management Function in relation to any regulated activities carried on by an authorised person, exempt person or exempt professional firm.

6. SANCTION

Financial Penalty

6.1. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. 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 6.5B1G, 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. During the Relevant Period, Mr Hodgson derived direct financial benefit from the breaches in the sum of £245,691.57.

6.4. The interest chargeable on these benefits at 8% per annum from receipt to the date of this Notice would have amounted to £107,915.81.

6.5. Step 1 therefore would have been £353,607 (rounded down to the nearest £1) inclusive of interest.

Step 2: The Seriousness of the Breach

6.6. Pursuant to DEPP 6.5B2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. The 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 relevant income for Mr Hodgson is £233,648.70.

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.

Impact of the Breach

6.10. Mr Hodgson caused a significant risk of loss, as a whole, as well as actual loss, to consumers who transferred out of their Defined Benefit Pension Schemes as a result of the firm's unsuitable Pension Transfer advice (DEPP 6.5B.2G(8)(b)). Further, a large proportion of customers agreed to pay for an ongoing service provided by Vintage. Where an unsuitable Pension Transfer recommendation was made and executed on behalf of the customer in these cases, the customer continued to pay for a service which, were it not for the unsuitable Pension Transfer advice, would not have been payable. Mr Hodgson was responsible for transfers with CETVs totalling over £28 million.

6.11. Mr Hodgson's breach caused a significant risk of loss to individual consumers who transferred out of their Defined Benefit Pension Scheme as a result of advice provided by Vintage. For many customers, their Defined Benefit Pension Scheme was their most valuable asset (the average CETV was £420,662.63 in general, and £393,052 for Mr Hodgson's advice) and was their main retirement provision (DEPP 6.5B.2G(8)(c)).

6.12. Over half of those customers advised by Vintage were BSPS members, many of whom were in a vulnerable position due to the uncertainty surrounding the future of the BSPS (DEPP 6.5B.2G(8)(d)).

Nature of the Breach

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

6.14. Mr Hodgson is an experienced industry professional having worked in financial services for several years. He held a senior position (CF4) within the firm (DEPP 6.5B.2G(9)(j) and (k)) and held significant responsibility for the business area affected by the breach (l).

6.15. Mr Hodgson did take some steps, along with his partner, in an attempt to comply with the Authority's rules (DEPP 6.5B.2G(9)(n)) that are described in section 4 above.

Whether the Breach was Deliberate and/or Reckless

6.16. The breaches committed by Mr Hodgson were as a result of his lack of competence, rather than deliberate or reckless acts (DEPP 6.5B.2G(11)).

Level of Seriousness

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

6.18. DEPP 6.5B.2G(13) lists factors likely to be considered 'level 1, 2 or 3 factors'. The Authority considers that Mr Hodgson's breach of Principles 6 and 7 were committed negligently (DEPP 6.5B.2G(13)(d)).

6.19. Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 3 and so the Step 2 figure is 20% of £233,648.70.

6.20. Step 2 is therefore £46,729.74.

Step 3: Mitigating and Aggravating Factors

6.21. 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.

6.22. The Authority considers there to be no aggravating factors.

6.23. The Authority considers that there are no factors that mitigate the breach.

6.24. Step 3 is therefore £46,729.74.

Step 4: Adjustment for Deterrence

6.25. Pursuant to DEPP 6.5B.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the firm who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.

6.26. The Authority considers that the Step 3 figure represents a sufficient deterrent to Mr Hodgson and others, and so has not increased the penalty at Step 4.

6.27. Step 4 is therefore £46,729.74.

Step 5: Settlement Discount

6.28. 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 firm reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.

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

6.30. Step 5 is therefore £32,700 (rounded down to the nearest £100).

Penalty

6.31. The Authority hereby imposes a total financial penalty of £32,700 on Mr Hodgson for breaching Statement of Principle 6 and Statement of Principle 7. This represents the punitive element of the penalty and is to be paid direct to the FSCS for the purpose of consumer redress. In furtherance of the consumer protection objective, in order to maximise funds available for consumer redress, the Authority will forgo any sum, otherwise owing by way of disgorgement, which has been made available to the FSCS by the partners of Vintage. The Authority would have imposed a penalty of £386,307.

Withdrawal of Approval and Prohibition Order

6.32. The Authority has had regard to the guidance in Chapter 9 of EG in considering whether to withdraw Mr Hodgson's approval to perform Senior Management

Functions and whether to impose a prohibition order on him. The Authority has the power to prohibit individuals under section 56 of the Act.

6.33. The Authority hereby withdraws Mr Hodgson's SMF4 (Partner) Function at Vintage.

6.34. The Authority hereby prohibits Mr Hodgson from performing the following functions because he is not a fit and proper person to perform such functions due to his lack of competence and capability:

(1) any function in relation to the regulated activity of advising on Pension Transfers and Pension Opt-outs carried on by an authorised person, exempt person or exempt professional firm; and

(2) any Senior Management Function in relation to any regulated activities carried on by an authorised person, exempt person or exempt professional firm.

7. PROCEDURAL MATTERS

7.1. This Notice is given to Mr Hodgson under and in accordance with the section 390 of the Act and to Vintage as an interested party in the withdrawal of Mr Hodgson's approval.

7.2. The following statutory rights are important.

Decision Maker

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

Publicity

7.4. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the Authority must publish such information about the matter to which this notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the

Authority, be unfair to you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

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

Authority Contacts

7.6. For more information concerning this matter generally, contact Roshani Pulle at the Authority (direct line: 020 7066 6241 /email: Roshani.pulle3@fca.org.uk).

Nicholas Hills
Head of Department
Financial Conduct Authority, Enforcement and Market Oversight Division

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

The Financial Services and Markets Act 2000 ("the Act")

The Authority's operational objectives

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

Section 56 of the Act

2. Section 56 of the Act provides that the Authority may make an order prohibiting an individual from performing a specified function, any function falling within a specified description or any function, if it appears to the Authority that that individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, a person who is an exempt person in relation to that activity or a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities

Section 63 of the Act

3. Section 63 of the Act provides that the Authority may withdraw an approval under section 59 given by the Authority in relation to the performance by a person of a function if the Authority considers that the person is not a fit and proper person to perform the function.

Section 66A of the Act

4. Under section 66A of the Act, the Authority may take action against a person if it appears to the Authority that he is guilty of misconduct and the Authority is satisfied that it is appropriate in all the circumstances to take action against him, including the imposition of a penalty of such amount as it considers appropriate.

5. Under section 66A of the Act a person is guilty of misconduct if, inter alia, he at any time failed to comply with rules made by the Authority under section 64A of the Act and at that time was an approved person, or had been knowingly concerned in a contravention of relevant requirement by an authorised person and at that time the person was an approved person in relation to the authorised person.

RELEVANT REGULATORY PROVISIONS

The Authority's Handbook of Rules and Guidance

6. In exercising its powers to impose a financial penalty, the Authority must have regard to the relevant regulatory provisions in the Authority's Handbook of rules and guidance (the "Handbook"). The main provisions that the Authority considers relevant are set out below.

Principles for Businesses ("PRIN")

7. The Principles are a general statement of the fundamental obligations of firms under the regulatory system and are set out in the Handbook. They derive their authority from the Authority's rulemaking powers as set out in the Act and reflect the Authority's regulatory objectives. They can be accessed here: https://www.handbook.fca.org.uk/handbook/PRIN/2/1.html

8. Principle 3 of the FCA's Principles for Businesses states that:

a. "a firm must take reasonable care to organise its affairs responsibly and effectively, with adequate risk management systems."

9. Principle 7 of the FCA's Principles for Businesses states that:

"a firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading."

10. Principle 9 of the FCA's Principles for Businesses states that:

"a firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment."

Statements of Principle and Code of Practice for Approved Persons ("APER")

11. The part of the Authority's handbook known as APER sets out the Statements of Principle issued under section 64 of the Act as they relate to approved persons and descriptions of conduct which, in the opinion of the Authority, do not comply with a Statement of Principle.

12. APER further describes factors which, in the opinion of the Authority, are to be taken into account in determining whether or not an approved person's conduct complies with particular Statements of Principle.

13. Statement of Principle 2 states that:

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

14. Statement of Principle 7 states that:

> *"an approved person performing an accountable higher management function must take reasonable steps to ensure that the business of the firm for which they are responsible in their accountable function complies with the relevant requirements and standards of the regulatory system."*

15. 'Accountable higher management functions' includes any accountable function that is an Authority controlled function that is a significant influence function. Significant influence functions include the following controlled functions: CF1 (Director), CF3 (Chief Executive), CF10 (Compliance Oversight) and CF11 (Money Laundering Reporting).

16. APER 3.1.8AG provides, in relation to applying Statements of Principle 5 to 7, that the nature, scale and complexity of the business under management and the role and responsibility of the individual performing an accountable higher management function within the [APER employer (in place from 7 December 2020, previously "the firm"] will be relevant in assessing whether an approved person's conduct was reasonable.

17. APER 3.3.1G states that in determining whether or not the conduct of an approved person performing an accountable higher management function complies with Statements of Principle 5 to 7, the following are factors which, in the opinion of the Authority, are to be taken into account:

(1) whether he exercised reasonable care when considering the information available to him;

(2) whether he reached a reasonable conclusion which he acted on;

(3) the nature, scale and complexity of the [APER employer's] (in place from 7 December 2020, previously "the firm's") business;

(4) their role and responsibility as an approved person performing an accountable [significant-influence (in place until 6 March 2016)] or [higher management (in place from 7 March 2016)] function; and

(5) the knowledge he had, or should have had, of regulatory concerns, if any, arising in the business under his control.

18. APER 4.6 describes conduct which in the opinion of the Authority does not comply with Principle 6.

19. APER 4.6.2G provides that in the opinion of the Authority, conduct of the type described in APER 4.6.3G, APER 4.6.5G, APER 4.6.6G or APER 4.6.8G does not comply with Statement of Principle 6.

20. APER 4.6.3G provides that failing to take reasonable steps to adequately inform themselves about the affairs of the business for which they are responsible falls within APER 4.6.2G.

21. APER 4.6.4G provides that Behaviour of the type referred to in APER 4.6.3 G includes, but is not limited to:

(1) permitting transactions without a sufficient understanding of the risks involved;
(2) permitting expansion of the business without reasonably assessing the potential risks of that expansion;

(3) inadequately monitoring highly profitable transactions or business practices or unusual transactions or business practices; […]

22. APER 4.6.5G provides that delegating the authority for dealing with an issue or a part of the business to an individual or individuals (whether in-house or outside contractors) without reasonable grounds for believing that the delegate had the necessary capacity, competence, knowledge, seniority or skill to deal with the issue or to take authority for dealing with part of the business, falls within APER 4.6.2G (see APER 4.6.13G).

23. APER 4.6.6G provides failing to take reasonable steps to maintain an appropriate level of understanding about an issue or part of the business that they have delegated to an individual or individuals (whether in-house or outside contractors) falls within APER 4.6.2G (see APER 4.6.14G).

24. APER 4.6.7G provides that behaviour of the type referred to in APER 4.6.6 G includes but is not limited to:

(1) disregarding an issue or part of the business once it has been delegated;

(2) failing to require adequate reports once the resolution of an issue or management of part of the business has been delegated; […]

25. APER 4.6.8G provides that failing to supervise and monitor adequately the individual or individuals (whether in-house or outside contractors) to whom responsibility for dealing with an issue or authority for dealing with a part of the business has been delegated falls within APER 4.6.2G.

26. APER 4.6.9G provides that behaviour of the type referred to in APER 4.6.8G includes, but is not limited to:

(1) failing to take personal action where progress is unreasonably slow, or where implausible or unsatisfactory explanations are provided;

(2) failing to review the performance of an outside contractor in connection with the delegated issue or business.

27. In determining whether or not the conduct of an approved person performing an accountable higher management function under APER 4.6.5G, APER 4.6.6G and APER 4.6.8G complies with Statement of Principle 6, the following are factors which, in the opinion of the FCA, are to be taken into account:

(1) the competence, knowledge or seniority of the delegate; and

(2) the past performance and record of the delegate.

28. APER 4.6.13G (Delegation) provides, amongst other provisions, that:

(1) An approved person performing an accountable higher management function may delegate the investigation, resolution or management of an issue or authority for dealing with a part of the business to individuals who report to them or to others.

(2) The approved person performing an accountable higher management function should have reasonable grounds for believing that the delegate has the competence, knowledge, skill and time to deal with the issue. For instance, if the compliance department only has sufficient resources to deal with day-to-day issues, it would be unreasonable to delegate to it the resolution of a complex or unusual issue without ensuring it had sufficient capacity to deal with the matter adequately. […].

29. APER 4.7 describes conduct which in the opinion of the Authority does not comply with Principle 7.

30. APER 4.7.2G provides that in the opinion of the Authority, conduct of the type described in APER 4.7.3G, APER 4.7.4G, APER 4.7.5G, APER 4.7.7G, APER 4.7.9G, APER 4.7.10G or APER 4.7.11AG does not comply with Statement of Principle 7.

31. APER 4.7.3G provides that failing to take reasonable steps to implement (either personally or through a compliance department or other departments) adequate and appropriate systems of control to comply with the relevant requirements and standards of the regulatory system in respect of the regulated activities of the [APER employer] (in place from 7 December 2020, previously "the firm") firm in question (as referred to in Statement of Principle

7) falls within APER 4.7.2G. [In the case of an approved person who is responsible, under SYSC 4.4.5R(2), with overseeing the firm's obligation under SYSC 4.1.1R, failing to take reasonable care to oversee the establishment and maintenance of appropriate systems and controls falls within APER 4.7.2G. (in place until 8 December 2019)].

32. APER 4.7.4G provides that failing to take reasonable steps to monitor (either personally or through a compliance department or other departments) compliance with the relevant requirements and standards of the regulatory system in respect of the regulated activities of the [APER employer] (in place from 7 December 2020, previously "the firm") in question (as referred to in Statement of Principle 7) falls within APER 4.7.2G.

33. APER 4.7.11G provides that the Authority expects an approved person performing an accountable higher management function to take reasonable steps both to ensure their [APER employer's] (in place from 7 December 2020, previously "firm's") compliance with the relevant requirements and standards of the regulatory system and to ensure that all staff are aware of the need for compliance.

34. APER 4.7.12G provides that an approved person performing an accountable higher management function need not themselves put in place the systems of control in their business (APER 4.7.4G). Whether he does this depends on his role and responsibilities. He should, however, take reasonable steps to ensure that the business for which he is responsible has operating procedures and systems which include well-defined steps for complying with the detail of relevant requirements and standards of the regulatory system and for ensuring that the business is run prudently. The nature and extent of the systems of control that are required will depend upon the relevant requirements and standards of the regulatory system, and the nature, scale and complexity of the business.

Conduct of Business Sourcebook ("COBS")

35. 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 customers:

The client's best interest rule

36. COBS 2.1.1R:

(1) A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).

Communication is fair clear and not misleading

37. COBS 4.2.1R:

(1) A firm must ensure that a communication or a financial promotion is fair, clear and not misleading.

Assessing suitability: the obligations

38. COBS 9.2.1R:

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

(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.

39. COBS 9.2.2R:

(1) A firm must obtain from the client such information as is necessary for the firm to understand the essential facts about him and have a reasonable basis for believing, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended, or entered into in the course of managing:

(a) meets his investment objectives;

(b) is such that he is able financially to bear any related investment risks consistent with his investment objectives; and

(c) is such that he has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.

(2) The information regarding the investment objectives of a client must include, where relevant, information on the length of time for which he wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment.

(3) The information regarding the financial situation of a client must include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments.

40. COBS 9.2.3 R:

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.

41. COBS 9.2.4 R:

A firm must not encourage a client not to provide information for the purposes of its assessment of suitability.

42. COBS 9.2.5 R:

A firm is entitled to rely on the information provided by its clients unless it is aware that the information is manifestly out of date, inaccurate or incomplete.

Insufficient information

43. COBS 9.2.6R:

> If a firm does not obtain the necessary information to assess suitability, it must not make a personal recommendation to the client or take a decision to trade for him.

Suitability reports

44. During the Relevant Period COBS 9.4 set out the following rules and guidance concerning Suitability reports.

45. COBS 9.4.1 R:

> A firm must provide a suitability report to a retail client if the firm makes a personal recommendation to the client and the client:
>
> […]
>
> (2) buys, sells, surrenders, converts or cancels rights under, or suspends contributions to, a personal pension scheme or a stakeholder pension scheme; or
>
> (3) elects to make income withdrawals or purchase a short-term annuity; or
>
> (4) enters into a pension transfer or pension Opt-out

46. COBS 9.4.7R:

> 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.

47. COBS 9.4.8 G:

A firm should give the client such details as are appropriate according to the complexity of the transaction.

Pension transfers, conversions, and opt-outs

48. COBS 19.1 applies, with some exclusions, to a firm that gives advice or a personal recommendation about a pension transfer, a pension conversion or a pension Opt-out. The following provisions of COBS 19.1 are set out as they applied during the Relevant Period.

49. COBS 19.1.2R:

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 schemeor 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.

50. COBS 19.1.3G:

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.

51. COBS 19.1.6G:

When advising a retail client who is, or is eligible to be, a member of a defined benefits occupational pension scheme or other scheme with safeguarded benefits whether to transfer, convert or Opt-out, a firm should start by assuming that a transfer, conversion or Opt-out will not be suitable. A firm should only then consider a transfer, conversion or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the client's best interests

52. COBS 19.1.7G:

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.

53. COBS 19.1.7AG:

When giving a personal recommendation about a pension transfer or pension conversion, a firm should clearly inform the retail client about the loss of the safeguarded benefits and the consequent transfer of risk from the defined benefits pension scheme or other scheme with safeguarded benefits to the retail client, including:

(1) the extent to which benefits may fall short of replicating those in the defined benefits pension scheme or other scheme with safeguarded benefits;

(2) the uncertainty of the level of benefit that can be obtained from the purchase of a future annuity and the prior investment risk to which the retail client is exposed until an annuity is purchased with

the proceeds of the proposed personal pension scheme or stakeholder pension scheme; and

(3) the potential lack of availability of annuity types (for instance, annuity increases linked to different indices) to replicate the benefits being given up in the defined benefits pension scheme.

54. COBS 19.1.8G:

When a firm prepares a suitability report it should include:

(1) a summary of the advantages and disadvantages of its personal recommendation;

(2) an analysis of the financial implications (if the recommendation is to opt-out); and

(3) a summary of any other material information.

Fit and Proper test for Employees and Senior Personnel ("FIT")

55. Guidance on the question whether an individual is a fit and proper person is given in the part of the Handbook called the Fit and Proper Test for Employees and Senior Personnel (FIT). FIT 1.3.1G states that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person to perform a particular controlled function. The most important considerations will be the person's:

(1) honesty, integrity and reputation;

(2) competence and capability; and

(3) financial soundness.

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

Enforcement Guide ("EG")

57. The Authority's policy for exercising its power to make a prohibition order is set out in Chapter 9 of EG.

58. EG 9.2.2 states that the Authority has the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant.

Depending on the circumstances of each case, the Authority may seek to prohibit an individual from performing any class of function in relation to any class of regulated activity, or it may limit the prohibition order to specific functions in relation to specific regulated activities. The Authority may also make an order prohibiting an individual from being employed by a particular firm, type of firm or any firm.

59. EG 9.2.3 states that the scope of the prohibition order will depend on the range of functions which the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of risk which he poses to consumers or the market generally. At EG 9.3.5(4) the Authority gives a serious lack of competence as an example of the type of behaviour which has previously resulted in the Authority deciding to issue a prohibition order.

60. EG sets out the Authority's approach to taking disciplinary action. The Authority's approach to financial penalties is set out in Chapter 7 of EG, which can be accessed here:

https://www.handbook.fca.org.uk/handbook/EG/7/?view=chapter

Decision Procedures and Penalties Manual ("DEPP")

61. Chapter 6 of 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.htmln