

**Andrew Page is referring this Decision Notice to the Upper Tribunal where the parties will present their respective cases. Any findings in this Decision Notice are therefore provisional and reflect the Authority's belief as to what occurred and how it considers the behaviour of Financial Page Ltd should be characterised. The Tribunal will determine what (if any) is the appropriate action for the FCA to take, and will remit the matter to the FCA with such directions as the Tribunal considers appropriate to give effect to its determination. The Tribunal's decision will be made public on its website. No allegation of wrongdoing is made against Hennessy Jones Limited, Mark Stephen, James King or City Administration Limited in this Decision Notice.**

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## DECISION NOTICE

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To: **Financial Page Ltd (in liquidation)**

Firm  
Reference  
Number: **623858**

Address: **The Fort Offices  
Artillery Business Park  
Garrison Avenue  
Park Hall  
Oswestry  
Shropshire  
SY11 4AD**

Date: **6 December 2018**

### 1. ACTION

- 1.1. For the reasons given in this Notice, the Authority has decided to publish a statement pursuant to section 205 of the Financial Services and Markets Act 2000 (the "Act") to the effect that Financial Page Ltd ("FPL") contravened regulatory requirements in the period from 3 July 2014 to 1 February 2016 (the "Relevant Period").
- 1.2. The Authority considers that the serious failings in this case warrant a substantial penalty. FPL is in liquidation. Had it not been for its reduced financial circumstances the Authority would have imposed a financial penalty of £283,100.

## 2. **SUMMARY OF REASONS**

- 2.1. The Authority has determined that, during the Relevant Period, FPL breached Principle 1 (Integrity) of the Authority's Principles for Businesses by acting dishonestly and recklessly in relation to its pension advice business, and breached section 20 of the Act by carrying on the regulated activity of advising on Pension Transfers without the relevant permission.
- 2.2. Pensions are a traditional and tax-efficient way of saving money for retirement. The value of someone's pension can have a significant impact on their quality of life during retirement and, in some circumstances, may affect whether they can afford to retire at all. Customers who engage authorised firms to provide them with advice in relation to their pensions place significant trust in those providing the advice. Where a firm fails to act with integrity and puts its interests above those of its customers, it exposes its customers to a significant risk of harm.
- 2.3. Further, where elements of a pension advice process are outsourced to a third party service provider, the authorised firm remains responsible for the advice given and all decisions and actions in relation to regulated activities provided in its name. It is therefore essential that, in such circumstances, the authorised firm maintains control of the advice process and provides effective oversight of the activities carried out by the service provider on its behalf.
- 2.4. FPL is a small firm that, during the Relevant Period, was authorised by the Authority with permission to conduct regulated activities, including advising on investments (excluding Pension Transfers) and arranging (bringing about) deals in investments. Andrew Page was the sole approved person at FPL during the Relevant Period, with approval to perform the controlled functions of CF1 (Director), CF10 (Compliance Oversight), CF11 (Money Laundering Reporting) and CF30 (Customer). FPL also had a de facto director, Thomas Ward.
- 2.5. During the Relevant Period FPL adopted and used the Pension Review and Advice Process. This process was based on a pension switching advice model, the development of which was initiated and influenced by a third party, HJL. The Pension Review and Advice Process:
  - (1) involved HJL sourcing leads from lead generation companies and introducing customers to FPL;

- (2) involved HJL and CAL (a third party service provider which was closely connected to HJL) being provided with FPL's logo and letterhead and the electronic signature of Mr Page (the Firm's qualified financial adviser) so that they could perform functions (the Outsourced Functions) on FPL's behalf, including:
  - (a) contacting customers that had been introduced to FPL by HJL;
  - (b) conducting fact-finds with these customers;
  - (c) inputting the results of those fact-finds into the Software (an automated client management system designed to produce Suitability Reports);
  - (d) sending the Suitability Reports to the customers; and
  - (e) calling the customers to ask whether they wished to proceed in accordance with FPL's advice;
- (3) was structured to result in customers who met certain pre-set criteria approved by FPL being advised to switch their pensions to SIPP's investing in high risk, illiquid assets not regulated by the Authority (the Loan Notes and, from November 2014, the Bond). HJL had a material financial interest in the Loan Notes, which was not disclosed to customers; and
- (4) involved little meaningful oversight by FPL of HJL's activities as an introducer and of the Service Providers' performance of the Outsourced Functions.

2.6. FPL was aware of what the Pension Review and Advice Process involved and how it was structured. Nevertheless, it held itself out to customers as providing bespoke, independent investment advice based on a comprehensive and fair analysis of the whole market. FPL knew this was misleading to customers as it did not reflect the reality of the service that it would provide using the Pension Review and Advice Process. In holding itself out in this way, FPL acted dishonestly. The Authority considers this to be particularly serious because customers were not made aware of the true nature of the service being provided, including the fact that HJL's involvement in the process and financial interest in the Loan Notes created a conflict of interest. Customers were therefore denied the opportunity to make an informed decision on whether to use the Firm's services and on whether to invest in the products recommended to them by the Firm.

- 2.7. FPL's actions in relation to its adoption and use of the Pension Review and Advice Process, summarised in paragraphs 2.8 to 2.18 below, were reckless. The Pension Review and Advice Process put FPL's customers at serious risk of receiving unsuitable advice and therefore at serious risk of investing in products that were not suitable for them, but FPL closed its mind to these risks and unreasonably exposed its customers to them by adopting and using the Pension Review and Advice Process.
- 2.8. FPL agreed to recommend the Loan Notes and the Bond to customers in circumstances where it had failed to carry out adequate due diligence on them to ensure that it had a proper understanding of them, including their risks and benefits. In particular:
- (1) FPL relied mainly on documents provided to it by HJL, despite knowing that HJL had a material financial interest in the Loan Notes, and did not take any actions to address the risk that the information provided by HJL could be misleading or incomplete;
  - (2) key parts of FPL's due diligence were not completed until after advice had already been given to customers to switch their Pensions to SIPP's investing in the Loan Notes;
  - (3) Mr Page did not perform adequate due diligence on the insurance policies that were intended to provide a capital guarantee for the Loan Notes. As a result, FPL did not understand how the insurance policies would operate in practice, the extent of protection that they would provide or that the insurer was controlled by the issuer of the Loan Notes; and
  - (4) Mr Page only reviewed a summary of the features of the Bond, which did not include a full description of the risks and incorrectly concluded that the Bond was equivalent to cash.
- 2.9. In any event, it should have been obvious to FPL from the limited information that it considered that the Loan Notes and the Bond were high risk investments that were unlikely to be suitable for FPL's customers, except in very limited circumstances. However, FPL failed to give due consideration to the risk that the Loan Notes and the Bond were unsuitable.
- 2.10. FPL knew of HJL's involvement in the Pension Review and Advice Process, that the process was structured to result in customers switching their pensions to SIPP's

investing in the Loan Notes (and later the Bond), and that HJL had a material financial interest in the Loan Notes. Further, FPL knew that two of the directors of HJL during the Relevant Period (Mark Stephen and James King) were directors of the company issuing the Bond, and that Mr Stephen was also a director of the company issuing the Loan Notes. However, FPL took no steps to manage these conflicts of interest or to ensure the common directorships and how HJL was remunerated were disclosed to customers.

- 2.11. It should have been obvious to FPL, given that Mr Page was an experienced and qualified financial adviser, that it needed to give due consideration to the documents to be used in the Pension Review and Advice Process, and to how the process would operate in practice, before it started to use the Pension Review and Advice Process. However, FPL failed to do so and adopted and used the Pension Review and Advice Process having failed to identify significant, obvious deficiencies in the process, including that: the fact-find contained leading questions intended to steer customers towards the features of the products that would be recommended; the Suitability Reports did not include sufficient information to provide customers with a compliant personal recommendation; and information provided to customers about the Loan Notes, and later also the Bond, did not adequately inform them of their costs, benefits and risks.
- 2.12. In any event, it should have been obvious to FPL from the information available to it that the Pension Review and Advice Process did not comply with the Authority's rules. FPL was aware that it would have no meaningful involvement in the advice to be given and that the documents to be used in the process would mislead customers about the service that would be provided. However, FPL failed to give any meaningful consideration to whether or not the Pension Review and Advice Process was compliant.
- 2.13. FPL failed to maintain control of the Pension Review and Advice Process and allowed important parts of the process, such as the conduct of fact-finds, to be performed in a way that failed to obtain and/or take into account relevant information about FPL's customers. Further, FPL failed to review in a meaningful way advice given through the Pension Review and Advice Process, for which it was responsible, whether before recommendations were sent to customers or at all.
- 2.14. FPL failed to put in place appropriate systems and controls and compliance arrangements to oversee and monitor the Pension Review and Advice Process.

- 2.15. FPL worked with the Service Providers in circumstances where it had failed to carry out adequate due diligence on them and had failed to give any proper consideration to whether they were suitable to perform services on its behalf. FPL conducted some due diligence on HJL, but only completed key parts of it after it had commenced business with HJL, and did not conduct any due diligence on CAL.
- 2.16. FPL failed to take any steps to establish that the lead generators used by HJL generated their customer introductions in an appropriate manner and did not use cold calling. The Authority has evidence suggesting that one of the firms used by HJL generated introductions through cold calling. This was brought to FPL's attention by the Authority in September 2014, but FPL took no steps to amend the lead generation process and did not conduct any further due diligence on HJL.
- 2.17. FPL engaged an external compliance consultant to provide compliance support. Mr Page, and therefore FPL, suspected that the Pension Review and Advice Process might not be compliant, but withheld his suspicions and even the fact that FPL was using the process from the compliance consultant. Even after concerns were raised with FPL by the compliance consultant following a review of four customer files (including concerns about the inadequate and leading fact-find questions and the role of the Service Providers), FPL disregarded those concerns and continued to use the Pension Review and Advice Process.
- 2.18. FPL failed to have regard to customers' interests when advising customers to switch the cash in their SIPP into the Bond and also when reinvesting customers' interest payments in the Loan Notes:
- (1) FPL's customers' pensions were initially invested in a SIPP with a portfolio made up of the Loan Notes and cash. From November 2014 FPL contacted customers to advise them to switch the cash element of their portfolio into the Bond. Although Mr Page, on behalf of FPL, sought to contact all customers by telephone and in writing, he, and therefore FPL, failed to assess whether the switch was suitable for each customer and, when speaking with customers on the telephone, failed to explain the risks of the Bond.
  - (2) FPL subsequently sent those customers that Mr Page had not been able to contact by telephone an 'opt out' letter, which appears to have recommended that they switch the cash in their SIPP into the Bond and informed them that they could contact FPL if they required further advice. Customers were informed that if they did not respond, FPL would complete

the switch for them, but were not given a deadline to respond to the letter. From April 2015, FPL started instructing the SIPP Provider to switch customers' cash to the Bond.

- (3) FPL adopted a similar process when it decided in January 2015 to reinvest all interest payments from the Loan Notes received by customers back into the Loan Notes. FPL appears to have used the same 'opt out' letter to inform customers that their interest was going to be reinvested. Whilst customers were informed generally that they could contact FPL if they required further advice, they were not told that they had a choice whether to reinvest the interest payments or that they would need to inform FPL if they did not want their interest payments to be reinvested. The 'opt out' letter was used even though not all customers had ongoing servicing arrangements with FPL.

2.19. FPL's reckless actions in relation to its adoption and use of the Pension Review and Advice Process, in particular the fact that it allowed the Service Providers to perform the Outsourced Functions on its behalf without adequate supervision, failed to review in any meaningful way advice given through the Pension Review and Advice Process, and failed to put in place and operate appropriate systems and controls in relation to the process, exposed it to the risk of breaching section 20 of the Act by carrying on a regulated activity without the relevant permission, as in fact happened. The Pension Review and Advice Process failed to distinguish properly between Pension Transfers (which include the transfer of deferred benefits from an occupational pension scheme into a SIPP) and Pension Switches (which involve the movement of funds from one personal pension scheme to another where no safeguarded benefits are involved). As a result, despite FPL not having the necessary permission to provide advice on Pension Transfers, in at least 22 cases advice about Pension Transfers was given to customers by FPL in breach of section 20 of the Act.

2.20. In addition to the clear deficiencies in the Pension Review and Advice Process, the Authority has identified that unsuitable advice was provided to FPL's customers in all 20 FPL customer files it has reviewed. Further, each of the 20 customer files failed to comply with applicable Handbook rules. As the same advice process was used for all customers who were advised to invest in the Loan Notes and/or the Bond (the "Underlying Investments"), the Authority considers it is likely that the advice provided to most, if not all, of FPL's advised customers was unsuitable.

- 2.21. During the Relevant Period, 985 FPL customers invested over £33 million in SIPPs investing in high risk, illiquid assets that were unlikely to be suitable for them, thereby exposing them to a significant risk of loss. 860 FPL customers switched or transferred their pension funds through the Pension Review and Advice Process and 675 customers were advised by FPL to switch the cash element in their pension into the Bond, which included 125 customers novated to FPL from another financial services firm.
- 2.22. FPL adopted the Pension Review and Advice Process for financial gain from the fees it generated and in order to increase the number of customers that it could advise about other products, such as life assurance or other investments, and thereby generate further fees. In doing so, FPL put its own interests before those of its customers.
- 2.23. FPL also deliberately either omitted to provide information or, where it was provided, gave false and/or misleading information to the Authority about its business arrangements on more than one occasion. FPL did so to try to prevent the Authority from identifying misconduct by the Firm and Mr Page, and thereby acted dishonestly.
- 2.24. In addition, FPL recklessly dealt with its assets in breach of the Asset Retention Requirement which, on its application, had been imposed on it by the Authority on 10 July 2015 (see paragraph 2.26(2) below).
- 2.25. The Authority considers FPL's failings to be serious because:
- (1) they related to a large number of customers (including some who were vulnerable due to their age, their inability to replace capital, their medical conditions or other personal circumstances);
  - (2) it should have been obvious to FPL that the involvement in the Pension Review and Advice Process of HJL, which had a material financial interest in the Loan Notes, created a conflict of interest, yet it took no steps to manage the conflict or to ensure that HJL's financial interest was disclosed to customers;
  - (3) it should have been obvious to FPL that the Loan Notes and the Bond were unlikely to be suitable for retail customers, except in very limited circumstances; and



- (4) on 7 August 2014 and 3 September 2014, the Authority wrote to the Firm and drew its attention to alerts released by the Authority relating to firms advising on Pension Switches or Pension Transfers into unregulated products through SIPPs, the risks of non-mainstream products being unsuitable and the need to protect customers. Despite this FPL did not take steps to protect its customers.

2.26. FPL's provision of pension advice was subject to examination by the Authority in June 2015. The Authority had serious concerns with respect to the adequacy of FPL's pension advice and, at the request of the Authority, FPL applied for requirements to be imposed on it. The requirements were imposed on 10 July 2015, and included that FPL was not permitted to:

- (1) conduct Pension Switches and/or Pension Transfers to any SIPP scheme, until independent verification was provided to the Authority confirming that a robust and compliant advice process was in place. (That verification was subsequently provided on 26 October 2015 and this requirement was amended); and
- (2) in any way dispose of, deal with, or diminish the value of any of its assets without the prior consent of the Authority (the Asset Retention Requirement).

2.27. On 16 July 2017 FPL entered liquidation. The FSCS declared FPL in default on 22 March 2017 and is investigating claims made by FPL's customers. As at 17 May 2018, the FSCS had paid over £1.7 million in compensation to FPL customers as a result of loss suffered upon transferring or switching their pensions to the Underlying Investments.

2.28. The Authority considers that FPL's breach of Principle 1 and section 20 of the Act warrants a substantial penalty. Had FPL not been in liquidation, the Authority would have imposed a financial penalty on it of £283,100. However, on account of FPL's reduced financial circumstances, the Authority has instead decided to publish a statement of FPL's misconduct, as described at paragraph 1.1 of this Notice.

### 3. **DEFINITIONS**

3.1. The definitions below are used in this Notice.

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

the "Asset Retention Requirement" means the requirement imposed on the Firm on 10 July 2015, not to in any way dispose of, deal with, or diminish the value of any of its assets without the prior consent of the Authority

the "Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority

the "Bond" means the 10-year bond issued by an unquoted UK company incorporated in November 2014 into which FPL's customers' pensions were invested

"CAL" means City Administration Limited, the third party service provider that performed the Outsourced Functions on behalf of FPL between October 2014 and July 2015

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

"DEPP" means the Authority's Decision Procedure and Penalties Manual

"EG" means the Authority's Enforcement Guide

"FOS" means the Financial Ombudsman Service

"FPL" or the "Firm" means Financial Page Ltd

"FSCS" means the Financial Services Compensation Scheme

"GABRIEL" means the Authority's online system for collecting and storing regulatory data from firms

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

"HJL" means Hennessy Jones Limited, now known as Reditum Capital Limited. Mr Page signed a contract with HJL on 6 December 2013 for HJL to become an IAR of FPL, and HJL was registered with the Authority as such between 11 September 2014 and 2 July 2015. HJL introduced customers to FPL between July 2014 and July 2015. HJL also performed the Outsourced Functions on behalf of FPL between July 2014 and October 2014

"IAR" means Introducer Appointed Representative

"Loan Notes" means the assets, which consisted of 10-year loans to funds incorporated in Mauritius and managed by a Mauritian company, into which FPL's customers' pensions were invested

"Outsourced Functions" means the functions outsourced by FPL to the Service Providers under the Pension Review and Advice Process, including the functions described in paragraph 2.5(2) of this Notice (but not including the functions carried out by HJL in its role as introducer)

"Pension Review and Advice Process" means the process described in paragraph 2.5 of this Notice that FPL used between July 2014 and 10 July 2015

"Pension Summary Report" means the report given to FPL's customers indicating whether and by how much the customer could potentially benefit from a Pension Switch

"Pension Switch" means the movement of funds from one personal pension scheme to another where no safeguarded benefits are involved

"Pension Transfer" has the meaning given in the Handbook and includes the movement of funds from an occupational pension scheme to a personal pension scheme (in this case a SIPP)

"Person A" means the individual who had an influential role at HJL, referred to in paragraph 4.41 of this Notice

"Person B" means the individual with whom FPL signed a loan agreement on 21 August 2015

"Relevant Period" means 3 July 2014 to 1 February 2016 inclusive

"Service Providers" means collectively HJL and CAL

"SIPP" means self-invested personal pension

"SIPP Provider" means the firm providing the SIPP account

"Software" means the automated client management system that was used by the Service Providers during the Pension Review and Advice Process to manage customer information and generate Suitability Reports for customers

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

"SYSC" means the Senior Management Arrangements, Systems and Controls Sourcebook, part of the Handbook

“the Tribunal” means the Upper Tribunal (Tax and Chancery Chamber)

“Underlying Investments” means the Loan Notes and/or the Bond

“the Warning Notice” means the warning notice given to FPL dated 5 March 2018

#### **4. FACTS AND MATTERS**

##### **Background**

- 4.1. FPL is a small firm based in Oswestry, Shropshire. It was incorporated on 21 September 2011 and was initially registered with the Authority as an Appointed Representative in a network. FPL applied to the Authority for authorisation on 9 April 2014 and was authorised on 3 July 2014 with permission to conduct regulated activities, including advising on investments (excluding Pension Transfers) and arranging (bringing about) deals in investments.
- 4.2. During the Relevant Period Mr Page was the only approved person at FPL. He was an experienced and qualified financial adviser and was approved, from 3 July 2014, to perform the controlled functions of CF1 (Director), CF10 (Compliance Oversight), CF11 (Money Laundering Reporting) and CF30 (Customer).
- 4.3. Whilst Mr Page was the only approved director at FPL, the Authority considers that FPL also had a de facto director, Thomas Ward. A de facto director is an individual who acts as a director without having been appointed to that position validly, or at all.
- 4.4. FPL also had an Investment Committee which met three times during the Relevant Period. There were three members of the Investment Committee: Mr Page, Mr Ward and another individual.
- 4.5. From around July 2014 until 10 July 2015, FPL used the Pension Review and Advice Process, which involved:
  - (1) HJL sourcing leads from lead generation companies and introducing customers to the Firm;
  - (2) the Outsourced Functions being performed on behalf of FPL, initially by HJL, and then, from October 2014, by CAL, which was closely connected to HJL; and

- (3) little meaningful oversight by FPL of HJL's activities as an introducer and of the Service Providers' performance of the Outsourced Functions.

- 4.6. The Pension Review and Advice Process was structured to result in customers who met certain pre-set criteria approved by Mr Page being advised to switch their pensions to SIPPs investing in high risk, illiquid assets not regulated by the Authority (the Loan Notes and, from November 2014, the Bond). FPL was aware that HJL had a material financial interest in the Loan Notes, and that it was not disclosed to customers

*The business proposition*

- 4.7. Mr Ward introduced FPL to HJL in December 2013. On 6 December 2013, FPL signed a contract with HJL under which it was agreed that HJL would act as an IAR of FPL and introduce customers to FPL for Pension Switches. At that time it was proposed that Pension Switches would be conducted on an execution-only basis. The intention was that HJL would provide a pre-packaged customer file to FPL, which FPL would then put its name to as the authorised person. However, an execution-only business model was not subsequently implemented.
- 4.8. On 8 March 2014, Mr Ward informed Mr Page in an email that HJL had moved to a pension switching advice model. Mr Ward explained that, were FPL to apply this model, he would provide packaged customer files with all supporting documentation and that for FPL it would "*simply be a case of putting [FPL's] name to it*". The customer files and supporting documentation were to be provided to Mr Ward by HJL.
- 4.9. Mr Page was told by Mr Ward that FPL could expect over 150 cases per month which could generate '*ridiculous*' amounts of income for FPL each month. Mr Page responded that this had '*just made my day*'.
- 4.10. Mr Page and Mr Ward decided that FPL should adopt this pension switching advice model and that, in order to do so, FPL needed to be directly authorised by the Authority. FPL began to use the Pension Review and Advice Process once its application was approved by the Authority, in July 2014.

**The Underlying Investments**

- 4.11. The Pension Review and Advice Process resulted in customers' pensions being switched or transferred to SIPPs with a portfolio of underlying assets which consisted of (i) 10-year loans to funds incorporated in Mauritius and managed by a

Mauritian company (the Loan Notes), and (ii) from November 2014, a 10-year bond issued by an unquoted UK company incorporated in November 2014 (the Bond).

- 4.12. Customers' SIPPs were invested in three portfolios which were misleadingly described as being 'cautious', 'moderate' and 'adventurous', and which were made up of differing proportions of Loan Notes, the Bond and, in some cases, a small percentage of cash. The portfolios were meant to align to a customer's attitude to risk, but in practice there was little difference between the risks and returns of the 'cautious' portfolio when compared to the 'adventurous' portfolio. As such, the terms used to describe the three portfolios failed to reflect the reality that customers would be exposed to high levels of risk whichever portfolio their SIPP was invested in.
- 4.13. Customers were told that the portfolios offered fixed returns and a capital guarantee. In fact, the Underlying Investments within the portfolios are high risk, illiquid and unlikely to be suitable for retail investors except in very limited circumstances due to:
- (1) the investment strategies of the companies issuing the Loan Notes and the Bond, which include investing in distressed residential and commercial property and other speculative investments, including unlisted equities; and
  - (2) the limited regulatory oversight of the issuing companies, which are not subject to the Authority's rules governing, for instance, investment and borrowing powers, disclosure of fees and charges, management of conflicts of interest, a prudent spread of risk and other investor safeguards.

#### *The Loan Notes*

- 4.14. For the Loan Notes a "capital guarantee" was meant to be provided by way of insurance, but this was not (and, as far as the Authority is aware, is still not) in place for all of the funds. None of the insurance policies have been provided to the Authority and it has therefore not been possible to confirm the extent of cover provided by the policies which have been put in place or even whether the insurance is valid. Where insurance is in place it may be of limited value to customers in that it is not directly for the benefit of the customers investing in the Loan Notes. Further, the insurance company is based in Saint Kitts and Nevis and is subject to significantly less stringent regulatory requirements than insurance companies

within, for example, the UK. Customers were not told about any of the above important risk factors.

- 4.15. Although customers may request the repayment of their funds, this is subject to a minimum 12 months' notice period and the board of directors of each fund has the discretion to refuse to repay the funds in certain circumstances. Further, the Loan Notes are not regulated by the Authority and are not covered by FOS or FSCS protection, and in the event of insolvency customers will be unsecured creditors, a fact that customers were not told about either before or after they agreed to switch or transfer their pensions.

#### *The Bond*

- 4.16. For the Bond, capital protection was meant to be provided by way of floating charges on the assets of the issuing company and by a cash amount, to be held in a separate segregated account and invested in cash instruments.
- 4.17. The Bond is listed on an overseas exchange and the value of the Bond is dependent on whether there is a market for it. As such, customers may realise less than their original investments if they sell them prior to the redemption date. Repayment of the principal sum and interest is also dependent upon the company generating sufficient income and returns. Further, the Bond is not regulated by the Authority and is not covered by FOS or FSCS protection.

#### **Failures in the Firm's due diligence on the Underlying Investments**

- 4.18. A firm is required to take reasonable steps to ensure that the investments that are recommended to its customers are suitable for those customers (COBS 9.2.1R). In order to determine whether an investment is suitable for a customer, a firm needs to undertake due diligence on the investment to understand how it works. This is the process a firm carries out to assess, among other things, the nature of the investment and its risks and benefits.
- 4.19. Mr Page was responsible for carrying out the Firm's due diligence on the Loan Notes and the Bond to ensure that they were suitable for FPL's customers. Although Mr Page was aware of the need to undertake adequate due diligence, the due diligence that he carried out was inadequate. In particular:
- (1) Mr Page relied mainly on documents provided to him by HJL. Despite the fact that HJL had a material financial interest in the Loan Notes, which was obvious from the information provided to FPL, Mr Page, and therefore FPL,

did not take any actions to address the risk that the information provided by HJL could be misleading or incomplete;

- (2) key parts of Mr Page's due diligence were not completed until after advice had already been given to customers to invest in the Loan Notes;
- (3) Mr Page told the Authority in interview that insurance limited the risk of the Loan Notes. However, Mr Page did not perform adequate due diligence on the insurance policies. As a result, Mr Page, and therefore FPL, did not understand how the insurance policies would operate in practice and was unaware that the policies did not cover all the funds. Mr Page also appeared to be unaware until August 2015 that the insurer was controlled by the issuer of the Loan Notes; and
- (4) Mr Page only reviewed a summary of the features of the Bond, which did not include a full description of the risks. Mr Page considered that the Bond was equivalent to cash despite it being obvious, even from the limited information he was provided with, that the Bond was higher risk and less liquid than cash assets.

4.20. Even on the limited information considered by Mr Page it should have been obvious to him, as a qualified and experienced financial adviser, and therefore FPL, that the Underlying Investments were high risk investments which were unlikely to be suitable for FPL's customers except in very limited circumstances (for example, in some circumstances they may be suitable for high net worth investors or sophisticated investors looking for some exposure to less traditional investments). However, Mr Page, and therefore FPL, failed to give due consideration to the risk that the Underlying Investments were not suitable.

### **The Pension Review and Advice Process**

4.21. The development of the pension switching advice model, upon which the Pension Review and Advice Process was based, was initiated and influenced by HJL. HJL had been seeking an efficient process, to be adopted by an authorised financial adviser, for advising customers who met certain criteria to switch their pensions to SIPP's investing in the Loan Notes. FPL was not the first authorised financial adviser to adopt a process based on the pension switching advice model; another authorised financial adviser had done so earlier in 2014. FPL was responsible for the advice given to customers through the Pension Review and Advice Process. However, HJL sourced leads from lead generation companies and introduced



customers to FPL, and significant parts of the process (the Outsourced Functions) were outsourced to the Service Providers.

- 4.22. Under the Pension Review and Advice Process, leads were sourced by HJL from a number of lead generation companies. Customers were invited to request a free pension review. If a customer made such a request, they would be contacted by a Service Provider, which would obtain information about the customer's existing pension arrangements. The Service Provider would input the information into the Software, which would generate a Pension Summary Report. The Pension Summary Report would give the customer an indication of whether they might save costs if they changed their pension arrangements. The Service Provider would attend a face-to-face meeting with the customer to present the Pension Summary Report and promote FPL's advice service.
- 4.23. If the customer signed a service proposition confirming that they wished to receive advice from FPL, the Service Provider would collect relevant documents from the customer and conduct a scripted fact-finding exercise. The Service Provider would input the results of the fact-find into the Software, which would determine, based on pre-set criteria approved by Mr Page, whether the customer should be advised to invest in the Loan Notes (and, from November 2014, the Bond as well) and produce a Suitability Report containing a personal recommendation. The Service Provider would send the Suitability Report to the customer and call the customer to ask them whether they wished to proceed in accordance with the advice they had received. Customers were not always told that they were being contacted by a third party, so some customers may have been under the impression that they were dealing with staff from FPL itself.
- 4.24. FPL allowed the Service Providers to perform the Outsourced Functions with little or no oversight. Although the Suitability Reports were issued in FPL's name, FPL had no involvement in the assessment of suitability for individual customers or in the production of the Suitability Reports. Mr Page's electronic signature and the Firm's letterhead and logo were simply added to documents provided by the Service Providers to customers, including the Suitability Report. As such, FPL did not control the advice given in its name.
- 4.25. During the Relevant Period, FPL advised 860 customers to switch or transfer their pensions to a SIPP investing in the Underlying Investments through the Pension Review and Advice Process. This amounted to approximately £31 million of customer funds.

- 4.26. FPL received an advice fee of 3% of a customer's pension assets when a Pension Switch or Pension Transfer to the SIPP was completed. For any customer who opted to have ongoing servicing, FPL would also receive an annual fee of 0.4% to 0.5% of the customer's pension assets paid by the SIPP Provider from the customer's pension assets. Between September 2014 and January 2016, FPL received £1,154,692 in advice or ongoing servicing fees. FPL paid over £52,000 of its fees to HJL and over £679,000 to CAL for their roles in the Pension Review and Advice Process.

### **Conflicts of interest**

- 4.27. A firm must take reasonable steps to identify whether a conflict of interest exists between itself and its appointed representatives (and certain other people connected with the firm) on the one hand and clients of the firm on the other (SYSC 10.1.3R). When considering if a conflict of interest exists firms should take into account whether, among other things, the firm or its appointed representative has an interest in the outcome of a service provided to a client or a transaction carried out on behalf of the client which is distinct from the client's interest in that outcome (SYSC 10.1.4R(2) and SYSC 10.1.4AG). This is to ensure that the firm is aware of any undue influence which could impede it from acting in the interests of its customers. Where a conflict of interest is identified a firm must manage the conflict appropriately (SYSC 10.1.7R). Where a firm cannot ensure that the interests of a client will not be damaged as a result of a conflict, the firm must disclose the nature or sources of the conflict and the steps taken to mitigate it (SYSC 10.1.8R).
- 4.28. HJL's involvement in the Pension Review and Advice Process created an obvious conflict of interest because the process was structured to result in customers investing in the Loan Notes, in which HJL had a material financial interest.
- 4.29. Mr Page, and therefore FPL, knew that HJL's motive for introducing customers to FPL was that it wanted customers to invest in the Loan Notes (and later also the Bond), and knew that HJL received 5% of the sums invested in the Loan Notes. Further, Mr Page knew that two of the directors of HJL during the Relevant Period (Mark Stephen and James King) were also directors of the company issuing the Bond, and that Mr Stephen was also a director of the company issuing the Loan Notes. However, FPL took no steps to manage these conflicts of interest and its customers were not made aware of how HJL was remunerated or of Mr Stephen's and Mr King's common directorships.

### **Failures relating to the Firm's adoption and use of the Pension Review and Advice Process**

- 4.30. Before FPL was authorised by the Authority, Mr Page, and therefore FPL, reviewed and approved templates of various documents used in the Pension Review and Advice Process, including fact-find scripts and template Suitability Reports, and approved the pre-set criteria which would be the basis for the Software's determination of whether a customer should be advised to invest in the Underlying Investments.
- 4.31. FPL adopted and used the Pension Review and Advice Process despite knowing that customers would be given misleading information about the service they would receive. For example, the template documents that Mr Page reviewed and approved included the service proposition which customers had to sign to confirm that they wished to receive advice from FPL and that they agreed with the terms of the service offered. The service proposition stated, *"...we offer an Independent advice service. We will recommend investments based on a comprehensive and fair analysis of the market. We will place no restrictions on the Investment Markets we will consider before providing investment recommendations, unless you instruct us otherwise. We will however only make a recommendation when we know it is suitable for you...We operate independently and therefore provide investment services from the whole market"*.
- 4.32. FPL knew these statements were untrue. It knew that advice would be given through an automated process without any meaningful assessment of individual customers' needs, that the only products that were intended to be recommended to customers through the Pension Review and Advice Process were the Underlying Investments and that the Outsourced Functions would be performed on FPL's behalf by HJL, which had a material financial interest in the Loan Notes, or by CAL, which was closely connected to HJL.
- 4.33. There were other significant obvious deficiencies in the Pension Review and Advice Process which FPL should have identified had it given due consideration to the documents to be used in the Pension Review and Advice Process, and to how the process would operate in practice, including:
- (1) The fact-find script contained leading questions which were intended to steer the customer towards the features of the Underlying Investments that would be recommended.

For example, customers were read a statement which included the following: *'Pension money can be held in a range of different investments offering different features. Some will experience highs and lows while others may perform in a much less volatile manner.'* They were then asked if they would prefer their pension fund to *'Grow at a fixed and known rate each year?'* or to *'Go up and down in value depending on the underlying investments' performance?'*

Customers were also asked *'If it could be guaranteed that the value of your pension fund at the end of an agreed term could not fall below the amount invested – would you want to incorporate this feature?'* and given the option of answering 'yes' or 'no'.

These questions were likely to lead customers to say they would prefer fixed returns and a capital guarantee. Where customers stated either or both of these preferences, they were advised to invest in the Loan Notes, and later also the Bond. The customers' stated preferences for fixed returns and/or a capital guarantee were used to justify recommending the Loan Notes, and later also the Bond, which customers were told offered fixed returns and *'an element of capital protection'*. Customers were not asked any other questions about their investment objectives.

- (2) The fact-find also only allowed for certain specified information to be gathered from the customer, which was insufficient to establish the suitability of recommendations. The fact-find was conducted by staff of the relevant Service Provider, working from a script, who were not permitted to depart from the script and probe for further information. Even when a customer did disclose additional relevant information, it was not taken into account as a result of the way in which the Suitability Reports were prepared. Further, a suitably qualified financial adviser should oversee the fact-find process. However, Mr Page did not supervise the conduct of fact-finds, and therefore FPL did not have any meaningful involvement in the individual assessment of customers' circumstances.
- (3) Customers were not given a compliant personal recommendation as the Suitability Report did not explain why the Underlying Investments were suitable for a customer's demands and needs. The Suitability Report also did not include an analysis of the advantages and disadvantages of the recommended products compared to the customer's existing pension.

- (4) The information provided to customers about the Underlying Investments did not fully inform customers of their costs, benefits and risks. In particular:
- (a) important information about the risks of the Underlying Investments was either not disclosed to the customer or, where it was disclosed, was contradictory or unclear;
  - (b) the three portfolios that customers invested in were described as 'cautious', 'moderate', and 'adventurous'. However, these terms failed to reflect the reality that customers would be exposed to high levels of risk whichever portfolio their SIPP was invested in;
  - (c) customers were told that the Loan Notes provided a fixed return and a capital guarantee. However, it was never explained or disclosed to customers that there was a risk that they would not get all their capital investment back. If the issuer of the Loan Notes performed poorly, it might not be able to make interest payments to customers and/or repay capital. Further, any request for early repayment of capital was at the discretion of the issuer. It was particularly important that customers were made aware of these risks given the issuer had no track record and the underlying assets were illiquid and high risk;
  - (d) customers were told that the Bond provided a fixed return and capital protection, and could be converted into cash in a very short time. However, it was never explained or disclosed to customers that there was a risk that they would not get all their capital investment back. If the issuer of the Bond performed poorly, it might not be able to make interest payments to customers and/or repay capital. It was particularly important that customers were made aware of these risks given the issuer had no track record and the underlying assets were illiquid and high risk; and
  - (e) whilst the advice provided would be covered by FOS and the FSCS, customers were not told that if the Loan Notes or the Bond failed, they would be unable to make a complaint or claim to the FOS and/or the FSCS, as the issuers and the Underlying Investments were not regulated by the Authority.

- (5) The conflicts of interest continued for the duration of the Relevant Period, throughout which HJL maintained a material financial interest in the Loan Notes and Mr Stephen remained a common director of HJL and of the issuer of the Loan Notes, and for most of which Mr Stephen and Mr King were also directors of the company issuing the Bond. However, Mr Page, and therefore FPL, took no steps to manage these conflicts of interest, and customers were not made aware of how HJL was remunerated or of the common directorships.

4.34. Mr Page told the Authority that he believed that the Pension Review and Advice Process was compliant as he had been told that HJL had received legal advice. In fact, the legal advice that Mr Page was referring to did not relate to the compliance of the Pension Review and Advice Process with the Authority's rules, and Mr Page did not check whether HJL had received other advice. Mr Page's statement is also not consistent with his deliberate actions to mislead and disregard FPL's compliance consultant (see paragraphs 4.45 to 4.51) and his deliberate actions to provide false and misleading information to the Authority (see paragraphs 4.70 to 4.82).

4.35. The Authority considers that the Pension Review and Advice Process was wholly and, to an experienced and qualified financial adviser, obviously inadequate and exposed customers to a significant risk of loss from investments that were unlikely to be suitable for them. It should have been obvious to Mr Page, and therefore FPL, from the information available to him, that the Pension Review and Advice Process was not compliant with the Authority's rules. However, as a result of Mr Page's inadequate consideration of the documents to be used in the Pension Review and Advice Process, and of how the process would operate in practice (as well as his inadequate due diligence on the Underlying Investments and, as detailed below, the Service Providers), FPL adopted and used a non-compliant process without giving any meaningful consideration to the interests of customers.

#### **FPL's limited role in the Pension Review and Advice Process**

4.36. FPL had negligible involvement in the Pension Review and Advice Process. For example:

- (1) FPL had no involvement in contacting the customer's existing pension provider.
- (2) FPL had no involvement in conducting the fact-find with the customer. Occasionally, Mr Page reviewed the information that was recorded on the

Software by the Service Providers. However, he thought he did not need to be involved in considering the suitability of the recommendation to the customer because the Software assessed the information provided as it was "*an automated system*".

- (3) FPL had no involvement in preparing the Suitability Report for the customer. Mr Page told the Authority that he reviewed a number of Suitability Reports either before or after they had been provided to the customer. However, to the extent that he did carry out such reviews, he did not give any meaningful consideration to whether the recommendation was suitable for the customer as he considered the product was suitable for all customers who received a personal recommendation through the Pension Review and Advice Process.
  - (4) FPL had no involvement in any follow up calls or meetings with a customer after the Suitability Report had been issued or in completing or checking the paperwork to enable the customer to switch or transfer their pensions. As a result, FPL did not know which customers completed Pension Switches or Pension Transfers.
  - (5) FPL had no contact with the customer during the Pension Review and Advice Process unless specifically requested.
- 4.37. The only time when Mr Page routinely contacted customers was after the Pension Switch or Pension Transfer had been completed. Mr Page called all customers to welcome them to the Firm. However, these calls did not involve an assessment of the suitability of the customer's investment or the provision of advice. The welcome calls were also used as an opportunity to identify whether the customer might have any demands and needs for other financial advice that FPL offered, for example in relation to insurance.
- 4.38. FPL did not have access to its customer records other than through the Software or if it requested CAL to provide copies. After CAL appointed a voluntary liquidator on 27 August 2015, FPL was unable to access its customer records through the Software.

### **Failures in the Firm's due diligence on the Service Providers**

- 4.39. Principle 3 of the FCA's Principles for Businesses provides that a firm must take reasonable care to organise and control its affairs responsibly and effectively, with

adequate risk management systems. Further detailed rules and guidance are set out in SYSC. In particular, firms such as FPL, which are common platform firms (as defined in the Handbook):

- (1) must take reasonable steps to identify risks relating to the firm's activities, processes and systems (SYSC 7.1.2R);
- (2) when relying on a third party for the performance of operational functions which are critical for the performance of regulated activities, must ensure they take reasonable steps to avoid additional operational risk (SYSC 8.1.1R);
- (3) must exercise due skill, care and diligence when entering into any arrangement for the outsourcing to a service provider of critical or important operational functions or of any relevant services and activities (SYSC 8.1.7R); and
- (4) must take the necessary steps to ensure that any service providers have the ability, capacity and any authorisation required by law to perform the outsourced functions, services or activities reliably and professionally (SYSC 8.1.8R(1)).

4.40. The Firm agreed to HJL acting as introducer and to the Service Providers performing the Outsourced Functions on its behalf during the Relevant Period, without giving any proper consideration to whether they were suitable to perform those activities. Mr Page conducted some due diligence into HJL. However key parts of this due diligence were only completed after FPL had commenced business with HJL. No due diligence was carried out in relation to CAL.

4.41. During the Relevant Period, FPL corresponded regularly with Person A, an individual with an influential role at HJL. Person A had been convicted for blackmail and offences under the Insolvency Act 1986 and at that time remained an undischarged bankrupt due to having hidden assets from his creditors. Mr Page did not conduct any checks of his own on Person A's background. Mr Ward identified Person A's background, through an internet search, the day after he first met him in November 2013. Mr Page has told the Authority that he was not aware of Person A's background until 2015.



### **Failures in the Firm's due diligence on the lead generation process**

- 4.42. HJL was registered with the Authority as an IAR of FPL between 11 September 2014 and 2 July 2015. HJL introduced customers to FPL from around the time that FPL was authorised by the Authority on 3 July 2014. As the principal of an IAR, FPL had responsibility for HJL's conduct as an introducer.
- 4.43. At no point, either before starting the introducer relationship with HJL, or afterwards, did FPL take any steps to ensure that the lead generators used by HJL generated their customer introductions in an appropriate manner and, in particular, to ensure that they did not use unlawful cold calling.
- 4.44. In fact, the Authority has evidence suggesting that one of the firms used by HJL used cold calling to generate customer introductions in breach of relevant legislation. FPL was made aware of this in September 2014, when prompted by a call from the Authority, but took no steps to amend the lead generation process and did not conduct any further due diligence on HJL.

### **Misleading the Firm's compliance consultant**

- 4.45. FPL engaged an external compliance consultant to provide compliance support in relation to its business arrangements and the compliance of the advice that it provided to customers. The compliance consultant was also responsible for FPL's reporting of data to the Authority. It was therefore important that FPL provided its compliance consultant with complete and accurate information about its business to ensure that FPL was complying with the Authority's requirements.
- 4.46. FPL did not, however, provide all relevant information to its compliance consultant and in fact sought to conceal the extent of its business with HJL. Mr Page sent an email to Mr Ward on 13 June 2014, stating that he believed it would be best if they kept the Pension Review and Advice Process "off [the compliance consultant's] radar". On 8 September, two days before the compliance consultant was due to visit, Mr Page sent an email to Mr Ward, saying that he would "*just keep quiet*" about the Pension Review and Advice Process. These emails indicate that Mr Page suspected that the Pension Review and Advice Process might not be compliant. On 10 September 2014, the compliance consultant visited FPL and Mr Page did not fully inform the compliance consultant about the business that FPL was conducting.
- 4.47. On 18 September 2014 Mr Page emailed a former employee of the compliance consultant and stated '*I now have Introducer Appointed Rep based in London who*

*package up leads for Pension switches, does it matter how many I do with the same product and provider. I was wondering about my KPIs if all my business was with one provider...'. Mr Page did not ask the same question of his compliance consultant.*

4.48. On 29 September 2014 Mr Page asked the compliance consultant when he would need to submit his first GABRIEL report to the Authority detailing the business that FPL had done. The compliance consultant confirmed it would need to be submitted in November but that it would only cover the few months between July and September. The compliance consultant also stated that after November the report would only need to be submitted every six months. Mr Ward reacted to this by stating in an email to Mr Page, *'That may be great news as we will have only completed on small numbers and that then gives us six months until may next year'* to which Mr Page replied *'I'm glad we can get this sorted then have a good run at it'*.

4.49. As a result of Mr Page's actions, the compliance consultant was unaware of the Pension Review and Advice Process and the inherent conflicts of interest for most of the Relevant Period. The compliance consultant only became aware of these matters in June 2015, when Mr Page reported them to it following a notification from the Authority that it would be conducting a short notice visit to FPL.

*Disregarding the compliance consultant's file review findings*

4.50. During the Relevant Period, the compliance consultant reviewed four customer files, all of which were initially failed for compliance issues. The first file was failed in draft form in December 2014 and subsequently received a minimum pass score when additional documentation was provided by FPL. The other three files were reviewed in May 2015 and failed with the lowest rating possible, which was described as *'customers require compensation'*. The compliance consultant raised a number of concerns about FPL's advice process, notably the inadequate and leading fact-find questions and the role of the Service Providers in the advice process. Notwithstanding, FPL's Investment Committee determined that FPL's Pension Review and Advice Process was compliant. However, only Mr Page and Mr Ward had seen the compliance consultant's findings as they were not provided to the third member of the committee.

4.51. As a result of the disagreement over these findings, Mr Page informed the compliance consultant on 27 May 2015 that pension files would no longer be provided to the compliance consultant for review.

### **The Authority's review of 20 customer files**

- 4.52. Given that all of FPL's customers were told that they were receiving a personal recommendation based on a comprehensive and fair analysis of the whole market when in fact they were not, and given HJL's material financial interest in the Loan Notes which was undisclosed to customers, the Pension Review and Advice Process clearly put FPL's customers at serious risk of receiving unsuitable advice and therefore at serious risk of investing in products that were not suitable for them.
- 4.53. Nevertheless, the Authority has reviewed the advice given to 20 of FPL's customers during the period from 5 August 2014 to 24 March 2015 using recordings of calls and meetings, where they were available, and copies of the customer files maintained by the Service Providers.
- 4.54. The advice given to the customer was clearly unsuitable in all 20 files. As the same process was used for all advice relating to the Underlying Investments, the Authority considers it is likely that the advice provided to most, if not all, of FPL's customers was unsuitable.
- 4.55. In all 20 files the Authority considers that the gathering of information from the customer, the product recommendation, the Suitability Report and the disclosure of information about the product breached the Authority's requirements, including because:
- (1) insufficient information was gathered from customers in order to ensure a suitable recommendation was given to customers. For example, the fact-finding script was limited and key information was not requested from customers, including about their investment objectives (other than with respect to fixed returns and a capital guarantee) and their knowledge, experience, understanding and ability to accept the risks of speculative investments (COBS 2.1.1R, 9.2.1R and 9.2.6R);
  - (2) the Underlying Investments were not suitable due to the illiquid nature and high risk of the investments made by the issuers of the Loan Notes and the Bond, and the limited regulatory oversight of the issuing companies (COBS 2.1.1R, 9.2.1R and 9.3.1G);
  - (3) the Suitability Reports failed to give customers a compliant personal recommendation as they did not explain why the SIPP and the Loan Notes, and later also the Bond, were suitable for a customer's demands and needs

and also did not adequately explain the possible disadvantages of the recommendation to customers (COBS 2.1.1R and 9.2.1R); and

- (4) fact sheets provided to customers about the Underlying Investments did not adequately explain the risks and possible disadvantages of investing in the Underlying Investments and did not disclose to customers that HJL would receive an initial fee of up to 5% of the funds raised from the Loan Notes (COBS 2.1.1R and 9.2.1R).

4.56. In addition, the Authority identified:

- (1) one case where investment advice had been given about a Pension Transfer outside of FPL's permission;
- (2) four cases where the recommendation was not suitable as the customer lost existing benefits (guaranteed annuity rate or guaranteed interest rate) (COBS 2.1.1R and 9.2.1R(1));
- (3) five cases where the recommendation was unsuitable for the customer's personal circumstances, financial circumstances and/or investment objectives (COBS 2.1.1R and 9.2.1R(1)). For example, a customer stated that he wished to have variable rather than fixed returns but the recommendation was justified on the basis that his capital should be guaranteed. Conversely another customer stated that she did not want capital guaranteed products but the recommendation was justified on the basis of the fixed return;
- (4) 12 cases where the recommendation was unsuitable as the SIPP was more expensive than one, or more, of the customer's existing pensions and there was no justification for the additional cost (COBS 2.1.1R and 9.2.1R(1)). For example, a customer was recommended to switch to the SIPP and invest in the Loan Notes even though this would be £4,184 more expensive at the medium return level than remaining in his existing pension and the customer had less than nine years to his desired retirement age;
- (5) 14 cases, where audio recordings of the advice process were available for review by the Authority, where oral statements were made to the customer during the advice process that were factually inaccurate, unclear, unfair or misleading (COBS 4.2.1R). Those statements included that:

- (a) after the fact-find an independent financial adviser would spend two days reviewing the customer's circumstances to make a recommendation, when in fact the advice process was automated with typically no involvement from a qualified financial adviser;
  - (b) an adviser would search the market for a recommendation tailored to the customer's circumstances, when in fact the Underlying Investments were the only products that were available for recommendation to the customer;
  - (c) in respect of the Loan Notes, the customer's capital would be guaranteed and the returns were fixed, without explaining that income and/or capital might be lost if the Mauritian funds (and the assets they purchased) did not perform adequately, and that any request for early repayment of capital was at the issuer's discretion; and
  - (d) the advice was covered by FSCS, without making it clear that any losses incurred by the failure of the Underlying Investments would not be covered by the FSCS; and
- (6) 18 cases where the information suggests the customer waived their right to cancel within 30 days (COBS 4.2.1R). There is no evidence that customers were informed of the implications of waiving their rights and they may not have been given sufficient time to reflect on the suitability of the investment.

#### **Cash to Bond switches**

- 4.57. In November 2014 FPL began contacting customers who had already invested in a portfolio of the Loan Notes and cash to advise them to switch the cash element of their portfolio into the Bond. At this stage the Bond was not listed on any stock exchange. The Bond was later listed on an overseas exchange and the switches to the Bond were completed from April 2015 onwards.
- 4.58. Mr Page attempted to contact all customers by telephone and then followed up the call in writing, both to those he had contacted and those he had not. These communications were inadequate as Mr Page did not:

- (1) ask about any changes in the customer's circumstances and/or assess whether the switch would be suitable given the customer's demands and needs; or
- (2) explain the risks of the Bond during the telephone call. In fact, FPL stated: *'We now have a cash bond paying 3% and it is our recommendation we do an internal transfer within the portfolio to take advantage of this extra growth. There is no charge, it does not affect the risk of the portfolio...'* This was misleading as the Bond does not have the same risk level as cash and is, in fact, an illiquid, high risk investment.

4.59. From around February 2015, FPL sent those customers it was unable to contact by telephone an 'opt out' letter. The 'opt out' letter was used even though not all customers had ongoing servicing arrangements with FPL. FPL has only been able to provide the Authority with a draft version of the 'opt out' letter that was sent to customers and has not been able to confirm the number of customers that were sent the letter. The draft letter informed customers that they could contact FPL if they required further advice about the switch but, if they were happy with the proposed course of action, they did not need to do anything and FPL would complete the switch for them once the Bond was issued. The draft letter did not set a deadline for customers to respond should they not wish to switch. Mr Page has confirmed that the 'opt out' letter sent to customers was a '*negative response*' letter.

4.60. The 'opt out' letter was not an appropriate method of advising customers as there was no opportunity for FPL to ask about the customer's circumstances or ensure that they understood the risks, benefits and costs of the proposed course of action.

4.61. The 'opt out' letter was also not an appropriate method of seeking customers' consent, especially as FPL was proposing to move a customer's cash into a high risk, illiquid investment. There was a risk that some (if not all) customers might not read the 'opt out' letter, understand its contents or appreciate the consequences of not responding. As such, by switching customers' cash to the Bond on the basis of non-responses to the 'opt out' letters, there was an obvious risk that customers did not consent to the switch.

4.62. FPL did not provide adequate details of the features and risks of the Bond to any of its customers who switched to the Bond. For example, the application form for the Bond required investors to sign a declaration confirming that they understood that the Bond was a high risk investment and that they were seeking a high risk profile for that part of their investment strategy. However FPL's customers were not

provided with the application form as the telephone call or 'opt out' letter were considered by FPL to be sufficient to facilitate the transfer.

- 4.63. In total 675 customers moved over £2 million of their pension assets from cash to the Bond as a result of FPL's advice. This included 125 customers who had, on the advice provided by another financial services firm, already invested in a portfolio containing the Loan Notes with a small percentage of cash and who were subsequently advised by FPL to switch the cash element into the Bond.
- 4.64. The Authority considers the process adopted by FPL to recommend customers to switch their cash assets to the Bond was wholly inadequate and exposed customers to a significant risk of loss from investments that were unlikely to be suitable for them. FPL did not have regard to the interests of its customers when advising customers to make this switch. FPL also did not have regard to whether the advice process it adopted, and in particular the use of the 'opt out' letter, was an appropriate method of seeking a customer's consent or otherwise in the customer's best interests.

#### **Reinvestment of interest into the Loan Notes**

- 4.65. On 9 January 2015 FPL held an Investment Committee meeting where it was decided that all interest payments from the Loan Notes received by customers should be reinvested into the Loan Notes. This decision was made despite the fact that not all customers had ongoing servicing arrangements with FPL. From around February 2015 FPL began writing to customers to inform them that their interest payments would be reinvested into the Loan Notes. Customers were informed of this in the same 'opt out' letter used to inform customers about the proposed switch of the cash in their SIPP into the Bond (see paragraph 4.59 above). In the draft version of this 'opt out' letter provided to the Authority, customers were informed generally that they could contact FPL if they required further advice, but were not told that they had a choice whether to reinvest the interest payments or that they would need to inform FPL if they did not want their interest payments to be reinvested.
- 4.66. The 'opt out' letter was not appropriate for similar reasons to those explained above in relation to the cash switch, in particular that customers might not have consented to FPL investing their interest payments in this way.

### **Acting outside the Firm's permission**

- 4.67. The Firm was not authorised to advise on Pension Transfers. However, in allowing the Service Providers to perform the Outsourced Functions on its behalf without adequate supervision, failing to review in any meaningful way advice given through the Pension Review and Advice Process, and failing to put in place and operate appropriate systems and controls in relation to the Pension Review and Advice Process, the Firm exposed itself to the risk of breaching section 20 of the Act by carrying on a regulated activity without the relevant permission.
- 4.68. This in fact happened. During the Relevant Period FPL gave advice to at least 22 customers to transfer their pensions from an occupational pension scheme to a SIPP. As a result, at least 21 customers transferred total funds of over £407,000.
- 4.69. Mr Page was informed by CAL on 7 February 2015 that Pension Transfers had been conducted. In response Mr Page requested that all Pension Transfer cases be referred to him for approval in future. Mr Page did not identify that the Firm did not have permission to conduct Pension Transfers. He was unaware that FPL had acted outside its permission by conducting Pension Transfers through the Pension Review and Advice Process until this was identified by the Authority.

### **Misleading the Authority**

- 4.70. FPL repeatedly and deliberately provided the Authority with incomplete and misleading information about its business arrangements. It also provided the Authority with information which it knew was untrue. If FPL had not provided misleading information the Authority would have intervened in FPL's business earlier.

#### *20 August 2014 New Business Register*

- 4.71. The Authority contacted FPL by telephone and email on 7 August 2014. In the email, the Authority drew FPL's attention to two alerts that had been issued by the Authority relating to Pension Switches and SIPPs. FPL was also asked in the email to provide a detailed new business register setting out "all business" the Firm had arranged via a SIPP, including confirmation of whether advice had been provided.
- 4.72. By 18 August 2014, FPL knew that advice had been given in its name to 15 customers under the Pension Review and Advice Process to switch or transfer their pension funds into SIPPs investing in the Loan Notes, and that applications for the switch or transfer of each customer had been received by the SIPP Provider.



Despite this, on 20 August 2014 FPL deliberately provided the Authority with a new business register which did not contain any information regarding these 15 customers. Instead the new business register only contained information relating to six cases where SIPP advice had been provided by FPL between September 2012 and March 2014, before FPL had become directly authorised.

- 4.73. It was clear from the Authority's correspondence with Mr Page, including the email containing its request for information and links to the two alerts, that the Authority was interested in FPL's advice in relation to SIPPs. However, the Authority considers that FPL deliberately omitted relevant information from the new business register in an attempt to mislead the Authority about the type of business the Firm was conducting, and in particular to prevent the Authority from finding out that customers were being advised to switch their pensions to SIPPs investing in the Loan Notes.

*1 September 2014 Telephone Call*

- 4.74. On 1 September 2014 the Authority called Mr Page to discuss information that the Authority had received which suggested that customers were being cold called on behalf of FPL.
- 4.75. During the course of his call with the Authority, Mr Page emailed Mr Ward to ask about a lead generation company mentioned by the Authority. Mr Ward sent several emails in reply confirming that the lead generation company provided leads to HJL. Mr Ward's emails included the following:
- (1) *"Don't know [the lead generation company]. Checking now but I would say no!"*
  - (2) *"They are a lead provider and provide leads to [HJL]. Not direct to us – so don't use this info yet!!!! I am still digging!!!!"*
  - (3) *"WE have not – our introducer may have – again im [sic] still digging so don't open to them yet!!!!"*
  - (4) *"This is ok I believe. As its [sic] not us so we can deflect the flak!!!! If Needed!!!! But its [sic] not life threatening issue I don't think mate!!!! Are they being bastards or ok?"*
  - (5) *"...[the lead generation company] DO COLD CALL Clients/prospects apparently."*

(6) *"We can say that we will check with our introducer [HJL] to see if they use this company and if they do we will investigate further and if we do not receive an acceptable reply we will drop them immediately."*

(7) *"But try and work it that [HJL] use a large number of lead providers and we don't always have details of all of them! DONT [sic] SAY THAT THEY COLD CALL MATE."*

4.76. Mr Page confirmed to the Authority during the telephone call that the lead generation company did introduce to HJL, but did not tell the Authority, either during the call or afterwards, that it apparently cold called. Further, the Authority has not been provided with any evidence to suggest that Mr Ward or Mr Page took any steps to confirm whether the lead generation company mentioned by the Authority actually did cold call or to ensure that it did not do so.

4.77. The Authority warned Mr Page that it would be concerned if FPL was conducting its business in a similar manner to that described by the Authority's alerts. Mr Page deliberately did not say anything to suggest that FPL was conducting its business in such a manner.

4.78. The information provided by Mr Page during the call also did not correct the misleading impression given to the Authority by the new business register.

*5 September 2014 email*

4.79. On 3 September 2014, the Authority emailed FPL a link to an alert issued by the Authority that advised customers to ignore any cold calls they receive from firms offering a free pension review. The alert warned that these reviews are typically used to persuade customers to move their pension into SIPP's invested in unregulated investments. On the same day, the Authority sent FPL an email containing links to the two alerts that it had drawn to his attention on 7 August 2014 (see paragraph 4.71 above).

4.80. Mr Page emailed the Authority on 5 September 2014, stating that he was responding to the 3 September 2014 emails, having reviewed the alerts and having given some thought to the issues raised in the 1 September 2014 telephone call. The email was misleading as it:

(1) stated that FPL did not use lead generation companies as part of its business model and, despite the alert drawn to FPL's attention on 3 September 2014 which specifically mentioned cold calling concerns, failed

to mention that at least one of HJL's lead generators apparently used cold calling;

- (2) stated that FPL did not use the services of unauthorised firms. In fact, Mr Page knew that HJL was not authorised, at the time was not an IAR of FPL, and played a key role in the Pension Review and Advice Process;
- (3) stated that *"Under no circumstance would I consider investments in unregulated products such as overseas property, forestry or store pods among other things"*. In fact, Mr Page knew that the Pension Review and Advice Process was structured to result in customers being recommended to switch their pensions to SIPPs investing in the Loan Notes, which were issued by a company in Mauritius, and that the Loan Notes were not regulated by the Authority;
- (4) stated that *"Only after a full review of [a customer's] circumstances do I issue the initial report"* and *"I follow the Principles and Conduct of Business Rules in the giving of any and all advice and first take time to familiarise myself with the wider investment and financial circumstances before making any recommendations."*

In fact, Mr Page knew that, at that time, the Software was used to review customers' circumstances, with little or no oversight from Mr Page;

- (5) stated that *"the provision of suitable advice generally requires consideration of other investments held by the customer"*.

In fact, Mr Page knew that the fact-find script did not ask customers for information about any other investments they held; and

- (6) stated that *"when advice is given on a product which is a vehicle for other products (such as SIPPs and other wrappers), consideration of the suitability of the overall proposition is taken into account"*.

In fact, the Suitability Report template that had been approved by Mr Page did not include consideration of the suitability for the customer of both the SIPP wrapper and the underlying assets.

- 4.81. The information provided by Mr Page in the email also did not correct the misleading impressions given to the Authority by the new business register and the 1 September 2014 telephone call.

- 4.82. As a result of the information provided by Mr Page, in August and September 2014 the Authority considered FPL to be a 'low risk' firm and FPL was not scheduled for further contact for a number of months. If the information provided to the Authority had been accurate and not misleading, the Authority would have asked for further information about FPL's pension advice process and the Loan Notes, and would have intervened at an earlier time.

### **Breach of the Asset Retention Requirement**

- 4.83. On 10 July 2015, at the request of the Authority, FPL applied for requirements to be imposed on it. Accordingly, requirements were imposed on the Firm on the same date. These included the Asset Retention Requirement, which has not been varied or lifted since it was imposed.

- 4.84. Mr Page, on behalf of FPL, twice acted in breach of the Asset Retention Requirement by dealing with FPL's assets:

- (1) On 21 August 2015 Mr Page, on behalf of FPL, signed a loan agreement with Person B. Under the terms of the agreement, Person B would lend £25,000 to FPL with Mr Page as guarantor of the loan. In consideration for the loan, FPL would give rights to its entire client base to Person B from the date of the agreement. Whilst the agreement was in force FPL would not be able to contact the client base without the permission of Person B. The client base would be returned to FPL if the loan was repaid by 31 January 2016 or, if it had not been repaid, the client base would be owned by Person B from 1 February 2016.

At no time did Mr Page contact the Authority either before, or after, making this agreement or when, in December 2015, he emailed Person B in order to extend the loan repayment date. The Authority was not made aware of the loan agreement until 10 October 2016.

- (2) On 27 January 2016, Mr Page, on behalf of FPL, signed an introducer agreement with a claims management company. Under the terms of the introducer agreement, FPL would provide the claims management company with details of FPL's customers that FPL believed had been mis-sold Pension Transfers, Pension Switches and SIPP investments. In return for these introductions, FPL would receive 15% of all fees generated by the claims management company resulting from a successful claim.

On 1 February 2016, Mr Page provided the claims management company with a list of 219 customers, along with their addresses and phone numbers. These customers had originally received advice from the authorised firm that had, prior to FPL, adopted a process based on the same pension switching advice model. The customers had then subsequently been novated to FPL for provision of ongoing services. FPL had not contacted these customers to obtain their consent to disclose their information to a third party.

The contact details were provided so that the claims management company would focus on contacting the novated customers, rather than customers who had been advised by FPL where FPL would be liable for any claims. Mr Page suggested to the claims management company that it should tell the novated customers they had been given "*tainted*" advice but were now with a "*very competent IFA*" in FPL.

- 4.85. In entering the loan agreement with Person B and the introducer agreement with the claims management company, the Authority considers Mr Page, and therefore FPL, recklessly disregarded the Asset Retention Requirement.

## 5. **FAILINGS**

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

### **Principle 1**

- 5.2. Principle 1 required the Firm to conduct its business with integrity. A firm may lack integrity where it acts dishonestly or recklessly.
- 5.3. During the Relevant Period, the Firm breached this requirement in that:
- (1) FPL acted dishonestly by holding out the Pension Review and Advice Process to customers as the Firm providing bespoke, independent investment advice based on a comprehensive and fair analysis of the whole market. This was dishonest because FPL knew that this was misleading to customers as it did not reflect the reality of the service that it would provide using the Pension Review and Advice Process.
  - (2) FPL's actions in relation to its adoption and use of the Pension Review and Advice Process to provide advice to its customers were reckless. The

Pension Review and Advice Process put FPL's customers at serious risk of receiving unsuitable advice and therefore at serious risk of investing in products that were not suitable for them (which in fact happened), but FPL closed its mind to these risks and unreasonably exposed its customers to them by adopting and using the Pension Review and Advice Process. In particular:

- (a) FPL recommended the Underlying Investments to customers in circumstances where it had failed to carry out adequate due diligence on them. In any event, it should have been obvious to FPL from the limited information that it considered that the Underlying Investments were high risk investments that were unlikely to be suitable for FPL's customers, except in very limited circumstances. However, FPL failed to give due consideration to the risk that the Underlying Investments were unsuitable.
- (b) FPL knew of HJL's involvement in the Pension Review and Advice Process and that the process was structured to result in customers switching their pensions to SIPP's investing in assets in which HJL had a material financial interest. Further, FPL was aware of Mr Stephen's and Mr King's common directorships. However, FPL took no steps to manage these conflicts of interest or to ensure that the common directorships and how HJL was remunerated were disclosed to customers.
- (c) FPL adopted and used the Pension Review and Advice Process in circumstances where it had failed to give due consideration to the documents to be used in the process, and to how the process would operate in practice, and had therefore failed to identify significant obvious deficiencies in the process. In any event, it should have been obvious to FPL from the information available to it that the Pension Review and Advice Process did not comply with the Authority's rules. However, FPL failed to give any meaningful consideration to whether or not it was compliant.
- (d) FPL failed to maintain control of the Pension Review and Advice Process and allowed important parts of the process (for example, the conduct of fact-finds) to be performed in a way that failed to obtain and/or take into account relevant information about its customers.

Further, FPL failed to review in a meaningful way advice given through the Pension Review and Advice Process, whether before recommendations were sent to customers or at all.

- (e) FPL failed to put in place and operate appropriate systems and controls and compliance arrangements to oversee and monitor the Pension Review and Advice Process.
  - (f) FPL worked with HJL and CAL during the Relevant Period in circumstances where it had failed to carry out adequate due diligence on them and had failed to give any proper consideration to whether they were suitable to perform services on its behalf.
  - (g) FPL failed to take any steps to establish that the lead generators used by HJL generated their customer introductions in an appropriate manner and did not use cold calling.
  - (h) FPL suspected that the Pension Review and Advice Process might not be compliant, but withheld its suspicions and even the fact that it was operating the process from its compliance consultant. FPL also disregarded concerns raised by its compliance consultant and continued to use the Pension Review and Advice Process.
  - (i) FPL failed to have regard to customers' interests, when advising customers to switch the cash in their SIPP into the Bond. FPL either failed to assess whether switching the cash in a customer's SIPP into the Bond was suitable for the customer or, when speaking with customers on the telephone, failed to explain the risks of the Bond. FPL also failed to have regard to customers' interests, when reinvesting customers' interest payments in the Loan Notes.
- (3) FPL, through Mr Page, deliberately provided false and misleading information, or omitted to provide relevant information, to the Authority about its business arrangements. The Authority considers this was done intentionally to try to prevent the Authority from identifying misconduct by the Firm and Mr Page, and that FPL thereby acted dishonestly.
- (4) FPL recklessly breached the Asset Retention Requirement. It should have been obvious to FPL that it would breach this requirement by entering into a loan agreement with Person B and selling customer data to a claims

management company. However, FPL recklessly disregarded the Asset Retention Requirement.

### **Section 20 of the Act**

- 5.4. The Firm breached section 20 of the Act by carrying on a regulated activity without the relevant permission by advising on at least 22 Pension Transfers during the Relevant Period.

## **6. SANCTION**

### **Financial penalty**

- 6.1. The Authority considers that, were it not for the fact that the Firm is in liquidation (see paragraph 6.32 below), it would be appropriate to impose a financial penalty on FPL under section 206 of the Act in respect of its breaches of Principle 1 and section 20 of the Act.
- 6.2. 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 6.5A sets out the details of the five-step framework that applies in respect of financial penalties imposed on firms.

### **Step 1: disgorgement**

- 6.3. Pursuant to DEPP 6.5A.1G, at Step 1 the Authority seeks to deprive a firm of the financial benefit derived directly from the breach where it is practicable to quantify this.
- 6.4. The Firm derived £139,765 profit from the SIPP business conducted during the Relevant Period. However, as this profit was derived from Mr Page's share of the Firm's revenue, and the profit was used for Mr Page's benefit, the Authority does not consider it appropriate to seek disgorgement from the Firm.
- 6.5. Step 1 is therefore £0.

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

- 6.6. Pursuant to DEPP 6.5A.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. Where the amount of revenue generated by a firm from a particular product line or business area is indicative of the harm or potential



harm that its breach may cause, that figure will be based on a percentage of the firm's revenue from the relevant products or business area.

6.7. The Authority considers that the revenue generated by the Firm is indicative of the harm or potential harm caused by its breaches of Principle 1 and section 20 of the Act. The Authority has therefore determined a figure based on a percentage of the Firm's relevant revenue. The Firm's relevant revenue is the revenue derived by the Firm during the period of the breach. The period of the Firm's breach was from 3 July 2014 to 1 February 2016. The Authority considers the Firm's relevant revenue for this period to be £1,179,692.

6.8. In deciding on the percentage of the relevant revenue that forms the basis of the Step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 20%. 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 firms there are the following five levels:

Level 1 – 0%

Level 2 – 5%

Level 3 – 10%

Level 4 – 15%

Level 5 – 20%

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. The Authority considers the following factors to be relevant:

Impact of the breach

6.10. The Firm adopted the Pension Review and Advice Process motivated by the prospect of making significant financial gain (DEPP 6.5A.2G(6)(a)).

6.11. The Firm's breach of Principle 1 caused a significant risk of loss to a large number of customers who switched or transferred their pensions to SIPPs investing in the Underlying Investments (DEPP 6.5A.2G(6)(c)).

- 6.12. A large number of customers were given advice by FPL through the Pension Review and Advice Process, including some who were vulnerable due to their age, their inability to replace capital, their medical conditions or other personal circumstances (DEPP 6.5A.2G(6)(d)).

Nature of the breach

- 6.13. The Firm breached both Principle 1 and section 20 of the Act over an extended period of time (DEPP 6.5A.2G(7)(a) and (b)).
- 6.14. The breaches of Principle 1 and section 20 of the Act revealed serious systemic weaknesses in the Firm's systems and controls (DEPP 6.5A.2G(7)(c)).
- 6.15. Mr Page, the only person approved to perform the CF1 (Director) controlled function at the Firm, was responsible for the breaches of both Principle 1 and section 20 of the Act (DEPP 6.5A.2G(7)(d)).
- 6.16. The Firm failed to conduct its business with integrity because it acted dishonestly and/or recklessly throughout the Relevant Period (DEPP 6.5A.2G(7)(g)).

Reckless misconduct

- 6.17. The Authority has concluded that the Firm acted recklessly in respect of the Pension Review and Advice Process, as described in paragraph 5.3(2) of this Notice (DEPP 6.5A.2G(9)(a)).
- 6.18. The Firm acted recklessly in breaching the Asset Retention Requirement (DEPP 6.5A.2G(9)(a)).

Deliberate misconduct

- 6.19. The Firm deliberately misled customers by holding itself out to customers as providing bespoke, independent investment advice based on a comprehensive and fair analysis of the whole market when, as it knew, this did not reflect the reality of the service that it would provide using the Pension Review and Advice Process (DEPP 6.5A.2G(8)(b)).
- 6.20. The Firm deliberately provided false and misleading information to the Authority about its business arrangements (DEPP 6.5A.2G(8)(c)).

### Level of seriousness

6.21. DEPP 6.5A.2G(11) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the Authority considers the following factors to be relevant:

- (1) the Firm's breach of Principle 1 caused a significant risk of loss to a large number of customers (DEPP 6.5A.2G(11)(a));
- (2) the Firm's breaches of Principle 1 and section 20 of the Act revealed serious and systemic weaknesses in its procedures, its management systems and its internal controls relating to its pension advice business (DEPP 6.5A.2G(11)(b));
- (3) the Firm failed to conduct its business with integrity (DEPP 6.5A.2G(11)(e); and
- (4) the Firm's breach of Principle 1 was committed deliberately and recklessly (DEPP 6.5A.2G(11)(f)). The Firm's breach of section 20 of the Act was committed recklessly (DEPP 6.5A.2G(11)(f)).

6.22. DEPP 6.5A.2G(12) lists factors likely to be considered 'level 1, 2 or 3 factors'. The Authority considers that none of these factors apply.

6.23. Taking all of these factors into account, the Authority considers the seriousness of FPL's breaches to be level 5 and so the Step 2 figure is 20% of £1,179,692.

6.24. Step 2 is therefore £235,938.

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

6.25. Pursuant to DEPP 6.5A.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.

6.26. The Authority considers that the following factors aggravate the breach:

- (1) on 18 January 2013, 28 April 2014 and 26 August 2014 the Authority issued alerts to firms advising on Pension Transfers with a view to investing pension monies into unregulated products through SIPPs (DEPP 6.5A.3G(2)(k)); and

- (2) in August and September 2014 the Authority specifically sent copies of the alerts referred to above to FPL and highlighted the Authority's concerns. FPL failed to bring the Pension Review and Advice Process to the attention of the Authority or to implement changes to the process (DEPP 6.5A.3G(2)(a)).

- 6.27. The Authority considers that there are no factors that mitigate the breach.
- 6.28. Having taken into account these aggravating factors, the Authority considers that the Step 2 figure should be increased by 20%.
- 6.29. Step 3 is therefore £283,126.

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

- 6.30. Pursuant to DEPP 6.5A.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the firm that committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.
- 6.31. The Authority considers that the Step 3 figure of £283,126 represents a sufficient deterrent to the Firm and others, and so has not increased the penalty at Step 4.

#### **Serious financial hardship**

- 6.32. Pursuant to DEPP 6.5D.4G, the Authority will consider reducing the amount of a penalty if a firm will suffer serious financial hardship as a result of having to pay the entire penalty. The Firm is currently in liquidation. The Authority would, in the interests of creditors, want any assets to be made available to the Firm's creditors. The Authority has not imposed penalties in cases involving insolvent firms where the imposition of a penalty would impact adversely on creditors. On that basis, the Authority has decided not to impose a financial penalty on the Firm.
- 6.33. Step 4 is therefore £0.

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

- 6.34. Pursuant to DEPP 6.5A.5G, if the Authority and the firm 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.

6.35. No settlement discount applies.

6.36. Step 5 is therefore £0.

### **Penalty**

6.37. The Authority would have imposed a financial penalty of £283,100 (rounded down to the nearest £100) on FPL for breaching Principle 1 and section 20 of the Act. However, taking into account the financial circumstances of FPL, the Authority has decided not to impose a financial penalty.

### **Statement of Misconduct**

6.38. The Authority's position in relation to the imposition of a public censure is set out in Chapter 6 of DEPP. DEPP sets out non-exhaustive factors that may be of particular relevance in determining whether it is appropriate to issue a financial censure rather than a financial penalty. DEPP 6.4.2G(1) indicates that it may be a factor whether or not deterrence may be effectively achieved by issuing a public censure. Further DEPP 6.4.2G(7) indicates that a relevant factor is the Authority's approach in previous similar cases to ensure a consistent approach to its decisions.

6.39. As is explained in paragraph 6.32 above, the Authority has had regard to the need to balance deterrence against the need to act in the wider interests of creditors and has decided not to impose a financial penalty on the Firm on the basis that a financial penalty would impact adversely on creditors. Instead, the Authority has decided to issue a statement of FPL's misconduct under section 205 of the Act.

## **7. REPRESENTATIONS**

7.1. FPL did not make any representations on the Warning Notice. However, Annex B contains a brief summary of the key representations made by HJL, Mark Stephen, James King and Person A as persons given third party rights in respect of the Warning Notice under section 393 of the Act, and how they have been dealt with. In making the decision which gave rise to the obligation to give this Notice, the Authority has taken into account all of the representations made by HJL, Mr Stephen, Mr King and Person A, whether or not set out in Annex B.

## 8. **PROCEDURAL MATTERS**

- 8.1. This Notice is given to FPL under section 208 of the Act and in accordance with section 388 of the Act.

### **Decision maker**

- 8.2. The decision which gave rise to the obligation to give this Notice was made by the Regulatory Decisions Committee.

### **The Tribunal**

- 8.3. FPL has the right to refer the matter to which this Notice relates to the Tribunal. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, FPL has 28 days from the date on which this Notice is given to it to refer the matter to the Tribunal. A reference to the Tribunal is made by way of a signed reference notice (Form FTC3) filed with a copy of this Notice. The Tribunal's contact details are: Upper Tribunal, Tax and Chancery Chamber, Fifth Floor, Rolls Building, Fetter Lane, London EC4A 1NL (tel: 020 7612 9730; email: [fs@hmcts.gsi.gov.uk](mailto:fs@hmcts.gsi.gov.uk)).
- 8.4. Further information on the Tribunal, including guidance and the relevant forms to complete, can be found on the HM Courts and Tribunal Service website:  
  
<http://www.justice.gov.uk/forms/hmcts/tax-and-chancery-upper-tribunal>
- 8.5. A copy of Form FTC3 must also be sent to the Authority at the same time as filing a reference with the Tribunal. A copy should be sent to Helen Tibbetts at the Financial Conduct Authority, 12 Endeavour Square, London E20 1JN.
- 8.6. Once any such referral is determined by the Tribunal and subject to that determination, or if the matter has not been referred to the Tribunal, the Authority will issue a final notice about the implementation of that decision.

### **Access to evidence**

- 8.7. Section 394 of the Act applies to this Notice.
- 8.8. The person to whom this Notice is given has the right to access:
- (1) the material upon which the Authority has relied in deciding to give this Notice; and

- (2) the secondary material which, in the opinion of the Authority, might undermine that decision.

### **Third party rights**

- 8.9. A copy of this Notice is being given to each of Thomas Ward, HJL, CAL, Mark Stephen and James King as third parties identified in the reasons above and to whom in the opinion of the Authority the matter is prejudicial. Each of those parties has similar rights to those mentioned in paragraphs 8.3 and 8.8 above, in relation to the matters which identify him/it.

### **Confidentiality and publicity**

- 8.10. This Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). In accordance with section 391 of the Act, a person to whom this Notice is given or copied may not publish the Notice or any details concerning it unless the Authority has published the Notice or those details.
- 8.11. However, the Authority must publish such information about the matter to which a decision notice or final notice relates as it considers appropriate. The persons to whom this Notice is given or copied should therefore be aware that the facts and matters contained in this Notice may be made public.

### **Authority contacts**

- 8.12. For more information concerning this matter generally, contact Helen Tibbetts (direct line: 020 7066 0656) at the Authority.

**Tim Parkes**  
**Chair, Regulatory Decisions Committee**

## **ANNEX A**

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

- 1.1. The Authority's objectives are set out in Part 1A of the Act, and include the operational objective of securing an appropriate degree of protection for consumers (section 1C).
- 1.2. Under section 205 of the Act, if the Authority considers that an authorised person has contravened a requirement imposed on the person, it may publish a statement to that effect.
- 1.3. Under section 20(1) of the Act, if an authorised person, other than a PRA authorised person, carries on a regulated activity in the United Kingdom, or purports to do so, otherwise than in accordance with permission— (a) given to him by the Authority under Part 4A, or (b) resulting from any other provision of the Act, he is to be taken to have contravened a requirement imposed on him by the Authority under the Act.

### **2. RELEVANT REGULATORY PROVISIONS**

#### ***Principles for Businesses***

- 2.1. PRIN 1.1.2G states that the Principles are a general statement of the fundamental obligations of firms under the regulatory system. During the Relevant Period, PRIN included Principle 1: "A firm must conduct its business with integrity" and Principle 3: "A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems."

#### ***Enforcement Guide***

- 2.2. EG sets out the Authority's approach to exercising its main enforcement powers under the Act.
- 2.3. Chapter 7 of EG sets out the Authority's approach to exercising its power to impose financial penalties and other disciplinary sanctions.

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

- 2.4. The Authority's policy for imposing penalties is set out in Chapter 6 of DEPP.



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

- 2.5. The Authority's rules and guidance for Conduct of Business are set out in COBS. The rules and guidance in COBS relevant to this Notice are 2.1.1R, 4.2.1R, COBS 4.8.2R, 9.2.1R, 9.2.6R, 9.3.1G and the rules in 9.4.

### ***Senior Management Arrangements, Systems and Controls Sourcebook***

- 2.6. The Authority's rules and guidance for senior management arrangements, systems and controls are set out in SYSC. The rules and guidance in SYSC relevant to this Notice are 7.1.2R, 8.1.1R, 8.1.7R, 8.1.8R(1), 10.1.3R, 10.1.4AG, 10.1.7R and 10.1.8R.

## **ANNEX B**

### **REPRESENTATIONS**

#### **Representations received from HJL, Mr Stephen, Mr King and Person A (the "third parties")**

1. The third parties' representations (in italics), and the Authority's conclusions in respect of them, are set out below:

#### The development of the Software and the pension switching advice model

2. *HJL did not develop the Software or the pension switching advice model. They were instead designed by two individuals at another company independent of HJL ("Company A").*
3. The Authority accepts that HJL did not create the Software, and that it was instead created by two individuals at Company A. However, the Software was developed at the request of HJL. HJL initially sought an efficient way to provide customers with a pension comparison, to see whether the customer's existing pension charges were reasonable. A system was developed by Company A in around 2011/2012 in line with this request. This system was an early version of the Software.
4. In 2013, HJL asked Company A whether an advice model could be "bolted on". HJL staff assisted Company A to understand the products that would be recommended through the Software so that Company A could develop the triggers for the advice. HJL also led the creation of the templates of the documents which were used in the Pension Review and Advice Process and which enabled a complete, fully advised pension switch. The Authority therefore considers that HJL initiated and influenced the development of both the Software and the pension switching advice model.

#### HJL did not process leads obtained through unlawful cold calling

5. *HJL was at no time involved in cold calling activities itself. All clients introduced to the Firm were obtained by lead generation businesses through a generic financial promotion process, which did not involve the lead generator in identifying any specific investment or a specific provider of investment services. To the extent the activities of the lead generators involved unsolicited real-time financial promotions, those promotions were exempt from the financial promotion restriction in section 21(1) of the Act by virtue of Article 17 of the Financial Service and Markets Act 2000 (Financial Promotion) Order 2005.*

6. The Authority has not found that HJL cold called customers. Instead, the Authority has found that FPL failed to take any steps to establish that the lead generators used by HJL generated their customer introductions in an appropriate manner and did not use cold calling. As such, it did not know whether leads were generated by cold calling. In fact, the Authority was contacted by three customers complaining that they had been cold called by one of the lead generation companies used by HJL.

Mr Stephen properly managed any conflict of interest

7. *Mr Stephen took careful steps to manage any potential conflicts of interest, including taking legal advice on issues surrounding potential conflicts. From his and HJL's position, relevant potential conflicts were properly managed.*
8. This Notice relates to the conduct of FPL and the steps it took to manage, disclose and mitigate the potential conflicts of interest posed by Mr Stephen's common directorships. The Authority has made no finding as to whether Mr Stephen adequately managed any actual or potential conflicts that he had. However, it is necessary to describe Mr Stephen's common directorships in the Notice in order to explain FPL's misconduct.

Reference to Mr King's common directorship

9. *Mr King was a director of HJL during the Relevant Period and was also a director of the entities that issued the Bond. However, the corporate governance of those entities was structured in such a way that he was able to recuse himself from directors' decisions in case of conflict. The nature of the investments of the company issuing the Bond was such that there were few, if any, circumstances in which Mr King needed to recuse himself.*
10. For the reasons set out above in relation to Mr Stephen, it is necessary to describe Mr King's common directorships in the Notice in order to explain FPL's misconduct and the Authority has made no finding as to whether Mr King adequately managed any actual or potential conflicts that he had.

HJL was not inherently unsuitable for the purposes for which it was retained by FPL

11. *HJL's qualification to operate the Software was its having staffing and organisational capacity to do so. Moreover, the Authority has failed to explain on what basis it implicitly contends that HJL was unsuitable.*

12. When outsourcing functions to a third party, authorised firms which are common platform firms (such as FPL) must comply with Principle 3 of the FCA's Principles for Business and applicable rules in SYSC, and should also have regard to applicable guidance in SYSC. The relevant rules and guidance are set out in paragraph 4.27 of this Notice. In light of these rules and guidance, FPL should have taken reasonable steps, such as conducting adequate due diligence, to ensure that HJL was suitable to perform the functions that were outsourced to it.
13. FPL did not take reasonable steps, or conduct adequate due diligence, even though it was intended that HJL would correspond with customers on behalf of the Firm, and would perform functions that were both necessary and important for the giving of advice (such as the conduct of fact-finds). The Authority considers that such due diligence should go beyond merely ensuring that HJL had the staffing and organisational capacity to carry out the Outsourced Functions or its lead generation activities. In addition, as part of FPL's due diligence it could have considered, for example, the suitability of HJL's management and the quality of its staff.

Reference to Person A's criminal record and bankruptcy

14. *Person A was at all material times a consultant to HJL, and he played a limited role as regards the Pension Review and Advice Process. There is no need to refer to Person A's criminal record and bankruptcy since these matters were not relevant to any risk assessment that the Firm needed, on the facts of this case, to have carried out. It is also denied, to the extent that it is alleged, that it would not have been appropriate for the Firm to enter into a business relationship with HJL because of these matters.*
15. In the Authority's view, the evidence supports its conclusion that Person A played a significant part in the Pension Review and Advice Process and had an influential role at HJL. For example, his job title in HJL's organisation chart was "Senior Investment Manager", he was one of three representatives from HJL at meetings with the SIPP Provider (along with Mr Stephen and Mr King), he brought the business proposition from HJL to FPL and he gave instructions to FPL regarding the cash to Liquid Assets Bond switch. The Authority considers that it is appropriate to refer to Person A's background, which demonstrates a serious failure to act with integrity. When considering whether to outsource important functions to a third party, especially where the third party will be responsible for most of the customer contact, the extent to which customers could be exposed to persons who have demonstrated a lack of integrity should be a fundamental consideration. FPL's failure to consider this illustrates its

failure to give proper consideration to whether HJL and CAL were suitable to perform services on its behalf.

Other entities were involved with the use of the Software during the Relevant Period but have not been addressed in the Warning Notice to the same extent as HJL

16. *HJL discharged its limited processing functions for the period July to October 2014. At other times in the Relevant Period these functions were discharged by CAL, however, HJL is named frequently throughout the Notice.*

17. Each of the relevant entities that were involved in the Pension Review and Advice Process are mentioned to the extent necessary to describe the facts and matters relied on in reaching the decision to take the action set out in paragraph 1.1 of the Notice. The fact that HJL is mentioned more often than CAL is a reflection of its greater role in the Pension Review and Advice Process, in particular, its role in the development of the model on which the process is based, its lead generation activities, its role in relation to the products recommended through the process, and its financial interest in those products.

Anonymisation of HJL, Mr Stephen and Mr King

18. *There is no reason why HJL, Mr Stephen and Mr King should not be anonymised. The Notice would achieve what it is intended to achieve even if HJL, Mr Stephen and Mr King are not identified by name. Further, HJL's commercial interests will be significantly harmed if it is named in the Notice.*

19. HJL had a central role in the Pension Review and Advice Process. In particular, it initiated and influenced the development of the pension switching advice model, brought the model to the attention of the Firm, performed the Outsourced Functions and had a material financial interest in the Loan Notes. In these circumstances, the Authority considers it appropriate to mention HJL by name so that its findings, and the factual background (including the key parties involved), can be easily ascertained by the recipient of the Notice, as well as by any other reader of the Notice. Further, the Authority considers it possible that HJL could be identified from the description of the matters contained in the Notice even if anonymised as the Authority's Financial Services Register names HJL as an IAR of FPL between 11 September 2014 and 2 July 2015, and the Authority considers it is necessary to include detail in the Notice about HJL, including that it was an IAR and the time period that it was registered as an IAR, in order to explain the relationship between HJL and FPL. As such, the Authority

considers it unlikely that HJL will be materially prejudiced as a result of being referred to by its name in the Notice.

20. The Authority has decided to name Mr Stephen and Mr King for similar reasons. As Companies House records show they were the only two directors of HJL during the period that FPL was using the Pension Review and Advice Process, the Authority considers they could be identified even if anonymised. Further, as directors, they were responsible for the day-to-day operation of HJL during the Relevant Period.