Reference numbers: FS/2019/002,005,006,007&008

FINANCIAL SERVICES – pensions switching activities of independent financial advisers (IFAs) - whether advisers acted without integrity in adopting and using a pension advice process outsourced to a third party which resulted in recommendations for retail customers to switch their personal pensions into SIPPs investing in unregulated funds - whether the unregulated funds were high risk and generally unsuitable for retail investors - whether the IFAs failed to have regard to material conflicts of interest when recommending the funds-whether the IFAs carried out adequate due diligence on the funds and those operating the outsourced functions of the advice process - Statement of Principle 1 of the Authority's Statements of Principle for Approved Persons-COBS 2.1.1R, 4.2.1R,9.2.1R, 9.2.6R etc - SYSC 7.1, 8.1 and 10.1

Financial penalty – whether in relation to one applicant action to impose financial penalty partially time-barred - whether one applicant performed role of director without the Authority's approval knowing or being reasonably expected to have known that approval was required - whether financial penalty appropriate for IFAs concerned and if so appropriate level of penalty – ss 63A, 66 FSMA

Fitness and properness of IFAs concerned - prohibition order in relation to all functions in relation to regulated activities - s 56 FSMA

UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER

ANDREW MARK THOMAS PAGE **Applicants**
ROBERT WARD
WILLIAM MARK TRISTAN FREER
THOMAS HENRY WARD
AIDEN JAMES HENDERSON

- and -

THE FINANCIAL CONDUCT AUTHORITY **The Authority**

TRIBUNAL: Judge Timothy Herrington
Member Sue Dale
Member Gary Bottriell

Sitting in public at The Rolls Buildings, Royal Courts of Justice, London EC4 on 8-12,15-19,22-26, 29-30 November and 1-2 and 8-9 December 2021

Mr Andrew Page in person

James Lloyd, Counsel, instructed by Murray Hughman Solicitors, for the second to fifth Applicants

James Purchas and Rebecca Keating, Counsel, instructed by the Financial Conduct Authority, for the Authority

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GLOSSARY

Terms	
AIGO	AIGO Holdings PCC, a protected cell company incorporated in Mauritius as an Expert Fund and which issued the Loan Notes though a number of cells
AIGO IM	the Information Memorandum dated 14 November 2013 issued by AIGO
Applicant	any of Mr Page, Mr T Ward, Mr Henderson, Mr R Ward and Mr Freer
Authority	the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority
Avalon	Avalon Investment Services Limited, one of the SIPP Providers
Avalon SIPP	the Avalon Freedom SIPP, a SIPP provided and administered by Avalon
BHIM	Bank House Investment Management Limited, the Firm of which Mr R Ward and Mr Freer were approved persons during the Relevant Period
Bonds	any of the HJ Residential plc 6% Bonds 2024, HJ Commercial plc 7% Bonds 2024, HJ SME plc 8% Bonds 2024 and HJ Liquid Assets plc 3% 2024 Bonds and also referred to as the Residential Bonds, the Commercial Bonds, the SME Bonds, and the Liquid Assets Bonds respectively
Brochure	a document drafted by HJL for use by each of the Firms marketing their services to be sent to customers along with the Service Proposition
CAL	City Administration Limited, an unauthorised entity to whom was delegated the information gathering and advice process elements of the Pension Review and Advice Process from mid-October 2014 onwards
Cells	the AIGO UK Residential Property Fund, the AIGO Commercial Property Fund, the AIGO Natural Resources Fund and the AIGO Equity Fund, each a cell of AIGO and also referred to as the Residential Property Fund, the Commercial Property Fund, the Natural Resources Fund and the Equity Fund

	respectively
CPA	an amount, known as the Cash Provision Amount, not exceeding 20% of the proceeds of an issue of Bonds, held by the issuer in cash or other liquid investments
CPUK	Carey Pensions UK LLP, a SIPP provider, but not in relation to the Products
EFP	Easy Financial Planning UK LLP, an unauthorised entity to whom was delegated the information gathering and advice process elements of the Pension Review and Advice Process between January and April 2014
Enforcement	the Authority's Enforcement and Market Oversight Division
Execution-Only Process	the process adopted by HCA to act for customers on an execution only basis to switch their pensions to a SIPP investing in the Loan Notes
Fact Find	the assessments conducted by EFP, HJL or CAL, as the case may be, of a customer's individual circumstances and their attitude to risk and capacity for loss
Fact Sheet	a fact sheet issued to a customer investing in the Loan Notes or the Bonds setting out a summary of the main features of the particular Loan Notes or Bonds recommended to the customer concerned
Firms	BHIM, HCA and FPL
FOS	Financial Ombudsman Service
FPL	Financial Page Ltd, the Firm of which Mr Page was an approved person during the Relevant Period and in respect of which Mr T Ward performed certain functions
FSCS	Financial Services Compensation Scheme
FSMA	Financial Services and Markets Act 2000 (as amended)
Guinness Mahon	Guinness Mahon Trust Corporation Limited, one of the SIPP Providers
GM SIPP	the Global SIPP, a SIPP provided and administered

	by Guinness Mahon
HCA	Henderson Carter Associates Limited, the Firm of which Mr Henderson was an approved person during the Relevant Period
HJL	Hennessy Jones Limited, now known as Reditum Capital Limited, an unauthorised entity which (i) was responsible for the promotion of the Loan Notes and the Bonds (ii) acted as investment adviser to AIGO and to the issuers of the Bonds (iii) acted as introducer of customer leads to the Firms at different times during the Relevant Period (iv) was delegated the information and advice process elements of the Pension Review and Advice Process between May and mid-October 2014 and (v) was an IAR of FPL and HCA
IFA	independent financial adviser
IFAC	IFA Compliance Limited, a company which provided external compliance support to FPL
IAR	introducer appointed representative, that is an appointed representative (as defined in s39 (2) FSMA) all whose scope appointment is limited to effecting introductions to its principal and distributing non-real-time financial promotions
Information Memorandum	in relation to the Loan Notes or the Bonds, an information memorandum prepared by AIGO or the relevant Issuer as the case may be
Issuer	in relation to the Bonds, any of HJ Residential plc, HJ Commercial plc, HJ SME plc or HJ Liquid Assets plc as the case may be
Kazai	a UK property company to whom the Residential Property Fund and Commercial Property Fund made loans
LeadTracker	the software used in the Execution-Only Process and the Pension Review and Advice Process to maintain a record of interaction with leads introduced to the process and to produce Pension Summary Reports and Pension Recommendation Reports
Loan Notes	the unsecured loans to AIGO, raised for the account of Cells in AIGO investing in commercial property, residential property, natural resources

	and equity investments
Master Loan Agreement	an agreement between Guinness Mahon and a Cell of AIGO pursuant to which Guinness Mahon lent to AIGO sums contributed by investors to the GM SIPP
Outsourced Functions	the functions of lead generation, information gathering and advice process performed on behalf of a Firm by EFP, HJL or CAL as the case may be
Pension Review and Advice Process	the process initiated by HJL which through the use of lead generation and LeadTracker involved the Firms delegating to EFP, HJL or CAL, as the case may be, the functions of information gathering and the making of recommendations to customers introduced by HJL and its agents which resulted in such customers switching their pensions into a SIPP operated by a SIPP Provider in which the underlying investments were either the Loan Notes or the Bonds if certain conditions were met
Pension Summary Report	the document generated by LeadTracker which reported on the customer's existing pensions and provided a comparison of the costs of the existing pensions when compared to a transfer to a SIPP Provider and assuming an investment in an unspecified product selected by HJL
Pension Recommendation Report	the document generated by LeadTracker which recommended that the customer transfer their existing pensions to a SIPP Provider and that the funds transferred be invested in a Portfolio comprised of the Products
Portfolio	a blend of either Loan Notes or Bonds recommended to a customer and named either an Adventurous Portfolio, a Cautious Portfolio or a Moderate Portfolio
Products	together the Loan Notes and the Bonds
RDC	The Regulatory Decisions Committee of the Authority
Relevant Period	in relation to Mr Page and Mr T Ward is 3 July 2014 to 1 February 2016, in relation to Mr Henderson is 30 October 2013 to 8 July 2015 and in relation to Mr R Ward and Mr Freer is 9 September 2014 to 1 February 2016

Service Proposition	a document signed by a customer setting out the terms on which a Firm would provide services to a customer introduced to the Firm through the Pension Review and Advice Process
SimplyBiz	SimplyBiz Group, a company which provided external compliance support to HCA
SIPP	Self-invested personal pension scheme
SIPP Provider	a firm regulated by the Authority which operated SIPPs in respect of customers of the Firms and where the SIPPs concerned included one or more of the Products
Stark	a UK property company to whom the Residential Property Fund made loans
Voluntary Requirement	a requirement relating to a Firm's Part 4A agreed between the Firm and the Authority

People

Financial Page Ltd ("FPL")

Mr Page	Andrew Page, Applicant in these references, the only approved person at FPL, who held the CF 1 (Director), CF 10 (Compliance Oversight), CF 11 (Money Laundering Reporting) and CF 30 (Customer) controlled functions during the Relevant Period
Mr T Ward	Thomas Ward, Applicant in these references, Head of Group Operations at FPL during the Relevant Period

Henderson Carter Associates Limited ("HCA")

Mr Henderson	Aiden Henderson, Applicant in these references, who was the only person at HCA approved to perform the CF 1 (Director), CF 10 (Compliance Oversight), CF 11 (Money Laundering Reporting) and one of three persons approved to perform the CF 30 (Customer) controlled function during the Relevant Period

Bank House Investment Management Limited ("BHIM")

Mr R Ward	Robert Ward, Applicant in these references, who was approved by the Authority to perform the CF1 (Director) and CF 3 (Chief Executive) controlled functions at BHIM during the Relevant Period from 16 October 2014

Mr Freer	Tristan Freer, Applicant in these references, who was approved by the Authority to perform the CF1 (Director) CF 10 (Compliance Oversight) and CF 11 (Money Laundering Reporting) and CF 30 (Customer) control functions at BHIM during the Relevant Period
EFP	
Mr N Maynard	Mr Nicholas Maynard, Director
Mr O Maynard	Mr Oliver Maynard, Director
HJL	
Mr King	James King, a director of HJL and a number of the Issuers
Mr Stephen	Mark Stephen, managing director of HJL, responsible for establishing and promoting the Products
Person A	a senior employee of HJL involved in the development of the Products and the Pension Review and Advice Process
CAL	
Mr Worrow Sr	Mr David Worrow, a director of CAL
Mr Worrow Jr	Mr David Worrow, a director of CAL and also the son of Mr Worrow Sr
The Authority	
Mr Ali	Mussammil Ali, associate in the Retail and Authorisations Division of the Authority's Supervision Department
Ms Hartley	Lucinda Hartley, manager dealing with the Authority's work on pension mis-selling during the Relevant Period
Mr Hewitt	Christopher Hewitt, technical specialist dealing with overseeing the Authority's approach to the assessment of the suitability of pension and investment advice during the Relevant Period
Ms High	Lorraine High, manager in the Authority's Unauthorised Business Department during the Relevant Period
Mr Raphael	Bradley Raphael, manager involved in the Authority's

	pension mis-selling project during the Relevant Period
Mr Slater	Christopher Slater, retired associate in the Authority's Supervision Division involved in the Authority's work on pensions mis-selling during the Relevant Period
Mr Smith	Joseph Smith, manager in the General Insurance Sector Supervision Department of the Authority who gave evidence on captive insurance in these proceedings
Ms Tibbetts	Helen Tibbetts, manager in Enforcement dealing with the Authority's investigation into the Applicants
Mr Walmsley	Christopher Walmsley, technical specialist in the Authority's Supervision Department dealing in the Relevant Period with the Authority's concerns regarding the suitability of pension and investment advice given by financial adviser firms
SimplyBiz	
Mr Kershaw	Gary Kershaw, Group Compliance Director
Ms Farrell	Lesley Farrell, formerly SimplyBiz field consultant who provided compliance support to HCA
Others	
Mr Wilson	Simon Wilson, Interim Head of Resolution at the FSCS
Ms Hallett	Christine Hallett, formerly Chief Executive Officer of CPUK
Ms Preston-Hoar	Ruth Preston- Hoar, formerly Compliance Executive at IFAC
Mr Lockie	Robert Lockie, branch principal of Bloomsbury Wealth and expert witness in these proceedings

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APPENDIX

DECISION

I. INTRODUCTION

Background

1. On 6 December 2018 the Financial Conduct Authority (the "Authority") through its Regulatory Decisions Committee ("RDC"), issued Decision Notices to the Applicants and the firms at which they worked (the "Firms") as follows:

(1) Financial Page Ltd ("FPL"), Mr Andrew Page and Mr Thomas Ward;

(2) Henderson Carter Associates Limited ("HCA") and Mr Aiden Henderson; and

(3) Bank House Investment Management Limited ("BHIM"), Mr Robert Ward and Mr Tristan Freer.

2. In those Decision Notices the Authority decided to impose a substantial financial penalty, pursuant to s 63 A of the Financial Services and Markets Act 2000 ("FSMA") in the case of Mr T Ward and pursuant to s 66 FSMA in the case of the other individuals. The Authority also decided to make an order prohibiting each of the Applicants from performing any function in relation to any regulated activity carried on by an authorised person, exempt person, or exempt professional firm.

3. Each of Mr Page, Mr T Ward, Mr Henderson, Mr R Ward and Mr Freer ("the Applicants") have referred their respective Decision Notices to the Tribunal. This decision concerns the subject matter of those references. Because there are overlapping, and in some cases identical, issues in the references the Tribunal directed that the references be heard together.

4. The subject matter of the references is the conduct of the Applicants in respect of a business model which each of the Firms adopted and used. The Authority contends that each of the Firms adopted a business model which was designed by a third party which had not been authorised by the Authority to carry out regulated activities, namely Hennessy Jones Limited ("HJL"). The Authority says the model was designed by HJL to result in customers introduced to the Firms through HJL investing their pensions in high-risk products in which HJL had a significant financial interest.

5. The Authority says the model operated as summarised at [6] and [7] below.

6. Potential customers holding one or more personal pensions were contacted by marketing companies used by HJL and offered a free pension review showing their current pension projections and what an alternative arrangement might look like if invested in a self–invested pension plan ("SIPP") in an unspecified product selected by HJL and introduced to the relevant Firm.

7. In the early stages, the process was an "Execution-Only Process" because it did not involve the Firm giving any advice on the pension switch, but rather reviewing the

customer's SIPP application paperwork before it was presented to the SIPP Provider. HCA was the only one of the Firms to implement the Execution-Only Process. The model evolved into a "Pension Review and Advice Process" whose essential elements were:

(1) Each of the Firms held out their pension advice service to customers as offering bespoke independent advice provided by an approved adviser that had considered the whole of the market. The Authority says the reality was that the business model involved the Firms using HJL as an introducer and delegating the information gathering and advice process (the "Outsourced Functions") to be performed by third parties, namely Easy Financial Planning (UK) LLP ("EFP") (from January-April 2014), HJL (from May to mid-October 2014) and City Administration Limited ("CAL") (from mid-October 2014 onwards).EFP was an appointed representative of an authorised person. Neither HJL nor CAL were authorised persons.

(2) The Pension Review and Advice Process was structured so as to result in customers who met predetermined criteria established through the process being recommended to switch their pensions to a SIPP provided by Guinness Mahon (for HCA, FPL and latterly BHIM) or Avalon (for BHIM initially) with the underlying investment in high-risk investments. Those investments were either Loan Notes issued by one of the protected cells of AIGO Holdings PCC, a protected cell company incorporated in Mauritius ("AIGO"), or Bonds issued by one of a number of UK incorporated companies promoted by HJL, namely HJ Residential plc, HJ Commercial plc, HJ SME plc and HJ Liquid Assets plc.

(3) HJL had a material financial interest in the Loan Notes and Bonds which was not disclosed to customers.

8. By the time of the Authority's intervention into the Firms approximately £76.5 million of customers' pensions had been switched into SIPPs with the Loan Notes and/or the Bonds as the underlying investments. The first switch took place in around December 2013. Guinness Mahon agreed to stop investing customers in SIPPs with the Loan Notes as the underlying investment in June 2015. The exchange on which the Bonds were listed closed on 18 August 2015 following which switches to SIPPs with the Bonds as the underlying investments ceased.

9. All three Firms have been declared in Default by the Financial Services Compensation Scheme ("FSCS") as each of them have been found to be unable to pay claims against it. As a result of claims made by customers of the Firms on the basis that they have suffered financial loss as a result of having been given unsuitable advice to switch their pensions, compensation totalling over £20.6 million has been paid to customers of HCA, over £25.6 million has been paid to customers of FPL and over £5.4 million has been paid to customers of BHIM. A significant number of these customers have not had all their losses covered by the FSCS as their claims were in excess of the FSCS's compensation limit of £50,000.

Alleged misconduct and the Applicants' position

10. In broad terms the Authority alleges misconduct against the individual Applicants as follows:

(1) Each of the Applicants engaged in conduct that was at times dishonest and at other times reckless, demonstrating a lack of integrity and lack of fitness and propriety.

(2) In the case of Mr Henderson, Mr Page, Mr R Ward and Mr Freer that conduct also amounts to a breach of Statement of Principle 1 of the FCA's Statements of Principle and Code of Practice for Approved Persons ("Statement of Principle 1").

(3) Mr T Ward was not an approved person, but it is the Authority's case that he performed the CF1 controlled function without approval and his conduct would have amounted to a breach of Statement of Principle 1 had he been so approved.

(4) As a result of the relevant Applicant's misconduct, FPL and BHIM also breached requirements imposed on them by the FCA: FPL breached an asset requirement and BHIM breached requirements on the Firm's permission.

11. The key allegations made against Mr Page are that during the period between 3 July 2014 and 1 February 2016:

(1) He acted dishonestly by causing FPL to hold out the Pension Review and Advice Process to customers as FPL providing bespoke, independent investment advice based on a comprehensive and fair analysis of the whole market. The Authority says this was dishonest because Mr Page knew that this was misleading to customers as it did not reflect the reality of the service FPL would provide using the Pension Review and Advice Process.

(2) He acted recklessly in relation to FPL's adoption and use of the Pension Review and Advice Process. The Authority says that Mr Page closed his mind to the serious risk that the process would (as subsequently transpired) result in FPL's customers receiving unsuitable advice and investing in products that were not suitable for them. In particular:

> (1) it should have been obvious to Mr Page from the limited information that he considered that the Loan Notes and later the Bonds were high risk investments that were unlikely to be suitable for FPL's customers, except in very limited circumstances;
>
> (2) it should have been obvious to Mr Page from information available to him that the Pension Review and Advice Process did not comply with the Authority's rules, but he failed to give any meaningful consideration to whether or not it was compliant;
>
> (3) he 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 SIPPs investing in assets in which HJL had a material financial interest in customers investing but took no steps to manage these conflicts of interest or disclose them to customers;

(4) he failed to take reasonable steps to ensure that FPL reviewed in a meaningful way advice given through the Pension Review and Advice Process, whether before recommendations were sent to customers or at all;

(5) he allowed FPL to work with HJL then CAL in circumstances where he 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 behalf of FPL;

(6) he 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; and

(7) he disregarded concerns raised by FPL's compliance consultant regarding the Pension Review and Advice Process and continued to allow FPL to use the process notwithstanding his suspicions that it may not be compliant.

(3) He closed his mind to the interests of customers when advising customers to switch the cash in their SIPP to Bonds issued by HJ Liquid Assets plc.

(4) He acted dishonestly by providing false and misleading information on FPL's application to the Authority for authorisation and, after FPL was authorised, failed to correct the misleading impression that had thereby been created.

(5) He acted dishonestly by deliberately providing false and misleading information, or omitted to provide relevant information, to the Authority about FPL's business arrangements.

(6) He acted dishonestly by deliberately providing false information to Guinness Mahon, the SIPP provider.

(7) He recklessly entered into an agreement with Mr T Ward granting him custodianship of FPL clients in the event of FPL ceasing trading which was not in the best interest of customers.

(8) He recklessly allowed FPL to breach an asset retention requirement imposed by the Authority by entering into a loan agreement and selling customer data.

12. Accordingly, the Authority contends that Mr Page breached the requirement of Statement of Principle 1 to act with integrity in carrying out his controlled functions during the Relevant Period. The Authority seeks a financial penalty of £321,033 (together with continuing interest) against Mr Page pursuant to s 66 FSMA and to make an order pursuant to s 56 FSMA prohibiting Mr Page from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm.

13. The key allegations made against Mr T Ward are that during the period between 3 July 2014 and 1 February 2016:

(1) He knowingly performed, or had such knowledge and experience that he could reasonably be expected to have known that he was performing, a role as a director of FPL without approval, and chose not to seek such approval from the Authority.

(2) He recklessly closed his mind to the obvious conflict of interest presented by HJL's key role in the Pension Review and Advice Process and its material financial interest in customers investing in the Loan Notes, and to the risk that unsuitable advice might be provided to FPL's customers, and was instrumental in FPL's adoption and use of the Pension Review and Advice Process.

(3) He disregarded the interest of FPL's customers and showed a willingness to enrich FPL, himself and third parties at their expense.

(4) He placed the interests of HJL above the interests of FPL's customers. He took instructions from HJL, and in practice regularly requested approval from HJL, for his actions including in relation to aspects of FPL's business over which HJL should not have had influence (for example, in relation to where and in what proportions FPL's customers' pensions should be invested).

(5) He took deliberate steps to control and influence the content and flow of information that FPL disclosed to the Authority. He encouraged Mr Page to withhold important information from the Authority and deliberately drafted communications and instructed Mr Page to provide communications to the Authority that were false and/or misleading.

14. Accordingly, the Authority contends that Mr T Ward has demonstrated a lack of integrity while working for FPL during the Relevant Period. The Authority seeks a financial penalty of £416,558 (together with continuing interest) against Mr T Ward pursuant to s 63A FSMA and to make an order pursuant to s 56 FSMA prohibiting Mr T Ward from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm.

15. The key allegations made against Mr Henderson are that during the period between 30 October 2013 and 8 July 2015:

(1) He acted recklessly by closing his mind to the conflict of interest inherent in the Execution-Only Process. He was aware of HJL's involvement in this process and of HJL's financial interest in the Loan Notes but took no steps to manage the conflict or to ensure that HJL's financial interest in the Loan Notes was disclosed to customers.

(2) He dishonestly caused HCA to hold out the Pension Review and Advice Process to customers as HCA providing bespoke, independent investment advice based on a comprehensive and fair analysis of the whole market. The Authority says this was dishonest because Mr Henderson knew that this was misleading to customers as it did not reflect the reality of the service HCA would provide using the Pension Review and Advice Process.

(3) He acted recklessly in relation to HCA's adoption and use of the Pension Review and Advice Process. This process put HCA'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 Mr Henderson closed his mind to these risks and unreasonably exposed HCA's customers to them by allowing HCA to adopt and use the Pension Review and Advice Process. In particular:

(1) he failed to carry out adequate due diligence on the Loan Notes before they were recommended to customers and failed to give due consideration to the risk that the Loan Notes were unsuitable in circumstances where it should have been obvious from the limited information that he considered that the Loan Notes were high-risk, illiquid investments that were unlikely to be suitable for HCA's customers, except in very limited circumstances;

(2) he failed to take any steps to establish whether the lead generators used by HJL generated their customer introductions in an appropriate manner and did not use cold calling;

(3) he 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 SIPPs investing in assets in which HJL had a material financial interest in customers investing but took no steps to manage these conflicts of interest or disclose them to customers;

(4) he failed to identify significant obvious deficiencies in the Pension Review and Advice Process in circumstances where it should have been obvious from the information available to him that the Pension Review and Advice Process did not comply with the Authority's rules and therefore failed to give any meaningful consideration to whether or not the process was compliant;

(5) he failed to take reasonable steps to ensure that HCA maintained control of the Pension Review and Advice Process, allowing important parts of the process to be performed in a way that failed to obtain and/or take into account relevant information about HCA's customers and failed to take reasonable steps to ensure that HCA reviewed in a meaningful way advice given through the Pension Review and Advice Process;

(6) he failed to take reasonable steps to ensure that HCA put in place and operated appropriate systems and controls and compliance arrangements to oversee and monitor the Pension Review and Advice Process; and

(7) he failed to give any proper consideration to whether HJL or CAL was suitable to perform services on behalf of HCA and failed to carry out adequate due diligence on those entities before agreeing that HCA would work with them.

(4) He deliberately provided, on behalf of HCA, false and misleading information to the Authority about the compliance checks that he was undertaking. In the Authority's opinion, Mr Henderson did this intentionally to

try to prevent the Authority from identifying misconduct by him and HCA, thereby acting dishonestly.

16. Accordingly, the Authority contends that Mr Henderson breached the requirement of Statement of Principle 1 to act with integrity in carrying out his controlled functions during the Relevant Period. The Authority seeks a financial penalty of £179,179 (together with continuing interest) against Mr Henderson pursuant to s 66 FSMA and to make an order pursuant to s 56 FSMA prohibiting Mr Henderson from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm.

17. The key allegations made against Mr R Ward are that during the period between 9 September 2014 to 1 December 2016:

(1) He acted recklessly once he had been approved by the Authority to perform the CF 1 (Director) and CF 3 (Chief Executive) controlled functions on 16 October 2014 in continuing to allow (i) BHIM to use the Pension Review and Advice Process; (ii) the Bonds to be recommended to BHIM's customers; and (iii) BHIM to work with HJL and CAL, thus exposing BHIM's customers to a significant risk of harm in circumstances where:

(1) he failed to take reasonable steps to ensure that BHIM undertook adequate due diligence on the Bonds, doing nothing to satisfy himself that the due diligence carried out by Mr Freer was adequate in circumstances where had he taken such reasonable steps it would have been obvious to him Mr Freer's due diligence was inadequate and that the Bonds were high-risk investments that were unlikely to be suitable for BHIM's customers, except in very limited circumstances;

(2) he failed to take any steps to establish whether the lead generators used by HJL generated their customer introductions in an appropriate manner and did not use cold calling;

(3) he failed to take steps to manage and/or disclose the conflicts of interest arising from (i) the structure of the Pension Review and Advice Process; (ii) HJL's role in the Pension Review and Advice Process; and (iii) the role of two of HJL's directors as directors of each of the companies issuing the Bonds and their financial interest in the Bonds;

(4) it should have been obvious to him, given his experience in the financial services sector, that there was a significant risk that the Pension Review and Advice Process was not compliant with the Authority's rules;

(5) he failed to take reasonable steps to ensure that BHIM maintained control of the Pension Review and Advice Process, allowing important parts of the process to be performed in a way that failed to obtain and/or take relevant information into account about BHIM's customers;

(6) he failed to take reasonable steps to ensure that BHIM reviewed in a meaningful way the advice given through the Pension Review and Advice Process;

(7) he failed to take reasonable steps to ensure that BHIM put in place appropriate systems and controls and compliance arrangements to oversee and monitor the Pension Review and Advice Process; and

(8) he agreed (together with Mr Freer) that BHIM would work with HJL and CAL without giving any proper consideration as to whether they were suitable to perform services on behalf of BHIM and failed to take reasonable steps to ensure that BHIM carried out adequate due diligence on HJL and then CAL before agreeing that BHIM would work with them.

(2) He recklessly allowed BHIM to breach a term of a Voluntary Requirement by permitting it to advise (with his knowledge) a total of 76 customers to switch their pension to a SIPP after the Voluntary Requirement had been imposed. He was aware of the risk that BHIM might breach the terms of the Voluntary Requirement but, by closing his mind to that risk, recklessly failed to take reasonable steps to ensure that these transactions were permitted.

(3) He made false and misleading statements to the Authority concerning BHIM's relationship with HJL and CAL in order to try to prevent the Authority from identifying misconduct by himself, Mr Freer and BHIM and thereby acted dishonestly.

(4) He acted dishonestly by deliberately telling the Authority that BHIM did not have minutes of board meetings when, in fact, BHIM kept formal minutes of meetings which he (and others) approved.

(5) He failed to be open and cooperative, and recklessly provided the Authority with incomplete and inaccurate information in response to requests made by the Authority to BHIM with the result that (i) he failed to ensure that BHIM complied with the requirements to provide the Authority with certain of his emails; (ii) he provided the Authority with a materially incomplete copy of BHIM's new business register; and (iii) he failed to ensure that BHIM complied with the Authority's request to provide it with the full name of an entity with whom BHIM had an agreement and a copy of that agreement.

18. Accordingly, the Authority contends that Mr R Ward breached the requirement of Statement of Principle 1 to act with integrity in carrying out his controlled functions during the Relevant Period. The Authority seeks a financial penalty of £88,100) against Mr R Ward pursuant to s 66 FSMA and to make an order pursuant to s 56 FSMA prohibiting Mr R Ward from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm.

19. The key allegations against Mr Freer are that during the period between 9 September 2014 to 1 December 2016:

(1) He dishonestly caused BHIM to hold out the Pension Review and Advice Process to customers as BHIM providing bespoke, independent investment advice based on a comprehensive and fair analysis of the whole market. The Authority says this was dishonest because Mr Freer knew that this was misleading to customers as it did not reflect the reality of the service BHIM would provide using the Pension Review and Advice Process.

(2) He acted recklessly in relation to BHIM's adoption and use of the Pension Review and Advice Process. This process put BHIM'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 Mr Freer closed his mind to these risks and unreasonably exposed BHIM's customers to them by allowing BHIM to adopt and use the Pension Review and Advice Process. In particular:

(1) he failed (i) to carry out adequate due diligence on the Bonds before they were recommended to customers, relying solely on documents provided to BHIM by HJL despite knowing that HJL and/or its directors had a material financial interest in the Bonds and did not take any actions to address the risk that the information provided by HJL could be misleading or incomplete; and (ii) to give due consideration to the risk that the Bonds were unsuitable in circumstances where it should have been obvious from the limited information that he considered that the Bonds were high-risk, illiquid investments that were unlikely to be suitable for BHIM's customers, except in very limited circumstances;

(2) he failed to take any steps to establish whether the lead generators used by HJL generated their customer introductions in an appropriate manner and did not use cold calling;

(3) he failed to take steps to manage and/or disclose the conflicts of interest arising from (i) the structure of the Pension Review and Advice Process; (ii) HJL's role in the Pension Review and Advice process; and (iii) the role of two of HJL's directors as directors of each of the companies issuing the Bonds and their financial interest in the Bonds;

(4) he failed to identify significant obvious deficiencies in the Pension Review and Advice Process in circumstances where it should have been obvious from the information available to him that the Pension Review and Advice Process did not comply with the Authority's rules and therefore failed to give any meaningful consideration to whether or not the process was compliant;

(5) he failed to take reasonable steps to ensure that BHIM maintained control of the Pension Review and Advice Process, allowing important parts of the process to be performed in a way that failed to obtain and/or take into account relevant information about BHIM's customers and failed to take reasonable steps to ensure that BHIM reviewed in a meaningful way advice given through the Pension Review and Advice Process;

(6) he failed to take reasonable steps to ensure that BHIM put in place and operated appropriate systems and controls and compliance arrangements to oversee and monitor the Pension Review and Advice Process; and

(7) he agreed (together with Mr R Ward) that BHIM would work with HJL and CAL without giving any proper consideration as to whether they were suitable to perform services on behalf of BHIM and failed to take

reasonable steps to ensure that BHIM carried out adequate due diligence on HJL and then CAL before agreeing that BHIM would work with them.

(3) He recklessly allowed BHIM to breach a term of a Voluntary Requirement by permitting it to advise (with his knowledge) a total of 76 customers to switch their pension to a SIPP after the Voluntary Requirement had been imposed. He was aware of the risk that BHIM might breach the terms of the Voluntary Requirement but, by closing his mind to that risk, recklessly failed to take reasonable steps to ensure that these transactions were permitted.

(4) He made false and misleading statements to the Authority concerning BHIM's relationship with HJL and CAL in order to try to prevent the Authority from identifying misconduct by himself, Mr R Ward and BHIM and thereby acted dishonestly.

(5) He acted dishonestly by deliberately telling the Authority that BHIM did not have minutes of board meetings when, in fact, BHIM kept formal minutes of meetings which he (and others) approved.

(6) He recklessly allowed BHIM to provide the Authority with a copy of BHIM's new business register which was materially incomplete. He closed his mind to the risk that the new business register might be incomplete or inaccurate and failed to take reasonable steps to ensure they information provided to the Authority was complete and accurate. Had he done so, he would have identified the obvious errors in the document.

20. Accordingly, the Authority contends that Mr Freer breached the requirement of Statement of Principle 1 to act with integrity in carrying out his controlled functions during the Relevant Period. The Authority seeks a financial penalty of £52,725 (together with continuing interest) against Mr Freer pursuant to s 66 FSMA and to make an order pursuant to s 56 FSMA prohibiting Mr Freer from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm.

21. The Applicants all deny the allegations of dishonesty and recklessness.

22. Mr Page says that he held an honest, reasonable and genuine belief in the propriety of the Products and their suitability for the customers concerned, as shown by the fact that he switched the whole of his pension into them. He says the Products were suitable for all those customers whose objectives were low-cost investment, fixed returns and security of capital. He contends that he tested the whole market and found no other products which met these objectives.

23. Mr Page contends that he carried out a high level of due diligence on the Products, relying on his genuine belief that the Loan Notes had been designed by Mr Daniel Tunkel, a leading financial regulatory lawyer, who had advised that they were a standard product as well as the due diligence carried out by Guinness Mahon.

24. As far as the Pension Review and Advice Process was concerned, Mr Page denies that the process was designed to push customers towards one product, maintaining that only a minority of the leads generated and deemed suitable for pension switches were directed towards the Products. Again, he maintained that the process was designed by Mr Tunkel and that he was satisfied that it complied with the Authority's regulatory requirements. He contends that he attended CAL's offices to review the operation of the process frequently and carried out random checks on files to establish whether the required standards were met.

25. Mr Page contends that HJL's conflict of interest, which he identified as the 5% fee it would take out of the proceeds of investments made into the Loan Notes, was adequately disclosed in the AIGO IM which was sent to customers.

26. Mr Page contends that there was no intention to mislead the Authority as regards his firm's application for authorisation, which was prepared by the firm's compliance consultant. He contends that the agreement with Mr T Ward granting him custodianship of FPL's clients was believed by him to be in the best interests of customers. He denies that there was any breach of the asset retention requirement, contending that the loan agreement and agreement to sell data was of no effect.

27. Mr T Ward contends that as Head of Operations for FPL he undertook administrative tasks and operated under the direction of Mr Page in that role. He contends that he never made any decisions on behalf of FPL or gave any advice on investments or performed any related activities. He contends that his limited role did not involve the performance of controlled functions for which he would require approval.

28. Mr T Ward denies that he had any responsibility to oversee HJL or CAL's performance of the Outsourced Functions which was the responsibility of Mr Page. Neither, he says, was he responsible for providing investment advice on whether the Products were suitable or reviewing the compliance of the Pension Review and Advice Process with the Authority's rules. Mr T Ward denies that he encouraged Mr Page to mislead the Authority and in any event Mr Page was responsible for the accuracy of the information provided to the Authority in response to its requests.

29. Mr Henderson denies that he failed to carry out any meaningful due diligence on the Loan Notes or closed his mind to the risk that the Loan Notes were not suitable for retail investors. He says he formed the view that the Loan Notes represented the best in the market option for persons seeking fixed returns, which was an investment judgment based on the substantial due diligence documentation provided by HJL. He says he considered other products on the market and undertook a risk analysis before concluding that the Loan Notes were suitable for customers who wanted fixed returns, an exercise which included consideration of the composition of the investment portfolios concerned. He also says he relied on Mr Tunkel's advice.

30. Mr Henderson disputes the Authority's characterisation of the Pension Review and Advice Process and Outsourced Functions. He contends that the suitability reports generated by the process were reviewed by him before being sent to the customer. He

denies that he exercised no meaningful oversight of the process or the performance by the service providers of the Outsourced Functions. He contends that at various points compliance advisers, SimplyBiz, gave advice as to the suitability of the Loan Notes and the compliance of the Pension Review and Advice Process with the Authority's rules.

31. Mr Henderson contends that the main conflicts of interest were adequately managed or disclosed, particularly through the Information Memorandum which was provided to every customer.

32. Mr Henderson denies misleading the Authority regarding the file reviews that took place. He says that the compliance checks recorded were conducted at the relevant time and not, as the Authority contends, after the event when the relevant files were requested.

33. Furthermore, Mr Henderson resists the imposition of a financial penalty in respect of at least some of the allegations made against him on the grounds that the limitation period set out in s 66 (4) FSMA had expired by the time the Authority commenced regulatory proceedings against him by the issue of a Warning Notice.

34. Mr R Ward denies that BHIM ever had a business relationship with HJL and had no responsibility for the activities of that company in generating leads. He contends that the only contractual relationship in relation to the Outsourced Functions was between BHIM and CAL and that it was CAL who sourced leads from lead generation companies and introduced the leads to BHIM.

35. Mr R Ward denies that the Bonds were only suitable for retail investors in very limited circumstances. Capital protection was put in place for the funds, and a loss provision mechanism had been built in which provided additional capital in the event of a loss, similar to an insurance premium. The underlying assets, namely UK commercial and residential property, were low risk and, historically, had performed well. The Bonds were traded on an EEA regulated market which had an almost identical regulatory profile to the UK Alternative Investment Market.

36. Mr R Ward contends that any conflicts of interest were adequately disclosed in the relevant Information Memorandum relating to the Bonds, which, to Mr R Ward's best of knowledge and belief was provided to customers.

37. Mr R Ward contends that he took reasonable steps to ensure that BHIM carried out adequate due diligence on the Bonds by instructing Mr Freer, who was the Compliance Officer of BHIM, to do so.

38. Mr R Ward denies that he failed to ensure that BHIM gave due consideration to the documents used in the Pension Review and Advice Process. He contends that he ensured that Mr Freer carried out adequate due diligence, considered how the documents would be used in the process and how the process would operate in practice. He contends that Mr Freer was responsible for ensuring and did ensure that the advice to each customer was compliant and suitable.

39. Mr R Ward contends that the LeadTracker software would have identified (1) whether the customer's answers to the fact-find meant that the customer required bespoke advice; (2) whether the customer's objectives were best met by current investments, such that a switch was inappropriate; and (3) whether the customer's answers to the fact find were such as to render investment in a portfolio including the Bonds unsuitable. If the customer was not rejected as unsuitable for one of these reasons, the software would generate a suitability report on behalf of BHIM recommending a switch into a SIPP with an underlying investment in a portfolio including Bonds. If the customer was rejected, the customer was referred back to BHIM.

40. Mr R Ward denies that he recklessly allowed BHIM to breach the term of a Voluntary Requirement. He reasonably believed that the Voluntary Requirement only applied to transfers to SIPPs and did not prevent pension transfers to a platform.

41. Mr R Ward denies making false and misleading statements to the Authority regarding BHIM's relationship with HJL and CAL, the production of board minutes or the provision of other information.

42. Mr Freer contends that the Pension Review and Advice Process did provide bespoke, independent investment advice based on a comprehensive and fair analysis of the whole market. He adopts the characterisation of the process described by Mr R Ward as set out at [38] above. He contends that suitability reports and corresponding documentation was reviewed by him before it was sent to the customer and the covering letters clearly offer clients the opportunity to speak to an independent financial adviser ("IFA") by telephone to talk through any points that remained outstanding.

43. As regards BHIM's adoption and use of the Pension Review and Advice Process, Mr Freer contends that he ensured that the advice to each customer was compliant and suitable. He did listen to calls conducted with customers and adequate compliance checks were conducted by him.

44. Mr Freer adopts the same position as Mr R Ward in relation to the allegation of a breach of the Voluntary Requirement and the other allegations regarding the provision of false and misleading statements and the provision of other information to the Authority, as described at [39] and [40] above.

Structure of this decision

45. We have decided that the Authority has made out its case on substantially all of the key allegations that it has made against the Applicants. We have therefore dismissed the references and have made directions regarding the imposition of sanctions against the Applicants as set out below. We should point out that we have not sought to deal with every allegation made by the Authority in its pleadings. We have taken the view that those allegations that we have specifically dealt with are sufficient to justify the regulatory action it seeks to take. In our view, none of the other allegations that we have not specifically dealt with, even if determined in favour of the relevant Applicant,

would detract from that position. We now set out the facts and matters we have relied on in making our decision and the reasons for our decision.

46. For ease of reference, we have prefaced this decision with a Table of Contents showing how we have organised this decision as well as a non-exhaustive Glossary of Terms and a dramatis personae. It can be seen from that Table of Contents that we start with consideration of matters which are common to all references before dealing with each individual reference.

II. COMMON APPLICABLE LAW AND REGULATORY PROVISIONS

General

47. The Authority's regulatory objectives are set out in s 1B FSMA and include securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.

Provisions relating to Approved Persons

48. Pursuant to s 64A FSMA, the Authority has issued a number of Statements of Principle that are contained within the part of its Handbook entitled Statements of Principle and Code of Practice for Approved Persons ("APER"). APER sets out the fundamental obligations of approved persons and describes conduct, which in the opinion of the Authority, does not comply with the relevant Statement of Principle.

49. In these references, the Authority alleges that the Applicants engaged in conduct that was at times dishonest and at other times reckless, demonstrating a lack of integrity.

50. Accordingly, Statement of Principle 1 is relevant, which provides that an approved person must act with integrity in carrying out his controlled functions.

51. In order to find a breach of Statement of Principle 1 the behaviour that the Authority alleges amounts to failing to act with integrity must be linked to the controlled functions for which the individual concerned has approval. In that regard, in the case of Mr Page, Mr Henderson and Mr Freer that means the CF 1 (Director), CF 10 (Compliance Oversight), CF 11 (Money Laundering Reporting) and CF 30 (Customer) function and in the case of Mr R Ward CF 1 (Director) and CF 3 (Chief Executive) function. Each of CF 1, CF 3, CF 10 and CF 11 functions are "significant influence functions" which means that the holder of the function concerned has, by virtue of Statement of Principle 7 to take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function complies with the relevant requirements and standards of the regulatory system. We therefore need to assess whether the individuals concerned acted without integrity when undertaking those responsibilities.

52. At the relevant time APER 3.1.3G provided that, when establishing compliance with, or a breach of, a Statement of Principle, account will be taken of the context in which a course of conduct was undertaken, including the precise circumstances of the

individual case, the characteristics of a particular controlled function and the behaviour expected in that function.

53. At the relevant time, APER 3.1.4G provided that an approved person will only be in breach of a Statement of Principle where he is personally culpable. Personal culpability arises where an approved person's conduct was deliberate or where the approved person's standard of conduct was below that which would be reasonable in all the circumstances.

54. APER 4.1 lists conduct which in the opinion of the Authority does not comply with Statement of Principle 1. The examples given in the code are not exhaustive. This includes an approved person:

(1) Deliberately misleading (or attempting to mislead) by act or omission: a client, his firm (or its auditors), or the Authority. Such behaviour includes, but is not limited to, deliberately: falsifying documents; misleading a client about the risks of an investment; providing false or inaccurate information to the Authority; and destroying documents relevant to misleading or attempting to mislead the Authority.

(2) Deliberately recommending an investment to a customer where the approved person knows that he is unable to justify its suitability for that customer.

(3) Deliberately failing to inform, without reasonable cause, a customer or the Authority of the fact that their understanding of a material issue is incorrect despite being aware of their misunderstanding.

(4) Deliberately failing to disclose the existence of a conflict of interest in connection with dealings with a client.

(5) Deliberately not paying due regard to the interests of a customer. Deliberate acts, omissions or business practices which could be reasonably expected to cause consumer detriment.

55. In our view, bearing in mind a number of the allegations made against the Applicants that they failed to deal appropriately with the Authority, Statement of Principle 4 is also relevant. That provides that an approved person must deal with the Authority in an open and cooperative way and must disclose appropriately any information of which the Authority would reasonably expect notice. Such a failure, depending on the circumstances, may also amount to acting without integrity in breach of Statement of Principle 1.

Law relating to integrity

56. As Mr Purchas submitted, there is no strict definition of what constitutes acting with integrity. It is a fact specific exercise.

57. The correct legal approach to the question of integrity has been considered in many cases before this Tribunal and its predecessor, the Financial Services and Markets Tribunal. The examples given in APER 4.1 set out above focus on deliberate (or dishonest) behaviour, but it is clear that the concept of integrity is wider than the

concept of dishonesty and does not necessarily involve deliberate behaviour. The Tribunal recently reviewed the leading cases in its decision in *Stuart Malcolm Forsyth v FCA and PRA* [2021] UKUT 0162 (TCC) ("*Forsyth*") at [40] to [44]:

> "40. In *Tinney v FCA* [2018] UKUT 0435 (TCC) the Tribunal, having considered the cases of *Hoodless and Blackwell v FSA* (2003) and *Vukelic v FSA* (2009) at [10] and [11] set out the following guidance at [12] to [14] which we gratefully adopt:
>
> > "12. The Tribunal in *First Financial Advisors Limited v FSA* [2012] UKUT B16 (TCC) agreed with the observation in *Vukelic* and endorsed the guidance in *Hoodless* and *Atlantic Law*. At [119], the Tribunal observed:
> >
> > > "Even though a person might not have been dishonest, if they either lack an ethical compass, or their ethical compass to a material extent points them in the wrong direction, that person will lack integrity."
> >
> > 13. We agree. A lack of integrity does not necessarily equate to dishonesty. While a person who acts dishonestly is obviously also acting without integrity, a person may lack integrity without being dishonest. One example of a lack of integrity not involving dishonesty is recklessness as to the truth of statements made to others who will or may rely on them or wilful disregard of information contradicting the truth of such statements. Such behaviour was found to be evidence of a lack of integrity by the Tribunal in *Vukelic* at [119]:
> >
> > > "It may be that Mr Vukelic was not dishonest on this transaction in the sense of deliberately participating in a scheme to deceive and we are prepared to accept that he was not. But he turned a blind eye to what was obvious and failed to follow up obviously suspicious signs. We do not believe that an educated professional in a senior position could have been oblivious to the signs that the transaction depended on concealment for its success. It is possible, but unlikely, that Mr Vukelic simply failed to spot what should have been obvious to a person in his position. But if that had been so it would have resulted from an inexcusable failure to ask obvious questions."
> >
> > 14. The Tribunal in *Allen v FSA* (2009) adopted the view of the Tribunal in *Vukelic* that to turn a blind eye to the obvious and to fail to follow up obviously suspicious signs is a lack of integrity. We agree with the views expressed in *Vukelic* and *Allen* but note that 'recklessness' is a difficult concept that is not defined in the FSMA or Statements of Principle produced by the FCA. In *R v G* [2003] UKHL 50, [2004] 1 AC 1034, the House of Lords construed 'recklessly' in the Criminal Damage Act 1971 as meaning that a person acts recklessly when he is aware of a risk that a circumstance exists or a result will occur and it is, in the circumstances known to him, unreasonable to take the risk. The House of Lords based its

interpretation on the definition proposed by the Law Commission in clause 18(c) of the Criminal Code Bill annexed to its Report on Criminal Law: A Criminal Code for England and Wales and Draft Criminal Code Bill, Vol 1 (Law Com No 177, 1989). A similar definition of recklessness was included in a draft Bill for reforming the law of offences against the person, which the Government published in 1998 but did not take forward. The definition was quoted by Lady Hale and Lord Toulson, in a joint judgment, in Rhodes v OPO & Anor [2015] UKSC 32 at [84]. They pointed out that recklessness is a word capable of different shades of meaning and presents problems of definition. However, they set out the definition proposed by the Law Commission in a scoping consultation paper on Reform of Offences against the Person (LCCP 217, 2015):

> "A person acts recklessly with respect to a result if he is aware of a risk that it will occur and it is unreasonable to take that risk having regard to the circumstances as he knows or believes them to be."

We adopt that proposed definition as an appropriate standard of recklessness in this case."

41. Mr Khan also drew our attention to the later Court of Appeal case of *Wingate v SRA* [2018] 1 WLR 3696. In that case Rupert Jackson LJ made the following observations at [95], [97], and [100] as to the standard of conduct expected of a professional person acting with integrity:

> "95. Let me now turn to integrity. As a matter of common parlance and as a matter of law, integrity is a broader concept than honesty…
>
> 97. In professional codes of conduct, the term "integrity" is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members. See the judgment of Sir Brian Leveson P in Williams at [130]. The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards.
>
> …
>
> 100. Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse."

> 42. *Wingate* concerned the standard of conduct expected of a solicitor. We accept that Mr Forsyth, as the Chief Executive of a regulated insurance firm, would likewise be expected to adhere to higher standards than those expected from general members of the public because of the trust that the public rightly put in those who lead regulated financial services firms. This is one of the ways of distinguishing "integrity" from "honesty". The latter concept is a basic moral quality which is expected of all members of society. Honesty involves being truthful about important matters and respecting the property rights of others. Telling lies about things that matter or committing fraud or stealing are generally regarded as dishonest conduct: See *Wingate* at [93]. It follows that a person who is dishonest in his conduct is guilty of more serious misconduct than a person who acts without integrity. That is why regulators are usually astute in identifying whether they characterise the conduct of which they complain as demonstrating a lack of honesty as opposed to a lack of integrity.
>
> 43. It is clear that there are both subjective and objective elements to the test of what constitutes a lack of integrity. As is now the case with an allegation of dishonesty since the Supreme Court's judgment in *Ivey v Genting* [2017] 3 WLR 1212, the test is essentially objective but nevertheless involves having regard to the state of mind of the actor as well as the facts which the person concerned knew: see *Wingate* at [115] to [120].
>
> 44. Therefore, as Mr Khan correctly submitted, in this case we may have regard to the actual state of Mr Forsyth's knowledge or belief as to the facts but there is no requirement that the Regulators prove that Mr Forsyth appreciated that what he had done constituted a failure to act with integrity in the objective sense."

58. As is indicated by the passages quoted at [57] above, acting recklessly can amount to acting without integrity. In *Ford and Owen v FCA* [2018] UKUT 0358 (TCC) the Tribunal stated at paragraph 22:

> "Reckless behaviour is capable of being characterised as a lack of integrity, and in determining whether behaviour is reckless regard must be had to what would reasonably have been appreciated or understood by persons in the same position as the individual in question. The standard to be applied is an objective one and does not depend on the particular knowledge the individual may, or may not have, of the risk in question. In the regulatory context with which we are concerned, a reckless failure to consider whether something is a risk may equally be found to amount to lack of integrity, as could be a reckless disregard of a known risk."

59. In our view, the observation of the Tribunal at [42] of *Forsyth* that the Chief Executive regulated insurance firm would be expected to adhere to higher standards than those expected from general members of the public because of the trust that the public rightly put in those who lead regulated financial services firms, would equally apply to the Applicants in this case performing the important CF1 and CF3 functions

and, in our view, the same would apply to Mr T Ward were we to find that he should have been approved to perform the CF1 function.

Law relating to dishonesty

60. The Supreme Court's judgment in *Ivey v Genting Casinos Ltd t/a Crockfords* [2017] UKSC 67 is now the leading authority on the meaning of dishonesty. As Mr Purchas submitted, the two core limbs are:

> (1) The actual state of mind of individual, namely their knowledge or belief as to the facts (the subjective element).

61. (2) Whether that is dishonest by ordinary standards (the objective limb).

62. Lord Hughes formulated the test at [74] as follows:

> "When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

63. Thus, as Mr Purchas submitted, the test for dishonesty is ultimately objective. Nevertheless, the relevant Applicant's state of mind as well as their conduct are relevant to determining whether they have acted dishonestly.

64. Therefore, in relation to the individual allegations of dishonesty in this case, we need to establish what the relevant facts were in relation to the allegations concerned and the knowledge and belief of the relevant individual as to those facts. That is the subjective limb of the test. We then need to apply the objective test of dishonesty to that situation, that is whether the conduct of the Applicant was dishonest by ordinary standards.

Suitability

65. The section of the Authority's Handbook entitled COBS sets out detailed rules relating to the conduct of business by the firms which the Authority regulates. We refer below to the conduct of business rules which are relevant to the Firms in respect of these references as they were in force at the relevant time.

66. COBS 2.1.1 provides that a firm must act honestly, fairly and professionally in accordance with the best interests of its client in relation to designated investment business carried on for a retail client.

67. COBS 4.2.1R provides that firms must ensure that a communication or a financial promotion is fair, clear and not misleading.

68. COBS 4.5.2R (3) provides that a firm must ensure that information is sufficient for and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received.

69. COBS 4.5.2R (4) states that the firm must ensure that information does not disguise, diminish or obscure important items, statements and warnings.

70. COBS 9.2 places obligations on firms to assess the suitability of the recommendations that it makes. In particular:

(1) COBS 9.2.1R provides:

> "(1) A firm must take reasonable steps to ensure that a personal recommendation, or a decision to trade, is suitable for its client.
>
> (2) When making the personal recommendation or managing his investments, the firm must obtain the necessary information regarding the client's
>
> > (a) knowledge and experience in the investment field relevant to the specific type of designated investment or service;
> >
> > (b) financial situation; and
> >
> > (c) investment objectives
>
> so as to enable the firm to make the recommendation, or take the decision, which is suitable for him."

(2) COBS 9.2.2R provides:

> "(1) A firm must obtain from the client such information as is necessary for the firm to understand the essential facts about him and have a reasonable basis for believing, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended, or entered into in the course of managing:
>
> > (a) meets his investment objectives;
> >
> > (b) is such that he is able financially to bear any related investment risks consistent with his investment objectives; and
> >
> > (c) is such that he has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of the portfolio.
>
> (2) The information regarding the investment objectives of the client must include, where relevant, information on the length of time for which he wishes to hold the investment, his preference regarding risk taking, his risk profile, and the purposes of the investment.
>
> (3) The information regarding the financial situation of the client must include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments."

71. COBS 9.4.1R (1) and (2) provides that a suitability report must be provided to a retail client if the firm makes a personal recommendation to the client where the client buys, sells, surrenders, converts or cancels rights under, or suspends contributions to, a personal pension scheme or a stakeholder pension scheme.

72. COBS 9.4.4R provides that where a suitability report relates to a personal or stakeholder pension, it must be provided to the client no later than fourteen days after the contract is concluded (where certain rules on cancellation in COBS 15 apply).

73. COBS 9.4.7R states that the suitability report must at least (1) specify the client's demands and needs, (2) explain why the firm has concluded that the recommended transaction is suitable for the client having regard to the information provided by the client and (3) explain any possible disadvantages of the transaction for the client.

Oversight and Outsourcing

74. Principle 3 of the Authority'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. As mentioned above, those of the Applicants exercising significant influence functions had responsibility to take reasonable steps to ensure that the Firms met this regulatory standard.

75. HJL was an "introducer appointed representative" ("IAR") of both FPL and HCA. For a description of the status of an "appointed representative" of a firm under FSMA see *Charles Palmer v FCA* [2017] UKUT 0358 (TCC) at [21] to [25]. A "introducer appointed representative" is an appointed representative appointed by a firm whose scope of appointment is limited to effecting introductions to the relevant firm and distributing non-real time financial promotions.

76. In addition to the statutory requirements of s 39 FSMA, the Authority has through its regulatory requirements imposed responsibility on a firm which is a principal of an appointed representative for the acts and omissions of the appointed representative. As is clear from paragraph 12.1.3 of the Authority's Supervision Manual (SUP), the main purpose of the Authority's rules and guidance in this area is to place responsibility on the principal firm for seeking to ensure that its appointed representatives are fit and proper to deal with customers in its name and to ensure that customers dealing with its appointed representatives are afforded the same level of protection as if they had dealt with the principal firm itself.

77. SUP 12.4.6R requires a firm, before appointment and on a continuing basis, to take reasonable care to ensure that any person appointed as an IAR is suitable to act for the firm in that capacity and that the firm is ready and organised to comply with other applicable requirements contained or referred to in SUP 12. In making this assessment, SUP 12.4.7G requires consideration of whether the person and those responsible for its activities are of sufficiently good repute and otherwise fit and proper. If at any time a firm has reasonable grounds to believe that the requirements of SUP 12.4.6R are not satisfied, SUP 12.6.1R requires a firm to rectify the matter or terminate the appointment of the person.

78. SUP 12.5.7R requires that there is a written contract with each IAR and that the contract limits the scope of the IAR's appointment to effecting introductions and distributing non-real time financial promotions.

79. SUP 12.6.6R provides that a firm must take reasonable steps to ensure that its AR does not carry on activities in breach of the general prohibition.

80. SUP 12.6.11A R provides that a firm must take reasonable steps to establish and maintain systems and controls for ensuring compliance with the contract terms required by SUP 12.5.

81. The section of the Authority's Handbook known as SYSC contains provisions regarding the outsourcing of functions by an authorised firm. The provisions of SYSC applied as rules and were therefore mandatory in the case of "common platform" firms but applied as guidance in relation to other firms. FPL was a common platform firm but HCA and BHIM were not.

82. "Outsourcing" is defined in the Handbook Glossary as an arrangement of any form between a firm and a service provider by which that service provider performs a process, a service or an activity which would otherwise be undertaken by the firm itself.

83. SYSC 8.1.1R provides:

> "A common platform firm must:
>
> (1) when relying on a third party for the performance of operational functions which are critical for the performance of regulated activities, listed activities or ancillary services (in this chapter "relevant services and activities") on a continuous and satisfactory basis, ensure that it takes reasonable steps to avoid undue additional operational risk;
>
> (2) not undertake the outsourcing of important operational functions in such a way as to impair materially:
>
> > (a) the quality of its internal control; and
> >
> > (b) the ability of the appropriate regulator to monitor the firm's compliance with all obligations under the regulatory system and, if different, of a competent authority to monitor the firm's compliance with all obligations under MiFID."

84. SYSC 8.1.3G provides:

> "SYSC 4.1.1R requires a firm to have effective processes to identify, manage, monitor and report risks and internal control mechanisms. Except in relation to those functions described in SYSC 8.1.5R, where a firm relies on a third party for the performance of operational functions which are not critical or important for the performance of relevant services and activities (see SYSC 8.1.1 R (1)) on a continuous and satisfactory basis, it should take into account, in a manner that is proportionate given the nature, scale and complexity of the outsourcing, the rules in this section in complying with that requirement".

85. SYSC 8.1.4R provides:

> "For the purposes of this chapter an operational function is regarded as critical or important if a defect or failure in its performance would materially impair the continuing compliance of a common platform firm with the conditions and obligations of its authorisation or its other obligations under the regulatory system, or its financial performance, or the soundness or the continuity of its relevant services and activities".

86. SYSC 8.1.7R provides:

> "A common platform firm must exercise due skill and care and diligence when entering into, managing or terminating any arrangement for the outsourcing to a service provider of critical or important operational functions or of any relevant services and activities".

87. SYSC 8.1.8R sets out a number of steps that common platform firms must take in order to meet their obligations under SYSC 8.1.7A which include the following:

(1) the service provider must 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));

(2) the service provider must carry out the outsourced services effectively and to this end the firm must establish methods for assessing the standard of performance of the service provider (SYSC 8.1.8R (2)); the service provider must properly supervise the carrying out of the outsourced functions and adequately manage the risks associated with the outsourcing (SYSC 8.1.8R(3));

(3) appropriate action must be taken if it appears that the service provider may not be carrying out the functions effectively and in compliance with applicable laws and regulatory requirements (SYSC 8.1.8R (4));

(4) the firm must supervise the outsourced functions and supervise risks associated with outsourcing (SYSC 8.1.8R (5));

(5) the firm must be able to terminate the arrangement for the outsourcing where necessary without detriment to the continuity and quality of its provision of services to clients (SYSC 8.1.8R (7)); and

(6) the firm must have effective access to data related to the outsourced activities as well as to the business premises of the service provider (SYSC 8.1.8R (9)).

88. Mr T Ward, Mr R Ward and Mr Henderson pleaded that these provisions were not applicable to any functions outsourced to either HJL or CAL and consequently that there were no obligations on the Firms to monitor the performance of the outsourced functions because HJL and CAL were not performing regulated activities when undertaking the outsourced functions.

89. Those contentions were not pursued by Mr Lloyd at the hearing. We agree with Mr Purchas's submissions that the definition of "outsourcing" is very broad and applies

to any activity which is critical or important which would be provided by the firm itself. In this case, the services provided by HJL and CAL in relation to the generation of leads and the operation of the Pension Review and Advice Process are activities that the Firms would have undertaken were they not done by an outsourced provider. There is nothing in the definition of "outsourcing" which restricts its application to regulated activities and SUP 12 and Principle 3 are relevant to the Firms' oversight of the outsourced services carried out by HJL or CAL, as the case may be, regardless of whether HJL or CAL conducted regulated activities.

90. Furthermore, it was not disputed that the activities outsourced to HJL or CAL were critical or important. There can be no question that in relation to the activities concerned, failure in their performance would materially impair the continuing compliance of the Firms with their obligations under the regulatory system, particularly as regards compliance with the suitability rules outlined above.

Conflict of interest

91. In relation to the Authority's contention that the Applicants should have managed the conflicts of interest arising from HJL and its directors' financial interest and involvement in the Products and the development and operation of the Pension Review and Advice Process, as well as the suitability rules referred to above, the regulatory provisions referred to below are relevant.

92. As to what constitutes a conflict of interest, we were referred to the Court of Appeal's judgment in *Toth v Jarman* [2006] 4 All E.R. 1276 at paragraph 119:

> "The conflict of interest could be of any kind, including a financial interest, a personal connection, or an obligation, for example, as a member or officer of some other body. But ultimately, the question of what conflicts of interest fall within this description is a question for the court, taking into account all the circumstances of the case."

93. In this case, the question arises as to whether, as the Authority contends, there is a conflict of interest between the interests of the Firms' customers receiving suitable advice as regards the switching of their pensions and the interests of HJL, who introduced those customers to the Firms through the lead generation process. That process resulted in HJL introducing customers who then invested in the Products. HJL had a material financial interest in the Products, both through its role as an adviser in relation to the Products and the fact that it received a commission of 5% of the funds invested into the Products. We return to that question later as part of our consideration of the issues which are common to all of the references.

94. The section of the Authority's Handbook known as SYSC contains the provisions regarding conflicts of interest which are relevant in this case. As described [81] above, those provisions applied to FPL, a common platform firm, as rules and applied as guidance in relation to the other Firms. For reasons that we explain later, those provisions are relevant to FPL and HCA because of the status of HJL as an appointed representative of each of those Firms, but not relevant to BHIM, for whom HJL did not act as an appointed representative. In the case of the allegations against Mr R Ward and

Mr Freer in relation to the way that they dealt with conflicts of interest, the Authority relies on the features of the Pension Review and Advice Process which, the Authority says, raised issues as to compliance with the suitability rules because of the involvement of HJL both in generating leads and receiving financial benefit from its promotion of the Products.

95. SYSC 10.1.3R provided at the relevant time:

> "A firm must take all reasonable steps to identify conflicts of interest between:
>
> (1) the firm, including its managers, employees and appointed representatives (or where applicable, tied agents), or any person directly or indirectly linked to them by control, and a client of the firm; or
>
> (2) one client of the firm and another client;
>
> that arise or may arise in the course of the firm providing any service referred to in SYSC 10.1.1R."

96. SYSC 10.1.7R, at the relevant time made provision for the management of conflicts in the following terms:

> "A firm must maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps to prevent conflicts of interest as defined in SYSC 10.1.3R from constituting or giving rise to a material risk of damage to the interest of its clients."

97. SYSC 10.1.8R, so far as relevant, made provision for disclosure of conflicts of interest at the relevant time in the following terms:

> "(1) If arrangements made by a firm under SYSC 10.1.7 R to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of a client will be prevented, the firm must clearly disclose the general nature and/or sources of conflicts of interest to the client before undertaking business for the client.
>
> (2) The disclosure must:
>
> (a) be made in a durable medium; and
>
> (b) include sufficient detail, taking into account the nature of the client, to enable that client to take an informed decision with respect to the service in the context of which the conflict of interest arises.
>
> (3) …"

Financial penalty

98. Under section 66(3) FSMA the Authority may impose a financial penalty on any approved person if it is satisfied that he has failed to comply with a Statement of Principle.

99. The Authority's policy on imposing a financial penalty is set out in that part of the Authority's Handbook known as DEPP.

100. DEPP 6.1.2 states that the principal purpose of imposing a financial penalty is to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business.

101. DEPP 6.2.4 states that disciplinary action against senior managers of firms and other individuals is one of the Authority's key tools in deterring firms and individuals from committing breaches.

102. As set out in DEPP 6.5.2, the Authority applies a five-step framework to determine the appropriate level of financial penalty. In cases such as this the five-step framework operates as follows:

Step 1: *Disgorgement*

The Authority seeks to deprive an individual of the financial benefit derived directly from the breach where it is practical to quantify this.

Step 2: *The seriousness of the breach*

The Authority will determine a figure that reflects the seriousness of the breach which is based on the percentage of the individual's relevant revenue from the employment connected to the breach, being the relevant income earned by the individual in the twelve months preceding the end of the breach. The percentage to be applied depends on the seriousness of the breach which will be assessed on a scale of 1 (least serious) to 5 (most serious) depending on the impact and nature of the breach and whether it was committed deliberately or recklessly.

Step 3: *Mitigating and aggravating factors*

The Authority may increase or decrease the amount of financial penalty arrived at after step 2, to take into account factors which aggravate or mitigate the breach. Any such adjustment will be made by any of a percentage adjustment to the figure defined at step 2.

Step 4: *Adjustment for deterrence*

If the Authority considers that the figure arrived at after step 3 is insufficient to deter the individual who committed the breach, or others, from committing further or similar breaches then the Authority may increase the penalty through the application of a multiplier to the figure arrived at after step 3.

Step 5: *Settlement Discount*

This step is not relevant in this case as the matter has not been settled by agreement with the Authority.

103. As this Tribunal indicated in *Tariq Carrimjee v FCA* [2015] UKUT 0079 (TCC) the Tribunal is not bound by the Authority's policy when making an assessment of a financial penalty on a reference, but it pays the policy due regard when carrying out its overriding objective of doing justice between the parties. In so doing the Tribunal looks at all the circumstances of the case.

104. This approach was followed by the High Court in *FCA v Da Vinci Invest Limited* and others [2015] EWHC 2401 where Snowden J said in the context of the imposition of a penalty for market abuse at [201]:

> "It was the FCA's submission, and I accept, that in determining any penalty under section 129, the starting point for the court should be to consider the relevant DEPP penalty framework that was in existence at the time of commission of the market abuse in question. To do otherwise would risk introducing an inequality of treatment of defendants depending upon whether the proceedings were taken against them under the regulatory route or the court route and depending upon how long the proceedings had taken to come to a conclusion. By the same token, however, in common with the Upper Tribunal, the court is not bound by that framework, or by the FCA's view of how it should be applied. But if the court intends to depart from the framework in a particular case, it should explain why it considers it appropriate to do so. It occurred to me that in this regard there is some analogy with the approach of the criminal courts to the application of the sentencing guidelines produced by the Sentencing Council."

Prohibition

105. Section 56 FSMA confers upon the FCA the power to make a prohibition order against an individual prohibiting that individual from performing a specified function, any function falling within a specified description, or any function, if it appears to the FCA that the individual is not a fit and proper person to perform functions in relation to a regulated activity by an authorised person.

106. The Authority's Enforcement Guide ("EG") sets out guidance on the Authority's approach to prohibition orders.

107. EG 9.3.2 makes it clear that the Authority will consider all the relevant circumstances of the case which may include, but are not limited to, certain identified factors. Those factors include:

(1) The criteria for assessing fitness and propriety, that is honesty, integrity and reputation; competence and capability; and financial soundness.

(2) To what extent the person has failed to comply with rules applicable to him, has been knowingly concerned in contravention by the relevant firm requirement imposed on the firm under FSMA.

(3) The nature of the particular controlled function which the person was performing, the nature and activities of the firm concerned, and the markets in which the person operates.

(4) The severity of the risk which the person poses to consumers and confidence in the financial system.

(5) The person's previous disciplinary record and general compliance history.

Fitness and propriety

108. The section of the Authority's Handbook entitled FIT sets out the fit and proper test for approved persons. FIT 1.3 provides that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person. The most important considerations will be the person's honesty, integrity and reputation, competence and capability, and financial soundness.

109. Clearly, in relation to these references because of the way in which the Authority presents its case, the relevant consideration is the Applicants' honesty and integrity.

III. ISSUES TO BE DETERMINED AND THE ROLE OF THE TRIBUNAL

Role of the Tribunal

110. Section 133(4) FSMA provides that, on a reference, the Tribunal may consider any evidence relating to the subject matter of the reference whether or not it was available to the decision-maker at the material time. This is not an appeal against the Authority's decision on each of the references but a complete rehearing of the issues which gave rise to the decision. Section 133(5) to (7) FSMA, following amendments made by the Financial Services Act 2012, now provides as follows:

> "(5) In the case of a disciplinary reference or a reference under section 393(11), the Tribunal must determine what (if any) is the appropriate action for the decision-maker to take in relation to the matter, and on determining the reference, must remit the matter to the decision-maker with such directions (if any) as the Tribunal considers appropriate for giving effect to its determination. (6) In any other case, the Tribunal must determine the reference or appeal by either-
>
> (a) dismissing it; or
>
> (b) remitting the matter to the decision-maker with a direction to reconsider and reach a decision in accordance with findings of the Tribunal.
>
> (6A) The findings mentioned in subsection (6)(b) are limited to findings as to-
>
> (a) issues of fact or law;
>
> (b) the matters to be, or not to be, taken into account in making the decision; and

> (c) the procedural or other steps to be taken in connection with the making of the decision.
>
> (7) The decision-maker must act in accordance with the determination of, and any direction given by, the Tribunal."

111. The "decision-maker" in relation to these references is the Authority.

112. It can be seen that there is a distinction between the powers of the Tribunal on what is described as a "disciplinary reference" and other references. Pursuant to s 133(7A) FSMA "disciplinary reference" includes a decision to take action under s 66 FSMA, that is to impose a financial penalty on a person. The term does not include a reference to impose a prohibition order under s 56. Thus, these references are effectively sub-divided.

113. The Applicants' references of the decisions to impose a financial penalty are "disciplinary references" and accordingly, as was the case in relation to all references made before 1 April 2013, the Tribunal has power to determine at its discretion what (if any) is the appropriate action for the Authority to take. In relation to the Applicants' references of the Authority's decisions to impose a prohibition order, which we shall refer to as the "non-disciplinary references", the powers of the Tribunal as set out in s 133(6) are more limited. The jurisdiction may now be characterised as a supervisory rather than a full jurisdiction. That means that, unless the Tribunal believes the reference to have no merit and therefore dismisses them, its powers are limited to remitting the matter to the Authority with a direction to reconsider their decisions in accordance with the findings of the Tribunal.

114. The Tribunal explained the extent of its powers on a non-disciplinary reference in *Carrimjee v FCA* [2016] UKUT 0447 (TCC) at [39] and [40] as follows:

> "39. If, having reviewed all the evidence and the factors taken into account by the Authority in making its decision, and having made findings of fact in relation to that evidence and such other findings of law that are relevant, the Tribunal concludes that the decision to prohibit is one that is reasonably open to the Authority then the correct course is to dismiss the reference.
>
> 40. Alternatively, if the Tribunal is not satisfied that in the light of its findings that the decision is one that in all the circumstances is within the range of reasonable decisions open to the Authority, the correct course is to remit the matter with a direction to reconsider the decision in the light of those findings. For example, that course would also be necessary were the Tribunal to make findings of fact that were clearly at variance with the findings made by the Authority, and which formed the basis of its decision. That course would also be necessary had there been a change of circumstance regarding the applicant which indicated that the original findings made on which the decision was based, for example as to his competence to undertake particular activities, had been overtaken by further developments, such as new evidence which clearly demonstrated the applicant's proficiency in relation to the relevant matters. Such a course would not usurp the

Authority's role in making the overall assessment as to fitness and propriety but would ensure that it reconsidered its decision on a fully informed basis. In our view such a course is consistent with the policy referred to at [31] and [32] above as it leaves it to the Authority to make a judgment as to whether a prohibition order is appropriate."

115. Even in the case where the Tribunal has not accepted all of the factors that led the Authority to conclude that a prohibition order was appropriate and it might therefore be said that the Authority has taken into account irrelevant considerations in deciding whether to impose a prohibition order, it would not be appropriate to remit the decision to the Authority for further consideration where the seriousness of the matters which the Tribunal has found would lead inevitably to the Authority reaching the same decision were that course to be followed : see *Charles Palmer v FCA* [2017] UKUT 0358 (TCC) at [270].

Issues to be determined

116. In summary, in order to determine these references, we need to deal with the following issues:

(1) Whether the Authority has, in relation to each Applicant, other than Mr T Ward, made out its case that the Applicant concerned has breached Statement of Principle 1 by failing to act with integrity in carrying out his controlled functions during the Relevant Period. We shall determine that issue by dealing with each of the key allegations made by the Authority against each of the Applicants concerned, as summarised at [11] in relation to Mr Page, [15] in relation to Mr Henderson, [17] in relation to Mr R Ward and [19] in relation to Mr Freer.

(2) Whether the Authority has, in relation to Mr T Ward made out its case that he performed the CF 1 controlled function without approval and his conduct would have amounted to a breach of Statement of Principle 1 had he been so approved. We shall determine that issue by dealing with each of the key allegations made by the Authority against Mr T Ward as summarised at [13] above.

(3) If we determine issues (1) and (2) above in favour of the Authority, we shall then determine whether a financial penalty is appropriate in respect of all or any of the Applicants and, if so, the appropriate amount of the penalty. In relation to Mr Henderson, before determining that issue, we will also have to determine whether the limitation period for the imposition of a financial penalty had expired in respect of all or some of the allegations made against him.

(4) We shall then determine the question as to whether a prohibition order is appropriate in relation to each reference.

117. Before determining those issues in relation to each individual Applicant, we shall make findings as regards the Products, the Pension Review and Advice Process and conflicts of interest which are common to each of the references, and which will feed into the determinations that we make in respect of each individual Applicant.

Standard and burden of proof

118. As is well established in references of this kind, the burden of proving that Applicant failed to act with integrity to the required standard rests with the Authority judged to the ordinary civil standard: see *Tariq Carrimjee v Financial Conduct Authority* [2015] UKUT 79 (TCC), 20 at [47]. In *Ford and Owen v FCA* [2018] UKUT 0358 (TCC) at [42], the Tribunal observed:

> "It is nonetheless the case that regard must be had to the quality of the evidence. As the Court said in *In re S-B*, if an event is inherently improbable, it may take better quality evidence to persuade a court or tribunal that it has happened than would be required if the event were commonplace. There is, however, as Lord Hoffman in *In re B* had pointed out, at [15], no necessary connection between seriousness and inherent probability."

119. We are asked to make findings of fact as to events which took place some years ago, many of which are undocumented. As Mr Lloyd correctly submitted, in small firms such as those we are concerned with in these references, much discussion takes place in person, often informally. The evidence that we have seen largely takes the form of email correspondence and we have not been provided with phone records or text messages sent or received by the Applicants. We cannot know what actually happened in relation to all the events concerned. The burden is on the Authority to satisfy us as to what was more likely than not to have happened on the basis of the evidence before us.

IV. EVIDENCE

Approach to witness evidence and contemporary documents

120. Not unusually, in this case much of the oral evidence was directed to memories of matters that occurred some years ago. Often, the witnesses would say that they could not remember particular events or when they occurred, although we did not always accept that that was the case, as some of our findings below demonstrate.

121. It is also important to note that although the events in question did occur some years ago, most of the Applicants were interviewed by the Authority relatively soon after the events in question. The first interview with Mr Page took place in December 2015, the first interview with Mr T Ward took place in April 2016 and the first interviews with Mr R Ward and Mr Freer took place in February 2016. Mr Henderson was interviewed somewhat later in February 2017. Before the interviews the Applicants were sent bundles of documents which they were given the opportunity to review before the interviews and accordingly could refresh their memories about the events in question.

122. Further interviews took place towards the end of 2016 when the Applicants would again have the opportunity of refreshing their memories by reference to the documents.

123. Furthermore, the RDC process, which took place over the summer of 2018, and the preparations for that process gave the Applicants further opportunities to review what happened in order to prepare their representations to the RDC.

124. As far as the Tribunal proceedings are concerned, the trial bundle was provided many months before the hearing commenced as a result of the postponement of the hearing from February to November 2021 so that there was ample opportunity again for the Applicants to revisit the documentation so as to refresh their memories.

125. Nevertheless, in this situation it is important for the Tribunal to have regard to the contemporaneous documents and the overall probabilities. As has often been said, the contemporaneous documents are usually more reliable than the content of witness statements, prepared with the assistance of a legal team after the event and for the purpose of proving a case or meeting a case against them.

126. In *Simetra Global Assets Ltd & Anor v Ikon Finance Ltd & Ors* [2019] EWCA Civ 1413, Males LJ stated the following at [48] to [49}:

> "48. In this regard I would say something about the importance of contemporary documents as a means of getting at the truth, not only of what was going on, but also as to the motivation and state of mind of those concerned. That applies to documents passing between the parties, but with even greater force to a party's internal documents including emails and instant messaging. Those tend to be the documents where a witness's guard is down and their true thoughts are plain to see. Indeed, it has become a commonplace of judgments in commercial cases where there is often extensive disclosure to emphasise the importance of the contemporary documents. Although this cannot be regarded as a rule of law, those documents are generally regarded as far more reliable than the oral evidence of witnesses, still less their demeanour while giving evidence. The classic statement of Robert Goff LJ in *The Ocean Frost* [1985] 1 Lloyd's Rep 1 at p.57 is frequently, indeed routinely, cited:
>
>> "Speaking from my own experience, I have found it essential in cases of fraud, when considering the credibility of witnesses, always to test their veracity by reference to the objective facts proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities. It is frequently very difficult to tell whether a witness is telling the truth or not; and where there is a conflict of evidence such as there was in the present case, reference to the objective facts and documents, to the witnesses' motives, and to the overall probabilities, can be of very great assistance to a judge in ascertaining the truth. I have been driven to the conclusion that the Judge did not pay sufficient regard to these matters in making his findings of fact in the present case."

> 49. It is therefore particularly important that, in a case where there are contemporary documents which appear on their face to provide cogent evidence contrary to the conclusion which the judge proposes to reach, he should explain why they are not to be taken at face value or are outweighed by other compelling considerations."

127. Whilst *The Ocean Frost* and *Simetra* were cases concerning fraud, in our view the principles are equally applicable to proceedings in this Tribunal, particularly where, as in the current case, questions of dishonesty and integrity are in issue.

128. In *Grace Shipping v Sharp & Co* [1987] 1 Lloyd's Rep 207 (Privy Council) Lord Goff said at p. 215:

> "It is not to be forgotten that, in the present case, the Judge was faced with the task of assessing the evidence of witnesses about telephone conversations which had taken place over five years before. In such a case, memories may very well be unreliable; and it is of crucial importance for the Judge to have regard to the contemporary documents and to the overall probabilities."

129. In *Gestmin SGPS S.A. v Credit Suisse (UK) Limited, Credit Suisse Securities (Europe) Limited* [2013] EWHC 3560 (Comm) Leggatt J (as he then was) said this at [22]:

> "…the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose – though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events."

130. However, that is not to say that all the evidence including the oral evidence should not be taken into account. The Court of Appeal in *Kogan v Martin* [2020] EMLR 4 said this at [88] :

> "88. …First, as has very recently been noted by HHJ Gore QC in *CBX v North West Anglia NHS Trust* [2019] 7 WLUK 57, Gestmin is not to be taken as laying down any general principle for the assessment of evidence. It is one of a line of distinguished judicial observations that emphasise the fallibility of human memory and the need to assess witness evidence in its proper place alongside contemporaneous documentary evidence and evidence upon which undoubted or probable reliance can be placed. Earlier statements of this kind are discussed by Lord

> Bingham in his well-known essay The Judge as Juror: The Judicial Determination of Factual Issues (from The Business of Judging, Oxford 2000). But a proper awareness of the fallibility of memory does not relieve judges of the task of making findings of fact based upon all of the evidence. Heuristics or mental short cuts are no substitute for this essential judicial function. In particular, where a party's sworn evidence is disbelieved, the court must say why that is; it cannot simply ignore the evidence."

131. In relation to interview evidence generally, the Tribunal appreciates that subjects of interviews by the Authority will find them a daunting experience. They will probably never have found themselves in a similar situation before and they may find the atmosphere intimidating, outnumbered as they will be by the Authority's representatives, even if the subject is accompanied by a legal representative, which is their right. It is understandable that in that situation answers may be given which, on reflection, are not as accurate as they might have been. The Tribunal takes those factors into account when assessing the weight to be given to interview evidence. As we have indicated above, the various stages of this process, that is the successive interviews, the RDC process, the preparation of witness statements for the Tribunal and the preparation for the proceedings themselves all give ample opportunity for those who are subject to the process to look at what they have said in the past, examine the relevant documents and refine their previous answers where necessary.

132. We have examined the transcripts of the various interviews that took place and have found nothing of concern as to the manner in which the interviews were conducted. Mr Page, in particular, felt that he was ambushed by the Authority selectively drawing out documents from the interview bundle and providing him with new documents on the day of the interview. In that regard, we note that at the outset of his first interview Mr Page was asked whether he had had an opportunity to familiarise himself with the documents in the bundle provided to him in advance to which he answered, "not fully". He was asked whether he needed any more time to familiarise himself with the bundle but said that he was happy to continue. Furthermore, he was reminded of his right to have a legal representative at the interview, but it was only at his third interview that he availed himself of that opportunity which, he acknowledged in his opening submissions, made him feel much more confident. Mr Page was provided with a small number of documents which were not in the bundle towards the end of the interview, but those were copies of his own communications with the Authority and we are not satisfied that he was seriously prejudiced by that, and, as the Authority acknowledged, unless there were legitimate reasons not to do so, documents would normally be provided in advance.

133. In those circumstances, from what we have seen, we are not satisfied that Mr Page's criticisms as to the interview process as conducted in this case are well-founded.

Witnesses

The Authority's factual evidence

134. We had witness statements from a number of employees or former employees of the Authority as follows:

(1) *Helen Tibbetts* – Ms Tibbetts is a Manager in the Authority's Enforcement and Market Oversight Division ("Enforcement") and in that capacity has managed a team responsible for the Authority's investigation into the Applicants. Ms Tibbetts' evidence dealt with the file review that she and a colleague undertook in respect of 20 customer files for each Firm and recorded her conclusion that all the files reviewed failed to meet the requirements of the Authority's rules on suitability. Her evidence also dealt with the steps taken by the Authority to identify whether customers were provided with the Information Memoranda and concluded that there was no evidence to suggest that the relevant Information Memoranda had been provided to any of the customers whose files were reviewed. Ms Tibbetts was cross examined by Mr Lloyd and Mr Page but most of her evidence was unchallenged. We found Ms Tibbetts to be a reliable witness doing her best to assist the Tribunal and we have accepted her evidence.

(2) *Lorraine High* – Ms High is a Manager in the Pension Scams team that sits in the Authority's Supervision Department. During the Relevant Period, she worked in the Authority's Unauthorised Business Department which involved considering unauthorised introducers' involvement in pension transfers and/or switches and whether their activities amounted to regulated activity. Ms High's evidence related to her involvement in assessing information from consumers reporting offers of free pension reviews and assessing whether the activity of an unauthorised introducer appeared to breach FSMA. Ms High was cross examined briefly by Mr Page, who challenged Ms High's evidence that there had been a call from Mr Raphael of the Authority and Ms High on the afternoon of 1 September 2014 to Mr Page during which FPL's relationship with the unauthorised introducer and FPL's business more generally was discussed. We found Ms High to be a reliable witness doing her best to assist the Tribunal and for reasons which we set out later we have accepted her evidence.

(3) *Christopher Hewitt* – Mr Hewitt is a Technical Specialist employed by the Authority whose responsibilities have included working on various thematic reviews focusing on pension and investment advice and overseeing the Authority's approach to assessing the suitability of pension and investment advice. Mr Hewitt gave evidence as to the Authority's expectations as regards compliance with the core suitability rules outlined in COBS 9 and made reference to various items of guidance issued by the Authority on this issue. Mr Hewitt also set out in firm-specific schedules details of fact finds and suitability reports he had reviewed, that is one file for each of HCA and BHIM and two files for FPL. Mr Hewitt was cross- examined by both Mr Lloyd and Mr Page, primarily on the question as to whether any conclusions as to the suitability of the recommendations made by the Firms could be drawn from the limited file reviews that Mr Hewitt undertook. We found Mr Hewitt to be a reliable witness doing his

best to assist the Tribunal, but we found his evidence to be of limited assistance, having undertaken our own reviews of some of the files of the Firms that were in evidence. However, Mr Hewitt's assessment of the files he reviewed is consistent with our conclusions on the files as a whole.

(4) Joseph Smith - Mr Smith is a Manager in the General Insurance Sector Supervision Department of the Authority. He adopted an earlier witness statement of Mr Peter Gardner, who has now left the Authority. Mr Gardner's evidence explained the nature of captive insurance and the key features and risks of the insurance cover which was arranged in relation to the Loan Notes. Mr Smith was clearly a knowledgeable witness. He was cross examined briefly by Mr Lloyd, but his evidence was not challenged on any significant points, and we have accepted it.

(5) Bradley Raphael – Mr Raphael is a Manager in the Authority's Investment, Wholesale and Specialist Division of the Authority's Supervision Department. During the Relevant Period his responsibilities included involvement in the Authority's pension mis-selling project, which was established to identify firms which might be advising consumers to switch from their existing pension arrangements into SIPPs to enable them to invest in high risk and often non-standard investments. It was in that context that Mr Raphael had dealings with Mr Page and Mr Henderson. Those dealings came about following suggestions from Ms High to Mr Raphael that FPL and HCL should be contacted in the light of their involvement with an unauthorised introducer. Mr Raphael's evidence dealt with his subsequent contact with Mr Page and Mr Henderson and, in particular, his request to Mr Page that he provide a copy of FPL's New Business Register, Mr Page's response to that request and also the call alleged to have taken place on 1 September 2014 between Ms High, Mr Raphael and Mr Page, as mentioned above. Mr Raphael was cross examined by both Mr Lloyd and Mr Page. We found Mr Raphael to be a reliable witness doing his best to assist the Tribunal and for reasons which we set out later we have accepted his evidence.

(6) Lucinda Hartley – Ms Hartley is a Manager in the Authority's Overseas Wholesale Banks Department. During the Relevant Period, Ms Hartley was co-managing the Authority's work on pension mis-selling. It was in that context that Ms Hartley coordinated a short notice visit by the Authority to FPL in June 2015 following which discussions took place between FPL and the Authority which led to FPL entering into a Voluntary Requirement on 10 July 2015, by which FPL agreed among other things not to carry on any activities in relation to pension switches or transfers to any SIPP. Ms Hartley's evidence covers that visit and the subsequent discussions between the Authority and FPL in which she was involved, including discussions which led to a variation of the Voluntary Requirement. Ms Hartley's evidence also covered a short notice visit by the Authority to BHIM which she coordinated, and which took place in July 2015 and the subsequent discussions between BHIM and the Authority in which she was involved which led to BHIM entering into a Voluntary Requirement. Under the terms of that Voluntary Requirement BHIM agreed, among other things, not to carry on activities in relation to pension switches or transfers to SIPPs. Ms Hartley was cross examined by Mr Lloyd and Mr Page. We found Ms Hartley to

be a reliable witness doing her best to assist the Tribunal and for reasons which we set out later we have accepted her evidence.

(7) Christopher Walmsley – Mr Walmsley is a Technical Specialist in the Authority's Supervision team that supervises wealth management firms. During the Relevant Period, Mr Walmsley was part of a team within the Authority's Supervision Department which, among other things, dealt with concerns that financial adviser firms had given customers unsuitable pension and investment advice. In that context, Mr Walmsley led the Authority's team that conducted the short notice visit to FPL on 3 June 2015. Mr Walmsley's evidence dealt primarily with Mr Page's contention that at the visit Mr Walmsley made favourable comments regarding FPL's operating and compliance manuals, which Mr Walmsley did not accept. Mr Walmsley was cross examined by both Mr Lloyd and Mr Page. We found Mr Walmsley to be an honest and reliable witness regarding the relevant events at the short notice visit, and for reasons which we set out later we have accepted his evidence.

(8) Mussammil Ali – Mr Ali is an associate in the Retail and Authorisations Division of the Authority's Supervision Department. During the Relevant Period Mr Ali was part of the Event Supervision Team whose role was to conduct an assessment of information received in relation to small firms, such as the Firms. In that context, Mr Ali followed up on intelligence received as regards HJL's contacts with consumers regarding the possibility of them switching their pensions and gave consideration as to whether in the light of the fact that HJL was an IAR of HCA there were any concerns regarding HCA's control over HJL's activities, a matter which he did not pursue. Mr Ali's evidence covered those matters, and it was relevant to the limitation issue raised by Mr Henderson. He was cross examined by Mr Lloyd. Mr Ali's evidence was of limited assistance to us in determining the limitation issue as he could not remember much of the detail regarding the work he undertook in relation to the matter beyond what is apparent from the documentary evidence to which he was referred during his cross-examination.

(9) Christopher Slater – Mr Slater was formerly a Lead Associate within the Authority's Investment, Wholesale & Specialists Supervision Division. He is now retired. During the Relevant Period, he was part of a team focused on complex cases arising from smaller firms, including pension-related matters. In that regard, the focus of Mr Slater's team was on pensions mis-selling in circumstances where customers were being advised to switch or transfer from their generally mainstream existing pension arrangements to SIPPs which invested in unsuitable underlying assets. Mr Slater gave evidence regarding his dealings with Mr Henderson following concerns that HCA may have been involved in giving unsuitable advice to customers to transfer their pensions into a SIPP where the underlying investments were the Loan Notes and, in particular, his review of three customer files that HCA provided in response to Mr Slater's requests and the subsequent short notice visit to HCA on 3 June 2015 which Mr Slater conducted. Mr Slater's evidence also covered the short notice visit to BHIM which took place on 15 and 16 July 2015 which Mr Slater conducted, and which is referred to at (6) above and the subsequent discussions regarding the

Voluntary Requirement also mentioned at (6) above. Mr Slater was cross examined by Mr Lloyd in relation to Mr Henderson's reference as regards the issue as to whether the Authority had sufficient information to commence an investigation against Mr Henderson prior to 8 February 2015. He was also cross-examined by Mr Lloyd in relation to Mr R Ward's and Mr Freer's references, primarily in relation to the terms of the Voluntary Requirement. Mr Slater did his best to assist the Tribunal, but his evidence was of limited assistance as he could not recall many of the events in question beyond what is apparent from the documentary evidence to which he was referred.

135. The Authority also provided witness statements from the following witnesses of fact in support of its case:

(1) *Simon Wilson* – Mr Wilson is Interim Head of Resolution at the Financial Services Compensation Scheme ("FSCS"). At the time that the FSCS began to accept claims in relation to advice given by the Firms following the Firms having been declared in default by the FSCS, Mr Wilson held the position of Claims Assessment Design Specialist in the Claims Assessment Design Team. That team considered claims against the Firms. In his evidence, Mr Wilson described that a firm will be considered in default where the FSCS finds that a firm is unable or is likely to be unable to meet claims against it because it has insufficient assets to meet its liabilities and how the FSCS quantifies the loss that a claimant against a firm in default has suffered. He described how the FSCS had concluded that the Firms had provided unsuitable advice to their customers in respect of pension switches to a SIPP provider where the underlying investments were either the Loan Notes or the Bonds and that following the relevant Firm entering into insolvency proceedings investments in the Products were considered to be worthless. Mr Wilson provided examples of case studies of claims made by customers of each of the Firms describing how the FSCS had come to the conclusion that the advice in question was unsuitable in each of those cases. Mr Wilson also gave evidence to the effect that none of the customers of the Firms who had submitted claims submitted a copy of the relevant Information Memorandum as part of their claims documentation. Mr Wilson was cross examined by Mr Lloyd and Mr Page. We found Mr Wilson to be a knowledgeable and reliable witness. His evidence provided useful background as to the consequences of the operation of the Pension Review and Advice Process. However, we have found his evidence to be of limited assistance as regards whether the Firms gave unsuitable advice, having made our findings in that respect on the basis of the other evidence provided by the Authority in that regard, particularly the file reviews and how the Pension Review and Advice Process operated. We have also placed limited weight on Mr Wilson's evidence regarding the provision of the Information Memoranda.

(2) *Christine Hallett* – Ms Hallett was until 2 January 2020 employed at Carey Pensions UK LLP ("CPUK") as the Chief Executive Officer. The business of CPUK included providing SIPPs to UK clients. It was in that capacity she had dealings with Mr T Ward and Mr Page who were exploring the possibilities of partnering with SIPP providers other than Guinness Mahon that would accept investments recommended by FPL to its customers. Ms Hallett's evidence

covered how she perceived the respective roles of Mr T Ward and Mr Page within FPL and the subsequent abortive discussions regarding the possibility of CPUK being acquired by FPL. Ms Hallett was cross examined by Mr Lloyd and Mr Page on these issues. We found Ms Hallett to be honest and reliable witness doing her best to assist the Tribunal and for the reasons which we set out later we have accepted her evidence.

(3) *Ruth Preston-Hoar* – Ms Preston-Hoar was during the Relevant Period employed as a Compliance Executive by IFA Compliance Limited ("IFAC"). IFAC was engaged by FPL to provide compliance support. Ms Preston-Hoar's evidence dealt with her interactions with Mr Page and Mr T Ward in that capacity, primarily her communications with Mr Page and Mr T Ward regarding the results of a number of reviews of files concerning pension switches into SIPPs with a view to the customers' pensions being invested in the Loan Notes which FPL asked IFAC to undertake during November 2014 and May 2015. Ms Preston-Hoar was cross examined by Mr Page and Mr Lloyd. We found Ms Preston-Hoar to be an honest and reliable witness doing her best to assist the Tribunal and we have accepted her evidence which was not challenged to any significant extent.

(4) *Gary Kershaw* – Mr Kershaw is the Group Compliance Director for SimplyBiz Group ("SimplyBiz"), which was engaged by HCA to provide compliance support. Mr Kershaw's evidence covered the extent of the services provided by SimplyBiz to HCA during the various periods that it contracted for services from SimplyBiz, in particular the extent to which one of SimplyBiz's field consultants, Ms Farrell, provided assistance to Mr Henderson in relation to HCA's conduct of its pension transfer business. Mr Kershaw's evidence was that there were a number of interactions between Ms Farrell and Mr Henderson which were not recorded on SimplyBiz's systems. We found Mr Kershaw to be an honest and reliable witness doing his best to assist the Tribunal and we have accepted his evidence, although, as submitted by Mr Lloyd, as Mr Kershaw did not have direct dealings with HCA and the records of Simply Biz do not show many of the interactions between Ms Farrell and Mr Henderson, his evidence was of limited assistance.

(5) *Lesley Farrell* – As mentioned above, Ms Farrell was the SimplyBiz field consultant who was the main point of contact between SimplyBiz and HCA. In her witness statement, Ms Farrell describes her interactions with HCA, through Mr Henderson, many of which, as she states, were not recorded on SimplyBiz's systems. Much of her evidence conflicts with Mr Henderson's evidence on the extent of the advice given by SimplyBiz through Ms Farrell. Unfortunately, despite the Authority's best efforts in seeking to contact Ms Farrell, she did not attend for cross examination. Accordingly, Mr Purchas made an application for her witness statement to be admitted as hearsay evidence, which was not opposed by Mr Lloyd. We admitted the witness statement but as it was not tested through cross examination, we have only been able to put limited weight on Ms Farrell's evidence, generally only relying on it when it is consistent with the relevant documentary evidence.

Expert Evidence

136. Through their solicitors, Mr Henderson, Mr T Ward, Mr R Ward and Mr Freer sought a direction from the Tribunal that expert evidence be permitted to be served. The Tribunal agreed to that request on 2 October 2019 and permitted all parties to serve expert evidence limited to the question whether the Loan Notes and the Bonds should have appeared to a reasonably competent IFA to be high risk for retail investors, based on the information relating to the Products that the relevant Applicant claimed to have reviewed.

137. In the event, the relevant Applicants confirmed on 8 September 2020 that they no longer intended to rely on expert evidence. However, the Authority served an expert report from Mr Robert Lockie, a financial planner and independent financial adviser who is a branch principal of Bloomsbury Wealth, a financial planning and wealth management firm which advises retail investors, typically high net worth individuals.

138. In his report, Mr Lockie concluded that both the Loan Notes and the Bonds should have appeared high risk to a reasonably competent IFA and that a reasonably competent IFA should have concluded that the compositions and returns of the different portfolios which were categorised as "Cautious, "Moderate" and "Adventurous" were in reality very close to each other both in terms of return and composition.

139. The Applicants did not agree with Mr Lockie's report, and he was cross-examined by Mr Lloyd and Mr Page.

140. In our view, Mr Lockie's report was both clear and comprehensive and for the reasons which we state later, we have accepted his conclusions in their entirety. We found Mr Lockie to be a very knowledgeable and impressive witness who demonstrated both in his report and his oral evidence a meticulous attention to detail.

The Applicants' Evidence

141. Each of the Applicants filed a witness statement on which they were cross-examined at length by Mr Purchas. In addition, Mr Mark Stephen, the managing director of Reditum Capital Limited (the new name of HJL), gave evidence on behalf of Mr Henderson and Mr T Ward and was cross examined by Mr Purchas. We set out below our assessment of these witnesses:

(1) *Mr Stephen* – Mr Stephen gave evidence regarding HJL's business model, and in particular its original objective of targeting pension schemes, including SIPPs, for the funding of real estate projects in the UK and abroad. His evidence also covered the performance of the loans to AIGO in the period up to March 2016 and the operation of the captive insurance put in place to provide capital protection for certain of the AIGO funds. We found Mr Stephen to be an unreliable witness. His answers were defensive, and at times evasive. For example, he professed not to remember the amount of his shareholdings in HJL and the extent of his interest in other companies which were associated with HJL, even though the documentation which was in evidence clearly indicated the extent of his interest in the companies concerned. Likewise, he was evasive in

dealing with the way in which the third party marketing companies employed by HJL were remunerated, denying that they were paid on a lead-by-lead basis and that none received commission, where the documentation in evidence clearly indicated that the contrary was the case. His evidence as to why he suggested in correspondence with a firm that Mr T Ward might be acting as a de facto director of FPL without being an Approved Person when in these proceedings he has taken the opposite position was lacking in credibility. Accordingly, we have treated Mr Stephen's evidence with caution, only seeking to rely on it when it is corroborated by other evidence.

(2) *Mr Page* – Mr Page is clearly a highly experienced and capable IFA, at least in relation to mainstream investments, who acquitted himself well when presenting his case in person. Our impression is that he has a generally quiet and unassuming personality and could be easily led by more forceful individuals into making unwise decisions. We have found that to be the case as a result of his relationship with Mr T Ward and the opportunity for personal financial gain that his firm's involvement in the Pension Review and Advice Process offered. Although we do not consider that Mr Page was generally deliberately untruthful when giving his evidence, he frequently gave answers that lacked credibility. He tended to assume that his recollection of particular events was correct when that suited his case without giving any consideration to the contemporaneous documentation which often contradicted his account. For example, in relation to the call of 1 September 2014 between the Authority and himself, which we consider in detail later, Mr Page's oral evidence was clearly contradicted by the language and timing of the various emails exchanged between himself and Mr T Ward at the time the call was taking place. We also observe that Mr Page expressed no remorse or regret, either for the significant losses that many investors had suffered and the consequent stress and worry which undoubtedly followed as a result of being advised to switch their pensions, or the large losses that have fallen on the FSCS and have had to be met by higher contributions to the FSCS by other IFA firms. His regret was focused on the effect that the investigation and these proceedings had had on him personally and suggested that the fault lay with the Authority, in the manner that it conducted the investigation, and with Guinness Mahon, on whose due diligence of the Products he said he relied and who he said caused much of the loss to investors by writing to them at the behest of the Authority to advise them that the Products were high risk. At no point did Mr Page focus on his own behaviour and whether he might have done things differently. Mr Page also admitted that he lied to Guinness Mahon in telling them that the Authority had instructed him to disinvest his pension. For all of these reasons, we have considered Mr Page's credibility carefully when determining whether to accept his explanations as to his beliefs and views on key points which underpin the Authority's allegations.

(3) *Mr T Ward* - we accept Mr Purchas's description of Mr T Ward as a "confident and forceful witness". The evidence shows that he took the lead in business dealings on behalf of FPL and in his advice to Mr Page on key matters. We found many of his answers to be evasive or lacking credibility, and which were often clearly contradicted by the relevant contemporaneous documentation. His standard response to a question which he would struggle to answer truthfully

was to say that he could not recall due to the fact that the events concerned happened a long time ago. However, there were other instances where it suited him to give a very clear and detailed answer in relation to an event which happened well in the past, such as this description of a conversation he had with Mr Page in the lift after leaving a meeting with HJL on the issue as to whether Mr Page ever contemplated agreeing to the Execution-Only Process. He described himself as FPL's Operations Manager but, despite having long experience of working in a number of roles in the financial services industry and one of its regulators, in an answer to a question from the Tribunal he expressed ignorance as to the provisions of SYSC which was not credible. Accordingly, we have treated Mr T Ward's evidence with caution, only seeking to rely on it when it is corroborated by other evidence.

(4) *Mr Henderson* – Mr Henderson is an IFA with many years of experience, and he accepted that he was capable of appreciating the risks associated with the Execution-Only Process and the Pension Review and Advice Process. Mr Henderson was consistently evasive when faced with difficult questions. His standard response was to say that he had no comment to make in answer to the question or that he could not recall what happened at the time. An example was where he was challenged on his assertion that SimplyBiz had carried out reviews of the Pension Review and Advice Process prior to May 2015 when he said he could not agree or disagree with the challenge. As we explore in detail later, his explanations that Ms Farrell knew about HCA's recommendations of the Loan Notes before May 2015 were not credible and clearly contradicted by the contemporaneous documentary evidence. A further example of his evidence lacking credibility was his denial that HJL was incentivised to procure investment into the Loan Notes by virtue of the fact that HJL received a commission of 5% of the sums invested. Accordingly, we have treated Mr Henderson's evidence with caution, only seeking to rely on it when it is corroborated by other evidence.

(5) *Mr R Ward* – Mr R Ward has over 30 years of experience working in the financial services sector. He has in the past practiced as a financial adviser but did not practise as such after his bankruptcy in 2011. He was the controlling shareholder of BHIM and since 16 October 2014 performed the CF 1 (Director) and CF3 (Chief Executive) controlled functions. A large part of his role involved business development and accordingly he was closely involved in the arrangements that BHIM entered into regarding the Pension Review and Advice Process and the promotion of the Bonds. However, he denied that he had significant responsibility for the review of the Bonds and the review and operation of the Pension Review and Advice Process which he regarded as more properly the role of Mr Freer. However, at the time the relationship with HJL/CAL was developing Mr Freer had only recently returned to work after a serious illness and it is apparent that Mr Freer was overburdened, a matter which Mr R Ward should have addressed. We found Mr R Ward to be an unreliable witness. He had a tendency to give answers in order to suit his own position without having regard to what the contemporaneous documents showed on the point. We note that this tendency was also present both in his compelled interviews with the Authority and at the Authority's visit in July 2015. When challenged on this he said he felt that he had to give answers to the Authority in response to their questions because

if he did not, he would be accused of a lack of cooperation and therefore gave answers without thinking as to whether they were correct. We regard that approach as reckless, and we saw examples of it in his cross examination. For example, he said he was having meetings with HJL as regards the portfolios underlying the Bonds throughout 2015 but when shown the transcript of his interview with the Authority, where he said he only had one such meeting, he quickly retracted his evidence. His approach indicated that he did not prepare for his cross-examination by reminding himself as to what he said in his witness statement and what was shown in the documentary evidence. Accordingly, we have treated Mr R Ward's evidence with caution and have relied primarily on the documentary evidence regarding the relevant matters on which he was cross examined.

(6) *Mr Freer* – Alone amongst the Applicants, Mr Freer accepted that he had failed to deal with certain matters as well as he might and, to his credit, expressed regret for that. For example, he accepted that he should have done more due diligence on the Bonds and their investment strategy and that the fact-finding aspects of the Pension Review and Advice Process were flawed in a number of respects. He also accepted that he should have pressed for improvements to be made to the system to ensure that it was compliant. We also accept that Mr Freer was under considerable pressure at the time having recently returned to work after his illness. However, Mr Freer did not plead that his health issues materially impacted his ability to deal with the essential elements of the arrangements that he was asked to deal with by Mr R Ward in his capacity as a CF 1 and CF 10. There were certain aspects of his evidence that lacked credibility. When faced with difficult questions as to the scope of the service agreement and his review of it, in particular on the question whether HJL had a role in sourcing leads for BHIM, the suitability of the Bonds and the adequacy of the pension recommendation reports he simply declined to give a substantive answer or gave conflicting answers. He also gave a false impression in respect of his involvement with certain aspects of the Pension Review and Advice Process, maintaining that he was involved in the drafting of the Fact Find despite the fact that the wording used for BHIM was the same as that adopted by FPL and HCA prior to BHIM becoming involved. There were other instances where his evidence was not credible because it was contradicted by the contemporaneous documents, such as his explanation as to whether Board Minutes of BHIM existed and the accuracy of the new business register provided to the Authority. Accordingly, we have treated Mr Freer's evidence with a degree of caution and have sought corroboration where necessary from the contemporaneous documents.

Documentary evidence

142. In addition to the witness evidence, we had a large number of bundles of documents provided by the parties in electronic form, much of it derived from the Authority's investigation. As indicated in this decision, we have relied on a significant amount of this documentation in our findings, even where they were not specifically drawn to our attention by the parties during the hearing.

V. COMMON FINDINGS RELATING TO THE PRODUCTS AND THE PENSION REVIEW AND ADVICE PROCESS

The Products

Introduction

143. As previously mentioned, each of the Firms adopted a business model which involved the adoption of the Pension Review and Advice Process through which recommendations were made for customers of the Firms to switch their personal pensions into SIPPs where the underlying investments were one or more of the Products. We set out below the structure and main features of the Products together with an assessment as to whether the Products could be regarded as "low risk" as contended by the Applicants.

144. HCA advised customers to invest in the Loan Notes. FPL advised customers to invest in the Loan Notes and, from November 2014, the Liquid Assets Bonds. BHIM advised customers to invest in the Bonds (including the Liquid Assets Bonds).

Structure and features of the Loan Notes

General

145. AIGO was the issuer of the Loan Notes. AIGO was a protected cell company incorporated in Mauritius in April 2013. The effect of being a protected cell company was that AIGO could establish a number of separate cells each of which would be treated as a ring-fenced pool of assets and liabilities. AIGO had four cells, AIGO Commercial Property Fund ("the Commercial Property Fund"); AIGO UK Residential Property Fund ("the Residential Property Fund"); AIGO Natural Resources Fund (the "Natural Resources Fund); and AIGO Equity Fund (the "Equity Fund"). The first three of the Cells mentioned above were established in July 2013 and the Equity Fund was established on 14 April 2014.

146. Although not disclosed in the AIGO IM, Mr Stephen confirmed in his evidence that he was the owner of 100% of the equity capital of all of the Cells and that he sold all of his shares in these entities in March 2016.

147. Initially, AIGO had two Mauritius based directors. From their description in the AIGO IM those directors appeared to be local Mauritius lawyers and had no relevant expertise as regards the investments that the Cells proposed to make. Subsequently, on 11 February 2014, Mr Stephen was also appointed as a director.

148. In accordance with Mauritian regulatory requirements, AIGO had to appoint a locally-based investment manager. That was Fidelis Global Asset Management Limited who received a fee for acting in that capacity. It is not clear what in substance this

company did in relation to any of the Cells. The AIGO IM does not indicate that the investment manager had any relevant expertise in relation to the assets in which AIGO intended to invest. Mr Stephen denied that the investment manager played no direct role on the investment side. He said the process was that the investment manager produced a recommendation as regards investments to the board of AIGO and that it was mostly HJL who produced a recommendation to the investment manager, alongside ideas brought by the investment manager themselves in relation to natural resources.

149. We do not regard that as a credible explanation as to what actually happened in practice. As we have said, there is no evidence of any expertise on the part of the directors of AIGO or the investment manager in relation to investment matters such that they could provide any meaningful input into the process. Although not identified in the AIGO IM as having been formally appointed as either investment advisor or sub-investment manager, our conclusion is that in practice all decisions regarding investments were taken by HJL, particularly through Mr Stephen, and he was the only director who appeared to have any relevant experience. As we find later that expertise did not cover all of the areas in which AIGO intended to invest.

150. The AIGO IM states that "AIGO is regulated in Mauritius as an Expert Fund" and so was only available to an Expert Investor, defined as an investor "who makes an initial investment for his/her own account of no less than US$100,000 or its equivalent in any other currency". It is therefore clear that this was not a fund that could lawfully be promoted directly to retail investors because, as the AIGO IM makes clear, an Expert Fund was exempt from most ongoing obligations and regulations of the Mauritian authorities on public collective investment schemes. As was common ground, a large number of those who switched their pensions into SIPPs investing in the Loan Notes held pension schemes whose value was considerably less than the equivalent of US $ 100,000.

151. The AIGO IM records that AIGO had been advised (presumably by Howard Kennedy LLP who are disclosed in the AIGO IM as having given advice on UK regulatory matters) that it was not considered to be a deposit-taker and that the monies raised through the issue of the Loan Notes did not give rise to any collective investment scheme. It is assumed (although not explicitly stated in the AIGO IM) that the Loan Notes were debentures for the purposes of FSMA, notwithstanding the fact that they were constituted through a Master Loan Agreement entered into between a SIPP Provider and the relevant cell of AIGO, the interests in which would be allocated by the relevant SIPP Provider to those investors for whom it acted as SIPP Provider according to the value of the amount that each had invested. Therefore, the SIPP Provider lent the proceeds of the aggregate of the funds transferred to it as a result of the relevant pension switches to the relevant Cell under the terms of the Master Loan Agreement and would allocate the benefit of the Master Loan Agreement to the investors according to the amount each investor provided, the resulting interests constituting the Loan Notes.

152. Accordingly, since the Loan Notes were debentures, those who arranged transactions in those debentures would need to be authorised by the Authority if the activities concerned took place in the United Kingdom and any financial promotion

(which would include the AIGO IM) would have to be issued or approved by an authorised person unless a relevant exemption applied. The only wording in the AIGO IM which deals with these issues is a statement to the effect that in relation to the promotion of the Lending Scheme (that is the entering into by the SIPP Provider of the Master Loan Agreement and the allocation of interests in that arrangement to the underlying investors) the AIGO IM is an exempt financial promotion in accordance with Article 16 of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, in reliance upon the fact that HJL (as the promoter of AIGO) is an introducer appointed representative of various FCA authorised investment firms.

153. However, COBS 4.3 provides that a firm is required to comply with the Authority's financial promotion rules in relation to a financial promotion communicated by its appointed representative even where the financial promotion does not require approval because of the exemption in Article 16 referred to above. Therefore, in order for the AIGO IM to have been lawfully distributed to customers of the Firms, the relevant Firm would need to have ensured that the AIGO IM complied with the Authority's detailed financial promotion rules. Where HJL distributed the AIGO IM on behalf of FPL as its introducer appointed representative, that responsibility would have fallen on FPL, and where it was distributed on behalf of HCA that responsibility would have fallen on HCA. We have seen no evidence that either FPL or HCA took any responsibility in ensuring that the AIGO IM did comply with the financial promotion rules, although, as we find later, we are not satisfied that any of the Firms gave instructions that as a matter of course the AIGO IM should be sent to customers who were recommended to invest in the Loan Notes.

154. The Loan Notes were not listed or traded on any investment exchange. The AIGO IM disclosed that there was limited protection under the UK regulatory system for investors in the Loan Notes. In particular, it was stated that HJL was not regulated in the UK by the Authority and that there was no recourse to the Financial Ombudsmen Scheme or the FSCS in respect of the Loan Notes. The only regulation of AIGO and its service providers was the limited regulation provided by the Mauritian authorities in respect of an Expert Fund. As we have seen, however, investors did have recourse to the FSCS where they were given unsuitable advice by a firm authorised by the Authority to invest in the Loan Notes.

The Cells

155. The AIGO IM gave details of three Cells, the Residential Property Fund, the Commercial Property Fund and the Natural Resources Fund and described an initial offer of up to £20m of Loan Notes by each of those Cells. AIGO had the ability to establish further Cells, and, on 14 April 2014, it established the Equity Fund. No supplemental Information Memorandum appears to have been produced in relation to the £20m Loan Notes subsequently offered by the Equity Fund.

Terms of the Loan Notes

156. The Loan Notes were constituted under Master Loan Agreements dated 12 December 2013 (for the Residential Property Fund, the Commercial Property Fund

and the Natural Resources Fund) and 19 September 2014 (for the Equity Fund) entered into by AIGO on behalf of each Cell and the SIPP Provider, Guinness Mahon, who was appointed as trustee according to the terms of the master trust deed and rules governing the GM SIPP. Each investor entered into a Supplemental Deed relating to their individual SIPP arrangement.

157. All the Loan Notes had an 8% coupon payable annually in arrears and a 10 year maturity. However, at its discretion, AIGO's Board could extend the maturity date of the Residential Property Fund, the Commercial Property Fund and the Natural Resources Fund Loan Notes by up to 12 months if it was of the view that insufficient assets were realisable to repay them. As we have not seen a supplementary Information Memorandum for the Equity Fund, it is unclear whether the Board had the same facility to extend the Equity Fund Loan Notes in the same manner.

158. The Residential Property Fund, the Commercial Property Fund and the Natural Resources Fund Loan Notes contained a provision for a bonus (expressed as an addition to the coupon) which would be announced on the fifth anniversary of their issue, but only paid on maturity of the Loan Notes.

159. The AIGO IM stated that the proceeds of the Loan Notes would be used by the Cells to make loans and investments in accordance with their various investment strategies, as described below. The AIGO IM states that the Residential Property Fund, the Commercial Property Fund and the Natural Resources Fund could implement their strategy by purchasing assets directly; providing equity or debt capital (including on a mezzanine level and bridge financing) to other entities; or through any other investment method. The Loan Notes were not secured against any of the assets (in whatever form) of the Cells.

Repayment of Principal and Insurance

160. The intention was for the Cells to repay the principal of the Loan Notes and service the coupons payable from the successful implementation of their various investment strategies. However, the AIGO IM states that it was intended that each Cell would have the benefit of a contract of insurance which, should such Cell become incapable of meeting its financial obligations at the end of the term of the Master Loan Agreement or if it became insolvent before that time, would ensure that all the principal monies advanced under that agreement would be repaid. In the event, insurance was only put in place for the Residential Property Fund and the Commercial Property Fund so there was no insurance in respect of the obligation to repay the principal under the Loan Notes for the Natural Resources Fund or the Equity Fund. This was a clear breach of the terms of the Master Loan Agreements for those Cells.

161. The insurance was to be provided by a captive insurance company, AOB Insurance, which had been incorporated in Nevis around 30 December 2013 with share capital amounting to £1,000. A separate Statutory Fund was to be set up to insure each Cell. On 28 January 2014 the first Statutory Fund was established, that in respect of the Residential Property Fund. This was capitalised by £60,000 preference shares purchased by AIGO. Mr Smith, adopting the evidence of Mr Gardner in this regard,

notes that UK insurers are subject to significantly higher base capital requirements and that the minimum capital requirement in the UK would have been Eur2.5m.

162. The Statutory Fund for the Commercial Property Fund was established at some point later in 2014.

163. The only source of funding for the Statutory Funds was an annual premium paid by AIGO and accordingly there is a provision in each Master Loan Agreement stating that this premium would be paid by the individual Cells. The Cells therefore had to generate sufficient income to make these payments, in addition to interest payments on the Loan Notes and on-going costs, or the insurance would not be available.

164. The Master Loan Agreements made it clear that the insurance was to cover any shortfall between the realisable value of the Cell's assets and the amount of the loan. This is also the methodology by which the insurance premiums were calculated and can be seen by the fact that, by 31 December 2014, the total assets of the Residential Property Statutory Fund were approximately £135,000 compared to £19.4 million outstanding in loans to the Residential Property Fund.

165. Accordingly, as Mr Smith's evidence demonstrates, based on his reading of the relevant Nevis legislation and the available material on the website of the Nevis Financial Services Regulatory Commission, in respect of the Residential Property Fund only assets of its Statutory Fund would be available to meet any claims made in respect of that Cell. As Mr Smith observed, effectively the Cell was insuring itself with only a minimal premium set-aside, representing as little as 1.5% of the funds potentially at risk, from which various costs and fees were also being deducted.

166. It is also important to note that the insurance contracts that were issued were for the benefit of AIGO itself rather than the lender under the Master Loan Agreement. Accordingly, only AIGO's Board had the capacity to claim under them and, without any independent scrutiny, would also administer any pay outs to lenders.

Provisions for Early Repayment of the Loan Notes

167. The AIGO IM provided that if an investor wanted to redeem their investment in the Loan Notes prior to the maturity date then a minimum of 12 months' notice in writing was required. This would also be subject to the Board's discretion; repayment not being permitted if it was considered that it would cause harm to the business or investment portfolio.

168. By April 2014, the HCA Fact Sheets, referred to below, had been changed and now stated that disinvestment could be requested at any time and that monies were "contractually required to be returned" within a maximum of 30 days. This was apparently as a result of an addendum (dated 13 March 2014) to the Residential Property Fund, the Commercial Property Fund and the Natural Resources Fund Master Loan Agreements which provided for investors to request that their interest be transferred, assigned or sold with 30 days' notice. The validity of this addendum has been questioned as it was signed by Mr Stephen on behalf of both AIGO and Guinness

Mahon and Guinness Mahon, in a letter to the Authority dated 24 February 2016, have said that they were unaware that Mr Stephen had the authority to sign on their behalf. In any event, this addendum only related to investors who had been advised by HCA.

169. Further, it is not clear on what basis AIGO would be able to arrange for the transfer of an investor's interest, how that interest would be valued or who the potential purchaser might be.

Gearing

170. The AIGO IM warned that the Loan Notes represent "only a part of the current financial arrangements of the various Cells" and that there is, or may be, other financial obligations which may rank in priority to the Loan Notes. However, despite the significance of this statement, no information is provided about the existence or not of any such obligations.

171. The AIGO IM further identifies as a risk that the Residential Property Fund and Commercial Property Fund had the ability to raise further debt as part of their investment strategy which would "increase the risk profile" and "amplify losses in the event of a decline on asset values". There appears to be no limit on new debt that could be raised either in terms of amount or security position.

Residential Property Fund

172. The investment strategy of the Residential Property Fund is described in the AIGO IM as the purchase of "distressed" residential properties largely from the sale of repossessed properties. It was stated that the Cell would work in conjunction with Kazai, a UK based company that specialised in the purchase of such property. It was envisaged that the Cell would loan money to Kazai, the proceeds of which would be used by Kazai to purchase property for not more than 80% of market value and which it would aim to re-sell within 3 months for approximately 90% of market value. The loan from the Cell to Kazai would be secured by a floating charge with a covenant that the loan would not exceed the total market value of Kazai's assets. The loan carried 15% interest in the first year and then 9% per annum thereafter. The loan was not amortised, leaving the prospect of how Kazai intended to repay the loans at the end of the term unclear e.g., whether by a gradual disposal of its assets or by the refinancing of the loan.

173. As regards the investment expertise available to the Residential Property Fund, the AIGO IM describes the management team as being the sole director of Kazai, Elliott Castle, and Mr Stephen. Kazai was a newly formed company. The description of Mr Stephen's experience does not indicate that he had any significant experience of the UK residential property market. As regards Mr Castle, his experience in the distressed property market came from his role as the founder of WeBuyAnyHome.com, a company established in 2010 and which had a turnover of £3 million.

174. In practice the Residential Property Fund deviated from this strategy. Its balance sheet shows that by the end of its first year of operation (31 December 2014), the

Residential Property Fund had loaned approximately 55% of its funds to three other entities – Stark Enterprises (a property company established by Mark Stephen), White & Co Property Partners ("WCPP") and an entity simply described as "EMC". None of these entities are described in the AGO IM as potential partners for the Residential Property Fund. By the end of the second year, the balance sheet shows that about 68% of loans were made to either Stark or WCPP.

175. By 31 March 2016, the Residential Property Fund had further increased the proportion of its funds lent to Stark and WCPP, which now amounted to about 76% of its lending, the remainder being lent to Kazai.

Commercial Property Fund

176. The investment strategy of the Commercial Property Fund is described as predominantly being the purchase and leaseback of commercial property and the purchase of UK "distressed" commercial property. The latter was to be purchased at 20-80% market value with either a re-sale within 30 days at approximately 90% market value or work being undertaken to improve the property's value. The UK property market would be the main focus, but overseas property could also be held with the intention, but not obligation, to hedge the resulting currency risk.

177. As regards the expertise available to the Commercial Property Fund, the emphasis is put on Mr Stephen's experience since he became involved in the property investment market in 2000. According to the AIGO IM, that experience was largely obtained by involvement in residential property investments in Australia and commercial developments in China, Croatia, and Egypt but no mention is made of relevant experience in the UK property market.

178. The AIGO IM stated that the Commercial Property Fund could make its property investments in a variety of ways but in practice it did not appear to make any direct property purchases, instead, it lent money to Stark. By the end of the first year of operation (31 December 2014), the balance sheet shows that over £9 million had been lent by the Cell to Stark which had yet to be invested in property and was held in cash. By the end of the second year, the Cell's balance sheet shows that only approximately £1 million had been lent to Stark but approximately £22 million had been lent on the security of a debenture to a Hong Kong based entity called Universe, which had not been referred to in the AIGO IM. There is little information available about the properties that were invested in. Mr Stephen's evidence was that £14 million had been invested in a development in Bristol and £2-3million in a development in Chertsey as development rather than trading assets, but we have nothing to corroborate that so will make no finding on that point.

Natural Resources Fund

179. Natural resources are described in the AIGO IM as "stocks of materials that exist in the natural environment that are both scarce and economically useful in production or consumption, either in their raw state or after a minimal amount of processing". The main product groups open to investment by the Natural Resources Fund included

forestry products, fuels, ores and other minerals, non-ferrous metals, energy and agricultural products, the aim being to purchase securities in "advantaged producers" i.e. low cost producers of a given commodity run by capable management teams. The AIGO IM said that the Natural Resources Fund would seek to purchase these securities when "it is believed that the price reflects a limited possibility of permanent capital impairment", presumably meaning when it was relatively low.

180. The AIGO IM said that the Natural Resources Fund intended to diversify its investments to avoid over-concentration of exposure with not more than 25% of its assets being held in any one project. A range of other desired investment criteria is given including a minimum IRR of 24%; that demand for the resource be expected to grow by 50% over 10 years; and that there was existing demand for 100% of the current output of the resource. As with the Commercial Property Fund, it was the intention, but not obligation, to hedge any currency exposure.

181. As regards the expertise available to the Natural Resources Fund, the management team of the Cell is listed as being Mr Stephen, his father Jim Stephen and Reeves Knyght of Mayfair Investment Management Limited (a mining specialist). From their descriptions in the AIGO IM these individuals appeared to have only limited experience of the type of investments the Natural Resources Fund was intending to make. As mentioned above, Mr Stephen's experience was mainly in property investment, his father's expertise was confined to one specialist field within the agricultural sector and Dr Knyght is a lawyer by background; it is not clear whether his role in relation to the transactions in the natural resources sector he was said to have been involved in was on the legal or business side.

182. In practice, by the end of the first year of operation (31 December 2014), the balance sheet shows that approximately £1.6 million had been loaned to an entity called Dos Palm Oil whilst £5.8 million remained held as cash. By the end of the second year, approximately £290,000 had been loaned to Dos Palm Oil, £6.7million had been lent to HJ Liquid Assets plc (reduced from about £10 million in March 2015) and £630,000 loaned to Stark. Neither Stark nor HJ Liquid Assets plc had any obvious connection to the Natural Resources Fund's investment strategy as set out in the AIGO IM.

Equity Fund

183. As mentioned above, no supplemental Information Memorandum appears to have been produced in relation to the £20 million Loan Notes offered by the Equity Fund. The sources of information about the Equity Fund are limited to the Fact Sheets and also some Supplemental Listing Particulars dated 14 April 2014 which related solely to the sale of participating shares in the Equity Fund. The Listing Particulars describe the investment strategy of the Fund as being "to invest through equity financing in companies operating in the financial sector across the globe, with priority on capital preservation and growth". The Fact Sheet dated April 2014 provides a rather different description stating that the Equity Fund predominantly traded fixed income discounted bonds (a specialised market) with the advice of Kempis Asset Management. It notes that Kempis had targeted a revenue of between £5.3 million and £19 million for the

Equity Fund in the first year which, if the maximum £20 million was raised, represented a return of between 26% and 95%.

184. By October 2014, the new Fact Sheet describes the strategy as including the "equity trading of listed shares, SME secured share purchase and investment in equity trading firms". It is unclear what "secured share purchase" means or the further opaque statement that the Equity Fund will "only invest in listed shares through secured unlisted share purchase or through a debt mechanism to a trading entity". Nevertheless, the Fact Sheet states that "regulated trading advisors" would be used, although Kempis is no longer mentioned. We received no explanation as to why the strategy had changed and it did not appear that any of the Firms questioned the reasons for the changes.

185. In practice, by 30 September 2015, the Equity Fund had invested approximately £2 million in the Natural Resources Fund and £4.6 million in the Commercial Property Fund. On the face of it these investments bear no relation to the Equity Fund's strategy. A further £1.5 million had been invested in Universe Finance, and there are four properties that are listed as providing security with an estimated value (according to Zoopla) of approximately £8.2 million, albeit that one property in London is valued at approximately £7.1 million.

186. By 31 March 2016, the Equity Fund had disinvested from the Natural Resources Fund and had made further investments in the Commercial Property Fund. It appears that overall, approximately £6.15 million had been invested in the Commercial Property Fund, but the market value of the shares is given as approximately £5.8 million, a loss of approximately £350,000 having been made. £1.5 million remained invested in Universe Finance.

The Fact Sheets

187. As we examine in further detail later, when customers of the Firms were recommended to invest in the Loan Notes, they were recommended to do so on the basis of investing in one of three portfolios named the Bespoke Cautious Portfolio, the Bespoke Moderate Portfolio and the Bespoke Adventurous Portfolio. Those Portfolios consisted of what was described as a "carefully selected blend of investments" made up of a mixture of Loan Notes from the various Cells. At the time of the recommendation, the customer would be sent a short Fact Sheet which gave a short description of the relevant Cell and its investment strategy. Some of the information in the Fact Sheets was at variance with what was said in the AIGO IM.

188. For example, the availability of insurance features prominently on the front page of each Fact Sheet under the heading "Capital Guarantee" accompanied by the statement that the "Lending Scheme" will benefit from the additional protection of an insurance policy covering 100% of the loan in the case of default by AOB Insurance Limited".

189. There are a number of problems with this statement. First, as referred to above, at the date of the earliest Fact Sheets (April 2014), insurance was only in place for the Residential Property Fund, that for the Commercial Property Fund coming somewhat

later and it was never put in place for the Natural Resources Fund or the Equity Fund. Secondly, the Fact Sheets state clearly that the policy would cover "100% of the loan" which was not the case. The Master Loan Agreements are clear that the insurance was to cover any shortfall between the realisable value of the Cell's assets and the amount of the loan. Thirdly, as we have said, the insurance policies were in the name of AIGO and hence only AIGO's Board had the capacity to claim under them and, without any independent scrutiny, would also administer pay outs to lenders.

190. A second example, as we have already mentioned above, was that in a number of cases the description of the investment strategies of the various Cells in the Fact Sheets was at variance with what was stated in the AIGO IM.

Role of HJL

191. Although, as we have said, HJL had a prominent role in advising on the investments to be made in the Cells, the AIGO IM makes no direct reference to this and focuses on the role of HJL in promoting investment in the Loan Notes.

192. The AIGO IM states that AIGO had entered into an agreement with HJL appointing HJL for the purposes of promoting the Loan Notes to pension schemes, including SIPPs. It disclosed that under this agreement HJL would be paid a fee of 5% of all loans advanced and utilised by the relevant Cell as part of its business. The AIGO IM also disclosed that HJL may seek to become an IAR of a firm regulated by the Authority for the purpose of being able to offer regulated pensions to HJL's clients in the pensions marketplace. It is clear from this that HJL would have a dual role, promoting the interests of AIGO in seeking investment in the Cells and being remunerated by receiving a percentage of the funds raised and, if it were to act as an agent of a firm regulated by the Authority, such as one of the Firms, it would be acting on behalf of IFAs who had a duty to ensure that any recommendations made to invest in the Loan Notes were suitable for the customers concerned.

Costs of investment in the Loan Notes and on-going costs of the AIGO Structure

193. As we have indicated above, 5% of each investment made into the Loan Notes would be paid to HJL upon subscription. As we shall see later, an initial advice fee at the rate of 3% of the funds invested was paid by a customer who accepted the recommendation from the relevant Firm to invest in the Loan Notes.

194. There were also various upfront costs of the AIGO structure, as disclosed in the AIGO IM, namely £54,000 for the establishment of AIGO and the Cells and the legal costs of the offering and UK legal costs of £102,500.

195. There were also ongoing costs. These consisted of (i) an initial fee of 1% and an annual fee of 0.5% calculated on the assets under management in the Cells to be paid to Fidelis Global Asset Management Limited as investment manager; (ii) £18,000 per annum to be paid to Fidelis Trust & Corporate Services Ltd to act as administrator; (iii) £4,000 per annum to be paid to each of the Directors of AIGO and periodic expenses

such as annual audit fees, fees to regulators and registrars in Mauritius; and (iv) the insurance premium, as described above.

196. Accordingly, in the first year of their investment, an investor who acquired Loan Notes on 31 December 2013 would pay 3% before the investment was made and then once the various commissions and costs are taken into account (5% + 0.3% (approximation of upfront costs assuming a maximum capital raising of £60 million) + 1% + 0.2% (the insurance premium paid by the Residential Property Fund and the Commercial Property Fund)), approximately 9.5% of the total sum to be invested has been expended before any investment has been made.

197. Other than the 3% advisory fee, an investor would only find out about the other costs if they read the AIGO IM. They are not disclosed in the Fact Sheets whose only reference to fees is to inaccurately state that there are no fund charges.

198. Under the Service Proposition, as discussed below, investors who opted for an annual investment review would also have been charged 0.5% p.a. of the total value of their investment.

Structure and features of the Bonds

General

199. The first issue of Bonds took place in October 2014. There were three separate issues, each of which was made by a separate company, namely HJ Residential plc, HJ Commercial plc and HJ SME plc. Each of these companies (an "Issuer") was incorporated in England and Wales and registered as a public limited company, and made an initial offer of up to £4 million of nominal value of Bonds at par.

200. Each of these issues was described in a separate Information Memorandum for each Issuer, all dated 1 October 2014.

201. Subsequently, on 17 February 2015, up to £3.7 million Bonds were offered by HJ Liquid Assets plc, which was also incorporated in England and Wales and registered as a public limited company. These Bonds were also offered at par. There is an Information Memorandum for this issue dated 17 February 2015.

202. Each Issuer was wholly owned by Mr Stephen and had £50,000 in equity capital (a quarter of which was paid up). Mr Stephen and Mr King were named as the two executive directors for each Issuer, being described as having "substantial expertise" in either "the UK residential property market", "the commercial property market", "the corporate and business environment" or the "financial markets" depending on the Issuer concerned.

203. The Information Memoranda contain extensive risk warnings. The offer document states clearly on the first page that "an investment in the Company involves a high degree of risk". Each Information Memorandum also contains a declaration on the application form in which investors confirm that they understand it to be a high risk investment and that they are seeking a high risk profile for this part of their investment

strategy. In the body of the Information Memorandum prospective investors are warned that "an investment … is only suitable for investors capable of evaluating the risks and merits of such investment and who have sufficient resources to bear any loss which may result from the investment". Warnings are given as to the likely illiquidity of the Bonds; that each Issuer was newly established and so its business strategy was unproven; that the expected economic performance of the investments may not occur; and that the value of each Issuer's assets may not exceed its liabilities at any particular time.

204. Summary information memoranda were also produced for each issue of Bonds which contained information about the features of bonds in general, a summary of the terms of the Bonds, details of each Issuer's strategy and a summary of risk factors but did not contain any information about fees. In addition, two page Fact Sheets were produced which contained no information about risk or disclosure of fees.

205. Each Information Memorandum was a financial promotion pursuant to s 21 FSMA but was capable of being lawfully distributed in the UK on the basis that it was stated in the document that it had been issued by Alfred Henry Corporate Finance Limited, a firm authorised and regulated by the Authority.

206. At the time of issuance of the Bonds, it was the intention to apply for them to be listed on GXG Main Quote Market, a Danish exchange similar to the UK Alternative Investment Market. The Information Memoranda stated that GXG Main Quote did not have the status of an EU regulated market. The Information Memoranda also all warned that the Bonds were not yet listed and that, prior to this, it may be difficult to sell them. Further, even with a listing, investors were warned that there may not be a liquid market in the Bonds and investors should regard their investment as of an illiquid nature. There was no evidence that at any time there was an active secondary market in the Bonds.

207. It is unclear when the Bonds were listed on GXG Main Quote, but subsequently GXG Main Quote was closed down and, on 28 September 2015, the Bonds were instead listed on the Cyprus Stock Exchange Emerging Companies Market. We had no evidence that the Bonds were ever traded on that market.

Terms of the Bonds

208. The Bonds were constituted by a Trust Deed entered into by each Issuer and the Bond Trustee, Woodside Corporate Services Limited. These Deeds were dated 31 July 2014 (the Commercial Bonds); 8 August 2014 (the Residential & SME Bonds) and 17 February 2015 (the Liquid Assets Bonds).

209. The Residential Bonds had a 6% coupon; the Commercial Bonds a 7% coupon; the HJ SME Bonds an 8% coupon; and the Liquid Assets Bond a coupon of 3%. All interest payments were to be made annually in arrears and all the Bonds had a maturity date of 31 December 2024. They were secured by a floating charge over the assets of the relevant Issuer.

210. The Information Memoranda stated that the intention was for the repayment of the principal of the Bonds to be dependent on the success of the investment strategies, but there was also to be a Cash Provision Amount ("CPA") to provide some additional protection. This would consist of "eligible cash investments", held in a segregated account, of an amount to be determined by an independent actuary but not exceeding 20% of the aggregate principal amount of the Bonds plus the interest accrued by the first interest payment date. It was intended that the ratio of the CPA to Bonds would remain constant over time. Notably, a CPA was to be established even for the Liquid Assets Bond which was intended to be the equivalent of cash itself (see below). The effect of holding a proportion of its assets in cash would clearly affect the ability of the Issuer to achieve the required return to meet its obligations under the Bonds. However, given the lack of financial statements for the Issuers, there is no evidence that a CPA was in place for any of the Bonds or what level of cash was actually held.

211. Prior to the maturity date, the Bonds could be redeemed at par (plus accrued interest) if the relevant SIPP beneficiary died. The Information Memorandum for the Liquid Assets Bonds also states that "uniquely" those Bonds could also be redeemed at par at any time with 24 hours' notice; an assertion repeated in the Fact Sheet. However, this provision is not contained in the detailed terms and conditions of the Bonds within the Information Memorandum and there is no Trust Deed within the evidence provided to establish that it actually existed.

212. Further Bonds could be issued ranking pari passu with the original Bonds, but there is a covenant prohibiting the raising of debt with any prior ranking security. There are no details relating to any overall limit on new debt.

The Residential Bonds

213. HJ Residential plc's stated investment strategy was similar to that for the AIGO Residential Property Fund in that it intended to purchase UK residential property at a significant discount to market value (not more than 90%) and sell it within 3 months. However, unlike the AIGO Residential Property Fund, HJ Residential plc would purchase the assets itself rather than lend money to others to do so.

214. The main deal flow was anticipated to be from HJL, described in the Information Memorandum, as a company formed by two directors (Mr Stephen and Mr King) who have "substantial expertise" in the UK residential property market. HJL would also benefit from advice on structuring transactions from Reeves Knyght, who, it will be recalled, was described in the AIGO IM as a specialist mining consultant for the AIGO Natural Resources Fund. HJ Residential had one non-executive director, David Anderson, whose main experience appeared, from his description in the Information Memorandum, to be in the hotel sector.

215. No financial statements for HJ Residential plc were in evidence, although it is stated in the summary information memorandum that one of the benefits of listing was that these would be produced twice a year so investors could monitor the Issuer's progress.

216. There is little information as to what HJ Residential actually invested in. However, there was in evidence an undated document entitled Table of Property Holdings (for HJ Residential plc) which lists 16 sold and 20 current properties.

The Commercial Bonds

217. HJ Commercial plc's stated investment strategy was the same as the AIGO Commercial Property Fund, that is the purchase of commercial property at 20-80% market value with either a re-sale within 30 days at approximately 90% market value or work being undertaken to improve the property's value. The UK property market would be its main focus, but overseas property could also be held. However, HJ Commercial plc's strategy was also to purchase the underlying assets itself rather than lend money to others to do so.

218. The main source of deals was again expected to be HJL. There is little information about what properties were actually bought. However, there are unaudited and undated financial statements for 2014 for HJ Commercial plc in the evidence, showing that its total assets of just over £5m were held in cash.

The SME Bonds

219. The Information Memorandum stated that HJ SME plc's intention was to purchase receivables or make loans to natural resources companies, SMEs (small and medium sized enterprises) or start-up companies either in the UK or overseas. The intention was for most loans to be secured by a fixed charge over key assets of the borrowers, examples given include patents, production machinery, vehicles and property; with a floating charge possibly to be obtained over all assets. The minimum investment amount would be £250,000 which means that (taking into account fees) there would have been a maximum of 16 projects invested in and probably less, which, we observe, is not a highly diversified portfolio.

220. It was stated that HJ SME plc's investments would be determined by HJL who was appointed as specialist asset consultant. Alongside Mr Stephen and Mr King, HJ SME had a non-executive director (Robert Sargent) whose experience was in institutional fund management at major institutions which does not appear to be relevant to the strategy of HJ SME plc. Mr Sargent's other directorships included Dos Palm Oil Production Limited (invested in by the AIGO Natural Resources Fund) and Kempis Asset Management (the first adviser for the AIGO Equity Fund).

221. There was no evidence regarding what investments were made and whether HJ SME achieved the return of 15-20% per loan that it was targeting. This is substantially higher than the 8% return due to Bondholders and appears to reflect the level of risk inherent in small and start-up businesses.

The Liquid Assets Bonds

222. As we discuss later, after their issuance in February 2015, the cash element of investors' portfolios (where advice had been provided by either FPL or BHIM) was transferred into an investment in the Liquid Assets Bonds.

223. It was stated that HJ Liquid Assets plc's strategy was to use the issue proceeds from the Bonds for G10 intra-day currency trading, single stock arbitrage trading and the trading of other liquid assets including foreign currency, money market mutual funds and government bonds. The trading would be done by a specialist company on behalf of HJ Liquid Assets plc (for a 20% performance fee) or HJ Liquid Assets plc would invest on a secured basis in a company incorporated specifically to trade on its behalf (loan interest being set at 3%). The London Academy of Trading is named as one such potential partner. HJ Liquid Assets plc had one non-executive director (John Devonshire), a partner of the London Academy of Trading.

224. The Information Memorandum warns that HJ Liquid Asset plc's trading carried "a higher risk of loss than trading many traditional instruments such as shares in many large companies or fixed income securities". In particular, it notes risks associated with price volatility, changes in the interest rate, liquidity and general market conditions.

The Fact Sheets

225. As was the case with the Loan Notes, when customers of the Firms were recommended to invest in the Bonds, they were recommended to do so on the basis of investing in one of three portfolios. Those Portfolios were named the HJ Cautious portfolio, the HJ Moderate Portfolio and the HJ Adventurous Portfolio. Later versions were branded BHIM rather than HJ. As with the Loan Notes, those Portfolios consisted of what was described as a "carefully selected blend of investments" made up of a mixture of Bonds from the various Issuers.

226. There was a prominent heading in the Fact Sheets of "Capital Protection" under which there was text to the effect that the Bonds benefited from being asset-backed as they had tangible assets securing their value held by the bond trustee and that as additional protection, a loss provision mechanism had been built in that provided additional capital in the event of loss. This was described as being similar in construct to an insurance premium.

227. It was also stated that the Bonds were listed on GXG Main Quote and that there was no restriction on resale. Beaufort Securities had been appointed as broker and it was stated that if the investor wished to sell the Bonds, then Beaufort Securities would perform this function on the investor's behalf.

Costs of investment in the Bonds and on-going costs

228. A sum equal to 5% of each investment made into the Bonds was (except in relation to the Liquid Assets Bonds) to be paid to HJL as a commission for introducing investors to the Bonds. As we shall see later, an initial advice fee at the rate of 3% of

the funds invested was paid by customer who accepted a recommendation from BHIM to invest in the Bonds.

229. There were various upfront costs, some of which were disclosed in the relevant Information Memorandum, such as £12,000 paid to Alfred Henry Corporate Finance for approving each Investment Memorandum and £12,000 to the same firm for advising on the admission of each of the Bonds to GXG Main Quote. It was also disclosed that a firm of solicitors would be paid for services relating to the verification of each Information Memorandum, but no amounts were disclosed.

230. There were also ongoing costs. In relation to each of HJ Residential plc, HJ Commercial plc and HJ SME plc, there was an annual fee of 1.5% of gross assets of each Issuer to be paid to HJL (at HJL's discretion) who had been appointed to act as "specialist asset consultant". A further sum of £12,000 per annum was payable to Alfred Henry Corporate Finance in relation to advice regarding the admission of the Bonds to GXG Main Quote, £12,000 per annum was payable to the non-Executive Director for each Issuer, £19,200 per annum was payable to the Bond Trustee and £3,000 per annum was payable to the Registrar for each Issuer. In relation to HJ Liquid Assets plc, similar fees were payable, but there was no ongoing fee to HJL, and the directors' fees were £4,000 per annum to each of Mr Stephen and Mr King and £4,000 per annum to the non-executive Director.

231. Accordingly, in the first year of their investment, an investor who put funds into the Bonds (excluding the Liquid Assets Bonds) in October 2014 would pay 3% before the investment was made and then once the various commissions and costs are taken into account (5% + 0.3% (approximation of upfront costs assuming funds put in to all three Bonds and a maximum capital raising of £12million) + 1.5% + 1.15% (on the same assumptions)) meaning approximately 10.95% of the total sum to be invested has been expended before any investment has been made.

232. In fact, it appears that considerably less than the full amount offered was raised. The announcement from the Cyprus Stock Exchange giving details of the listing of the Bonds on that Exchange in September 2015 discloses that Commercial Bonds to the value of £2,512,763 were listed, Liquid Assets Bonds to the value of £2,459,207 were listed, Residential Bonds to the value of £2,963,490 were listed and SME Bonds to the value of £1,812,237 were listed. Accordingly, in practice, the costs would be a higher percentage of the monies raised than referred to above.

233. Other than the 3% advisory fee, an investor would only find out about the other costs if they read the full Investment Memorandum.

234. Under the Service Proposition, as discussed below, investors who opted for an annual investment review would also have been charged 0.5% per annum of the total value of their investment.

Whether the Products were "low risk"

General

235. As mentioned above, Mr Lockie gave expert evidence on the question whether the Loan Notes and the Bonds should have appeared to a reasonably competent IFA to be high risk for retail investors, based on the information relating to the Products that the relevant Applicant claimed to have reviewed. In practice, Mr Lockie made his findings primarily by reference to the various Information Memoranda and Portfolio Fact Sheets.

236. In assessing what a reasonably competent IFA might reasonably be expected to have known at the time the relevant advice was given, Mr Lockie had regard to what was required to obtain the minimum qualification requirements for IFAs according to the terms of the Authority's Training and Competence Sourcebook. We understood that each of the relevant IFAs in this case had at least those minimum qualification requirements. In our view, that was an appropriate benchmark. As Mr Lockie said in his report, a reasonably competent IFA, providing advice on investment products for retail investors, should have a sufficiently broad knowledge to understand the principles of risk and return, diversification, how an investee's cost of capital relates to an investor's return and to be able to identify when it is prudent to ask additional questions or to enlist more specialist assistance. None of the Applicants took issue with that statement and we accept it as the relevant standard.

237. Mr Lockie set out a variety of factors that are relevant in assessing the risk of a product. Uncontroversially, he described how assets can be divided into two broad classes, namely "Defensive" assets and "Growth" assets. In the former category would fall cash and bonds, that is fixed interest securities, which would have a hierarchy of risk according to whether the issuer was a Government or a Corporate and whether the bonds were investment-grade or sub- investment-grade, depending on whether a rating had been obtained. "Growth" assets comprised equity instruments (shares) and real property. Mr Lockie explained that for most investors, a mixture of Defensive and Growth assets would be acquired, the split varying according to their particular circumstances. He explained how bonds generally present a lower risk than equities in that bond holders receive a fixed return and are ahead of owners of equity in the queue when the business is wound up. He did, however, stress that not all bonds are the same and he would expect a reasonably competent IFA to consider the risks associated with a bond in each case.

238. Again, uncontroversially, Mr Lockie explained the principles of investment planning and diversification. In particular, he explained how the risk of a failure of a subset of the broad market, such as a company, sector or country can be diversified away by spreading a portfolio across a range of assets within an asset class. As he explained, this reduces the impact of failure or underperformance of one component on the portfolio as a whole and is a widely accepted principle. He further explained how diversification can also protect systematic risk if the asset classes to which portfolios are exposed are selected so they do not all move in the same direction at once. He also described how portfolio construction relies on using assets which are not well correlated

with each other, so that they would not all be expected to move in the same direction at once most of the time.

239. Mr Lockie explained that there is a range of opinions as to the minimum number of holdings needed to effectively diversify a portfolio, with some suggesting as low as five and others 1,000 or more. He explained that diversification need not be expensive and that most investors can access a diversified portfolio at low cost via a collective fund such as a unit trust, investment trust, exchange traded fund or open-ended investment company. He observed that some such funds hold thousands of individual securities and have a global spread while charging under 1% per annum.

240. Mr Lockie then explained the extent to which a reasonably competent IFA would be expected to undertake due diligence on a new product. In the absence of a performance track record, he said that a reasonably competent IFA needed to make an assessment based on their experience, the data available about the long term historic returns of a similar asset over a range of market conditions and the proposed product costs. He emphasised that a new product, particularly from a new provider, should be subject to additional scrutiny due to the lack of a measurable track record. In his cross examination, Mr Lockie expressed the view that it was unnecessary to undertake the same degree of investigation where the product concerned, and those running it, were regulated on the basis that an adviser should be entitled to assume that, in the case of a UK investment, the Authority has already conducted that degree of detailed evaluation. He observed that the quality of regulation varied throughout the world, so the degree of due diligence necessary may depend upon where the product in question was regulated and what standards were applied in the relevant jurisdiction.

241. In Mr Lockie's view, due diligence should extend to the question of operational risks, examples being the competence and experience of personnel, conflicts of interest and costs.

242. Mr Lockie then described the criteria he used to determine the extent of risk inherent in an investment product. He accepted that the terms "low", "medium" and "high" risk are terms that are widely used, but there are not clear and universally accepted definitions of what constitutes "low" "medium" and "high". He accepted that the terms are somewhat imprecise in the sense that even though a particular investment may be fairly described overall by one of these terms that does not necessarily mean that the same term applies to each and every characteristic of the investment. In other words, it is possible for a given investment to have both low and high-risk characteristics.

243. He gave an example of a regulated investment fund which employed no gearing or derivatives and invested only in large UK companies, characteristics which would typically be regarded as low risk. However, if the investment fund only held 10 companies in its portfolio, the impact on the portfolio of one of those companies failing would be substantial and give rise to a higher systematic risk. As a result, in his view, a reasonably competent IFA would regard that fund as high risk overall. By contrast, a similar fund which invested only in emerging markets, but held a widely diversified

portfolio across dozens of countries and hundreds of companies, would be exposed to high systematic risk because emerging markets are perceived as riskier than the UK.

244. Mr Lockie's conclusion as to the approach to be taken in assessing whether an investment is low, medium or high risk overall is a matter of considering several criteria and forming an opinion based on the aggregate of the available data about it. He set out a table of the relevant factors to take into account when assessing an investment which he considered that a reasonably competent IFA would have in mind. We summarise the key factors as follows:

- *Liquidity and access:* low risk is where the investment is accessible within a few days with no or very small loss of capital; medium risk is where the investment is accessible within a few days, but value could be depressed due to market conditions; high risk is where the investment is not accessible on demand and/or the price is determined by the issuer rather than by a free market pricing mechanism

- *Short-term volatility:* low risk is where there is a small chance that the investment could fall in value by other than a small amount and recovery from such falls will generally be within a short period; medium risk is where there is a significant chance that the investment could fall in value and not recover for a prolonged period; high risk is where there is a significant chance that most or all of the investment could be lost irretrievably

- *Gearing*: low risk is where gearing is not employed; medium risk is where gearing may only be employed subject to predefined limits and timescales; high risk is where gearing may be employed without restrictions at the discretion of the investment provider

- *Currency risk:* low risk is where exposure is to assets denominated in the same currency as that of the investment or where currencies are fully hedged; medium risk is where the currency risk is either hedged or unhedged for reasons which are clearly stated; high risk is where exposure may be to assets denominated in other currencies and such exposures may be hedged or unhedged at the discretion of the provider and subject to no independent scrutiny

- *Maturity risk:* low risk is where interest paying investments mature in a short period of time (less than 5 years) and therefore tend to exhibit relatively low price volatility as investors are not committed to owning them for a long period; medium risk would be interest paying investments which mature between 5 and 15 years and their price volatility tends to fall between that of short and long dated bonds; high risk is where interest paying investments mature more than 15 years in the future, and are subject to greater price volatility as the impact of future events on the attractiveness of the income is less certain

- *Unsystematic:* low risk is where the investment is as fully diversified as possible across the asset class to which it is exposed, such as a broad market index fund; medium risk is where the investment is diversified across the asset class to which it is exposed; high risk is where the investment need not be diversified across the asset

class to which it is exposed and so may be heavily impacted by the failure or loss of any part of the portfolio's assets

- *Counterparty:* low risk is where any counterparties are large, stable and established institutions which are regulated, subject to external independent scrutiny and have adequate transparency to allow an informed assessment of the risk involved; high risk is where counterparties may be small, recently established with no track record, unregulated and not subject to significant scrutiny

- *Systematic:* low risk is where the underlying assets are in sectors which are established, subject to market pricing and have a low expected chance of loss, such as short-dated bonds from high quality issuers; medium risk is where the underlying assets are in sectors which are established and subject to market pricing but may be in asset classes which have a higher expected risk such as longer-dated or lower rated bonds, quoted equities or real estate; high risk is where the underlying assets may be unquoted and valuation is a matter of opinion on the part of the provider, the directors of the underlying entities or third parties appointed by the provider; where quoted, the listing is in a jurisdiction where regulation, transparency and investor rights may be less than in developed markets

- *Regulation and investor protection:* low risk is where the investment is fully protected by regulation and investor protection arrangements; medium risk is where regulation and investor protection arrangements cover some aspects of the investment; high risk is where there is little or no regulation or investor protection arrangements and in the event of failure of the provider, investors could expect to lose up to the entire amount of their investment

245. Mr Lockie accepted that few, if any, individual investments would fall in a single column on the table, thus emphasising the need to look at all the various factors and make an overall assessment.

246. Applying these criteria, Mr Lockie set out some examples of typical investments owned by retail investors which he would expect a reasonably competent IFA to regard as falling into each category:

- *Low risk*: deposit accounts with authorised institutions, gilt edged securities held to maturity and regulated funds investing in short-dated bonds issued by institutions with high credit ratings

- *Medium risk:* regulated and diversified (typically more than 100 holdings) collective funds investing in quoted securities, with daily liquidity

- *High risk:* unregulated collective investments, individual securities in quoted or unquoted entities, investment returns dependent on trading strategies, investments with high turnover, investments in unproven fields or in which the provider lacks experience, investments with high costs, collective investments with concentrated portfolios, illiquid investments and investments whose values are not subject to frequent market pricing

247. Mr Lockie explained that one way of considering the risk profile of an investment is to compare the investment which is being considered against a clearly identified low risk investment. He compared the AIGO Loan Notes, which paid interest at a rate of 8% annually in arrears and where capital would be returned to investors after 10 years, to a UK gilt-edged security due to redeem at the same time as the AIGO Loan Notes, namely the 2 ¼% Treasury Gilt 2023. If an investor bought the latter security on the day the AIGO Loan Notes were issued, he could expect a redemption yield of approximately 3% on an investment with a very low likelihood of default on either interest or principal and which could be traded daily.

248. Mr Lockie's analysis is that there is no reason for a high return low risk investment to exist because if market participants perceive that they can obtain a high return at low risk from an asset, demand for that asset will increase. This will push up its price to a level at which the prospective return to new buyers is lower and more in line with the market's expectations for an asset with that level of risk.

249. Therefore, Mr Lockie argued, if two bonds of similar maturity have different levels of redemption yield there is a perception somewhere that the one with a higher redemption yield will be riskier than the one with the lower redemption yield. If the issuer deems it necessary to offer a return of 8% when an equivalent UK gilt is offering a return of 3%, there is an implication that the issuer must regard the 8% bond as likely to be higher risk than the equivalent gilt. If not, there would be no need to attract investors by offering a higher return as they would be just as likely to buy the issue at a 3% redemption yield.

250. Finally, on these general points, in his cross examination Mr Lockie observed that the risk that is being assessed is the likelihood that the investment will deliver what it is expected to deliver during the period that it is held. Thus, in the case of the Loan Notes, the question is whether the risk of the issuer not being able to deliver the expected 8% return over the life of the product and to repay the principal in full at the end of the term can be considered to be a low, medium or high risk. In our view, that is an appropriate yardstick to apply when assessing risk and the Applicants did not dispute it.

Risks attaching to the Loan Notes - Mr Lockie's evidence

251. The risks identified by Mr Lockie were based primarily on the AIGO IM and the Fact Sheets on the basis that these materials would be the most useful in the assessment by a reasonably competent IFA of the risk profile of the Loan Notes. We agree with that assessment. Much of the material produced by the Applicants as to the due diligence that they undertook on the Loan Notes is in our view irrelevant to the assessment by the relevant IFA of the risk profile of the Loan Notes. Most of that material related to the Firms' obligations regarding identification for the purposes of money-laundering risks but had no relevance to the question of the professional competence of those involved with the Cells and their investment strategies.

Conflicts of interest

252. Mr Lockie identified that a substantial proportion of the investors' funds went to companies controlled by Mr Stephen, in circumstances where HJL had already been paid an initial fee from those funds. Mr Lockie was of the view that in such circumstances, a reasonably competent IFA would be concerned about the selection of counterparties and how the interests of the holders of the Loan Notes who were being expected to fund the enterprises were being protected.

253. Mr Lockie also noted that the equity holders (notably Mr Stephen) were incentivised to maximise investment returns over and above what was needed to pay the investors, who were funding the investments but had no influence over investment decisions. He particularly noted that the amount of risk that investors would wish to bear (and which would ensure payment on the Loan Notes) may well be lower than that desired by an equity holder. Mr Lockie stated that this would have been obvious to a reasonably competent IFA.

Insurance

254. Mr Lockie stated that he would not expect a reasonably competent IFA to have an in-depth understanding of the way in which captive insurance works and accepted that he had limited knowledge on captive insurers.

255. However, he observed that the premium calculation envisaged a very low risk of default during the 10 year term of the Loan Notes and that this implied that a claim would be unlikely. He went on to say, however, that he would be much more confident of the validity of this premise were the insurer an independent institution whose own business would be affected were a claim to arise. However, in this instance, the captive nature of the insurer meant that he could not regard the low premium as being indicative of an independent assessment of the risk of the Cells defaulting on their obligations in respect of the Loan Notes.

256. He stated that a reasonably competent IFA would have considered that concerns over the insurance, such as the use of a captive insurer rather than purchasing insurance in the market and the lack of adequacy of the captive insurer's capital, would have limited the mitigation to the risk profile that the insurance appeared to provide. Consequently, Mr Lockie was of the view that referral to a suitably qualified expert might have been justified.

257. Finally, on the insurance issue, Mr Lockie noted that if a claim were to arise the fact that the Directors of AIGO retain all responsibility for making claims and administering payouts to lenders should give a reasonably competent IFA cause for concern in that the process would not be independent and subject to scrutiny. This and the other factors mentioned above should, in Mr Lockie's view, have prompted a reasonably competent IFA to doubt whether, based on the evidence provided, the supposed benefits to the holders of the Loan Notes of the insurance arrangements had any real value.

Bonds and equities

258. Mr Lockie rejected Mr Page's characterisation that the risk level attached to the Loan Notes would be materially different had they been sold as equity. He expressed the view that the risk inherent in a product is not determined by whether it is sold as an equity or a bond; it is a function of what it is and the nature of the issuer's business. Although there is a difference, at least in principle, in the risk between bonds and equities issued by the same entity this reflects the priority of bondholders over equity holders on liquidation. He observed that if the business fails without sufficient assets to meet its liabilities, this distinction is academic as both parties lose their investment.

Regulatory protection

259. Mr Lockie expressed the view that, when considering an investment for a retail investor which is not subject to the UK (or equivalent) regulatory regime, it was incumbent on the entity responsible for advising that investor to ensure that any additional risk which this entailed was mitigated as far as possible by its own due diligence procedures. In the case of an investment not subject to the protection offered by the FSCS, Mr Lockie was of the view that the regulated firm recommending it needed to satisfy itself that the absence of such protection either would not impact materially on the investor's financial security if the investment were to fail (for example, by only investing a small proportion of their assets into it which they could afford to lose) or that the benefits available from it were considered to be adequate compensation for the elevated degree of risk compared to an investment offered by a regulated institution.

Residential Property Fund

260. Mr Lockie identified the following risk factors which he would expect a reasonably competent IFA to identify and consider in relation to this Cell:

- *Underlying assets*: Since the stated intention is for Kazai to turn around the properties quickly, the prices at which both acquisition and disposal take place will be dependent on market conditions at the time, whereas a buy and hold investor need only be concerned with one acquisition and one disposal price per property. The Cell is therefore dependent on both luck and skill rather than the asset class as a whole. In addition, property is an expensive asset class in which to carry out transactions and the proposed strategy involves a relatively frequent turnover of holdings which would create a greater cost drag on the Cell which could have an impact on the ability to generate sufficient revenue to repay the Loan Notes.

- *Diversification*: The loans to Kazai and Stark accounted for more than 70% of the Cell's assets at the end of 2014 and still more than 60% by the end of the following March.

- *Liquidity and Access:* The original notice period for withdrawals of 12 months gives rise to a lack of liquidity which contrasts markedly with the comparison

with a UK gilt and is inconsistent with what would reasonably be expected of a low risk investment. The addendum allowing for a request to be made for the investment to be transferred or assigned within 30 days also only relates to the position where the investor was advised by HCA and although a reasonably competent IFA would regard 30 days as reasonably liquid for an asset such as this, it was not clear how the Loan Notes would be valued in such circumstances or who would purchase them unless a functional secondary market existed.

- *Gearing:* The possibility of using gearing in this Cell increases the risk profile because such gearing would amplify losses in the event of a decline in its asset values. Gearing is not a feature that Mr Lockie believed a reasonably competent IFA would expect to find in an asset that is portrayed as low risk and its presence would push the asset's risk higher on the risk scale.

- *Currency risk:* This risk arises because of the potential to hold property throughout the world. Hedging is only stated to be a possibility rather than an obligation and in Mr Lockie's view a reasonably competent IFA should appreciate that the taking on of an unhedged currency risk may not be consistent with a low risk investment.

- *Unsecured loan:* by becoming unsecured creditors of the Cell to which they have lent funds, each holder of Loan Notes is exposed to the risk of failure of the Cell which Mr Lockie would expect a reasonably competent IFA to recognise as a concern when considering the investment's riskiness for a retail investor.

- *Counterparty*: The Cell's investments were via third parties rather than directly in the underlying assets. This represented a further additional risk, particularly because Kazai, for instance, had only a brief trading record at the time the AIGO IM was written. Only a limited review of the qualifications and experience of the potential partners appeared to have been undertaken by AIGO which had not obtained financial information about them. Kazai had undertaken a considerable burden in having to fund the high interest payments that it had agreed to pay the Cell and its property trading activities would need to generate sufficient returns to cover them. In Mr Lockie's view, a reasonably competent IFA would have considered that the high interest rates payable by Kazai were set by the Cell to reflect, at least in part, the risk involved in lending to Kazai.

- *Competence and experience of personnel:* In Mr Lockie's view, a reasonably competent IFA would be aware that the ability to execute an investment strategy effectively depends on the personnel resources available to the fund concerned. For a newly established fund, a greater degree of scrutiny on the part of an adviser would be reasonable than if it were a fund launched by an established provider with extensive experience and resources. In the case of this Cell, considerable reliance is placed on Mr Stephen's experience, but it was unclear how this related to the investment strategy of the Cell. As regards Mr Castle, his experience in sourcing below market value residential opportunities was relatively short and did not cover a full market cycle.

Commercial Property Fund

261. Mr Lockie considered that many of the risks of the Commercial Property Fund were identical to those of the Residential Property Fund, particularly those identified above as regards Liquidity and Access, Gearing, Currency Risk, Unsecured Loan, Counterparty (with the exception of the reference to Kazai) and Competence and experience of personnel insofar as it refers to Mr Stephen.

262. In addition, Mr Lockie identified the following risks that he would expect a reasonably competent IFA to identify and consider in relation to this Cell:

- *Underlying Assets*: The precise types of property to be targeted by the Cell were not specified in the AIGO IM and the fact that the offer was seeking to raise only £20 million would clearly limit the value of individual properties which could be acquired to those priced at under that figure. Mr Lockie expected that a reasonably competent IFA would also have appreciated that the information provided about the proposed investments was too general to permit a reasonable assessment of their prospects and thus the Cell's risk characteristics. Consequently, because the investment strategy was unclear, this entailed an elevated degree of risk.

- *Diversification*: The AIGO IM provided an example of a potential transaction at a cost of £2 million and, if this was typical, it indicated a maximum of around 10 holdings at any one time which, in Mr Lockie's view, a reasonably competent IFA would regard as a highly undiversified portfolio.

Natural Resources Fund

263. Again, Mr Lockie considered that many of the risks of the Natural Resources Fund were identical to those of the two Cells considered above.

264. In addition, Mr Lockie identified the following risks that he would expect a reasonably competent IFA to identify and consider in relation to this Cell:

- *Underlying Assets:* Mr Lockie observed that the AIGO IM listed several commodity risk factors, such as a decline in the value of infrastructure assets resulting from changing market conditions; new scientific discoveries relating to the use of the commodity and government and public attitudes regarding the popularity and benefits of products manufactured with the commodity. Mr Lockie observed that the presence of these risks should have suggested to a reasonably competent IFA that the asset class was not low risk and that any investment product that depended on the performance of such assets was not going to be low risk. Furthermore, he observed that the AIGO IM envisaged investment in a project company which only had a 2 year track record which exposed investors to a risk which might not exist with longer established businesses, a point that a reasonably competent IFA should have identified and considered as increasing the risk profile.

- *Diversification:* Mr Lockie observed that the minimum £1 million investment in each project indicates that, given the Natural Resources Fund sought to raise up to £20 million, there could be exposure to as few as four projects but in any event not more than twenty at any one time, with the result that diversification would be limited, and risk increased compared to a more diversified enterprise.

- *Competence and experience of personnel*: Mr Lockie observed that Mr Stephen, his father and Mr Knyght appear from the materials available to have only limited and specialised experience across the wide-ranging natural resources sector which raised doubts as to the management's ability to manage such a business effectively with a resulting increase in the risk profile of the fund.

Equity Fund

265. Mr Lockie identified the following risks that he would expect a reasonably competent IFA to identify and consider in relation to this Cell:

- *Liquidity and access*: Mr Lockie identified the same risks as he did in relation to the Residential Property Fund, mentioned above. These indicated to Mr Lockie that the Equity Fund was illiquid.

- *Investment strategy*: Mr Lockie noted that the strategy underwent significant changes in a relatively short period. He did not understand what, in relation to the latest strategy, was meant by "SME secured share purchase" and he doubted that a reasonably competent IFA would understand to what it referred. Mr Lockie observed that a reasonably competent IFA would regard a fund which changed its strategy from investing in bonds to equities to be so fundamentally unusual that it would raise serious concerns about its risk profile, a position that was exacerbated by the fact that, as at 31 March 2015, 30% of its assets were invested in another Cell, the Natural Resources Fund.

- *Counterparty*: the suggestion that the Cell could generate a return of between 26 to 95% of the investment amount would indicate to a reasonably competent IFA a high degree of risk at a time when a comparable UK gilt offered a return of 3%. Kempis Asset Management was represented as having demonstrated a track record over a period of 21 months without a single negative month of trading, but Mr Lockie was of the view that a reasonably competent IFA would not view it as appropriate to draw any conclusions about the repeatability of such performance based on such a short period.

Mr Lockie's overall conclusion on the risks attaching to the Loan Notes

266. Mr Lockie concluded that it should have been clear to a reasonably competent IFA, simply from reading the AIGO IM, that the authors of the document recognised the significant risks associated with investment in the Cells. He saw no basis on which an investment in any of the Cells could reasonably be regarded by a reasonably competent IFA as being low risk. In summary, Mr Lockie relied on the following

matters for his conclusion that any reasonably competent IFA would have placed the Loan Notes within the "high risk" category:

(1) the lack of liquidity;

(2) the dependence on the skill of managers and trading strategies;

(3) the lack of regulatory oversight;

(4) the absence of significant diversification; and

(5) the lack of evidence of relevant manager experience.

267. In his view, there was insufficient evidence to conclude that the insurance arrangements would have been adequate to mitigate these risks, given that not all Cells were covered by them and the ability of the captive insurer to meet the costs of any claims was unknown.

Risks attaching to the Bonds-Mr Lockie's evidence

268. As we stated in relation to the Loan Notes at [251] above, much of the material provided by the Applicants to support their due diligence processes is irrelevant to the question of the risk profile of the Bonds which can properly be assessed by reference to the Information Memoranda and the Fact Sheets.

Conflicts of interest

269. Mr Lockie expressed the view that the fees payable to HJL (whose sole shareholder was Mr Stephen who was also the sole shareholder and a director of the four Issuers) as well as Mr Stephen's entitlement to any excess returns above those needed to pay the Bondholders, created a clear conflict of interest. This was because Mr Stephen would have an incentive to procure investment into the Bonds and then the power to direct the activities of the Issuers to maximise his own returns as shareholder, regardless of the desire and capacity for risk of the bondholders who were providing the finance. The selection and appointment of HJL as "specialist asset consultant" for the Issuers (other than HJ Liquid Assets plc), regardless of evidence of its relevant expertise in the underlying assets, shows no indication of having been conducted on an independent basis given that the same individuals represented both parties. Mr Lockie expressed the view that he would expect that these conflicts would cause concern to a reasonably competent IFA considering recommending any of the investments to a retail investor.

Regulatory protection

270. Mr Lockie noted that the same comments that he made regarding the relevance of the regulatory protection available in respect of the Loan Notes, as set out at [259] above, applied to the Bonds.

Residential Bonds

271. Mr Lockie identified the following risk factors which he would expect a reasonably competent IFA to identify and consider in relation to these Bonds:

- *Underlying assets*: The same risk factors identified in relation to the AIGO Residential Property Fund applied.

- *Diversification*: As mentioned above, the only available information indicated that (as of an unknown date) there had been 16 properties sold and that there were 20 properties currently held, which Mr Lockie observed was not a large number across which to spread risk and that any reasonably competent IFA would have been concerned by this lack of diversification.

- *Liquidity and access*: Mr Lockie noted that the fact that the Residential Bonds were listed on GXG Main Quote did not ensure that an investor could necessarily effectively trade on a daily basis. He pointed out that for an asset to be liquid from an investor's perspective, there needed to be a sufficiently active market in it as, if there was little stock traded and little demand from other market participants, then it would be difficult to determine a fair and accurate price. There was no evidence of the extent to which there may have been a functional liquid market in the Residential Bonds. There was also a risk warning to investors that there was no guarantee that there would be a purchaser to whom investors could sell their Bonds should they wish to do so. In Mr Lockie's view, that would have been seen by any reasonably competent IFA as a clear indication that the Bonds had at least the potential to be illiquid, in contrast to his comparative example of a UK gilt.

- *Costs*: The level of the upfront and annual running costs disclosed (in excess of 9% per annum) when taken together with the intention to retain up to 20% of funds in cash made it hard for the Fund to achieve the required return to meet its obligations to Bondholders. Mr Lockie was of the view that a reasonably competent IFA would identify this as a factor suggesting an elevated risk.

- *Cash protection and security:* Mr Lockie regarded the CPA to be of minimal significance which at best might provide for the payment of interest on a rolling basis. He did not regard the existence of a floating charge over the assets of the Issuer as something that would automatically qualify the Bonds as low risk investments. Having the security in itself provided no protection against fluctuations in the value of that security and, if its value fell below that of the loans, the Issuer would be exposed to the risk of default. In addition, where the security was in the form of floating charges, the ability to crystallise the value of the assets when needed would be uncertain, particularly where funds were invested in enterprises or activities which were inherently risky. Mr Lockie therefore did not consider that a reasonably competent IFA would view the existence of charges on the assets of the issuing companies as impacting materially on the risk profile of the Bonds.

- *Counterparty risk*: Mr Lockie was of the view that since there was a commonality of management between HJL, the main source of deals, and the Issuer the effect was to put the entire investment risk in the hands of the HJL management which reinforced the high-risk nature of the investment.

- *Competence and experience of personnel*: Mr Lockie was of the view that it would have been clear to a reasonably competent IFA that the directors' biographies in the Information Memorandum provided insufficient evidence of substantial expertise in the UK residential property market. This should have led a reasonably competent IFA reviewing the Information Memorandum to be concerned about the risk to which investors in the Residential Bonds would be exposed in the absence of such substantial expertise.

Commercial Bonds

272. Mr Lockie considered that some of the risks of the Commercial Bonds were identical to those of the Residential Bonds, particularly those identified above as regards Liquidity and access, Costs, Cash protection and security, Counterparty, and Competence and experience of personnel. In addition, Mr Lockie identified Currency risk as a relevant factor. Since the Issuer could purchase property outside the UK, the value of such property would clearly be denominated in currencies other than sterling. Therefore, the movement of exchange rates could result in a transaction which had realised a profit in the local currency becoming a loss for a sterling investor in the absence of a currency hedging policy.

SME Bonds

273. Mr Lockie considered that some of the risks of the SME Bonds were identical to those of the Residential Bonds, particularly those identified above as regards Liquidity and access, Cash protection and security, and Counterparty.

274. In addition, Mr Lockie identified the following risks that he would expect a reasonably competent IFA to identify and consider in relation to these Bonds:

- *Investment strategy:* In Mr Lockie's view, the intended targeting of loans to generate a return of 15 – 20% is consistent with lending to high risk entities. Mr Lockie observed that this return was substantially higher than the 8% return due to the Bondholders who were funding the Issuer which means that, if each investment were to succeed, the Bondholders got no additional benefit. He observed that equity shareholders were effectively being allowed to take substantial risks with the Bondholders' capital.

- *Diversification*: Mr Lockie noted that, given the likelihood of a maximum of 16 counterparties, the default of one would have a material impact on the business. In his view, a reasonably competent IFA would consider that lending to 16 counterparties would not offer significant diversification.

- *Competence and experience of personnel:* Mr Lockie's view was that the directors' biographies provided limited evidence of substantial expertise in the corporate and business environment. There was no evidence of expertise or experience in short-term lending to small and/or new companies and, in his view, a reasonably competent IFA would be concerned by this and consider this as increasing the risks associated with investing in the SME Bonds.

Liquid Assets Bonds

275. Mr Lockie considered that some of the risks of the Liquid Assets Bonds were identical to those of the Residential Bonds, particularly those identified above as regards Liquidity and access, and Competence and experience of personnel, insofar as this referred to Mr Stephen and Mr King.

- *Trading strategy:* Mr Lockie observed that intra-day trading is widely considered by market participants to be highly risky and accordingly he would expect a reasonably competent IFA reading the Information Memorandum to be aware of that. He further observed that the trading strategy created the potential for higher returns but also for lower ones and even losses, even though the underlying investments delivered a fixed return if held to maturity. He noted that the success of a strategy which relied on trading was reliant on the skill of whoever was making the trading decisions and their ability to predict correctly which way prices would move.

- *Currency risk:* The Information Memorandum draws attention to the fact that the Bonds are denominated in sterling but some of the income will be generated in other currencies, leaving returns vulnerable to currency fluctuations. No indication is provided of any currency hedging strategy to mitigate this risk and there is also no indication as to the extent to which the income is intended to be generated in foreign currency, so there is an uncertainty about the extent of the currency risk. Mr Lockie's view was that this would cause a reasonably competent IFA to have concerns about the significant risk that could arise as a result of this.

- *Counterparty:* The relevant individuals at the London Academy of Trading appear to have only limited overall experience which in Mr Lockie's view would have caused a reasonable competent IFA concern about their ability to implement a successful trading strategy over the life of the Bonds.

- *Return level:* Mr Lockie observed that the investors were effectively being asked to fund the high risk activities of a derivatives trading business for a return (3%) which was on a par with that of a UK government bond of similar maturity. He said he would expect a reasonably competent IFA to view this return as not being consistent with the high risk profile of the investment.

- *Security:* the floating charges only include the foreign exchange contracts, trading positions and some surplus cash so, as warned in the Information Memorandum, the proceeds available for and allocated to the repayment of the

> Bonds at any particular time cannot be assured to cover all amounts that would otherwise be due and payable in respect of the Bonds. Therefore, it is questionable whether such a security is sufficient to mitigate the risks inherent in the investment strategy.

Mr Lockie's overall conclusion on the risks attaching to the Bonds

276. Mr Lockie was of the view that the nature of the proposed investment strategies for each of the Issuers was consistent with the risk warnings contained in the Information Memoranda to the effect that an investment in the Bonds involved a high degree of risk.

277. In his view, the additional fact that many of the personnel involved appear to have limited experience in the specific fields which pertained to the Issuers' investment strategies as well as the inherent risk of the Issuers' investment strategies themselves, should have made it clear to a reasonably competent IFA that an investment in the Bonds would be a high risk option. In his view, the small size of each issue should also have given rise to concerns as to the likelihood of there being a viable secondary market so investors could sell their Bonds should they need or wish to do so. This would mean that investors would have no realistic prospect of exiting their investment prior to the maturity of the Bonds and that determining a fair price for the Bonds, at any point, would be problematical.

The Portfolios

278. Mr Lockie observed that the stated yields of the BHIM Portfolios were 6.25% (Cautious), 6.6% (Moderate) and 6.775% (Adventurous). He did not expect a reasonably competent IFA to view the difference between 6.25% and 6.775% as sufficient to warrant such a range of descriptions. A similar analysis could be applied to the Bespoke (AIGO) and HJ Portfolios.

279. Bearing in mind his assessment of the specific risk factors relating to the Products detailed above and the lack of diversification within the Portfolios, in Mr Lockie's view, a reasonably competent IFA would not have considered that risk was mitigated in any meaningful way by combining several of these high risk Products. Therefore, in his view, the Portfolios were high risk regardless of whether they were named "Cautious", "Moderate" or "Adventurous", and the insignificant difference between their levels of return also indicated that there was, in essence, very little difference in their riskiness.

Discussion

The Applicants' submissions

280. Each of Mr Page, Mr Henderson and Mr Freer, who were responsible at their respective Firms for recommending the Products, did not accept Mr Lockie's conclusions that they should be regarded as high risk.

281. Mr Lloyd submitted as follows:

(1) Each of the Applicants worked in or was employed by a small firm. Necessarily, those firms were limited in their available resources; their approach to compliance invariably included a degree of reliance on external consultants or advice which might be uncommon of larger enterprises. Though the firms were governed by and subject to the Authority's rules as any other firm, there must be some accommodation, for example, where rules defer to concepts such as reasonableness – value judgements. For small firms, the interpretation of such standards is no small task. There are different ways of interpreting and approaching the rules and smaller businesses might be less sophisticated in their approach and might place a heavier reliance on others with expertise than larger enterprises that have that expertise in house or on call. The evidence painted a picture of small firms doing their best with the resources they had.

(2) The Applicants maintain that, at the time, they considered the relevant investments to be low risk. That is not to say that there were no higher risk factors; but that on their balanced assessment, these came out as low risk overall.

(3) The risk warnings set out in the Information Memoranda to the effect that the relevant Products should be regarded as high risk investments cannot be determinative because, as accepted by Mr Lockie, assessment of risk is not determined by any one individual factor but is a nuanced and subjective exercise and the Products were not direct-equity investments. The involvement of second (and third) parties, removing direct exposure, may reduce risk.

(4) There are a number of matters in Mr Lockie's evidence which undermine the Authority's suggestion that the Applicants cannot have properly assessed risk:

> (1) Mr Lockie accepted that he is not an expert in and had limited knowledge of crucial aspects of the investments in question, namely bonds, property and captive insurance;
>
> (2) Mr Lockie accepted that he had not been asked to look at bonds of similar term or return to those in this case, nor was he aware of whether such investments existed;
>
> (3) In any event, Mr Lockie accepted that different IFAs may reach different conclusions permissibly when faced with the same information, and said in cross-examination that:
>
> > "*There isn't a strict formula. One has to apply – yes, I guess one does have to apply an impression based on the evidence that is available, but it that may entail acquiring more information than is currently available in order to reach a reasonable conclusion*"
>
> (4) Mr Lockie also accepted that at least the following potential indicators of lower risk were present within the investments:
>
> - the involvement of *any* national finance regulator is of relevance to risk profile;
> - bonds are a generally defensive asset class;
> - bonds are typically lower risk than direct equity investments;

- while diversification is not conclusive of risk in any event, there was some diversification within the property portfolios indicative of lower risk;
- purchasing distressed property at below market risk afforded some level of 'protection' against drops in market value; and
- the presence of a gating mechanism could operate to reduce risk;

(5) Mr Lockie conceded in evidence that (i) he would not look at the individual holdings of a property fund into which he had invested his own clients; (ii) he would not expect an IFA to understand captive insurance; and (iii) as to questions of liquidity and disinvestment, he had not been provided with information about redemptions;

(6) When asked about whether it would have been reasonable for an IFA to seek out the expertise of others in respect of these investments, Mr Lockie agreed that it would be reasonable to seek the professional opinion of others that were better qualified to comment on it or to evaluate it than he was; and

(7) On Mr Lockie's own risk assessment matrix, there were several indicators of lower risk, notwithstanding his overall assessment.

(5) Consequently, Mr Lockie's evidence cannot demonstrate to the civil standard that the Products were "obviously" high risk; rather Mr Lockie's evidence supports the assertion that different IFAs might permissibly interpret and weigh different risk factors differently.

(6) The Applicants placed much stead in their risk assessment on the fact that they understood the investments to be "standard assets". This understanding was at least in part brought about as a result of:

(1) Legal advice seen and/or commissioned by the Applicants; and

(2) Discussions to which the Applicants were privy. Those discussions, the Tribunal has heard, included discussions with Mr Tunkel, and left the Applicants (rightly or wrongly) with the impression that the process and investments were compliant.

(7) The perceived classification of the assets as standard assets was not irrelevant to the question of risk, and the Applicants' assessment.

282. Each of Mr Page, Mr Henderson and Mr Freer were cross examined on the evidence in their witness statements to the effect that they considered the Products to be low risk. Their position can be summarised as follows.

Mr Page

283. Mr Page relied primarily on the fact that the Loan Notes generated fixed returns which were guaranteed by an insurance policy covering 100% of the principal amount of the Loan Notes. He said that in relation to the Liquid Assets Bonds, he knew of nothing better on the market that would achieve the same return. In evidence, he was

clear that the Liquid Assets Bonds were the same in risk terms as holding cash on the basis that the assets which were held were readily realisable into cash.

284. He said that the Loan Notes were "just a cash bond with a guarantee" and he also reasonably relied on Mr Tunkel's advice that the Loan Notes were a "standard asset". Mr Page accepted in cross-examination that he did not analyse the Information Memorandum in great detail; in particular he did not consider it part of his role to analyse the features of each of the Cells. He said he relied heavily on the fact that Guinness Mahon had accepted the Loan Notes as being suitable for inclusion in a SIPP and the due diligence that Guinness Mahon would undoubtedly have done in coming to that conclusion.

285. Mr Page said he had received the "performance sheets" for the Residential Property Fund and the Commercial Property Fund on a quarterly basis and he would have spent about "15 minutes" looking at them. He was unclear whether, for the Residential Property Fund he had looked at the detail of the properties held, and he had not seen the duplication of properties which had been raised as a concern by Mr Lockie. In relation to the Commercial Property Fund, he said it caused him no concern when he saw the amount that remained held in cash by Stark rather than invested in property as of 31 December 2014. He also did not notice that, by 31 March 2014, the Natural Resources Fund had lent considerably more than 25% of its funds to Dos Palm Oil contrary to its strategy of lending no more than 25% to any one project and that he did nothing when he subsequently saw the amount that had been invested in the Liquid Assets Bonds saying, "the working within the fund was beyond my remit".

Mr Henderson

286. Mr Henderson regarded the Loan Notes as providing a fixed return and a capital guarantee. He was of the view that although Guinness Mahon was an unsecured creditor in relation to the Loan Notes, the risk of insolvency was mitigated by insurance, which protected the value of the loans against a fall in the value of the underlying assets. He did not consider the lack of "regulatory oversight" to be so significant as to affect his view of the Loan Notes, which anticipated making loans for investment into a stable market in UK property. Accordingly, he considered the Loan Notes to be a low risk investment.

287. Mr Henderson did not consider the Nevis insurance regulatory regime to be meaningfully different to that of the United Kingdom. He said that he had relied on advice from Mr Tunkel to that effect. As regards the fact that the Loan Notes were not covered by the FOS or the FSCS, Mr Henderson expressed the view that neither the FOS nor the FSCS provide cover in relation to products, but only to advice. He said he relied on Mr Tunkel's advice that the Loan Notes were "standard assets".

288. Mr Henderson confirmed that he had seen performance sheets. He said he would have looked through the details of the properties purchased by the Residential Property Fund but admitted that he had not seen the duplication referred to by Mr Lockie. In relation to the Commercial Property Fund, he said that he worked in HJL's offices and saw all the commercial transactions; however, he seemed unaware of why there was so

much cash held by Stark by the end of 2014. He could not remember "the reasoning" behind the Natural Resources Fund investing in Liquid Assets Bonds and said he would probably have known the reason why the Equity Fund invested in the Natural Resources Fund but could not now remember.

Mr Freer

289. Mr Freer took the view that the Residential Bonds were suitable for clients with a low tolerance for risk, but that view altered slightly when GXG Main Quote turned out to be less sound than he had previously believed it to be. He understood that bonds were less risky than investing in funds because they offer a fixed coupon with a defined date upon which they will pay out capital. He said the risk of investing in a fund is that the value of the underlying assets can go up and down; however, if the bond was held to its conclusion the issuer is obliged to pay out the value. He therefore considered that this, in general, made investing in bonds less risky than investing in shares or funds which invested in shares.

290. Mr Freer was of the view that there was capital protection for the Bonds in the form of fixed and floating charges and cash collateral. In his view, this made the Bonds relatively stable and low risk investments. As regards regulatory oversight, he observed that many low-risk products were not protected by the FSCS and the FOS.

291. In Mr Freer's view, if all an investor required was a product that provided them with capital protection and a fixed return there was no reason why their entire pension pot could not be invested in the Bonds. He said that he could not find any comparable product to the Bonds for a 10 year term which met these objectives. As regards the risk warnings in the Information Memoranda, these were something that was standard for this type of document. He did, however, accept that just because an investment was capable of being traded on a market it did not mean that there was a secondary market and he accepted that no secondary market had developed in relation to the Bonds. He made an unsubstantiated assertion, which we reject, that some Bonds had been sold in the market. He accepted in his cross-examination that the Commercial Bonds tended towards a medium rather than a low risk and the SME Bonds could be regarded as medium to high risk. Nevertheless, he did not accept the conclusions of Mr Lockie's report but gave no reasons beyond a simple denial.

Conclusions – General

292. We start our consideration of the Applicants' submissions by rejecting Mr Lloyd's submission that there should be some accommodation to take account of the fact that the Applicants worked for small firms with limited resources. We cannot accept Mr Lloyd's picture of small firms doing their best with the resources they had.

293. As Mr Lockie's evidence demonstrates, a reasonably competent IFA could form a view as to whether the Products were high risk simply by a careful but not exhaustive review of the various Information Memoranda and Fact Sheets. Mr Lockie's conclusion, which we accept, was that a reasonably competent IFA who undertook such a review would conclude that the Products were evidently high risk. On that basis, Mr

Lloyd's concerns that the Applicants did not have the resources that would be available to a large firm, such as a bank, to undertake detailed due diligence on the Products and those who were responsible for managing them are not relevant.

294. It may be that the amount of due diligence that small firms, such as the Applicants' firms in this case, would have to undertake to satisfy themselves that it would be appropriate to recommend the Products would be disproportionate. As Mr Purchas submitted, if the Firms did not have the necessary resources to carry out detailed due diligence, with the result that the Firm would have less data available to assess the Products, it should not be recommending them. As Mr Lockie noted, an IFA may form a provisional view to the effect that the investment concerned looked quite good, but he would have to do so much work that it would make it uneconomical for him to use it. As he also noted, if the IFA could not form a judgment on the basis of his initial review of the documentation and could not easily find out what he needed to know to make that judgment, then the decision should be not to recommend the product.

295. Each of Mr Page, Mr Henderson and Mr Freer are experienced IFAs with the necessary qualifications to practice as such. The profile of their Firms suggests that prior to their involvement with the Products, typically the investments that they would recommend to their customers would be regulated products, such as collective investment schemes authorised and regulated by the Authority, equivalent products regulated by a regulator or regulated insurance based investments with similar characteristics to collective investment schemes. Insofar as individual securities were recommended, they may have included government securities and other securities listed on a major recognised exchange. Many of the regulated products would be offered by established providers, where it would be reasonable for the IFA to accept that, before they could be offered to the public, those who were responsible for them would have been subject to scrutiny by the Authority such that the IFA would not find it necessary to undertake as significant due diligence on either the product concerned or those responsible for managing it. Mr Page said in his evidence that he would not expect to do significant due diligence on the funds he recommended, and that is a reasonable position to take in relation to regulated products, but not in relation to unregulated products such as those which are the subject of these references.

296. There was no evidence that any of Mr Page, Mr Henderson or Mr Freer were expert in unregulated funds which invested in property or natural resources or that they were expert in captive insurance or other mechanisms for providing capital protection. However, like Mr Lockie himself, who also did not profess to have specialist expertise in captive insurance or property funds, from their experience and qualifications they would have been able to identify the relevant factors to be taken into account when assessing the risk profile of investments that did not have the characteristics of mainstream investments described above.

297. There was no challenge to the approach outlined by Mr Lockie in assessing whether an investment could be regarded as either high, medium or low risk, as summarised at [244] above. It appeared to be implicit in Mr Lloyd's submission that on the Applicants' balanced assessment the investments came out low risk overall and that

an assessment of these factors would be the starting point for a reasonably competent IFA seeking to assess the Products.

298. We therefore accept that an assessment of the factors identified by Mr Lockie would be an appropriate starting point. It follows from what we have said above that the fact that the IFAs concerned were not, in common with Mr Lockie, expert on the more specialised matters that we have referred to did not prevent them carrying out an appropriate assessment. Accordingly, we reject Mr Lloyd's submission that Mr Lockie's evidence is undermined by the fact that he is not an expert in and had limited knowledge of crucial aspects, namely bonds, property and captive insurance.

299. Neither did Mr Lloyd or Mr Page dispute Mr Lockie's approach of making his assessment primarily by reference to the Information Memoranda and the Fact Sheets.

300. It also appears from Mr Lloyd's submissions that it was common ground that there was no strict formula for determining whether an investment was low, medium or high risk. Mr Lockie accepted that, to a large extent, the process involved forming an impression based on the evidence that was available. We therefore accept that different IFAs may reach different conclusions on the same facts and that there are a range of reasonable conclusions that can be reached when assessing the same information. Some IFAs may give greater weight than others to particular factors.

301. However, there is no evidence that any of Mr Page, Mr Henderson or Mr Freer carried out a careful balancing exercise having considered all the relevant risk factors. As was demonstrated by the evidence that they gave in their witness statements and in their oral evidence, in relation to the Loan Notes, Mr Page and Mr Henderson appeared to rely primarily on the fact that the fixed returns could be assured because of the nature of the underlying investments and the principal amount of the Loan Notes was guaranteed because of the existence of insurance. Mr Freer thought that the Bonds were lower risk because they were secured and the issuer was obliged to pay out their full value at maturity.

Conclusions – the Loan Notes

302. There is no evidence that in relation to the Loan Notes either Mr Page or Mr Henderson gave any weight to any of the factors that led Mr Lockie to conclude that a reasonably competent IFA would have placed the Loan Notes within the "high risk" category namely:

(1) the lack of liquidity;

(2) the dependence on the skill of managers and the success of investment/trading strategies;

(3) the lack of regulatory oversight;

(4) the absence of significant diversification; and

(5) the lack of evidence of relevant manager experience.

303. As far as the liquidity point is concerned, we accept Mr Lockie's evidence that, although on the face of it the ability to assign the Loan Notes within 30 days demonstrates a degree of liquidity, there was no clarity as to how the Loan Notes would be valued or who would purchase them in the absence of a functional secondary market. In any event, this provision only applied to customers advised by HCA. In our view, this is a very strong factor pointing to there being a high risk that an investor wishing to sell his Loan Notes would be unable to do so at the issue price.

304. With regard to the dependence on the skill of the managers and the success of the investment strategies, Mr Page and Mr Henderson appear to take it as read that there was no risk that the relevant Cells would not be able to generate sufficient returns to service the interest payments, meet the significant costs of running the Cells and repay the principal amount of the Loan Notes. However, as Mr Lockie's analysis in the case of the property based funds indicates, successful property trading is dependent on both luck and skill rather than the general performance of property as an asset class and also involves significant cost. In our view, that risk would also have been increased in relation to the Residential Property Fund by the interposition of a third party such as Kazai or Stark so that there was significant reliance on the covenant of those entities, neither of which had significant track records. As Mr Lockie identified in relation to the Commercial Property Fund, there was little information about the intended investments which would enable a reasonable assessment to be made of the Cell's prospects. We also accept Mr Lockie's concerns regarding the underlying assets and investment strategies of the Natural Resources Fund and the Equity Fund.

305. Contrary to Mr Henderson's view, we do regard the lack of regulatory oversight to be a significant risk factor. He is wrong in his assessment that neither the FOS nor the FSCS provide cover in respect of products, as opposed to advice. Regulated collective investment schemes of the kind that we have referred to above as mainstream investments are subject to product regulation, covering matters such as the fitness and properness of the managers who operate the funds, the fund's investment and borrowing powers, the valuation of assets and the pricing of units and adherence to the published investment objectives. If a regulated fund was to fail as a result of non-compliance with any of these matters, then the FSCS safety net would apply and there would be access to the FOS. The only regulation of AIGO that we can detect is the fact that it was authorised by the Mauritian authorities as an Expert Fund. We have no details as to whether the managers of the Cells were regulated to any material extent in Mauritius. The disclosures in the AIGO IM make it clear that, as an Expert Fund, AIGO was exempt from most ongoing obligations and the regulation of the Mauritian authorities on public collective investment schemes. That in itself is a strong indication that the Loan Notes were to be regarded as a high risk product.

306. The risks which can arise as a result of a lack of regulatory oversight are well demonstrated by what actually happened in practice. As we have found, all of the Cells deviated from their stated investment strategies, most starkly in the case of the Equity Fund which, as Mr Lockie observed, underwent significant changes in a relatively short period. This would not have been possible without the approval of the relevant regulatory authority and possibly the investors in the case of a regulated fund, but this was a matter which did not appear to concern either Mr Henderson or Mr Page who

received the performance sheets which showed how the Cells were investing in practice.

307. As Mr Lockie stated, the heightened risks presented by the lack of regulation of the product concerned could be tempered by advising an investor to invest only a small proportion of their assets in the relevant product which they could afford to lose. However, as we shall see, in most cases those who were advised to invest in the Loan Notes were advised to invest the whole of their pension assets.

308. We also agree with Mr Lockie's view that there was an absence of significant diversification in respect of all of the Cells. Again, this would not have been possible in a regulated fund, where there are strict requirements as to diversification of assets.

309. We also accept Mr Lockie's concerns about the competence and experience of the personnel involved with all of the Cells to be well founded. Clearly, if the IFAs had had the necessary expertise, this was an area that could be explored through in-depth questioning and the obtaining of further evidence as to the track record and experience of the individuals involved. That is the kind of due diligence that, for example, a seriously interested institutional investor with significant knowledge of the sectors or trading strategies concerned, and the ability to ask the right questions, could undertake, but, in common with Mr Lockie himself, none of the IFAs in this case would have been competent to undertake this at reasonable cost. That is why, as Mr Lockie said, a reasonably competent IFA would find that there was sufficient concern about the competence and experience of the personnel involved to consider it a strong factor pointing towards investment being in the high risk category.

310. We also consider that both Mr Page and Mr Henderson placed undue reliance on insurance. First, insurance was not in place for all of the Cells. No insurance policies were obtained for two of the Cells at all. Even where there was insurance in place, we agree with Mr Lockie's assessment that it was of limited value.

311. As our analysis of the insurance arrangements set out [160] to [166] above demonstrates, a captive insurer based in Nevis provides much less confidence than a recognised open market insurer. The Nevis regulatory requirements are very light touch and the cost of insurance had to be borne by the individual Cells, in addition to the interest payments and the other running costs of the Cells. The riskiness of the Cell's trading strategies, as discussed above, enhanced the risk that the premiums would not be paid. As we have found, the value of the Residential Property Statutory Fund by 31 December 2014 was only a very small proportion of the loans it insured so that the ability of the insurance to meet any shortfall between the realisable value of the Cell's assets and the amount of the loans must be regarded as highly questionable. There would be no compensation scheme available were the insurer to fail. The risk of the insurance arrangements not performing to the extent represented was also heightened by the fact that the benefit of the insurance contracts lay with AIGO itself which would be making any claims and administering any recoveries.

312. There is no proper basis for Mr Henderson's assessment that the Nevis regulatory regime was not meaningfully different to that of the United Kingdom. Mr Smith's

evidence clearly demonstrates that not to be the case, bearing in mind the very low capital requirement for insurers in Nevis compared to the United Kingdom. Mr Henderson's assertion that Mr Tunkel had advised that the two regimes were comparable is not credible and we reject it. He could point to no written advice in that regard, and we could not see how an experienced lawyer such as Mr Tunkel could possibly come to that conclusion, bearing in mind that the readily available information on the Nevis regime would indicate to any reasonably competent lawyer that the regime was much laxer than that in the United Kingdom.

313. Accordingly, the statement in the Fact Sheets that the insurance was in effect a "capital guarantee" and that the insurance policy covered 100% of the loan was highly misleading.

314. With regard to the "potential indicators of lower risk" associated with the Products referred to by Mr Lloyd in his submissions, none of these detract from the strong indications of high risk that we have referred to above. Mr Lloyd's submissions in this regard were not made with any great force.

315. We place no weight on the role of the Mauritius regulator for the reasons we have set out above. Although it is true that bonds can be a "defensive" asset class, the Loan Notes were not promoted on that basis. Investment in a "defensive" asset is, as Mr Lockie indicated, designed to reduce the risk that arises because of the investor's holdings in other riskier assets, but as we have indicated above, the Loan Notes were themselves assets which carried many attributes of a high risk investment.

316. Mr Lloyd's submission that bonds are typically lower risk than direct equity investments is an over generalisation. As Mr Lockie pointed out, the risk inherent in the product is not determined by whether it is sold as an equity or bond; it is a function of what it is and the nature of the issuer's business. The difference merely reflects the priority of bondholders over equity holders in terms of on-going payments and on liquidation.

317. As far as diversification is concerned, in his submission Mr Lloyd appears to accept that diversification was limited, and in our view, it was insufficient to conclude that the property portfolios were of lower risk. Likewise, whether an investment strategy based on purchasing distressed property at below market value is successful in providing some level of protection against drops in market value, as we have indicated, will depend very much on the luck and skill of those implementing the strategy.

318. In our view, the question as to whether or not the Loan Notes could be regarded as "standard assets" is largely irrelevant to the question of the risk profile of the Loan Notes in the context of whether they were suitable to be recommended to retail investors.

319. In this regard, both Mr Page and Mr Henderson placed much reliance on a letter of advice written by Mr Tunkel to Mr Henderson on 12 March 2014. At that time, the term "standard assets" had not found its way into the Authority's Handbook as a defined term. However, there were proposals in a consultation paper issued by the Authority to

provide such a definition and Mr Tunkel indicated in his letter that the proposed definition would require that to be "standard assets" the asset would have to be capable of valuation and capable of realisation within at most 30 days' notice at a price closely correlated to that valuation. Mr Tunkel expressed the view that the Loan Notes could fall within the expression "structured product", which the consultation paper indicated could qualify as a "standard asset" provided it met the valuation and realisation criteria mentioned above. Mr Tunkel said that there was no reason why a transfer notice could not be accommodated within the 30 day timeframe and if the idea was to allow portability from one SIPP to another then that would be straightforward to arrange. He also said that if transferability at 30 days' notice could be facilitated, then there should not be a problem organising a valuation at the same frequency. He then concluded:

> "My view is that it should be possible to conceive of the AIGO loans as standard assets in the terms of the proposed formulation in the [consultation paper]. The matter is not certain, simply because the terms of the consultation on vague and imprecise, and the FCA has yet to provide definitive rules."

320. As can be seen, Mr Tunkel's advice is heavily caveated. In our view, a reasonably competent IFA would not rely on it as definitive advice.

321. In any event, as Mr Purchas submitted, whether or not the Loan Notes could be described as "standard assets" was not relevant to their risk profile. The term is now used in the Authority's Handbook but only in a limited context. IPRU-INV 5.9 sets out the Liquid Capital Requirement for firms whose permitted business includes establishing, operating or winding up a personal pension scheme. That would include a SIPP provider such as Guinness Mahon. The list of standard assets in that rule includes "structured products", which may be wide enough to cover the Loan Notes. The liquidity requirement is that the asset "must be capable of being accurately and fairly valued on an ongoing basis and readily realised within 30 days, whenever required". If the asset meets those requirements, then it can be taken account of in calculating the SIPP operator's capital requirements. The rule says nothing about whether it can be regarded as having a low risk profile. It may be a factor which would influence a SIPP operator such as Guinness Mahon in agreeing to hold such assets within a SIPP, but it says nothing about whether Guinness Mahon or anyone else regarded it as a product that could appropriately be promoted to retail investors on the basis that it was a low risk product. At its highest, it could be said to be a relevant factor when considering liquidity, which is only one of the factors that an IFA needs to consider when assessing the risk profile of a product. Even in that regard, as Mr Lockie said, it was not clear how the Loan Notes would be valued or who would purchase them in the absence of a functioning secondary market.

322. In our view, therefore, neither Mr Henderson nor Mr Page were justified in placing any significant weight on the fact that the Loan Notes may have been capable of being classified as a "standard asset" under the Authority's Handbook. It also follows that Mr Page's heavy reliance on the fact that Guinness Mahon had accepted the Loan Notes as being suitable for inclusion in a SIPP was misplaced; such due diligence as Guinness Mahon may have done was in part at least for a different purpose and there is

no evidence that it agreed to accept the assets on the basis that it regarded them as suitable investments to be promoted to retail investors.

323. The comparison that Mr Lockie made between an investment in the 2 ¼% Treasury Gilt 2023 (a maturity similar to that of the Loan Notes) demonstrated in clear relief the difference between a low risk investment which pays a fixed return but has (as near as possible) a capital guarantee and a high risk investment which also seeks to pay a fixed return and purports to offer a capital guarantee which, in fact, is of minimal value. The Gilt offered a return of 3% per annum over the investment period with, being a government issued security, a minimal risk of default. It is also a highly liquid investment traded in an active secondary market with a clear market price.

324. The Gilt used by Mr Lockie for his example is a paradigm example of a low risk investment: see [246] above. Of course, that investment pays nothing like the 8% return promised by the Loan Notes. There is a simple reason for that which is that investors who want a return of more than 3% have to accept a higher level of risk and the entity offering the investment has to pay this return otherwise it would not be able to attract investors. As Mr Lockie explained in his evidence, there is no reason for a high return low risk investment to exist: see [248] and [249] above. In our view, the logic of Mr Lockie's conclusion on that point is unassailable.

325. By contrast, the Loan Notes are a paradigm example of a high risk investment, as also identified by Mr Lockie at [246] above. In our view, the Loan Notes have all of the relevant features identified by Mr Lockie as characterising a high risk investment and, even though there may be a number of features that may be indicators of lower risk, in our view no reasonably competent IFA could reasonably conclude that these outweigh the strong features of a high risk investment identified above which characterise the Loan Notes.

326. We also accept Mr Lockie's conclusions that the risk of the Loan Notes is not ameliorated by being offered in a blended portfolio for the reasons he gave. In our view, the risk profile of the Loan Notes is not reduced by combining Loan Notes issued by different Cells in a portfolio.

Conclusions – the Bonds

327. There is no evidence that Mr Freer or Mr Page (in relation to the Liquid Assets Bonds) placed any weight on any of the factors that led Mr Lockie to conclude that a reasonably competent IFA would have placed them within the "high risk" category namely:

(1) the nature of the proposed investment strategies which were consistent with the risk warnings contained in the Information Memoranda to the effect that an investment in the Bonds involves a high degree of risk;

(2) the limited experience of the personnel involved in the specific fields which pertained to the Issuers' investment strategies as well as the inherent risks in those strategies;

(3) the lack of regulatory oversight;

(4) the high costs associated with each Issuer;

(5) the absence of significant diversification; and

(6) the likelihood of a lack of a viable secondary market due to the small size of each issue with the consequence that there would be no realistic exit route for investors prior to the end of the term of the Bonds and determining a fair price for the Bonds would be problematical.

328. As far as the Liquid Assets Bonds are concerned, we note that they offered a yield of no more than 3%, which is the same as the Gilt used by Mr Lockie as his comparator. Accordingly, there could be no basis for recommending investment in the Liquid Assets Bonds bearing in mind the capital security offered by a similar yielding gilt and the significant features of high risk identified by Mr Lockie in relation to them. We therefore reject Mr Page's view that there was nothing better on the market that would achieve the same return. As a reasonably competent IFA, he could have identified the comparative investment that Mr Lockie did. It is also clear that Mr Page did not understand the risk of the Liquid Assets Bonds. The fact that the assets held were readily realisable into cash does not mean that there would be no loss of capital on realisation because of the risk features of the trading strategy identified by Mr Lockie.

329. In our view, Mr Freer was entirely wrong to have discounted the risk warnings in the Information Memoranda relating to the Bonds. They were very specific in their statement that the Bonds were only suitable for investors who could afford to lose the entirety of their investment and, as Mr Lockie found, those risk warnings were consistent with the features of the Bonds described in the Information Memoranda. Whilst we accept that a risk warning in an Information Memorandum cannot be regarded as determinative, Mr Freer should have given due consideration as to whether the risk warnings were consistent with the features which were described. There is no evidence that he undertook that exercise, but in any event, in our view, the only reasonable conclusion to be drawn from the Information Memoranda is that the risk warnings were consistent with the features of the Bonds as described.

330. We accept entirely Mr Lockie's conclusions on the risk factors he identified in relation to the trading and investment strategies of the Issuers of the various Bonds. The reasons he gave are very similar to those he identified in relation to the Loan Notes. Likewise, we accept his conclusions as to the limited relevant experience of those who would be responsible for implementing those strategies. The fact that the amounts raised by each Issuer were comparatively small, enhances the risk that the Issuers would not achieve their investment strategies due to the heightened effect of the high costs likely to be incurred and the limited ability to diversify their investments.

331. Our findings in relation to the lack of regulatory oversight of AIGO are equally applicable to the Issuers of the Bonds. Indeed, it could be said that the position is worse because there was some regulation of AIGO by the Mauritius regulator but none of the Issuers required authorisation by any regulator to issue the Bonds, the only applicable regulation being the requirement that the Information Memoranda were approved by a person authorised by the Authority.

332. Insofar as they are applicable to the Bonds, we reject Mr Lloyd's submissions, as summarised at [281] (4) above for the reasons we gave in relation to the Loan Notes at [314] to [317] above.

333. It follows that we reject Mr Freer's view that the Bonds were less risky than investing in a collective investment scheme because they offer a fixed coupon with a defined date upon which they will pay out the capital. As we found in relation to the Loan Notes, based on Mr Lockie's findings, the fact that the investment concerned could properly be described as a bond rather than an equity investment is of limited significance; what is required is an assessment of the features of the particular investment in question, regardless of whether it is an equity or a bond.

334. As regards the liquidity issue, Mr Freer accepted in his cross-examination that no secondary market developed in relation to the Bonds and that the fact that the Bonds were originally listed on the GXG Main Quote did not in itself guarantee any liquidity.

335. In relation to the "standard assets" issue, DWF LLP gave a legal opinion dated 4 August 2014 addressed to the directors of HJL and the issuers of the Residential Bonds, the Commercial Bonds and the SME Bonds. That opinion stated that it was reasonable to conclude that securities to be listed on the GXG Main Quote would satisfy the Authority's definition of "readily realisable securities" and, as there was nothing restricting the Bonds being traded within 30 days of the sale order being given, "we would be satisfied that the Bonds will be standard assets". However, the opinion went on to say that this "could not guarantee a willing buyer for the Bonds". Consequently, this opinion is consistent with Mr Freer's view that the fact that the Bonds were listed on the GXG Main Quote did not in itself guarantee any liquidity.

336. For the reasons given by Mr Lockie, as summarised under the heading "cash protection and security" at [271] above, we do not regard the existence of the cash collateral and the floating charges on the assets of the issuing companies as impacting materially on the risk profile of the Bonds. We therefore do not agree with Mr Freer's assessment that it was appropriate to place significant weight on those features in coming to his conclusion that the Bonds were relatively stable and low risk investments.

337. As we have found in relation to the Loan Notes, for the reasons set out at [326] above, we do not consider that the risks of the Bonds were ameliorated by being offered in a blended portfolio.

338. In the end, Mr Freer himself accepted that the Commercial Bonds and the SME Bonds were not on balance low risk investments. For the reasons set out above, based primarily on our acceptance of Mr Lockie's evidence, we conclude that the Bonds were not low-risk investments. On the contrary, they were clearly high risk investments.

Overall conclusion

339. Based on the analysis set out above, our conclusion is that it would have been obvious to any reasonably competent IFA, who did no more than use his expertise to review the various Information Memoranda and Fact Sheets, that the Products were high risk. The features of the Products that are indicative of an investment carrying a

high risk of loss are overwhelming, that is the risk of the issuer not being able to deliver the expected return over the life of the product and to repay the principal in full at the end of the term.

340. As a result, a reasonably competent IFA would have concluded that the Products were not suitable to be recommended to retail investors except in very limited circumstances. Those circumstances might be where the investor, having been warned appropriately about the risks involved, was prepared to commit a small part of his investment portfolio on the basis that the assets concerned were those that he was willing to lose in the hope that the higher returns promised were achieved.

341. The risk profile of the Products was such that, in general terms, the promotion should have been restricted to institutional investors who had the necessary resources to carry out due diligence to assess the risks adequately and understand them and those sophisticated investors or high net worth individuals who were able to bear the risks involved. The Authority's rules permit illiquid and high risk investments such as the Products to be promoted to high net worth investors and sophisticated investors. The former are defined as those with an annual income of £100,000 or more and liquid net assets to the value of £250,000 or more. Such investors would have to accept that the investments concerned exposed them to a significant risk of losing all of the money they had invested. Likewise, a sophisticated investor is someone who confirms that he is sufficiently knowledgeable to understand the risks associated with engaging in investment activity in speculative illiquid securities and that the investments concerned may expose him to a significant risk of losing all of the money invested.

The Pension Review and Advice Process

Background and overview of the process

342. We make the following findings of fact at [343] to [412] below from the evidence before us, which, unless otherwise indicated, we did not take the Applicants to dispute in any material respect.

343. The genesis for the establishment of the Pension Review and Advice Process was the development of the LeadTracker software, primarily by Mr Nick Maynard a director of EFP. Mr Maynard was contacted by HJL in 2011 or 2012. He understood HJL to be a lead generator and that HJL wished to add value to leads that they sold on to other people. The leads concerned were customers who wanted to consider pension switching. HJL was interested in the ability to pre-screen leads so that they would be more valuable when sold on. Mr N Maynard's contact was Mr Stephen.

344. In response to this, LeadTracker was developed. The idea was to bridge the gap between an analysis tool of the customer's existing pensions and a model that could give a recommendation, and it was around the middle of 2013 that the discussions moved to the question as to whether it would be possible to develop LeadTracker so that it could give advice. Mr N Maynard emphasised that LeadTracker was a piece of software that could model the advice to cover any particular fund or range of funds; it was not developed purely with the Products in mind.

345. The first use of LeadTracker was in the context of the Execution-Only Process. That took place between 30 October 2013 and approximately January 2014. HCA was the only Firm to adopt the Execution-Only Process. The process involved a pre-packaged file, including an application that had been completed by the customer, being provided to HCA by HJL, who had been appointed as an IAR of HCA. HCA would then confirm the business could be completed. We return to the Execution-Only Process when considering Mr Henderson's reference.

346. When developed for use in the Pension Review and Advice Process, as well as maintaining a record of interactions with leads introduced to the process, LeadTracker was able to produce reports comparing the customer's existing pension(s) against an alternative based on a SIPP with an assumed underlying investment. A further process was added which permitted answers from a Fact Find to be uploaded and for a Pension Recommendation Report to be generated. HJL, principally through Mr Stephen, was involved in the development of LeadTracker for the Pension Review and Advice Process. The LeadTracker software was owned by a company under the control of Mr N Maynard which in due course licensed the use of the software by each of the Firms when they adopted the Pension Review and Advice Process. HCA was the first of the Firms to sign an agreement to enable it to use LeadTracker, on 30 January 2014.

347. There were seven key stages in the Pension Review and Advice Process, which were:

(1) Sourcing leads and then obtaining permission from those potential customers to gather, and then gathering, information about a customer's current pension arrangements.

(2) Preparing and issuing a report ("Pension Summary Report") on the customer's existing pensions which provided a comparison of the costs of the existing pensions when compared to a transfer to a SIPP Provider and assuming an investment in an unspecified product selected by HJL.

(3) Obtaining the customer's signature on a document setting out the terms on which the relevant Firm would provide services to the customer ("the Service Proposition") and providing to the customer a brochure ("the Brochure") promoting the services of the relevant Firm which stressed that the Firm provided independent, impartial advice.

(4) Producing a Fact Find, including an attitude to risk and capacity for loss assessment.

(5) Generating and issuing a report ("Pension Recommendation Report") which recommended that the customer transfer their existing pensions to a SIPP Provider and that the funds transferred be invested in a portfolio comprised of the Products.

(6) Discussing the recommendation with the customer.

(7) If the customer wished to proceed, completing the SIPP application documents.

Stage 1: sourcing leads and customer information gathering

348. It is the Authority's case that all the leads that led to potential customers passing through the Pension Review and Advice Process were generated through arrangements made by HJL. That appears to be accepted by both FPL and HCA, but BHIM contends that it had no knowledge of the involvement of HJL in the process and that its only relationship was with CAL in that regard. We will return to that matter when considering Mr R Ward's and Mr Freer's references.

349. Aside from that issue, it is clear from the evidence that HJL entered into at least 30 agreements with marketing companies and leads were generated by the marketing companies calling prospective customers and offering a free pension review.

350. We were taken to one of these agreements which appears to be a typical example. We should note that, although the agreement referred to below provides for a fixed amount to be paid for each lead, there are also other agreements where the marketing company was to be remunerated on the basis of the amount invested into the Products. Mr Stephen denied that was the case in his oral evidence, but that evidence is contradicted by the agreements concerned and we therefore reject it.

351. The marketing company agreed to make outbound or receive inbound calls for the purpose of generating clients in the UK who fit specified criteria and who were interested in having a no obligation pension review conducted by an independent financial adviser. HJL agreed to pay the marketing company £280 for each qualified lead that was generated. The specified criteria to qualify as a lead were:

(1) a valid UK pension with a minimum transfer value of £15,000;

(2) maximum age of 59 years;

(3) minimum of 2 years to retirement;

(4) no SIPPs or SSASs that are already invested in non-liquid assets;

(5) no occupational schemes currently being contributed to;

(6) no leads who are employed or self-employed IFAs;

(7) no leads who are currently consulting an IFA, currently having a review or have had a review in the previous 12 months; and

(8) final salary policies only accepted in some circumstances.

352. It can be seen from these criteria that although the criteria envisaged that potential customers could be approached with a view to them transferring out of occupational schemes, none of the Firms had permission to effect pension transfers (that is transfers out of an occupational scheme into a personal pension scheme such as a SIPP) as opposed to pension switches (that is switches from one personal pension scheme to another such scheme) so that it was envisaged that the Pension Review and Advice Process should only embrace leads who may be switching from one personal pension scheme to another.

353. The marketing agreement then set out details as to the information that the marketing company should obtain from the lead, in particular the details which established that the lead met the specified criteria and a copy of the lead's current pension policy statement. A sample Pension Enquiry Form and Pension Summary Report request form were attached as a schedule to the agreement pursuant to which, if the lead wished to take the matter further, the lead would authorise the obtaining of the necessary information from their current provider to enable the Pension Summary Report to be generated.

354. It is important to note that both the documents referred to at [353] above were branded with the name of the relevant Firm which would be providing any recommendation at the end of the process. Therefore, the lead was authorising the relevant Firm to obtain the necessary information, but the Pension Summary Report request form stated that the lead had been introduced to the relevant Firm through a third party who was covering the cost of the Pension Summary Report, and that introducer was disclosed as being HJL. That was the case even in relation to BHIM, according to the completed examples that were in evidence before us.

355. There was a covering letter which was sent to the lead with the documents referred to at [353] above following their contact with the marketing company, if they were interested in taking matters further. That covering letter, which it appears was generated by the marketing company, stated that the company was "happy to be able to provide you with an introduction to an… IFA to conduct a no obligation review of your current pension arrangements".

356. We have also seen a sample cover letter for a Pension Enquiry Form and Pension Summary Report request form prepared by Taylor Barton, one of the marketing companies, which said that "the entire process" would be managed by HCA and that "They will communicate all updates and progress and be your main point of contact going forward". The letter concluded with a statement that "one of our approved partners [HCA] will be in touch once we receive your completed documents to advise of the progress of your report".

357. Therefore, as Mr Purchas submitted, these documents gave the misleading impression to customers that the relevant IFA would be sourcing the information from their existing providers, preparing the Pension Summary Report and preparing the report on their existing pension plans. However, in reality, none of the Firms were involved in the research for, or production of the Pension Summary Reports which was all undertaken by the outsourced providers.

358. In the early months of the operation of the Pension Review and Advice Process, that is between May and October 2014, this work was carried out by HJL. However, in October 2014 the processing of leads, but not the generation of leads, appears to have been transferred from HJL to CAL, although we have seen no written agreement in that regard.

359. This is evidenced by the agreement, described as a Standard Service Agreement entered into between HJL and FPL on 2 May 2014. Pursuant to that agreement HJL

agreed to provide FPL with lead generation services as well as a detailed list of administration services. Those administration services comprised the outsourcing to HJL of all the work relating to the production of the Pension Summary Report, the undertaking of the Fact Find, the production of the Pension Recommendation Report and the provision of comprehensive client files loaded on to FPL's server. HJL was remunerated through a share of the advice fees received by FPL in respect of customers who were recommended the Products. An agreement in similar terms was entered into between HCA and HJL on the same day.

360. On 13 October 2014, CAL and FPL entered into a Standard Service Agreement in similar terms to the previous agreement between HJL and FPL, except that the services to be provided were limited to the administration services described above and did not include the lead generation services. There appears to be no agreement between FPL and HJL amending the original Standard Service Agreement so as to exclude the administration services, but it is to be assumed, and Mr Page did not seek to argue otherwise, that HJL remained responsible for the lead generation services.

361. It does not appear that HCA and CAL entered into a formal agreement, but in practice it appears that HJL continued to provide lead generation services and CAL provided the administration services during the remaining period that HCA participated in the Pension Review and Advice Process. CAL's "Typical Client Journey" flowchart which was in evidence shows that CAL would receive details of leads that met the specified criteria from the relevant marketing company working for HJL.

362. Initially, CAL operated from the same offices as HJL. In his evidence, Mr Page said that he was not comfortable with that position due to potential conflicts of interest and as a result CAL moved to another office nearby.

363. Although we have no evidence of common shareholdings and directorships, there was clearly a close connection between CAL and HJL. Two of the directors of CAL were Mr David Worrow and his son Mr David Worrow Jr. It appears the latter had worked for HJL. Staff who had also worked for HJL transferred to CAL, including Mr Tom Edwards-Stuart, who worked in compliance for CAL. The two companies appeared to work seamlessly in relation to the Pension Review and Advice Process. Mr King of HJL referred to CAL in an email to Guinness Mahon as "our outsourcing company". That is consistent with there being no formal agreement between HJL and CAL following the separation of the administrative services from the lead generation activities in October 2014.

364. We have seen standard scripts prepared for the marketing companies to use in their contacts with potential customers. In all cases, the script provides for the agent to introduce themselves as acting on behalf of one of the named Firms.

365. It appears that some of the marketing agents deviated from the scripts and engaged in cold calling, giving misleading information in the process. In her evidence, Ms High dealt with her enquiries into Taylor Barton, after receiving two consumer reports received by the Authority's Contact Centre. A consumer contacted the Authority to explain that her daughter had been cold called by Taylor Barton offering

a pension review and that they were claiming to be ringing on behalf of the Department of Work and Pensions. A second report from a consumer described how Taylor Barton stated that the government was funding them to offer pension reviews and that, if they went ahead, they would be referred to Mr Page.

Stage 2: Preparation and issue of a Pension Summary Report

366. Stage 2 of the Pension Review and Advice Process involved preparing and issuing a Pension Summary Report. As mentioned above, this was done by either EFP, HJL or CAL, as the case may be, (i) obtaining the details of the customer's existing pensions; (ii) once that was obtained entering the details into LeadTracker; and (iii) arranging for LeadTracker to generate the Pension Summary Report in a templated form. HJL and Mr Henderson were involved in the preparation of the templated documents.

367. The Pension Summary Report, however, went further than what was envisaged by the Pension Summary Report request form. Rather than just providing a report on the customer's existing pension plans, the Report set out a comparison focussing on the costs under the existing plans when compared to a transfer to the Guinness Mahon SIPP or Avalon SIPP and assuming an investment in an unspecified product selected by HJL. The cost comparison took into account a 3% charge to cover any advice costs that might be levied for making the switch, as well as the costs typically charged by the schemes for managing funds.

368. Under the heading "What happens now?" the Report stated that one of "our customer representatives" would contact the customer to discuss the process of obtaining professional advice about whether the customer's pension should be transferred. It was stated that if the customer decided to proceed with "our advice service" then "we will establish how best to invest your pension funds" and "what you aim to achieve by way of income from your pension plans".

369. The Report then concluded by including the electronic signature of the relevant IFA of the Firm involved, that is one of Mr Page, Mr Henderson or Mr Freer, as the case may be.

370. We accept Mr Purchas's submission that the Pension Summary Report maintained the appearance that it had been produced by the relevant approved Firm. It had the relevant Firm's cover pages and logos, giving the impression that it had produced the paperwork. In reality, HJL and CAL were the firms that were most involved in producing this document.

371. We also accept that the Firms had no meaningful involvement with this part of the process. The Firms did not supervise or monitor the preparation of this document, nor did they have the capacity to check that the data was being inputted correctly and that the projections were being calculated correctly. We did not take any of the Applicants to dispute that point. However, we understand that it would have been possible for the relevant Firm to access the Pension Summary Report on the LeadTracker system once it had been issued.

Stage 3– signing of the Service Proposition

372. Stage 3 of the Pension Review and Advice Process involved the signing of the Service Proposition. Agents of EFP, HJL or CAL, as the case may be, would attend the customer's house to go through the Pension Summary Report or the customer would be sent it by post and be contacted in a follow-up call. Customers were asked whether they wished to proceed to receive advice from the named Firm.

373. Initially the Service Propositions used by each Firm were almost identical save for the name, address and FS register number of the Firm.

374. The Service Proposition set out the basis on which the Firm was going to act. It said:

> "…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."

375. In relation to the scope of the service offered the document said:

> "We operate independently and therefore provide investment services from the whole market."

376. From April 2014, HCA used a revised version of the Service Proposition which contained the following statement:

> "We have agreed with the FCA that Non-Standard Investments are not suitable for most Clients and as a Firm we do not believe unregulated assets, which cannot be readily valued or realised restricts our Clients position and do not advise their use."

377. This reflects the terms of a Voluntary Requirement which HCA entered into in March 2014, and which we return to later when considering Mr Henderson's reference.

378. The customer was sent a marketing brochure (the "Brochure") promoting the relevant Firm which was produced at the same time as the Pension Summary Report.

379. In bold type at the beginning of the Brochure it was stated that:

> "[Firm] offers the highest level of service and independent financial advice. No two clients are the same which means that our financial planning and investment advice is tailored specifically to your needs."

380. The Brochure went on to say that the Firm was able to provide "all of our clients with a flexible and bespoke approach". It then said that "Our financial advisers are fully independent" and provided details of the Firm's senior management team.

381. Further on, under the heading "Reasons Why People Transfer Their Pensions", the Brochure again emphasised the importance of taking independent advice which was described as "taking advice from an expert who is not tied to offering the products of

one particular pension provider" which meant that the adviser concerned "can act entirely in your best interests to advise a pension portfolio that best matches your needs".

382. Under the heading "The Review Process" the Brochure explained how the process would lead to the making of a "Pension Advice Report", following the carrying out of the Fact Find. In regard to the Fact Find, the Brochure stated that the customer would receive a review from the Firm so it could obtain specific information which would enable the "[Firm] to construct a bespoke recommendation based on the information you have provided".

383. Information was then given as to what would happen if the customer received a Pension Advice Report, namely that the customer would be contacted and if the customer wished to proceed, arrangements would be made for the necessary documents to be delivered to the customer for signing to complete the transfer.

384. The contact address for the Firm given in the brochure was that of HJL and, later, CAL.

385. We mention at this stage that Mr Page denied that FPL used the Brochure, but it is clear that Brochures were produced for FPL. We return to that issue later when considering Mr Page's and Mr T Ward's references. Apart from Firm specific details, the text of the Brochures for the various firms and the photographs used were more or less identical.

Stage 4 – the Fact Find

386. Stage 4 of the Pension Review and Advice Process involved the Fact Find, and the attitude to risk and capacity for loss assessments. The Fact Find, and the attitude to risk and capacity for loss assessments, were either conducted over the telephone or face to face at a customer's home. The assessments were conducted by EFP, HJL or CAL, as the case may be, and not the Firms.

387. There were a number of examples of Fact Finds in evidence and they were broadly the same in terms of the information requested and questions asked, save for reference to the particular Firm's name.

388. The agent conducting the Fact Find worked from a written script and completed the answers by hand. Most of the questions had options which were completed by ticking the relevant box. There were also some questions which allowed actual information to be put in, such as those regarding the customer's occupation and their annual gross income. The completed script was uploaded to LeadTracker.

389. The customer was asked about their retirement age, the percentage of their current gross income they hope to enjoy in retirement and the percentage of their retirement income that they hoped would come from their pension arrangements. One example we looked at, which was completed on behalf of BHIM, related to a customer who disclosed his occupation as being a roadsweeper with an annual gross income of £13,000 who was looking to retire at 60, hoping to enjoy 100% percent of his current

gross income in retirement and that the entirety of that income would come from his pension.

390. There were limited questions regarding the customer's investment objectives. The customer was asked whether or not they had strong ethical concerns regarding where their money was invested. However, the process did not appear to require exploration of any of the customer's interests and objectives in this regard. As we shall see later, whatever the answer to this question, it was not taken account of in the LeadTracker process.

391. Under a section headed "Investment Returns" the first question to be asked was:

"Would you prefer your pension fund to:

- Grow at a fixed and known-rate each year?
- Go up or down in value depending on the underlying investments performance?"

392. The agent would complete the answer to that question by ticking the relevant tick box which appeared alongside the question.

393. The next question was about guarantees, with an explanation to be read by the agent to the effect that it might be possible to build in guarantees to the customer's pension which would ensure that their funds would not fall below the original amount invested. It was explained that guarantees can be important to people who could not easily stand any losses in the value of their pension funds and the customer was told that there was just one question to answer on this switch which was:

> "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?
>
> - Yes [or]
> - No"

394. The Fact Find did not ask any other questions about investment objectives.

395. There was then a series of questions designed to assess the customer's attitude to investment risk, the script explaining that this would help the Firm to match an investment strategy to the customer's profile. After those questions were answered, the agent would complete the result which would be one of Very Cautious, Very Cautious to Cautious, Cautious, Cautious to Moderate, Moderate, Moderate to Speculative, Speculative, Speculative to Very Speculative, Very Speculative, and Ultra Speculative.

396. At one end of the spectrum, "Very Cautious" was described as:

> "You prefer to take very little risk with your money. A typical "Very cautious" portfolio will have only a small proportion invested in equities with the balance in other assets to provide diversification."

397. At the other end of the spectrum, “Ultra Speculative” was described as:

> “You prefer to take very significant risk with your money. A typical “Ultra Speculative” portfolio may have almost all of the funds invested in equities with the balance in other assets to provide diversification. There may be an increasing proportion of specialised equity within the portfolio.”

398. We note, based on our assessment of the risk of the Products, that it would only be those customers who had indicated that their attitude to risk was “Ultra Speculative” for whom it might be considered the Products met their risk profile.

399. The customer was then asked to agree or not if the category explained to the customer by the agent met their attitude to risk.

400. The final section of the Fact Find looked at the customer’s capacity for loss, how long they would be holding their pension before retirement and what impact any losses might have on their lifestyle. Questions were asked on a multiple-choice basis as to when the customer intended to use the invested money, and how much of the investment the customer could stand to lose without having a significant impact on their future standard of living.

401. The end of the script contained the following statement:

> “It will take an IFA approximately 2 days to analyse your information and prepare your personalised Recommendation Report.”

402. The customer was asked whether they wished at that point to make an appointment date to discuss this Report.

Stage 5: Generation and issue of the Pension Recommendation Report

403. Step 5 of the Pension Review and Advice Process involved generating and issuing a Pension Recommendation Report. Customers’ answers to the Fact Find, attitude to risk and capacity for loss questions were uploaded onto LeadTracker. The report was then automatically generated by LeadTracker which populated a template recommendation report with relevant information. The Firms had no involvement with the preparation of the Report and an electronic signature from a suitably qualified adviser at the named Firm was simply added to the Report. We consider later in the context of the individual references the extent to which sight of the Reports was had by the Firms before they were sent out to the customer.

404. The Pension Recommendation Report contained an executive summary, typically a recommendation to invest in a pension fund that offered fixed returns and/or a capital guarantee, and that this should be done by investing in one of the Portfolios through a SIPP operated by one of the SIPP Providers. It was explained that the transfer would provide the following:

- An investment strategy which contains underlying capital guarantees, the customer being referred to the accompanying Fact Sheet for more details

- An investment strategy which offers fixed returns of a specified level
- Consolidation into a single, manageable plan
- An investment strategy which protects against capital loss.

405. After explaining (i) the customer's financial objectives and attitude to investment risk, as obtained from the Fact Find; (ii) the customer's proposed retirement date; and (iii) the objective as regards the amount of the customer's income in retirement that would come from their pension, the Report then set out (iv) a summary of the customer's existing pensions, in particular their transfer value; and (v) a projection of the final funds that could be achieved by the customer's desired retirement age. This was then compared to projections for the customer's existing funds.

406. The customer's attitude to investment risk was then discussed, it often being stated that the recommended portfolio differed from the typical portfolio that could be expected for someone with the customer's attitude to risk because of the objectives outlined by the customer during the fact-finding process, notably the desire to have a fixed return and a capital guarantee.

407. Details of the recommendation then followed, with reference to the included Fact Sheet, the emphasis being that the recommendation had been made in order to obtain the fixed investment returns and/or guarantee that the customer sought.

408. Details of the Firm's charges were then given, namely 3% of the customer's transferred funds. The ongoing charges from the SIPP Provider were also given and the customer was informed of the fee of 0.5% per annum were they to choose to receive an ongoing review of their pension arrangements.

409. Finally, there were some very generic risk warnings none of which referred to the specific investments that were the subject of the recommendation, other than to note that "the recommended investment differs from many mainstream opportunities" and that this may result in a delay in accessing income and tax free cash because of the nature of the investments - particularly relevant given the Loan Notes required a notice period of 12 months before they could be redeemed.

410. The electronic signature of the relevant IFA appeared at the end of the recommendation, that is either Mr Henderson, Mr Page or Mr Freer, as the case may be.

Stage 6: Discussing the Pension Recommendation Report with the customer

411. At this stage, a representative of EFP, HJL or CAL, as the case may be, visited the customer to go through the Pension Recommendation Report and discuss whether they wished to proceed to switch their pension into either the GM SIPP or the Avalon SIPP, as the case may be, and the underlying Products.

Stage 7: Completing the SIPP application

412. Finally, the SIPP application was completed. It would appear that the majority of customers at this stage waived their right to cancel the transaction within 30 days. Ms Tibbetts's evidence, which we accept, was that a substantial number of customers were told that if they waived their rights the investment would be completed quicker.

HJL's involvement in the design and operation of the Pension Review and Advice Process

413. There was no significant challenge by any of the Applicants to the Authority's contention that HJL performed significant functions in connection with the Pension Review and Advice Process. As we have mentioned, there is an area of dispute between the Authority and BHIM as to whether BHIM had any kind of contractual relationship with HJL, a point to which we return when considering Mr R Ward's and Mr Freer's references.

414. The Authority relied on the matters set out at [415] to [425] below in support of its contention, and we accept the Authority's submissions on these matters, which are clearly borne out by the documentary evidence.

415. HJL initiated and influenced the development of the Pension Review and Advice Process, including not only the development of LeadTracker but also by taking the lead in drafting the documents that were used in the process. As we have seen, the form of the Fact Find, the various Reports, the Brochures and the Fact Sheets were all in common form to be used across the three Firms, and HJL dealt with Mr N Maynard and his associated companies in influencing the development of LeadTracker, so it was capable of being used in relation to the promotion of the Products.

416. For example, we have seen an exchange of emails on 26 and 27 April 2014, where Person A at HJL provides a draft Brochure for FPL to Mr T Ward who then shares the draft with Mr Page and obtains information from Mr Page in order that the Brochure can be completed. Mr T Ward accepted in his oral evidence that Person A was involved in the production of the Brochure.

417. We have also seen a chain of emails, starting with a discussion between Mr King and Mr Stephen on an early draft of a Brochure, where Mr King states that he had "tried to shape it less totally in the direction of what we want". That email was also copied to Mr Henderson.

418. These matters are clear evidence that, from HJL's perspective, its use of LeadTracker and the design of the Pension Review and Advice Process, was in order to promote the Products. The AIGO IM made it clear that the target investors were solely pension schemes, including SIPPs. The engagement of the Firms to make recommendations through the Pension Review and Advice Process to leads sourced by HJL, through the use of the marketing companies, was the distribution channel used by HJL to promote the Products. The Pension Review and Advice Process had been designed by HJL, with the prime responsibility falling on Mr King, Mr Stephen and

Person A. It was HJL that determined which IFAs could participate in the Pension Review and Advice Process, as Mr Stephen accepted in his oral evidence.

419. Mr Lloyd accepted that although LeadTracker was designed to direct investors who satisfied specified criteria towards whatever products were input into it, during the Relevant Period, it was only being used for HJL products. In the event none of the Applicants, nor Mr Stephen, disputed that any products other than the Products were recommended through LeadTracker.

420. It was also not disputed that, in addition to acting as an introducer of leads, HJL operated the Pension Review and Advice Process on behalf of both HCA and FPL from around 2 May 2014 until around 13 October 2014, when, as discussed above, CAL became involved. HJL continued to be involved in the Pension Review and Advice Process thereafter, for example, being involved in preparing communications to customers to whom BHIM was recommending the use of Avalon instead of Guinness Mahon as the SIPP Provider.

421. It is therefore clear that HJL had a dual role. It generated qualified leads through the use of marketing companies with the objective that those leads would receive recommendations to invest in the Products through the Pension Review and Advice Process. At the same time, HJL was performing functions on behalf of the IFAs. As we have seen, the marketing companies represented to potential customers that they were acting on behalf of the IFAs. In essence, although it was not clearly documented as such, there was a sub-agency arrangement, whereby HJL engaged the marketing companies to generate leads for the IFAs. That arrangement continued, even after CAL came on the scene because, as we have seen, HJL continued to be responsible for the generation of leads. That structure had clear implications as regards the existence and management of conflicts of interest, which we return to later.

422. Mr Lloyd submitted that the process was designed to help the Firms filter out those who they knew they would advise against investing in the Products, so they only provided advice to those who might be suitable. We shall explore later the extent to which the process achieved that objective in practice. That was quite different to HJL's objective. Our findings as to the role that HJL played lead to the conclusion that HJL's primary objective was to provide a semi-automated recommendation to a customer to switch his pension into a SIPP, where the underlying investments would be one or more of the Products. The Pension Review and Advice Process fulfilled this objective by identifying the customer as having met the criteria for the making of such a recommendation, namely that they had indicated in the Fact Find that they would be interested in an investment with capital protection and a fixed return.

Oversight of the Outsourced Functions

423. We have described at [74] to [87] the requirements of the Authority's Handbook regarding the obligation for a firm to monitor both its IARs and other entities that perform outsourced functions on its behalf. We concluded at [89] and [90] that those requirements applied to the functions performed by HJL or CAL, as the case may be. Therefore, in summary the Firms had, among other things, the following obligations:

(1) where HJL was the Firm's IAR, to take reasonable care to ensure, before appointment and on a continuing basis, that HJL was suitable to act for the firm in that capacity and that HJL (which would include its own agents, the marketing companies) did not carry on activities in breach of the general prohibition (SUP 12.4.6R and SUP 12.6.6R;

(2) to have processes to monitor and report risks arising out of the performance of outsourced functions in a manner which was proportionate (SYSC 8.1.3G);

(3) to exercise due skill and care and diligence when entering into, managing or terminating the outsourcing (SYSC 8.1.7R); and

(4) to establish methods for assessing the standard of performance of the service provider and to supervise the outsourced functions and risks associated with the outsourcing (SYSC 8.1.8R).

424. There was no evidence that any of the Firms took meaningful steps to understand how HJL was sourcing leads so as to be satisfied that HJL and the marketing companies were behaving in an appropriate manner. We have identified a number of instances where marketing companies made cold calls and made inappropriate statements to the effect, for instance, that they were acting on behalf of a government agency.

425. Neither was there any evidence that any of the Firms undertook any meaningful due diligence on the way in which the leads were being provided for the Pension Review and Advice Process. In particular, that could not be the case at all in relation to BHIM because Mr Freer and Mr R Ward maintained that at the outset, they did not know that HJL was sourcing the leads.

426. In short, it did not appear that any of the Firms were of the view that it was their responsibility to ascertain how the leads were being sourced and whether HJL and the marketing companies were behaving appropriately when seeking to perform outsourced functions on behalf of the Firm.

427. We return to this issue again in the context of the individual references.

Assessment of the Pension Review and Advice Process

428. We now turn to our assessment of the extent to which the Pension Review and Advice Process generated recommendations to customers which were not compliant with the Authority's requirements as to suitable advice. In that regard, the requirements of COBS 9.2 and COBS 9.4.7R are particularly relevant.

429. Our assessment at this stage is based entirely on the documentary evidence that was before us, particularly the client files of each of the Firms. We set out below our general conclusions on a preliminary basis which will then be tested when we come to consider the references of the individual Applicants later in this decision.

Fact Find

430. We start by examining the Fact Find. It is uncontroversial that sufficient information has to be gathered from the customer in order that the IFA concerned can determine whether a recommendation is suitable.

431. We accept the Authority's case that the Fact Find was structured so that customers were steered towards certain outcomes and insufficient information was collected to enable suitable advice to be provided. In particular:

(1) The Fact Find did not collect adequate detail so as to evaluate what would be a suitable recommendation.

(2) The questions were designed to elicit answers such that customers were inevitably pushed towards an outcome whereby the Products were recommended. The process was designed so as to filter customers into investing in the Products.

432. As regards the first of those two deficiencies, it is apparent from our review of the template Fact Find, as set out above, and as submitted by Mr Purchas:

(1) The Fact Find contained only 10 to 15 mandatory questions which were for the most part only designed to elicit "yes" or "no" responses.

(2) The Fact Find did not require an exploration of the customer's responses. For example, if a customer confirmed they had ethical concerns, the process did not require exploration of the customer's interests and objectives in this regard. In any event, the fact that they had concerns, was not taken account of in the outcome of the LeadTracker process. Where customers indicated that they would like to invest in products which reflected their stance on ethical investing, this was simply recorded in the Pension Recommendation Report, but was not taken into account in relation to the investments recommended. As we have seen from our summary of the investment strategies underlying the various Products, there is no suggestion that these were based to any material extent on ethical considerations. A second example of the failure to explore customer's responses is provided in circumstances where a customer indicated in the Fact Find that not all income in retirement would come from their existing pension arrangements as there was no follow-up to ascertain where the remaining income would come from and the nature of the assets from which it would be derived.

(3) As we found at [390] to [394] above, the Fact Find only asked limited questions about investment objectives. No questions were asked about a client's other financial circumstances or so as to ascertain if there was sufficient diversity in their portfolio.

(4) There were no questions asked about:

(1) other savings and investments, including pensions not included in the free pension review;

(2) the customer's liabilities (both present and anticipated);

(3) other sources of income (both present and during retirement);

(4) the customer's knowledge, experience and understanding of investments, and their ability to accept the risks inherent in speculative investments; as well as

(5) the customer's ability to manage their own investments through a SIPP.

433. We therefore accept the Authority's case that the Fact Find scripts did not allow for sufficient further information to be gathered from the customer to establish the suitability of the recommendation subsequently made.

434. This further information is commonly known as "soft facts". As Ms Tibbetts indicated in her evidence and in response to questions from the Tribunal, those soft-facts might include a customer's personal circumstances and can relate to a variety of different areas for example their financial investments, liabilities, future life events that they will need to drawdown money for and the extent to which dependents will rely on the pension in addition to the customer. If not all of the customer's income will be drawn from their pension, this may also give rise to questions about the nature of their additional income.

435. Therefore, the Fact Find process did not comply with the standards prescribed by COBS 9.2.2R which requires a firm to obtain the necessary information regarding the customer's knowledge and experience of the investments which were the subject of the recommendation and all their investment objectives.

436. Neither did the process comply with the standards laid down by COBS 9.2.2R as it did not allow sufficient information to be obtained to provide a full understanding of the customer's financial position. Contrary to the requirements of COBS 9.2.2R, there was no information sought on the source and extent of the customer's other assets and their regular financial commitments. In a case like this, in our view, it would be essential for such information to be gathered, particularly where the customer had indicated that not all of their retirement income would come from their pension. In those circumstances, it would be necessary to take that additional information into account in assessing whether a recommendation to invest in the Products would be suitable.

437. As regards the second of the two deficiencies identified by the Authority, it is also apparent from our review of the template Fact Find, as set out above, and as submitted by Mr Purchas:

(1) The Fact Find had leading questions which steered the customer towards selecting features which would in due course be relied on as justifying a recommendation to invest in the Products. As we found at [390] to [394] above, the only questions about investment objectives related to whether the customer was interested in (i) an investment that grew at a fixed rate and did not fluctuate in value; and (ii) an investment which carried a guarantee as to its value on redemption. Those of course were key features of the Products which the Applicants said justified them recommending them to consumers as low risk and, if true, are clearly attractive features of a pension product. Those questions taken in isolation, without others on investment objectives, would most likely lead to

the customer answering "yes" to both questions. The questions were clearly not put neutrally in order to get an objective answer.

(2) If a customer selected either a preference for a fixed rate or guaranteed sum, that was used in the Pension Recommendation Report to justify recommending the Bonds or the Loan Notes. That appears to be the case regardless of what the customer said about their attitude to risk and capacity for loss. So, for example, where the customer's attitude to risk had been assessed as "Very Cautious", which would indicate that the Products, particularly those with an equity or property content, would not be suitable for the customer, it was stated that in effect their attitude towards risk was being discounted because of the desire to obtain capital protection for a fixed return: see [406] and [407] above. The attitude to risk assessment would only impact which of the Portfolios were recommended, but, as we have found, based on Mr Lockie's evidence, there was no significant difference in risk between the various Portfolios.

(3) It is important to consider not only the wording of the questions and the scripted introduction to them, but also the type of customer these questions were being posed to – an individual with modest pension sums (typically between £15,000 to £75,000) and how those customers would have been likely to respond to those questions.

(4) Unless a customer specifically requested another product, the information gathered did not alter the product selection and sometimes even when customers said they did not want fixed returns, they were still recommended an investment in the Products.

438. Consequently, there was a clear and substantial risk that because of the deficiencies in the Fact Find, recommendations to customers to invest in the Products would be unsuitable and accordingly the Firm concerned would be in breach of its obligation under COBS 9.2.1R to take reasonable steps to ensure that a personal recommendation is suitable for the customer concerned.

Pension Recommendation Report

439. The Authority carried out a file review of 20 randomly selected files for each of the Firms. These file reviews and the deficiencies identified were addressed by Ms Tibbetts in her evidence. Bearing in mind that a standard process was used in relation to all leads that passed through the Pension Review and Advice Process we agree with the Authority that it is likely that the deficiencies identified are likely to be representative across all of each of the Firm's files and we so find. As we have said, Ms Tibbetts's findings were not challenged in any material respect, and we accept her evidence.

440. We start by reference to Ms Tibbetts's statement that the Authority considers that the Products recommended to customers were high risk, illiquid and unlikely to be suitable for retail investors except in very limited circumstances due to:

(1) the nature and risk of the underlying investments including distressed residential and commercial property and other speculative investments, including unlisted equity; and

(2) the structure of the investment instruments which involve little regulatory oversight.

441. Ms Tibbetts went on to say that on the basis of the review of the customer files, the Authority concluded that the advice process in all cases was not sufficient to ensure that the Products would only be recommended to customers with sufficient knowledge, experience, understanding and ability to accept the risk of speculative investments.

442. Ms Tibbetts's assessment is consistent with our own conclusions as to the nature of the Products and our conclusion that, as a consequence, they would not be suitable for recommendation to the type of investors that were targeted through the Pension Review and Advice Process. As we have said, these were retail investors with relatively small pension schemes, that is with a value between £15,000 to £75,000 (although in fact some of the customers had smaller pension pots whilst a few had pension pots in excess of £100,000). It is also clear that virtually all of the customers had modest incomes and were not sophisticated in any respect as far as investment matters were concerned, and certainly not in relation to investments such as the Products. Neither could these customers afford to lose the amount invested in their pensions. An example was the roadsweeper with an annual income of £13,000 that we referred to earlier.

443. It appears where a recommendation was made to a customer to switch their pension, that recommendation would extend to the whole of their existing pension arrangements, or at least all of the pensions that were subject to review under the Pension Review and Advice Process. Therefore, if they did switch, most customers would find that the performance of the entirety of their pension assets depended on the performance of a high risk and undiversified portfolio containing the Products.

444. For that reason alone, we are able to conclude that in respect of all of the files reviewed by the Authority and, most likely for all of the recommendations made in respect of customers whose files have not been reviewed, that the recommendations will not have been suitable for the customer. Consequently, the relevant Firm would have failed to comply with its obligation under COBS 9.2.1R to have taken reasonable steps to ensure that the personal recommendation was suitable for the customer.

445. However, we think it is important to set out in some detail the other deficiencies that have been identified through the file review.

446. We start with some general observations of our own from our review of a number of the files for each of the Firms, which we have chosen at random, written from the perspective of an experienced IFA, in the hope that it may be of assistance in preventing similar deficiencies arising in the future.

447. As we have indicated, the attitude to risk assessment appeared to have no real effect on the outcome. The pair of binary answer questions supposedly labelled to identify a client's objectives asked them to choose between a preference for a fixed or

variable return, and a guaranteed or at risk initial capital sum. These two questions could give one of four possible responses of which we only saw three. Twenty of the customers, unsurprisingly, wanted fixed returns with a guaranteed capital sum with two customers wanting a fixed return with no guarantee and three a variable return with a guarantee. Those five customers, at variance to the majority view, still ended up with an identical outcome of a GM SIPP or an Avalon SIPP invested in the Products.

448. A common feature of all the files is that the recommendations generally failed to address any of the facts established in the Fact Find, other than the aspects of the portfolio referred to above. The covering letter to the recommendations said it took account of information provided by the customer such as desire for fixed returns and capital security, ethical concerns, and whether professional management and online access were important, but these were not matters explored in the recommendation itself. It was striking that the recommendations did not consider the actual circumstances of the person to whom they were sent and instead addressed only a generic outline of the category of person which had been targeted by the process. Matters such as illness, unemployment, bereavement and other assets were all ignored in the recommendation.

449. As we have found, there are numerous blind spots in the Fact Find which ought to be considered in the context of a pension review. There is no enquiry into the customer's other savings and investments, whether they had any secured or unsecured debt, whether there had been past debt problems, or whether they owned their home or not. The Applicants intimated that these matters were not important when the advice being given was a straightforward comparison of one asset in a pension pot to another. However, in our view, it is a problem when the whole premise underlying the advice was that the customer would be able to follow through an investment built upon a 10 year return being maintained with certainty that the customer would not need to access the funds in the meantime.

450. In some cases, where customers had said they wanted to continue to contribute to their pension, the comparisons are shown being made on the basis that contributions would continue. FPL implemented ongoing contributions in only one of the four cases where the transferring plans were receiving contributions. HCA recommended continuation of contributions for two of the three clients who had said they wanted to contribute and BHIM recommended that the three who expressed a desire to continue did so, however the question was not always asked by the field agent conducting the fact finding interview.

451. The common feature of 19 of the 25 sample files reviewed is that the customers earned less than the national average wage and had pension assets which were relatively modest so that contributions would be very important in helping the customer's future financial security. Allowing contributions to cease as a direct result of advice given is clearly inappropriate. In none of the sample files did a customer receive an indication of the pension they might expect in monetary terms nor were they given a target contribution rate. These deficiencies are clear evidence that none of the Firms were providing independent bespoke advice.

452. We set out in the Appendix to this decision our own observations on the files that we reviewed. None of them were free of problems.

453. We turn now to the results of the Authority's file review. Mr Purchas provided the following summary which we find to be fair and accurate:

(1) The Pension Recommendation Reports did not address customer's demands and needs. Recommendations were made despite the recommended SIPP being more expensive, the investment objectives not matching the recommendation, or resulting in the customer giving up benefits.

(2) The Pension Recommendation Reports contained insufficient detail to allow the cost comparison to be understood. There was no detail on the exit penalties from the existing scheme even though they had been contained in the Pension Summary Report.

(3) The Pension Recommendation Reports contained no consideration of whether the customer had the requisite knowledge, experience and willingness to manage their own investments through a SIPP.

(4) There was no explanation as to why moving to a SIPP was suitable or an explanation of the risks of this compared to previous managed arrangements.

(5) There was no information about the product being recommended. There was only a recommendation to invest in a Portfolio labelled as Cautious, Moderate or Adventurous with the Report stating that further details were contained in accompanying product fact sheets. A Fact Sheet was attached but it did not fully inform customers of the features, costs, benefits and risks of the Product. Information about risks was not disclosed or was confusing and/or contradictory. For example, the Fact Sheets did not disclose that HJL received 5% fees from AIGO in respect of the Loan Notes and 5% from each of the Bond issuing companies (with the exception of the Liquid Assets Bonds).

(6) There was no analysis of advantages/disadvantages of the recommended products compared to the customer's existing pension.

(7) Often, a customer's attitude to risk did not match the features of the recommendation.

(8) There was no explanation of counterparty risk and the risks of the Product provider being unable to pay the interest coupon. This was particularly important given the Product provider had no track record and the underlying assets were illiquid and speculative. This was common across each of the Pension Recommendation Reports.

(9) There was no reference in the Pension Recommendation Reports to the Loan Notes and Bonds being specialist investments despite that classification having been used in the Pension Summary Reports. This was again common across each of the Pension Recommendation Reports.

(10) The appendix of risk warnings contained warnings of no relevance to the customer and gave insufficient prominence to risks that were material. The result was to obscure those warnings which were relevant. For example, the warning

about property not always being readily saleable was only ninth on the list despite it being the main asset in all the portfolios.

(11) Customers were not told that the Products would not be covered by FOS and the FSCS.

454. There was a dispute between the parties as to whether a copy of the relevant Information Memorandum was provided to the customer along with the Pension Recommendation Report. The Fact Sheets in relation to the Loan Notes stated in the small print at the bottom that the AIGO IM would be provided on request. There was no reference in the covering letter to the Pension Recommendation Report that among the documents enclosed was the Information Memorandum. In the Report itself, the customer was referred to the "included fact sheet" for more details of the recommended investments. If the Information Memorandum was also included, it would have been expected that this would also be referred to in the body of the Report.

455. The Applicants maintained that the relevant Information Memorandum was sent in hard copy to every customer, that being the agreement with CAL or HJL, as the case may be. Mr Henderson, in particular, says he saw copies of the AIGO IM being placed into client correspondence when he was in HJL's offices and that he believed that a hardcopy was sent to every customer who acquired the Loan Notes.

456. The Authority does not accept that Information Memoranda were routinely sent. Ms Tibbetts's evidence was that no Information Memorandum was found in the digital files reviewed by the Authority. Her evidence was that the Authority conducted its own customer contact exercise in January 2020 to ascertain whether the customers concerned had received an Information Memorandum. The Authority only received six responses from that exercise, and only one customer said that he was provided with the Information Memorandum but that was after he had taken his decision to invest.

457. We accept, as Mr Lloyd submitted, that it would be wrong to rely on the results of the Authority's customer contact exercise as demonstrating that Information Memoranda were not routinely sent to customers. It was a very small sample and customers were asked in 2020 to recall documents they received some 6 years earlier, so that the answers given may not be reliable.

458. However, in our view, the other evidence points overwhelmingly to the conclusion that the Information Memoranda were not routinely sent to customers. The only specific reference to the Information Memoranda was in the Fact Sheets which indicated that it was available on request. If in fact it was being sent with every Report, then either the covering letter or the Report would have said so. On the contrary, there was a clear statement to the effect that it was not being sent with the Report and was only available on request. That indeed, would be the expected position. It is not in our experience usual for an IFA to send the full scheme particulars or prospectus of any investment. The necessary information is usually provided in a key features document or similar summary of the features of the investment concerned.

459. That position is not contradicted by Mr Henderson's evidence that he saw copies of the Information Memoranda being prepared for despatch to customers or his oral

evidence that he personally discussed it with a few clients. The customers concerned may have been given the document because they requested it, as envisaged in the Fact Sheets. No evidence was provided of any instruction to HJL or CAL to ensure that Information Memoranda were sent to all customers to whom a recommendation to invest in the Products was made or any evidence that any of the Applicants followed up with HJL or CAL to confirm that their instructions were being followed.

460. We therefore conclude that Information Memoranda were not sent to customers who did not specifically request a copy, as envisaged in the Fact Sheets.

461. In any event, in our view it would not have been appropriate for the Firms to have relied on the fact that they had provided the customer with the Information Memorandum to demonstrate that they complied with their obligations to ensure that the key features of the Product concerned, and the risks attached to it were fairly explained to the customer. As we have seen, the Information Memoranda are long and complex documents which were not prepared with the retail investor in mind. As we have said, in relation to the AIGO IM, since this was distributed by HJL as the IAR of FPL and HCA, it would have been the responsibility of the relevant Firm to ensure that the document complied with the relevant financial promotion rules, and in particular, the requirement that the document be clear, fair and not misleading. There is no evidence that either of those Firms undertook that exercise. The material in the Information Memoranda was not prepared in such a way as to be readily understood by the typical customer who received a recommendation through the Pension Review and Advice Process.

462. We therefore conclude, that on the basis of the customer files that the Authority reviewed, and our own review, that it is likely that any customer who received advice pursuant to the Pension Review and Advice Process to switch his pension into a SIPP where the underlying investments were one or more of the Products received unsuitable advice. This was in clear breach of the relevant Firm's obligation under COBS 9.2.1R to have taken reasonable steps to ensure that the advice was suitable for the customer. We shall, however, return to this issue when considering the individual references.

Reliance by the Applicants on Third Parties

463. In his submissions, Mr Page contended that Mr Tunkel had "signed off" on the Pension Review and Advice Process.

464. We have seen no evidence to support that assertion. None of the letters of advice from Mr Tunkel that were in evidence specifically deal with the Pension Review and Advice Process. His regulatory advice appears to relate purely to the promotion of the Loan Notes, the structuring of the Products, the relationship between the marketing companies and HJL, and the regulatory implications of the lead generation process.

465. Indeed, there is evidence which directly contradicts Mr Page's assertion. Howard Kennedy learnt that in his written representations to the RDC, Mr Page contended that the Pension Review and Advice Process had been designed by Mr Tunkel. Howard Kennedy denied that was the case. In a letter it wrote to the RDC on 3 August 2018,

Howard Kennedy said that Mr Tunkel was responsible for advising on the structuring of AIGO and gave advice to HJL on regulatory issues that "one faces in the UK when seeking to distribute interests in the AIGO Loan Scheme". It went on to say that Mr Page was mistaken in his belief that Mr Tunkel's advice went beyond that, or that advice was provided on the actual distribution system itself.

466. As Howard Kennedy went on to say in their letter, designing an advice process was not something that a lawyer would "dream of undertaking".

467. We therefore reject Mr Page's contention that Mr Tunkel was involved in the design of the Pension Review and Advice Process. Neither, it appears, did Mr Tunkel give any advice as to whether the process, as designed or operated in the manner we have described, complied with the Authority's requirements regarding the suitability of the recommendations that were made through the process.

468. There was also a suggestion that the Applicants took comfort from the fact that Guinness Mahon had undertaken their own due diligence on the Products and had accepted them as suitable for inclusion in a SIPP for retail investors.

469. That point was directed more at the question as to whether the Applicants had undertaken appropriate due diligence on the Products, and we have found no evidence that Guinness Mahon or any other SIPP Provider provided any comfort in relation to the Pension Review and Advice Process. Neither would we expect that to be the case; the suitability of any particular recommendation made by a Firm to invest in the Products would be entirely a matter for the Firm itself.

470. Mr Henderson contended that SimplyBiz had provided HCA with advice on the Pension Review and Advice Process. We return to that issue when considering Mr Henderson's reference.

Outcomes from the Pension Review and Advice Process

471. The Applicants stressed that not every lead recorded as data on the LeadTracker system invested in the Products.

472. We were shown statistics for each of the Firms prepared in June 2015 which showed cases received by each Firm, the status of cases in progress, the number of cases that had completed, that is with a recommendation to invest in the Products, and then the number of cases "Not Proceeding" with a breakdown of the reasons why the case was not proceeding to completion.

473. It is true to say that a large number of the cases introduced did not proceed to completion. However, for the largest number of cases where that happened it was either because the customer was "no longer interested" or was unable to be contacted. Those who were advised against investing were a very small number, for example just over 2% of the cases not proceeding for HCA, and similarly low proportions for FPL and BHIM. The other reasons why cases were not proceeding, were because they were cases that should not have been introduced in the first place, for example because the fund

was too small, the customer had switched IFA recently or their existing pension already contained guarantees.

474. Mr Lloyd had suggested in his opening submissions that the heading “no longer interested” was a catch-all category which included examples where the Firm decided that it was no longer in the customer’s interest for the investment to proceed. However, that point was not pursued in Mr Lloyd’s closing submissions and there is no evidence that we have seen to support it. We therefore find that the separate category headed “Advised Against” contains the only cases where there was some positive recommendation by the Firm against investment in the Products, which, as we have said, covered only a very small proportion of the cases that did not proceed.

475. It was also the case, as demonstrated by the statistics, that the large majority of customers who received any recommendation were advised to invest in the Products. There is also no evidence that, where a recommendation was made to a customer to switch their pension, the recommendation was to invest in anything other than one or of more of the Products. As the Applicants accepted, the only investments that were ever part of the LeadTracker process were the Products.

476. Therefore, as Mr Purchas submitted, the data does not support the Applicants’ contention that customers were regularly advised against investing in the Products.

477. The Applicants also contended that customers who entered the process but did not receive a recommendation to invest in the Products were advised by Firms to acquire other investments, on the basis of separate independent advice given by the Firms. The Applicants all contended that one of the attractions of the Pension Review and Advice Process as far as their Firms were concerned was the ability to generate leads who could be advised to invest in other Products.

478. In particular, Mr Page contended that any customers who were initially proposed for the LeadTracker process, but where the Products did not suit, were “parked” to be revisited at a later date by a newly recruited pension specialist. We return to that point when considering Mr Page’s reference. Likewise, Mr R Ward and Mr Freer emphasised that the primary purpose for BHIM engaging with the Pension Review and Advice Process was to generate leads for their Cheltenham business.

479. However, there was nothing in the evidence before us to indicate that a single customer, across any of the Firms, who was an HJL introduced lead, invested in a product other than the Loan Notes or the Bonds through a pension switch.

480. This is supported by the new business registers provided by the Firms. In respect of HCA and FPL, the new business registers for the period during which those Firms participated in the Pension Review and Advice Process show that outside of the LeadTracker process, they only had a very small number of customers who were invested in other products. With regard to BHIM, which had both a London and a Cheltenham Office, all of the HJL leads were advised to invest in the Bonds.

481. Therefore, the clear inference to be drawn from the evidence on this point is that, where the customer had indicated a preference for either a product with capital

protection or a fixed return, they would in the vast majority of cases be recommended to invest in the Products through a SIPP; and none of those customers would be recommended to invest in any other investment product by any of the Firms during the Relevant Period. That also follows from the fact that, as we have found, the only questions in the Fact Find about investment objectives that the customer was asked was whether they were interested in (i) an investment that grew at a fixed rate and did not fluctuate in value; and (ii) an investment which carried a guarantee as to the value of the investment on redemption.

Whether the process involved the giving of independent advice

482. In the light of our findings as to the way the process was structured and operated, we turn to consider whether the statements in the Service Proposition and Brochure reflected the reality of the service offered by the Firms through the medium of the Pension Review and Advice Process.

483. In our view, the impression that would have been given to any customer receiving the Service Proposition and the Brochure was that they would, by entering into an agreement with the relevant Firm, receive bespoke advice from an IFA that was individually tailored to their individual needs and aspirations.

484. However, the only service that any of the customers received from the Firms was a recommendation to invest in the Products, which was the predetermined outcome provided the customer had indicated a desire for capital protection and/or a fixed return – a likely consequence due to the leading questions in the Fact Find that we have identified above. If such a recommendation did not follow because, for example, the criteria for inclusion in the process were not met or the customer did not express a desire for a fixed return or capital protection, then none of the Firms intervened to carry out a further review of the customer's financial situation and recommend an alternative suitable product. The customer was simply left without any further services provided by the Firm.

485. As Mr Lockie stated in his report, an IFA is generally understood to mean a firm or individual which is authorised by the Authority and is able to consider and recommend all types of retail investment products that could meet an investor's needs and objectives. An IFA would therefore consider retail investment products across the whole market and give unbiased and unrestricted advice. Many of the customers who did not receive a recommendation through the Pension Review and Advice Process were likely to have needs and objectives that could have been addressed with independent advice, but they were not pursued after they had been screened out of the process. This was most unfortunate bearing in mind the profile of the customers concerned. It should also be noted, that one of the criteria to be satisfied to enter the process in the first place was that the customer did not have an IFA. They might therefore not have had the necessary knowledge and experience to understand that what they were being offered was not the typical services of an IFA.

486. It is evident, that a new business register which contains high volumes of identical outcomes applied to a large number of consumers randomly captured by extensive lead generation activities is not the result of a genuinely independent advisory service.

487. It is also instructive to look at the process from HJL's position. HJL's objective was to use the process as a means of maximising investors for their Products. They and their associates designed a process to capture those who confirmed that they were interested in capital protection and/or a fixed rate return. The Firms effectively became accomplices in that exercise and were not to any meaningful extent performing the functions expected of an IFA. As our review of the files reveals, there is little evidence of the Firms intervening in the process before the recommendations were made. As we have found, there are numerous examples of Fact Find responses having no influence on the outcome which nearly always led to a recommendation to invest in the Products. In essence, the IFAs lent their name to HJL's distribution process and, in effect, provided a veneer designed to give the impression that a truly independent service was being provided.

488. Mr Lloyd, using Mr Henderson's position as an example, said that his involvement in the process meant that he was in control and had a determining say and so could decide to take a customer out of the process if appropriate. He said that was what Mr Henderson understood his role to be, a role which he thought at the time constituted being independent. He did not consider himself to be wed to HJL or the Products and, although that is where the LeadTracker process led, he was under no obligation to allow customers to go through the process. That is what he meant when he said that he was acting independently. We return to the particular position of Mr Henderson and the other Applicants and what they understood to be meant by acting as an IFA when considering their particular references, but at this stage we do not accept that what Mr Lloyd has described illustrates that the Firm concerned was giving independent advice in the manner in which it was described in the Service Proposition.

489. Mr Lloyd accepted in argument that there could have been a "better description" of the services being offered in the documents. He accepted the Tribunal's formulation of what in reality was the nature of the service set out in the Service Proposition. It was put to Mr Lloyd that a more accurate description would be on the following lines. The Firm could have explained that it had recently become aware of a very good opportunity and had linked up with a product provider that was promoting products which the Firm believed would be suitable for investors who met certain criteria, namely the desire for capital protection and a fixed rate of return. If the Firm assessed the customer's personal circumstances, and was of the view that they were suitable for investment in those products, then it may make a recommendation to that effect, but if the Firm considered that such a recommendation was not suitable, then it would consider whether there were other products that may be suitable instead.

490. Mr Lloyd accepted that that would be a fairer and more transparent description of what was actually going to happen, rather than the impression that was actually given, namely that the Firm was going to undertake a whole of market assessment resulting in a bespoke, tailored recommendation.

491. However, based on what we have said above as to what constitutes independent advice, the description of the service that was actually provided cannot fairly be said to amount to the giving of independent advice.

492. In that regard, we accept the Authority's analysis that the statements in the Service Proposition were false and misleading in relation to the service provided to customers.

493. First, the statements that the Firms provided an "independent advice service" and "operate independently", and the statements that they provided a "comprehensive and fair analysis of the market" and that "We will place no restrictions on the Investment Markets we will consider" were all false and misleading.

494. In reality, the advice provided in the Firms' names was not provided through an independent advice service. The advice process had been developed by HJL to assist HJL in sourcing customers to invest in HJL's own products developed for the UK pensions market.

495. The advice was not generated by the Firms on a client-by-client basis, but through an automated process without any meaningful assessment of individual customers' needs. The LeadTracker software, as each of the Applicants accepts, generated the reports and the only products that LeadTracker would generate a recommendation report for were the Products.

496. The only products that would be recommended to customers who passed through the Pension Review and Advice Process were HJL's products, namely the Bonds and Loan Notes. The Applicants have accepted in evidence that no other products were recommended.

497. The Outsourced Functions were performed on the relevant Firm's behalf by HJL, EFP or CAL. HJL had a material financial interest in the customers investing in the Bonds and Loan Notes and had a close connection with CAL.

498. As Mr Purchas submitted, similar failings appear in the Brochure which held out the Firms as providing customers with independent advice from qualified financial advisers and explicitly stated that an advantage of independent advice is that the adviser is not tied to one particular provider or product, is not incentivised to make a particular recommendation and will therefore act entirely in the customer's best interests. The same issue arose in other stages of the Pension Review and Advice Process. For example, at the end of the Fact Find it was stated that "it will take an IFA approximately 2 days to analyse your information and prepare your personalised Recommendation Report …", whereas the recommendation was not personalised and there was no meaningful involvement from any IFA in the making of the recommendation.

499. We consider, where relevant to the determination of their references, the knowledge and belief of the Applicants as to the falsity of the statements in the Service Proposition and the Brochure.

Conflicts of Interest

Relevant regulatory requirements

500. The Authority relies on SYSC 10.1.3R, 10.1.7R and 10.1.8R, as set out at [95] to [97] above, (in respect of Mr Page, T Ward and Mr Henderson) for its contention that those Applicants should have addressed the obvious conflicts of interest arising from HJL and its directors' financial interest and involvement in the Products and the development and operation of the Pension Review and Advice Process.

501. In essence, the Authority says that there was a clear conflict of interest between the Firm, which includes its appointed representatives, and the Firm's customers. HJL was an IAR of both FPL and HCA, so the provisions mentioned at [95] to [97] above are applicable in this case and neither FPL nor HCA argued otherwise.

502. The only conflict explicitly recognised by FPL and HCA was the fact that HJL received a commission of 5% of the proceeds of the various offers of the Products. They say that conflict was adequately managed by being disclosed in the Information Memoranda.

503. However, in our view, the Authority was correct to say that the conflicts of interest went much wider than that. As Mr Purchas submitted, HJL had an overarching involvement in the Outsourced Functions from the beginning to the end of the process, along with an interest in the leads generated through the marketing companies that it appointed being invested into the Products. That created a serious divergence of interest between what HJL wanted, which was these customers to invest into the Products, and what was in the customers' interests which was to obtain suitable advice as to whether to switch at all and, if so, by reference to a consideration of products from across the market by means of an independent review by the identified IFA.

504. Neither Mr Lloyd nor Mr Page challenged that analysis, and we accept it.

505. HJL was not an IAR of BHIM and therefore the Authority has not pleaded a case against Mr R Ward and Mr Freer relying on SYSC. It relies on what it says is a broader approach which applies to all of the Applicants.

506. The Authority says that the Applicants should have had regard to the conflicts of interest as these impact on the potential suitability of the advice given including the disadvantages of a recommendation to invest in the Products through the Pension Review and Advice Process. At the broader level, the Applicants should have had regard to and disclosed HJL's interest in customers switching their pensions to the pre-selected Products, both in terms of the commission HJL received and the on-going involvement of HJL and its personnel with the Product providers. This involvement included acting as investment adviser, holding the share capital (in the case of both the HJ Bond Issuers and AIGO Cells) and owning and managing most of the various entities that received loans from the AIGO Cells.

507. Again, neither Mr Lloyd nor Mr Page challenged that analysis, and we accept it.

508. We are fortified in these conclusions by Mr Lockie's evidence. As set out at [252] above, in relation to the Loan Notes, Mr Lockie was of the view that there was a clear conflict where a substantial portion of the investors' funds were lent to companies controlled by Mr Stephen, in circumstances where HJL had already been paid an initial fee from those funds. That would give rise to concern on the part of a reasonably competent IFA about how the interests of the holders of the Loan Notes would be protected. Likewise, he identified a conflict between Mr Stephen's interests in maximising his returns as an equity shareholder and the interests of the holders of the Loan Notes in circumstances where they had no influence over the risk that the AIGO Cells, in effect under the direction of Mr Stephen, would be taking with their investment.

509. Similarly, in relation to the Bonds, at [269] we set out Mr Lockie's concerns about the conflict created because of Mr Stephen's interest as a director and shareholder of the Issuers, giving rise to an incentive to procure the maximisation of his own returns, regardless of the desire and capacity for risk of the bondholders who were financing the enterprises. There was also concern about the selection and appointment of HJL to provide investment advice to the Issuers without an independent selection process.

510. We agree with Mr Lockie that these conflicts would be highly relevant and cause concern to a reasonably competent IFA considering recommending any of the products concerned to a retail investor. They are therefore highly material to the question of suitability, and as well as having been managed through appropriate disclosure or otherwise, should have been considered by the IFAs as part of their assessment as to whether the Products were suitable.

Details of the conflicts of interest

511. Turning to the detail of the conflicts of interest concerned, these are summarised by Mr Purchas as follows.

512. As identified above, HJL had close links to, and a vested financial interest in, the Products which were recommended to customers by the Firms. In relation to the Loan Notes:

(1) Mr Stephen was a director of both HJL and AIGO. HJL was the marketing agent for AIGO and received a fee of 5% of the total amount raised from customers. That is a significant fee, particularly when added to the 3% direct commission payable by the customer when they switched their pension, ostensibly to the relevant Firm. We accept that it was a substantial incentive to procure investment in the Loan Notes and was not disclosed in any meaningful way to customers. There was no mention of it in any of the communications to the customers from the Firms, be it the Service Proposition, the Pension Recommendation Report or the Fact Sheets. While it was mentioned in the AIGO IM the nature of the potential conflict that might cause was not spelled out. In any event, as we have found, the AIGO IM was not generally provided to customers. Even if it had been, as we explained above, the AIGO IM was not an appropriate medium through which the relevant disclosure should have been made.

(2) While not addressed in the Information Memoranda it was clear from the quarterly information sheets for each Cell that were sent to the Firms, that loans were being advanced by the Cells to companies associated with Mr Stephen and this was known to both Mr Henderson and Mr Page. This was not disclosed at any point to customers.

513. In relation to the Bonds:

(1) Mr Stephen and Mr King were directors of HJL and each of the newly incorporated companies that issued the Bonds for which they received directors' fees. Furthermore, Mr Stephen was the 100% shareholder of each of the Issuers.

(2) HJL was appointed as a "Specialist Asset Consultant" by each of the Issuers (with the exception of HJ Liquid Assets plc) and for this role received a 1.5% ongoing fee (at HJL's discretion). HJL had already been paid an initial fee of 5% of the funds raised under the issuance of the Bonds.

(3) There was no mention of these matters in the Service Proposition or the Pension Recommendation Report. While the Fact Sheets referred to the common directorships there was no mention of the fees payable to HJL. These were referred to in the Information Memoranda, but the nature of the potential conflict that might cause was not spelled out and, as we have said, we have found that in general the Information Memoranda were not provided to customers and, even if they had been, they were not an appropriate medium through which the relevant disclosures should have been made.

514. As also identified above, there were conflicts of interest inherent in the Pension Review and Advice Process. HJL had a financial interest in having customers invest in the Products while the customer's interest was in receiving appropriate and suitable pension advice. Furthermore, according to evidence provided by a former employee of CAL to the RDC, the field agents working for CAL were entitled to receive 0.1% of the total value of the pension invested by way of a personal commission.

Management and disclosure of the conflicts of interest

515. Since the Applicants did not identify any of the conflicts of interest detailed above, save for the fee payable to HJL out of the proceeds of issue of the Products, it follows that no steps were taken by any of the Applicants to manage any of those other conflicts. Nor, as we have found, did any of the Applicants take any steps to manage the conflict arising out of the fee payable to HJL.

516. Mr Page says that he sought to address what he saw as a conflict created by the fact that HJL and CAL operated from the same premises by asking that CAL operate from different premises to HJL, but this does not address the substance of the conflicts identified above, and in any event did not happen until the middle of October 2014.

517. As far as disclosure of conflicts is concerned, all the Applicants relied on the Information Memoranda, but only sought to do so in the context of the disclosure of HJL's fee payable on the issue of the Products. As we have said, that is ineffective due to our findings that, in general, Information Memoranda were not provided, and even in those cases where they were provided, for example when requested by customer, they were not an appropriate medium through which to make such disclosure.

518. The implications of our findings on conflicts of interest set out above are considered further in relation to each Applicant in the context of the consideration of their individual references.

VI. THE FPL REFERENCES

Findings of Fact

Introduction

519. We start with our findings of fact which are specific to Mr Page's and Mr T Ward's references which are to be read in conjunction with the findings that we have made on matters which are common to all of the references, as set out above.

Background to FPL and its involvement in the Pension Review and Advice Process

520. Mr Page is an experienced adviser who has had a long career in financial services. He accepted in cross-examination that he was aware of the regulatory requirements relied on by the Authority in these references and the nature of those requirements.

521. Mr Page started his career in financial services in 1993. Prior to the formation of FPL he had worked for a number of firms, including Prudential plc and St James's Place. FPL was formed in 2011 and initially operated as part of the Financial Limited network as an Appointed Representative. On 9 April 2014, FPL applied for authorisation in its own right from the Authority and the application was granted on 3 July 2014 whereupon Mr Page was approved to exercise the CF 1, CF 10, CF 11 and CF 30 controlled functions. Mr Page was during the Relevant Period the only approved person at FPL.

522. Mr T Ward has also had a long career in financial services, but in operational rather than advisory roles. He commenced his career in 1978 and worked for a variety of institutions, including a period between 1989 to 1995 where he was Head of Operations and Assistant Director for a derivative trading company, City of London Options Limited. He was made redundant from that position and then took a job as a senior inspector at one of the Authority's predecessor regulators, namely the Securities and Futures Authority ("SFA"), where he worked for 12 months. During that time his role was to attend on businesses and review their operations to ensure their compliance.

523. In 1996, Mr T Ward became the Head of Compliance and Operations at SG Investment Management Ltd ("SGIM"), later moving to become Global Head of Operations and Administration and an Executive Director at that firm. During that time, Mr T Ward was approved to exercise those functions by the SFA.

524. Mr T Ward was removed as a director of SGIM with effect from 15 October 1999 and his employment terminated following allegations of misuse of an expense account debit card, withdrawal of cash from an office safe for personal use and authorising transfers from a suspense account to an account in his own name. SGIM notified the SFA of those matters in a notice to the SFA withdrawing Mr T Ward's approval and the SFA initiated an investigation into Mr T Ward's conduct.

525. On 9 April 2001, Mr Ward was convicted of 6 counts of obtaining a money transfer by deception, as a result of which he was sentenced to imprisonment for a term of 12 months. Mr T Ward continues to dispute his guilt, contending that he thought the money transferred into his accounts was in relation to a pay rise he had been promised, but he did not launch an appeal regarding his conviction.

526. The SFA's investigation had not concluded by the time that the Authority took over the SFA's functions under FSMA on 1 December 2001. The Authority considered taking action to prohibit Mr T Ward on the grounds that his criminal conviction and the surrounding circumstances indicated that he was dishonest and should be prohibited. However, it appears that the Authority reached the view that Mr T Ward was unlikely ever to be granted approved person status in the future and, although there was some risk to consumers in the area of financial activity for which approved person status was not required, on balance the Authority decided not to resource an investigation where it believed the risk to consumers was low. Mr T Ward was informed that the disciplinary proceedings would be discontinued, but that the documentation concerned would be held on record and, in the event he applied for permission to carry out a controlled function, those matters would be considered and taken into account.

527. It is therefore clear that Mr T Ward was experienced in the financial services industry and was aware of the approvals required to perform certain services, particularly as he had approved person status for a number of years and had worked at the SFA supervising regulating firms. He said in his interview with the Authority that he understood what controlled functions were and the need for approval when performing them. Mr T Ward was asked in cross-examination whether, if an application had been made on his behalf to be a CF1 for FPL in 2014, it would have been approved. Mr T Ward, unconvincingly, asked what a CF1 was (which we are sure he knew because of his previous experience and involvement in these proceedings) but said that he assumed that if he had applied to become a director of FPL, which was never his intention, it would not have been approved.

528. Following his release from prison, Mr T Ward provided operational assistance to a number of mortgage brokers and other financial advisers.

529. In 2013, Mr T Ward was asked by a contact whether he knew any IFAs who would be interested in being involved in some pension business. He subsequently received details of the Execution-Only Process and was given the contact details of Person A who he met in November 2013 for the first time. Person A introduced himself as a representative of HJL. During the meeting a business model relating to pensions being switched to a GM SIPP with the underlying investment being the Loan Notes was discussed.

530. Mr T Ward undertook some due diligence on Person A. He discovered that Person A had been convicted and sentenced in August 2013 for two offences under the Insolvency Act for failing to disclose property to the Official Receiver in relation to bankruptcy proceedings. Mr T Ward said in his evidence that despite the conviction having only occurred recently, he did not think that rendered Person A "immediately unsuitable" for him to work with in relation to a project involving UK pensions.

531. Mr T Ward introduced the opportunity to Mr Page, telling him that he was impressed with the paperwork that he had seen. In early December 2013, Mr Page and Mr T Ward met with Person A and Mr Stephen at HJL's offices in London. Mr Page confirmed that he undertook no due diligence or investigation into Person A's background. He denied in his interview with the Authority that he knew about Person A's convictions until after the Authority's visit in June 2015. On the basis of his lack of due diligence, we accept that was the case at the time that the initial discussions took place with Person A, but in view of the fact that Mr T Ward did conduct some investigations into Person A's background we think it is likely that subsequently, and before June 2015, Mr Page did become aware of Person A's convictions.

532. It is clear that following the meeting, Mr T Ward took the initiative in progressing matters towards establishing a relationship between FPL and HJL. On 5 December 2013, Mr T Ward sent an email to Mr Page attaching "a full sample file for the project we have been discussing". He went on to say:

> "I would suggest that we start with three a day initially and these will be paid at £100 per case when the receiving Scheme receipts the monies into the fund."

533. Mr T Ward referred to a "separate set of template documents that will be needed to submit the papers to the provider" which he said he would send later and that these would need to be used on FPL's headed paper where appropriate. The email finished by Mr T Ward saying:

> "If all is well I would intend to start early next week if that suits you Andrew?"

534. The sample file that is attached to the email included a copy of a client agreement for arranging execution only investments to be entered into between the customer and HCA. It was therefore clear that the file related to the execution-only business that HCA was at that time conducting in relation to introductions made to it by HJL as its IAR.

535. Later in the day, Mr T Ward sent the other documents envisaged. These documents provided for the IFA concerned to review the customer's application for the GM SIPP and submit it to Guinness Mahon for the customer's SIPP to be established and the funds transferred from his existing pension for investment in the Loan Notes. The documentation made it clear that the IFA would have no obligation to advise on the suitability of the investments concerned.

536. On 6 December 2013, Mr T Ward sent Mr Page an agreement to be entered into between FPL and HJL whereby FPL would appoint HJL as its IAR so as to enable HJL to introduce leads to FPL. This agreement had already been signed by Mr Stephen on behalf of HJL and was subsequently signed by Mr Page on behalf of FPL. Templates

were also prepared for use by FPL at the same time, all of which related to execution only business.

537. The documents to be used were subsequently revised. Again, Mr T Ward took the initiative in progressing this. In an email to Mr Stephen on 19 December 2013, Mr T Ward attached "the revised suite of docs that we are intending that Andrew will use". He said:

> "I am proposing that this route will change nothing, except for the fact that Andrew now takes the responsibility for the cases. The invoicing for the fee of £500 per case remains the same method and I need your agreement to that also."

538. Mr Page then encountered difficulty in registering the introducer agreement with the Authority. On 2 January 2014 he contacted Financial Ltd, for whom at that time FPL acted as an Appointed Representative, because he discovered that as FPL was not directly authorised registration would have to be effected by Financial Ltd.

539. Mr T Ward took the initiative in addressing this issue. He spoke directly to a compliance manager at Financial Ltd. That compliance manager emailed Mr Page on 27 January 2014 to say that Mr T Ward had been in contact but that he would prefer to deal with Mr Page. The compliance manager said that registering HJL as an introducer of Financial Ltd was not something that Financial Ltd would normally do.

540. On 29 January 2014, Mr Page emailed individuals at a firm he was contemplating working with in Dubai saying that "I was hoping to join my friend's business and incorporate mine with his, but it's not that simple going directly authorised, but it may work in the future". Mr Page accepted in cross examination that this was a reference to the business with HJL that Mr T Ward was attempting to introduce to FPL.

541. Mr Page continued to try and obtain Financial Ltd's agreement to registering HJL as an IAR. In an email to the compliance manager at Financial Ltd Mr Page indicated that the introductions were to high net worth individuals. Mr Page could not explain why he made that reference when the target investors envisaged by HJL would not fit that definition.

542. Financial Ltd explained that if HJL was to become its IAR it would have to do some due diligence. Mr Page was asked to undertake this and then explain what he had done to establish the credibility of HJL as an introducer. Mr Page enlisted the help of Mr T Ward in that regard who suggested Mr Page prepare a draft for him to review, advising Mr Page to include information regarding the "turnover and financial stability" of HJL which Mr T Ward could flesh out with the numbers.

543. In fact, what Mr Page produced was a one page document containing little detail. He described what he was being asked to do for HJL as follows:

> "I have been given the opportunity to meet and complete a Fact Find on [HJL] client; this will involve no more than completing a Fact Find and then discovering if I may be able to help their client. I will ensure that I complete the review and see where I can help within a suitable timeframe to all my usual standards…"

544. This document was sent to Mr T Ward, but nothing happened for a number of weeks and, on 3 March 2014, Mr Page emailed Mr T Ward saying that he needed the "beefed up report from your guys".

545. In the end, nothing materialised in terms of Financial Ltd registering HJL as an IAR and the proposed arrangements with HJL took a different direction.

546. It appears that, on 7 March 2014, Mr T Ward contacted Mr Page to tell him that HJL were proposing a new approach. On 8 March 2014 Mr Page emailed Mr T Ward saying he was looking forward to receiving details. He also said "if I can keep Financial out of the loop all the better".

547. Later that day, Mr T Ward emailed Mr Page with further details. He said:

> "I understand that they have now moved the product to it being an advisable switch. That means, that as we will be giving advice, that we don't have to have them registered and I can negotiate a 3% fee on ALL transfers. Obviously, I will be supplying the packaged client – all supporting documentation will be wrapped into the file – so it will simply be a case of putting our name to it and effecting the transfer. I would then suggest that as each transfer has an average value of £50k that we simply split the fee 50/50. In effect, every case you do will generate gross £1500 and we get £750 each from every case? Provider will almost certainly pay your Network and then, once it is filtered through to you, I will invoice for my share?
>
> My understanding is that they have over 700 cases per month at the moment? And only four others doing this for them!!!! That would mean we could collar over 150 cases prepackaged, per month and that would generate us gross a ridiculous £200k plus per month!!!!! I think we adopt the "suck it and see" approach and ask for one case, submitted and then see if any shit is thrown out? If not, gradually increase our numbers?????"

548. Mr Page responded on the same day, saying that Mr T Ward's email had "just made my day". He said that he was happy to proceed as Mr T Ward suggested and that he would "make sure I have a good process and system in place to knock them out as and when, serious money too…"

549. On 14 March 2014, Mr Page informed Financial Ltd that he would possibly be receiving income from a second source that would be "admin orientated" and asked how this would fit in with Financial Ltd's systems.

550. It appears that Mr T Ward then started to progress matters with HJL. On 14 March 2014 he emailed Mr Oliver Maynard of EFP with a template of FPL's letterhead. It seems that Mr Page had by then taken the decision that FPL should seek authorisation from the Authority in its own right. In an email to Mr T Ward on 18 March 2014 he said:

> "I think this will come off big style, I have just phoned Financial stating I wish to go directly authorised as I do not want their extra services as my business model is so simple.

> They are going to set me up, it takes 3 months, they are pinging a form over to get the ball rolling. They think I just don't want the back office stuff they provide.
>
> We can continue with my new bank account, nothing changes going forward, my fees increase slightly, but no one will have access to my business but me, we can pretty much do what we want then …"

551. Matters then proceeded swiftly. On 21 March 2014, Mr Page emailed Mr Oliver Maynard informing him that he had signed the Software Licence Agreement for LeadTracker. That followed a meeting that had been held on the same day between Mr Page and Mr T Ward on the one hand and Mr Nick Maynard and Mr Oliver Maynard from EFP on the other. On 9 April 2014, Mr Page informed Mr T Ward that FPL's application for authorisation from the Authority had been submitted that day. In response, Mr T Ward informed Mr Page that he was liaising with Person A to obtain login codes for himself and Mr Page to the LeadTracker system. These were obtained on 16 April 2014.

552. Both Mr Page and Mr T Ward vehemently contended that FPL had no intention of participating in the Execution-Only Process and that Mr Page had dismissed that possibility when he first met HJL in December 2013. Mr Page said that he did not consider execution only business to be a particularly fulfilling or ethical way to work and therefore rejected participating in the Execution-Only Process because it felt as though he would "just be putting my name to it and indeed this was really how it was presented to me". Mr T Ward says that he remembers very clearly a conversation with Mr Page in the lift on their way out from their first meeting with HJL where Mr Page said that he had no interest in progressing matters if what was being offered was participation in execution only business. That appeared to be one of the few times in Mr T Ward's oral evidence where he was able to remember clearly a conversation which had taken place some years previously.

553. Although both Mr Page and Mr T Ward were persistent in their evidence in holding to that line, that evidence is clearly contradicted by the contemporary documents. We therefore reject both Mr Page's and Mr T Ward's evidence on this point.

554. At this stage, the Pension Review and Advice Process had not been developed. HJL were only promoting the Products through the Execution-Only Process, initially with HCA. The sample documentation that was given to Mr T Ward and Mr Page related solely to the Execution-Only Process, as we found at [533] and [534] above. Mr T Ward's email of 5 December 2013, as referred to at [532] above, makes it clear that he was keen to progress matters on the basis of the documentation that had been provided. FPL signed an Introducer Agreement with HJL on that basis.

555. As we have found, Mr Page encountered difficulties in registering HJL as FPL's IAR whilst FPL was an appointed representative of Financial Ltd. He was not able to progress matters in that regard because Financial Ltd required a detailed report on the due diligence that FPL had undertaken on HJL and, as we have seen, that matter was not progressed in any substantive manner.

556. We have no doubt that had FPL provided what Financial Ltd required so as to enable HJL to be registered as IAR then FPL would have proceeded with the Execution-Only Process. FPL's potential participation in that process was overtaken by events when Mr T Ward informed Mr Page on 8 March 2014 that HJL was moving to an advised process and FPL then proceeded to take the necessary steps to enter that process, including applying for authorisation directly.

557. The Authority suggests that Mr Page was keen to keep Financial Ltd in the dark as to his plans. It is true that he described the role that FPL was going to perform as essentially an administrative process, but it appears that, at least at this early stage, Mr Page genuinely did believe that he would be signing FPL up to what was essentially an administrative process which would involve simply putting FPL's name to files where recommendations had been made to customers without any significant work on the part of FPL itself. That is consistent with how Mr T Ward described the process in his email to Mr Page on 8 March 2014, as set out at [546] above, and we note it contradicts Mr Page's assertion that he was not interested in business where he was simply asked to put his name to something.

FPL's application for authorisation

558. As we have mentioned above, FPL's application for authorisation by the Authority was received by the Authority on 9 April 2014. Although Mr Page said that the main reason FPL decided to apply for direct authorisation at this stage was because he thought that networks such as Financial Ltd had had their day, we have no doubt that the primary motivation was to enable FPL to participate in the Pension Review and Advice Process. From his experience with Financial Ltd and the proposal to register HJL as an IAR, it was clear to Mr Page that FPL could only participate in the Pension Review and Advice Process if the Firm became directly authorised. It was also apparent that Mr Page saw an advantage in distancing the Firm from Financial Ltd: see the emails referred to at [546] and [550] above.

559. Mr Page instructed IFA Compliance Limited ("IFAC"), a subsidiary of Financial Ltd which provided compliance services, to prepare the application for authorisation for FPL and paid a fee for that service. While Mr Page suggested initially during cross-examination that he may not have seen the application himself as it was prepared by IFAC, he then did accept that he had seen the document prior to it being submitted and had signed the declarations at the end of the application. Among other things, those declarations warned that it was a criminal offence to knowingly or recklessly give the Authority information which was false, misleading or deceptive and that the Authority must be notified immediately of any significant changes to the information provided. Another one of the declarations confirmed by Mr Page was that the information in the application was accurate and complete to the best of his knowledge and belief.

560. At the time of the application, Mr Page had signed the Software Licence Agreement for LeadTracker a few days previously, on 21 March 2014, and, as we shall see later, he was sent an updated Service Proposition on 7 April 2014. Arrangements for FPL to participate in the Pension Review and Advice Process were therefore well advanced at the time of the application. Two weeks after submitting the application Mr

Page wrote to Mr Paul Gilham at Pan Trustees (the trustee for Guinness Mahon) stating that "we should commence submission of advised transfer cases imminently".

561. The application did not take into account the potential arrangements for FPL's participation in the Pension Review and Advice Process which were, as we have found, at that stage well advanced and was the primary motivation for FPL applying to be directly authorised. In particular:

(1) FPL had to submit a business plan with the application. Guidance was given as to what that business plan should include, and it was requested that the business plan include details of whether a "particular business opportunity" had been identified. Mr Page did not include details of the potential arrangements with HJL on the basis, he says, that he was not sure the idea would come to "fruition", "nothing was in stone" and that "there's always business opportunities".

(2) In answer to the question "What functions will the applicant firm outsource?", which was clearly a prospective rather than a retrospective question, it was stated that the only function that would be outsourced would be the compliance support provided by FPL's external compliance consultant. As we have found, parts of the Firm's advice process would be outsourced through the Pension Review and Advice Process. FPL's website had already been updated to include HJL's details, as envisaged in Mr Page's email of 21 March 2014 to Mr Oliver Maynard, when he informed Mr Maynard that he had signed the Software Licence Agreement and was arranging to have HJL's address added to FPL's website. Mr Page did not give a direct answer on why he had failed to include accurate information in the application. Mr Page did not explain why he did not subsequently update the Authority when he signed the Service Agreement with HJL on 2 May 2014 for it to provide FPL with leads and the outsourced services.

(3) The application stated that advice would be independent, and the product solution would be independently chosen. As we have found, the Loan Notes were the only product recommended for investment through the Pension Review and Advice Process, which was not of itself independent.

(4) The application stated that all advice would be provided on a face-to-face basis by FPL, but the Pension Review and Advice Process did not envisage customers would have a face-to-face meeting with Mr Page. He accepted that this was not an accurate description in cross-examination and that he did not update the Authority regarding this.

(5) The application also asked whether the Firm would be using bespoke software systems. Financial Ltd's system for recording business was mentioned but LeadTracker was not, although Mr Page had recently signed the Software Licence Agreement on 21 March 2014, just four days prior to the date of his application.

(6) The application stated that in most cases FPL would be paid on a rate per hour by the customer. However, the arrangements with HJL envisaged that FPL would be remunerated by a 3% advice fee charged on the value of a customer's pension assets that were switched to the Products, as set out in Mr T Ward's email to Mr Page on 8 March 2014.

(7) In the same email, Mr T Ward made clear that HJL was expecting to provide FPL with 150 customers each month, but the application stated that FPL was expecting to have the same number of customers (50) in a year's time as it did at the point of application.

(8) The application stated that most business would be generated by existing customers and new customers would be received through referrals from existing customers rather than marketing. No mention was made of the fact that FPL had signed an introducer agreement with HJL on 6 December 2013 and expected that most new business would be generated through this route.

(9) The application stated that FPL's expected profit a year after authorisation would be £36,000. This figure was lower than FPL's profit in the previous year (£50,000). Mr T Ward's email of 8 March 2014 referred to above gave a much higher expected profit figure. In his opening submissions at the hearing of his reference, Mr Page stated that he "had never earned less than an average of £75,000 per annum for many years, so unsure why I said that. It was certainly not to mislead the FCA in any way."

562. It was also clear that Mr Page did not provide any details of the proposed arrangements with HJL to IFAC at the time of the making of the application and he did not update the Authority once the arrangements with HJL had been completed, other than arranging for the introducer agreement with HJL to be recorded on the Authority's register. Mr Page raised during cross-examination a question as to how he would have updated the Authority, but he accepted that he could have phoned the Authority or emailed or written to it. He could also have clarified with IFAC what needed to be told to the Authority and how it should be done.

Completion of the arrangements with HJL

563. Alongside the authorisation process, FPL continued to make arrangements to finalise the documents necessary for participation in the Pension Review and Advice Process.

564. On 31 March 2014, Mr Page sent Mr T Ward a copy of FPL's existing terms of business and asked him to amend it "as you see fit". Mr T Ward subsequently amended the document to turn it into the Service Proposition to be used in the Pension Review and Advice Process, sending it to Mr Oliver Maynard on 4 April 2014, copying in Mr Page. In that email Mr T Ward said that "I have now completed the above document and would ask if you could kindly add our logo and bits to the front cover for me…". A final version was sent back to Mr T Ward by Mr O Maynard on 7 April 2014 and was subsequently received by Mr Page.

565. Just prior to that, on 2 April 2014, Mr Ward sent an email to Mr Page asking him to "please cut-and-paste the text below and send it to [Mr O Maynard) as soon as possible". The text drafted for Mr Page to send was to the effect that Mr Page was happy to confirm that he had reviewed the content of both the Pension Summary Report and the Pension Recommendation Report and was happy to proceed with both.

566. As mentioned above, on 25 April 2014, Mr Page provided the trustee of the GM SIPP with FPL's bank account and contact details, referring to the fact that Mr T Ward had informed Guinness Mahon that FPL should commence admission of advised transfer cases "imminently".

567. At this time, Mr T Ward was taking the lead on settling the contents of the Brochure with Person A. Mr T Ward indicated that it would be ready to print the following week, as Person A wanted. In that context, Mr T Ward had reviewed the brochure currently used by HCA and told Person A that it would be hard to improve on it and therefore it should be adapted for use by FPL.

568. On 2 May 2014, FPL entered into the Standard Service Agreement with HJL, as detailed at [359] above, pursuant to which HJL agreed to provide FPL with lead generation services as well as a detailed list of administration services.

569. On 9 May 2014, there was an exchange of emails between Mr T Ward and Mr Worrow Jr regarding the finalisation of the Brochure. These emails were forwarded to Mr Page so he could provide the final information required, namely the job titles of the various FPL employees mentioned in the Brochure. Mr Page's comment on the Brochure was "Impressive! Seems all in order".

570. It appears that leads were being processed for the benefit of FPL shortly thereafter. We have seen a Pension Summary Report request form dated 13 May 2014 branded in the name of FPL, envisaging that FPL would be providing the Pension Summary Report in due course. This was, of course, before FPL had been authorised by the Authority and whilst its application for authorisation was under consideration.

571. Around this time, Mr T Ward and Mr Worrow Jr were in correspondence regarding the estimates of the volumes of business that would be coming FPL's way in the following months. On 22 May 2014, Mr T Ward, in an email which was not copied to Mr Page, said that the estimates given were "exactly what we were after".

572. On 13 June 2014, Mr Page emailed Mr T Ward informing him that IFAC were now providing Mr Page with the "regulatory requirements for going direct". He went on to say:

> "I'm not sure how this fits with the Pension transfers, better to keep it separate and keep it off the radar, I'll just use the IFA practice for my business.
>
> We can still keep things compliant moving forward and see how it evolves"

573. It appears from that email, that Mr Page regarded the new business to be done through the relationship with HJL as being separate from his IFA business, although he accepted that, in practice, the two sides of the business could not be kept separate, as there would be reporting requirements to the Authority as regards FPL's business as a whole. However, we take from the email that Mr Page did, at least in commercial terms, regard the new business as being separate from FPL's existing lines of business. That is also reflected in the arrangements that FPL had with Mr T Ward, namely that Mr T Ward would receive 50% of the income from the pension transfer business.

574. On 16 June 2014, Mr Page emailed Mr T Ward informing him that he had sent to HJL a compliment slip to be used for FPL, which gave its address as HJL's address in Mayfair.

575. On 18 June 2014, Mr Worrow Jr emailed Mr T Ward asking if Mr T Ward and Mr Page were happy with the Fact Find documentation and saying that he would be phoning Mr T Ward later that day to discuss the documents. Mr T Ward then asked Mr Page to "take a look at the attached for me please" asking, in particular, Mr Page to edit the Fact Find. Mr Page replied with a few comments on the same day, saying that the rest of the document read well.

576. On 3 July 2014, FPL received its authorisation from the Authority. Mr Page informed Mr T Ward immediately on receipt of the notification from the Authority. Shortly afterwards Mr T Ward informed Person A, telling Person A that he would inform Mr Worrow Jr as well. Mr Page also emailed his brother-in-law to inform him that FPL had been directly authorised. Mr Page said:

> "I can now put things into place I've been working on these past few months. I was in London last week tying a few things with Tom a new business partner and things are looking good moving forward."

577. Mr Page denied in his cross examination that he saw Mr T Ward as an equal partner in FPL. Nevertheless, as we have found, Mr T Ward was an equal partner in the pension transfer side of the business in the sense that he received 50% of its income as remuneration for his services to FPL.

578. On 16 July 2014, Ms High became aware of the activities of Taylor Barton, one of the marketing companies appointed by HJL. She was sent a record of the Authority's contact with a consumer who had reported that they had been contacted by Taylor Barton who had said that the government were funding them to offer a pension review, the impetus for the review coming from the OFT. The report said that Taylor Barton claimed they were approved by the Authority and that if the consumer went ahead she would be referred to a local company called Andrew Page who were backed by the OFT.

579. On 18 July 2014, Mr Page emailed Mr T Ward informing him that he was going to familiarise himself with the nature of the AIGO Cells. It therefore appears to be the case that Mr Page had not undertaken any significant review of the Cells before that time, although Mr Page maintained in his oral evidence that he had looked at a considerable amount of documentation relating to the Cells before then. We have found no evidence of that, and, accordingly, reject Mr Page's evidence on that point.

580. Although Mr T Ward was sent documents relating to the Cells by Mr Page, Mr T Ward did not himself undertake any significant review of those documents, although he was aware in general terms of the nature of the Cells. He confirmed that he was aware that there was a "Mauritian involvement" but said that, at the time, he was not aware that AIGO was incorporated in Mauritius. Whether or not that was true, we accept that Mr T Ward did not undertake any due diligence in relation to AIGO.

581. It did not take long for Pension Recommendation Reports to be issued in FPL's name. We have seen one dated 21 July 2014, which indicates that the earlier part of the process, namely the sourcing of the lead and the preparation of a Pension Summary Report, must have taken place sometime before then. We have seen a Pension Summary Report, relating to a different lead, dated 4 July 2014. We have also seen the transcript of a call between the agent conducting a Fact Find and a lead who subsequently received a Pension Recommendation Report. The call took place on 16 July 2014 and the agent disclosed at the beginning of the call that he was acting on behalf of FPL, stating that FPL was an independent financial adviser, authorised and regulated by the Authority.

582. Mr Page agreed that he was obliged to carry out due diligence on the Loan Notes and maintains that his due diligence was adequate. He accepted in his cross examination that it was necessary to take care to ensure that he had sufficient understanding of the features and risks of the Loan Notes before they were recommended to customers. He placed strong reliance on the insurance arrangements and the investment strategy of the Cells. It was quite clear from Mr Page's evidence that he relied on the fact of the 8% coupon, and the insurance arrangements, to justify the recommendation of the Loan Notes without regard to other risk factors. For example, in relation to the suggestion that he should have considered the risks of the investment strategies not supporting the 8% return, he did not think that it was his responsibility to review the particular investments that the Cells made or the expertise of those responsible for the investment strategies.

583. On 18 July 2014, Mr Page sent an email to Fidelis, the investment manager of AIGO, asking for details of the various funds and the amount they had under management. He never received a response and did not follow up. Mr Page's evidence was that, for his due diligence, he relied primarily on documentation provided by Guinness Mahon and some documentation from HJL. However, he only obtained information from Guinness Mahon in October 2014, sometime after FPL had started to use the Pension Review and Advice Process, and the information provided then included the AIGO IM. As regards that document, Mr Page said that although he read it carefully, he did not analyse it, which he regarded as the responsibility of Guinness Mahon who he said had agreed that it was suitable for investment through the GM SIPP.

584. As regards the insurance arrangements, Mr Page understood that insurance was not in place for all of the Cells when recommendations started to be made and that it was never in place for the Natural Resources Fund and the Equity Fund. Mr Page did not obtain copies of the various certificates of insurance.

585. Mr Page received the quarterly performance schedules for the Cells, which set out the details of the investments that had been made, and said he would have spent 15 minutes or so looking at them. He did not review the performance of the Cells against their stated strategies in the AIGO IM, for instance, not raising any issues with the fact that the Equity Fund was investing into the Natural Resources Fund. Again, he said that this level of analysis was not required on his part.

586. The documentation to support Mr Page's contentions that he conducted adequate due diligence on the Loan Notes is, by and large, largely confined, as Mr Lockie found,

to information commonly sought when verifying identity for money-laundering purposes and for establishing that the various entities concerned actually existed. There are no documents which provide any evidence of Mr Page actually assessing the Loan Notes themselves and the Cells' investment strategies.

587. There is no evidence that Mr Page gave any serious consideration to whether HJL or CAL were suitable to act as introducers and perform the Outsourced Functions on behalf of FPL. Neither did Mr Page undertake any assessment of the suitability the marketing companies, such as Taylor Barton, who purported to act on behalf of FPL or HJL or CAL, who conducted the Fact Finds. In fact, he was not aware of which companies had been appointed by HJL to source leads on behalf of FPL. Neither did he undertake any monitoring of the manner in which those entities carried on their activities when purporting to act on behalf FPL. Accordingly, Mr Page did not undertake any due diligence into how the marketing companies were remunerated.

588. As we have mentioned, Mr Page stated in interview that he was not aware of Person A's bankruptcy and criminal record until June 2015. He was aware that Person A brought the business model for the process to Mr T Ward, but he did no due diligence on Person A.

589. Mr Page's position was that it was the duty of HJL, the Appointed Representative of FPL, to ensure that the leads were obtained correctly and accordingly took no steps himself to monitor the way in which those leads were being generated.

Events during FPL's use of the Pension Review and Advice Process

FPL's first contact with the Authority

590. FPL's new business register shows that the first recommendation by FPL to a customer to switch their pension into an investment in the Loan Notes took place on 5 August 2014.

591. On 1 August 2014, Mr Raphael was contacted by email by Ms High with information about customers being cold called by Taylor Barton and then being referred to FPL. Mr Raphael followed this up by emailing Mr Page and asking him for a copy of FPL's new business register providing details of all business FPL had arranged via a "SIPP or SSAS arrangement". In setting the background for this request, Mr Raphael attached to his email a link to the adviser alert that the Authority had published to relevant firms on 28 April 2014, stating that the Authority was currently undertaking supervisory work in relation to pension transfers. That document alerted firms to the Authority's requirements when they give advice on SIPPs. In particular, the alert stated the following:

> "We believe pension transfers or switches to SIPPs intended to hold non-mainstream propositions are unlikely to be suitable options for the vast majority of retail customers. Firms operating in this market need to be particularly careful to ensure their advice is suitable."

592. The alert outlined some of the findings that the Authority had made as to unsuitable advice having been given in this area. It said:

> "In the cases we have seen, customers' existing arrangements were invariably traditional pension plans invested in mainstream funds or final salary schemes, with the customer generally having no experience of non-mainstream propositions and many having very limited experience of standard investments. The new arrangements firms proposed were to transfer or switch customers' funds to a SIPP, with a view to investment in non—mainstream propositions, which were typically unregulated, high risk and are highly illiquid investments. Some examples of these investments are overseas property developments, store pods and forestry. Such transfers or switches are unlikely to be suitable for the vast majority of retail customers.
>
> Generally speaking, we found very poor standards of advice. Firms typically failed to carry out an assessment of the customer's overall financial position, needs, attitude to risk and objectives in relation to the switch or transfer as a whole (including the characteristics and risk of the wrapper and of the underlying investments). Advisers' understanding of non-mainstream propositions was also typically very poor, at least in part because of inadequate due diligence on the products and on the product provider."

593. In our view, it is very clear that any reasonably competent IFA considering whether to participate in the Pension Review and Advice Process would have regard to this alert and whether or not it was relevant to the process, bearing in mind the profile of the customers being targeted and the nature of the Loan Notes. Mr Page said in his cross-examination that he may have seen the alert before, but he could not remember. Mr Page said he was of the view that the alert did not cover the Loan Notes because AIGO was a regulated fund, on the basis that it was regulated in Mauritius. He was of the view that the kind of investments referred to by the Authority, such as forestry and store pods were quite different to the investments to be made by the Cells. On the basis of our assessment of the risk profile of the Loan Notes, that was clearly not the case.

594. Mr T Ward became involved in the response to be made to Mr Raphael. On 19 August 2014 he sent an email to Mr Page setting out a draft response. Mr T Ward said in his evidence that he had prepared this response on Mr Page's instruction and that potentially it might have been a draft prepared by Mr Page in respect of which he tidied up the grammar.

595. We reject that characterisation of the email. The email commenced "can you please take a look at the response below". In our view, it is clear Mr T Ward took the initiative in preparing the response for Mr Page to review. The draft response stated that what was attached was a "detailed new business register stating all business the firm has arranged via a SIPP or SASS…"

596. The attachment to Mr T Ward's email showed only six completed transactions (and one pending transaction) and stated that the "date of advice" was between September 2012 and March 2014. The transactions concerned all related to existing clients or family members of Mr Page and were in respect of mainstream investments.

597. By this time there were, however, a considerable number of transactions effected through the Pension Review and Advice Process in the pipeline and waiting to be completed. On 11 August 2014, Mr King had emailed Mr T Ward attaching a list of business "signed up" for FPL as of the previous Friday. Mr King said "nothing for Page completed as yet but only a matter of days now before the first money should drop". On 18 August 2014, Mr Page had emailed Mr T Ward attaching a spreadsheet detailing fifteen transactions that had been received by Guinness Mahon between 29 July 2014 and 13 August 2014, where the total value of the funds to be transferred was £802,000.

598. Mr Page sent the response to Mr Raphael the next day, 20 August 2014, in the form drafted by Mr T Ward and with the spreadsheet attached to his draft also attached but omitting the pending transaction.

599. Both Mr Page and Mr T Ward contended that this response was accurate and reflected what Mr Raphael was seeking, notwithstanding the fact that it made no reference to what were, by that stage, a considerable number of transactions which had passed through the Pension Review and Advice Process, where the recommendation had been made, details had been submitted to Guinness Mahon and funds transferred. That meant that the only remaining step be taken was the issue of a confirmation note from Guinness Mahon that the transaction had been completed, or in Mr Page's words the issue of a "policy number". Mr Page confirmed that he did not provide any updated details to the Authority of those transactions once they had finally completed.

600. Unsurprisingly, Mr Raphael's review of the information provided by Mr Page did not give him any cause for concern. He emailed Ms High on 27 August 2014, saying that FPL appeared to be low risk "assuming the IFA is telling the truth".

601. However, Ms High continued to make enquiries into Taylor Barton during which Taylor Barton confirmed that they generated between 40 and 50 letters of authority which were referred to both FPL and HCA. In light of that information, Mr Raphael thought that speaking to Mr Page might facilitate Ms High's enquiries into Taylor Barton.

602. Accordingly, Ms High and Mr Raphael telephoned Mr Page together on 1 September 2014. The call was not arranged in advance with Mr Page.

603. There is a dispute as to what time of day this call took place and where Mr Page and Mr T Ward were physically situated at the time of the call. In his cross-examination of Ms High, Mr Page said that he received no call on 1 September because he was with a client on that day. However, it is clear that the call did take place on that day. That was the evidence of both Ms High and Mr Raphael and is also corroborated by Mr Page's email of 5 September 2014 to both Mr Raphael and Ms High thanking them for their follow-up emails from the call which he acknowledged he had received during the morning of 3 September 2014. In that email, Mr Page went on to say that "I have also given some thought to the content of our two conversations on Monday, 1 September 2014". In any event, under cross-examination, Mr Page did accept that the call took place on that day but said that it was in the morning.

604. However, Mr Raphael's evidence was that he had booked a meeting room between 1.30 pm and 2 pm and it was likely that he had done so in order to make the call from that room. There was also an exchange of emails between 1.30 pm and 2 pm between Mr Page and Mr T Ward which, as we find below, took place during the call. On that basis, we find that the call did, as Mr Raphael said, take place in the early afternoon of 1 September 2014. Mr Page was clearly mistaken in his recollection of events. It is also consistent with an entry in his diary for the same day which indicates an appointment at 1.30pm, without giving any further details.

605. As far as the contents of the call are concerned, these were summarised in an email that Mr Raphael sent to Ms High on 2 September 2014. Mr Raphael referred first to the "discussion with Andrew page yesterday" which he then summarised as follows:

> "
>
> - We explained to Mr Page why we initially contacted him as we received information he was involved in conduct similar to the alerts
> - We had reviewed his SIPP register and only saw six and Mr Page said they were all standard investments. He said that he had only been trading since June 2014
> - We asked Mr Page to explain his relationship with Taylor Barton as they were sending out letters with his firm's name on it – although he was hesitant at first he said that he gets leads from Hennessy Jones (which gets them from Taylor Barton)
> - Mr Page said that he had done due diligence on TB – we asked whether he had looked on the FS register and saw they were an introducer to another IFA and why would he then send leads to him-we asked whether he had known about Henderson Carter and he said he did not.
> - We explained that we would review matters in a few months time"

606. As we said, at the time of the call there was an exchange of emails between Mr Page and Mr T Ward. The chain starts at 13.37 with Mr Page asking Mr T Ward:

> "Who are Taylor Barton
>
> They asked me if I have received introductions from them?"

607. Mr T Ward replies at 13.38:

> "Don't know them. Checking now but I would say no!"

608. Mr T Ward sent a further reply at 13.40:

> "They are a lead provider and provide leads to Hennessy Jones.
>
> Not direct to us – so don't use this info yet!!!!! I am still digging!!!!"

609. Mr T Ward sent a further reply at 13.41:

> "We have not – Our introducer may have – again I'm still digging so don't open to them yet!!!!!"

610. Mr T Ward sent a further reply at 13.43:

> "This is okay I believe. It's not us so we can deflect the flak!!!! If Needed!!!!
>
> But it's not life threatening issue I don't think mate!!!!
>
> Are they being bastards or ok?"

611. Finally, Mr T Ward sent a further reply at 13.50:

> "TB provide leads to Hennessy Jones and DO COLD CALL
>
> Clients/prospects apparently.
>
> We can say that we will check with our introducer (HJ) 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.
>
> But try and work it that HJ use a large number of lead providers and we don't always have details of all of them! DON'T SAY THAT THEY COLD CALL MATE"

612. It was put to both Mr Page and Mr T Ward that this exchange of emails took place whilst Mr Page was on the telephone to Mr Raphael and Ms High and Mr T Ward and Mr Page were in the same office. Mr Page denied this was the case because he said he was in Shropshire with a client on that day. Mr T Ward took the position that he did not know where Mr Page was and neither did he know where he was on that day, over seven years ago.

613. In our view, the only conclusion properly to be drawn from this evidence is that the email exchange took place whilst Mr Page was on the phone to Mr Raphael and Ms High and that, on the balance of probabilities, the exchange took place while Mr Page and Mr T Ward were in the same office.

614. The timing of the emails is consistent with the time of the call, which we have found took place between 1.30pm and 2pm. The language of the emails is clearly consistent with the exchange taking place contemporaneously with the call, for instance, Mr T Ward at 13.43, using the present tense in the question he posed at the last line of his email. Furthermore, the email exchange shows it took a few minutes for Mr T Ward to give Mr Page further information so that he could respond to the Authority's questions regarding Taylor Barton, which is consistent with Mr Raphael's summary of the discussion where he said that Mr Page was hesitant at first but then disclosed that the leads came from Hennessy Jones who obtained them from Taylor Barton.

615. The emails also reveal Mr T Ward taking the lead in telling Mr Page how to deal with the Authority and, in particular, suggesting that Mr Page does not give the Authority the full picture at this time.

616. There is clear evidence of Taylor Barton cold calling potential leads who subsequently became customers of FPL through the Pension Review and Advice Process. Mr Page was taken to transcripts of calls between consumers and the Authority's contact centre to that effect.

617. On 3 September 2014, Mr Raphael sent Mr Page links to alerts for advisers in relation to SIPPs and underlying unregulated investments, including the alert some of which is quoted above. On the same day, Ms High sent Mr Page a consumer alert which warned consumers to be wary about being offered a free pension review out of the blue and being encouraged to move their pension to get better returns.

618. These emails were passed on to Mr T Ward who in turn passed them on to Person A. His comment to Person A was "we knew all about this some time ago… If anything, these are meaningless where we are concerned. Keen to make sure we box this one off today mate".

619. Although neither Mr Raphael's nor Ms High's emails called for a response, Mr T Ward then took the initiative in preparing a response to the Authority. On 4 September 2014 he emailed Mr Page, with a copy to Person A, as follows:

> "I have taken the view that less is more in this situation and provide the draft for discussion attached. I am sure that there will be a number of views to be taken into account on this issue and await everyone's thoughts before moving forward.
>
> I have copied [Person A] in as he will, if he is happy with the attached, send a copy to his Solicitors for their input.
>
> I am keen to get this out but more keen to make sure we kill it first time "STONE DEAD"
>
> …"

620. Mr T Ward said in his cross examination that this draft was prepared at the request of Mr Page and contains much material that Mr Page had drafted himself. We can find no evidence of that and the email referred to above is entirely consistent with Mr T Ward having taken the initiative in preparing a draft in conjunction with Person A, because of course, HJL would be affected were the Authority to pursue matters further at this stage. Mr Page had no explanation to offer as to why Mr T Ward wanted this response to be sent to the Authority. The draft said this in relation to the consumer alert:

> "I think I should make it absolutely clear that I do not recruit any Lead Generation Companies as part of my Business Model. I do have one Introducer who has recently started to provide me with a number of client introductions. These are qualified leads and come with signed [letters of authority] from the clients. We then collect the information on their existing plan [s] and complete a review of the same. At NO time leading up to my review has any advice being provided to the

> client by either the Lead Generator all the Introducer. Only after a full review of their circumstances do I issue the initial report which is followed up with a telephone call to establish whether they would like to proceed. Under no circumstance would I consider investments in unregulated products such as overseas property, forestry or store pods among other things. I do hope that this clears up this issue."

621. As regards the other alerts, the draft stated that Mr Page followed the Authority's view that the provision of suitable advice generally requires consideration of other investments held by the customer and that consideration of the suitability of the overall proposition is taken into account. Mr Page then set out his commitment to comply fully with the Authority's guidelines.

622. The final version was sent to the Authority on 5 September 2014 without any significant amendments to the draft prepared by Mr T Ward.

623. An exchange of emails between Ms High and Mr Raphael after receipt of Mr Page's response indicated that they were reasonably comfortable with it, but they informed Mr Page to look into whether FPL needed to record HJL as an IAR and referred him to areas of the Authority's website that might assist. It therefore appeared that Mr T Ward had achieved his objective of stopping any further enquiries from the Authority at this stage.

624. On 8 September 2014, Mr Page emailed Mr T Ward informing him that Mr Palmer of IFAC was shortly coming to see him to discuss his "new world as a directly authorised adviser". Mr Page said to Mr T Ward that he will "just keep quiet about the HJ business". On 16 September 2014, Mr Page emailed Ms Preston-Hoar in which he informed her that he now had an IAR on board and that they would be providing pension leads. He asked a question about how to record this business but gave no further details as to the nature of the business concerned.

625. On 11 September 2014, Mr Page arranged for HJL to be registered as an IAR of FPL and, on 16 September 2014, emailed Mr Raphael to inform him of that fact.

Discussions regarding FPL's first periodic return to the Authority

626. On 29 September 2014, Ms Preston-Hoar emailed Mr Page in response to a request from him, informing him that his first return to the Authority would be due by the middle of November, but would only need cover the few months from FPL becoming directly authorised until the end of September. This response was forwarded to Mr T Ward who said:

> "That may be great news as we will have only completed on small numbers and then that gives us six months until may next year!!!!..."

627. Mr Page responded:

> "Yes, I'll make sure it looks as good as possible, I'll email Mark my accountant tomorrow, I'm glad we can this sorted then have a good run at it, we've done 19 so far for GM."

628. Both Mr Page and Mr T Ward denied under cross-examination that this exchange indicated their pleasure at the prospect of being able to carry out a large amount of business before the Authority became aware of the nature and volume of the business being conducted. Their position was that what was meant was that they would have a sufficient period to make sure all their processes were "sorted".

629. We reject that explanation. The tenor of the exchange is clear; both Mr Page and Mr T Ward were pleased to know that there would be a significant period of time before the Authority would be aware of the volumes of business being conducted allowing FPL to have a "good run" at completing cases. Nothing is said about the processes that may need to have been undertaken to deal with the volume of business.

630. On 30 September 2014, Mr Page thanked Ms Preston-Hoar for her advice on the return date and indicated for the first time that FPL had commenced doing pension transfers through introductions from HJL, saying that there were "quite a few in the pipeline" but giving no further details.

Contractual arrangements with CAL

631. On 13 October 2014, as described at [360] above, CAL and FPL entered into a Standard Service Agreement to reflect the fact that CAL rather than HJL were now undertaking the necessary administration services relating to the Pension Review and Advice Process. There is no evidence of FPL having undertaken any due diligence on CAL at this time.

Novation of customers from HCA to FPL

632. Mr T Ward accepts that he was significantly involved in communications with Guinness Mahon with regard to the novation of a number of customers from HCA to FPL. Mr T Ward says that these were matters of an administrative nature and did not require Mr Page's input although Mr Page was kept informed. It would appear that this process was initiated at the request of HJL following an agreement between HJL and HCA to that effect.

633. On 9 December 2014, Person A emailed Mr T Ward, copying in Mr Page, telling Mr T Ward that he needed a letter from HCA passing FPL all their clients that had signed up for ongoing reviews as well as those who had not. Once those letters were obtained they could be presented to Guinness Mahon who would then be obliged to accept the transfer of clients from HCA to FPL.

634. On 10 December 2014, Mr T Ward provided a draft of the letter to be given by HCA to Guinness Mahon for Person A's approval which, when completed, was sent under Mr Page's signature to Guinness Mahon on 10 December 2014.

635. Mr T Ward continued to take the lead on the arrangements for the transfer of the servicing rights from HCA to FPL, including how to deal with the pro-rata distribution of the service fees payable, without the input of Mr Page.

Switch of cash holdings into the Liquid Assets Bonds

636. In November 2014, it appeared that HJL took the decision that investors in the Portfolios would have any cash element substituted by the Liquid Assets Bonds. On 10 November 2014, Person A wrote to Mr N Maynard to this effect, instructing him to substitute the Liquid Assets Bonds for cash held within both AIGO and HJ Bond Portfolios. A summary of the Information Memorandum relating to the Liquid Assets Bonds was attached.

637. On 20 November 2014, Mr Worrow Jr sent Mr Page a term sheet for the Liquid Assets Bonds, saying that this product gave clients a better return on the cash element of their Portfolio, asking Mr Page to confirm in writing that he was happy for this to be included in the advice reports as soon as possible.

638. It would appear that Mr Page gave that approval shortly thereafter, as he confirmed in his cross-examination. He said he read the term sheet, but there is no evidence of Mr Page having undertaken any significant due diligence on the Liquid Assets Bonds. However, not long afterwards he started the process of encouraging clients to transfer the cash element of their investments into Liquid Assets Bonds. Mr Page's diary entries show that he blocked out three days on 17, 18 and 19 November 2014 to "call HJ clients". He said that he could not remember what those calls would have been about, but in our view there cannot be any doubt that they were regarding the switch to the Liquid Assets Bonds. Finally, Mr Page did accept in his cross-examination that he did try to contact the relevant clients by telephone.

639. Mr Page prepared a script to be used during these calls, the key point of which was that it contained a recommendation to do an internal transfer within the particular Portfolio to take advantage of what was described as the extra growth provided by the Liquid Assets Bonds. Mr Page accepted that no Fact Find was undertaken and no explanation of the risks attaching to the Liquid Assets Bonds was given.

640. An opt out letter was prepared to be sent to those customers who could not be contacted by telephone. We have seen the text of the letter that was used, prepared in early February 2015. Mr T Ward accepted that it was quite possible that he was involved in the drafting of this letter. The letter said that "we highly recommend that we switch any cash element of the portfolio to this bond in order to take advantage of the extra growth". It went on to say that if the customer was happy then they did not need to do anything at all and "we shall perform the switch on your behalf once the bond is issued". Again, the letter gave no explanation that there was an increased risk as a result of the switch from cash to the Liquid Assets Bond and no information was given setting out the risks, benefits or costs of the proposed course of action.

641. Mr T Ward took the lead in dealing with Guinness Mahon with regard to recording the switches, informing Mr Robilliard of Guinness Mahon on 2 April 2015 that all correspondence on that issue should be directed to him as the clients concerned were FPL's and as such "we will make the decisions on these matters".

642. However, there were some administrative difficulties in effecting the switch and in an email on 28 April 2015, copied to Mr Page, Mr T Ward told Mr Robilliard of Guinness Mahon that "no monies are to be invested from the funds held on account… until either Andrew or myself provide the confirmation"

Alteration of the charging date for servicing fees

643. Mr T Ward initiated the process for altering the service fees payable to FPL. On 9 January 2015, Mr T Ward informed Mr King that he intended to provide comfort to Guinness Mahon that they could alter FPL's charging structures "as we please" provided they stayed within certain industry recognised parameters.

644. On 21 January 2015, Mr T Ward emailed Person A, copied to Mr Page, reporting on his discussions with Guinness Mahon on this issue. He started by saying that "I have agreed" with Guinness Mahon that FPL can charge its annual servicing fees on 31 December 2014 and that FPL will then complete a "negative response" circular to customers confirming that the coupon is about to be paid and that FPL will be taking its service fees. The email also asked Person A for his agreement that coupons would be reinvested.

645. Mr T Ward contended in cross-examination that all of this would have been cleared with Mr Page first and suggested that Mr Page may have dictated the letter to him. That is simply not credible; it is quite clear from the way the email is constructed that this was Mr T Ward reporting on something that he had taken the initiative on with Guinness Mahon. Although it appears that Mr Page was being kept informed, it does not look as if he played any significant part in the discussions that Mr T Ward had with Guinness Mahon.

FPL Investment Committee

646. In January 2015 FPL established an Investment Committee. This was FPL's only governing committee and its three members were Mr Page, Mr Richard Blackshaw and Mr T Ward. It was decided that any two of the three members could meet to transact business.

647. The main item of business discussed at the first meeting on 9 January 2015 was the performance of the Products and it was confirmed that the 8% coupon on the Loan Notes was to be paid in full. The Investment Committee agreed that all cash received would be reinvested in accordance with the initial investment strategy.

648. It was therefore clear that Mr T Ward was a party to that decision. He also took the lead in the correspondence with Guinness Mahon on that issue so as to ensure its implementation. Although Mr Page was copied in on correspondence, there is no evidence to support Mr T Ward's contention that all the correspondence was cleared with Mr Page in advance.

649. The minutes for the second meeting of the Investment Committee, held on 20 March 2015, record that the main business of the meeting was to discuss investment strategy relating to customers introduced through the Pension Review and Advice

Process. It is clear that this discussion took into account the advice being given to customers to switch their cash holdings into the Liquid Asset Bonds and the minutes record the decision to contact customers to get their consent to the switch.

650. The minutes for the third meeting of the Investment Committee, held on 27 May 2015, dealt with concerns raised by FPL's compliance team following file checks. The Committee confirmed that there was nothing detracting from FPL's processes in the Authority's Conduct of Business Rules.

651. Mr T Ward sought to downplay his role on the Investment Committee. He said that he was only there as a notetaker and to provide information. Again, we do not find that explanation credible. Mr T Ward is held out as a full member of the Committee and there is nothing to suggest that he did not take part in the decisions that are recorded to have been made by the Committee on an equal basis with the other members. Had it been intended that he perform a purely secretarial or information providing role, that could have been made clear and the minutes could have recorded that Mr T Ward was purely in attendance at the Committee meeting rather than participating as a full member. There is no evidence to suggest that to be the true position.

File reviews undertaken by IFAC

652. In November 2014, IFAC undertook a review of one of FPL's files, which related to a customer who had been introduced through the Pension Review and Advice Process. The file was chosen at random by Ms Preston-Hoar from a number offered by Mr Page.

653. On 27 November 2014, Ms Preston-Hoar emailed Mr Page to inform him that the file had been reviewed but "we suspect you won't be happy with the result". Ms Preston-Hoar therefore suggested that she and Mr Page discussed the results over the telephone and a call was arranged.

654. The file was given a poor review. Ms Preston-Hoar recalls being concerned by the shortcomings of the Fact Find and, in particular, that the file reviewer noted that it did not capture adequately the client's financial experience or obtain sufficient information to enable an assessment of the client's capacity for loss. It was also noted that the Fact Find did not contain details of the client's existing pension arrangements or properly explore the client's ethical investment preferences.

655. It is not clear whether the call with Mr Page actually took place, but on 8 December 2014, Mr Page sent Ms Preston-Hoar an email attaching what he described as "information that is sufficient to clarify the points in the file check", although Ms Preston-Hoar said that the information provided was what she would have expected to have been considered by the file checker.

656. The additional information was passed on to a compliance consultant employed by IFAC so that the file could be reassessed. That consultant confirmed to Mr Page on 3 February 2015 that the "case has now been signed off as the documentation that you sent answer the queries that were raised".

657. Mr Page forwarded the email to Mr T Ward with the comment:

> "Unbelievable, they have signed it off as a clean case: No remedial work to do"

658. There is no explanation as to why the compliance consultant considered the recommendation to be suitable and Ms Preston-Hoar did not take any further action in relation to the matter.

659. The file, however, had passed with the lowest pass score possible, that is 5/10. When asked in cross-examination whether he considered it satisfactory that the file passed with such a low score, Mr Page stated that he would have been concerned "if it got 1 or 2". It was clear, however, from Mr Page's email to Mr T Ward that he did not believe that any concerns needed addressing as a result of the file review.

660. A review of three further files took place in May 2015. This time all three files failed and were given the lowest mark possible, 1/10. Under "Actions" the file reviewer stated that the sales process was non-compliant and that the written advice given was not backed up by the paperwork. The reviewer stated that the firm needed to reconsider all aspects of its sales processes as they were not compliant. The reviewer noted that there had been a non-advised fact finding followed by an advised recommendation, with no direct discussion between the IFA and the client. The view was expressed that regulated advice could not be based on a fact find completed by a non-qualified individual. In addition, the Fact Find asked too few questions and, as this was the basis for the advice, that advice was flawed.

661. FPL was provided with these file review results and this led to Mr T Ward telephoning Ms Preston-Hoar on 20 May 2015 to discuss them. The call had been preceded by an email from Mr Page to Mr Worrow Jr on 19 May 2015 in which he asked for an answer to give to IFAC regarding their view that a non-qualified adviser completing a Fact Find, which resulted in a recommendation being provided by an IFA who had not met the client, was non-compliant.

662. Ms Preston-Hoar emailed Mr Page on 20 May 2015 reporting that Mr T Ward had spoken to her. However, she felt that this was better dealt with in writing but, as she did not have Mr T Ward's email address, she was responding to Mr Page instead. On IFAC's case notes relating to FPL, Ms Preston-Hoar describes Mr T Ward as "Andrew's go to man". Ms Preston-Hoar could not remember why she referred to Mr T Ward in those terms; she said it could have been that Mr T Ward had used the term in reference to himself when he introduced himself to her.

663. According to Ms Preston-Hoar's email, Mr T Ward had asked to speak to the file reviewer because he was unhappy with the comments made about the process being non-compliant because the Fact Find was completed by a non-authorised person before the recommendation was given by the IFA. Apparently, Mr T Ward explained that the process had been approved by lawyers. Ms Preston-Hoar replied that although COBS was unclear on that point, she did feel that the process was not in the spirit of the rules and that the Authority would be likely to pick up on a number of areas, in particular the basic nature of the Fact Find, the use of leading questions and the use of an unauthorised

adviser to carry out in-depth questioning of the client. Ms Preston-Hoar emphasised that the fact that the process did not obtain sufficient "know your client" information was the main problem.

664. Mr Page responded later that day saying that he had discussed the feedback with Mr T Ward and would further digest her comments before reverting.

665. On 27 May 2015, Mr Page emailed Ms Preston-Hoar to inform her that following the Investment Committee meeting that day, it had been decided there was no point in having further checks on pension transfer files because FPL had a legal opinion that their process was compliant. Mr Page did, however, say that he took on board that the soft facts within the Fact Find needed exploring further and "we are incorporating this for this process". In fact, in his cross-examination, Mr Page expressed the view that he had always thought that more soft facts were needed. The Investment Committee minutes dated 27 May 2015 also record that FPL accepted that more soft facts were needed.

666. As we have found, there was no evidence that FPL had received a legal opinion to the effect that the Pension Review and Advice Process was compliant with the Authority's requirements.

667. Ms Preston-Hoar replied the next day agreeing that there was no point in having file checks, but suggested that the decision was reviewed in six months' time to give FPL time to consider making changes. Ms Preston-Hoar said in her evidence that it was regrettable that Mr Page decided not to follow IFAC's advice, but IFAC could not force him to do so.

Potential arrangements with Carey Pensions

668. Early in March 2015, Mr T Ward contacted Ms Hallett of Carey Pensions UK LLP ("CPUK") to enquire as to whether CPUK might enter into a partnership whereby CPUK provided SIPPs to customers being advised by FPL. Mr T Ward explained the approach was on the basis that FPL were concerned about the capacity of Guinness Mahon to cope with the business being referred to them.

669. CPUK then began due diligence on FPL and the bonds that FPL had represented would be their preferred investments. On 15 April 2015, Ms Hallett met Mr T Ward and Mr Page at CPUK's office in Milton Keynes. According to Ms Hallett, based on her interactions with Mr T Ward, she believed Mr T Ward had responsibility for business development for FPL and had developed the firm's SIPP business, whilst Mr Page was the individual regulated by the Authority who signed off on advice given to customers.

670. There were a number of other meetings in May and June 2015 and Ms Hallett observed that Mr T Ward always took the lead, tending to speak and answer questions more than Mr Page. Her observation was that Mr Page was a quiet man, but responded to questions about FPL's advice process when asked directly. Mr T Ward took the lead in explaining the SIPP process and agreeing fees for CPUK to provide SIPPs to FPL under a trial agreement, with a view to increasing FPL's sales of SIPPs. It was always

Ms Hallett's belief that Mr T Ward was acting, and could negotiate, on behalf of FPL as a regulated entity. Ms Hallett, however, was aware from CPUK's due diligence that Mr T Ward was not registered as a director of FPL.

671. Matters then took a different course. From discussions with Mr T Ward in or around late April 2015, Ms Hallett became aware that FPL had an investor willing to assist the firm in buying a SIPP provider. By coincidence, at that time the shareholders of CPUK had decided to exit the UK business and so, on 1 May 2015, Ms Hallett had a discussion with Mr T Ward about the possibility of FPL acquiring CPUK.

672. On 2 May 2015, Miss Hallett emailed Mr T Ward and Mr Page with a standard non-disclosure agreement ("NDA"). This was returned signed by Mr T Ward and Mr Page.

673. The agreement, which was in the form of a letter, was addressed to "Mr T Ward & Mr A Page Page Wealth". The signature block was as follows:

> "Agreed on behalf of Page Wealth
>
> Signed
>
> Thomas Ward
>
> Andrew Page
>
> Director/Authorised Signatory on behalf of Page Wealth"

674. Ms Hallett's evidence was that she understood Mr T Ward to be an authorised signatory acting on behalf of FPL. She said that it was CPUK's policy to obtain the signatures of two authorised signatories on a document of this kind, although the signatories concerned did not need to be directors as far as CPUK was concerned.

675. In his evidence, Mr T Ward contended that the acquisition was to be in the name of a new entity, a partnership between him and Mr Page, backed by an investment arranged by Person A, and that partnership would trade under the name "Page Wealth".

676. That was a new contention made for the first time at the hearing. Mr T Ward's witness statement suggested that he signed as "authorised signatory" because he was authorised by Mr Page to sign, not because he was a director.

677. That explanation could only have been made in the context of FPL being the proposed purchaser, as it was understood to be the case by Ms Hallett. It was also the case that "Page Wealth" was the branding used by FPL in relation to business generated through the Pension Review and Advice Process. We therefore reject Mr T Ward's evidence on this point. We find that Mr T Ward signed the NDA on behalf of FPL along with Mr Page who was also acting on behalf of that entity.

678. On 4 June 2015, Miss Hallett and other colleagues met Mr T Ward and Mr Page again, along with Person A who was then identified as the investor who might be interested in purchasing CPUK with FPL.

679. According to Ms Hallett's unchallenged evidence, the CPUK team were not impressed with Person A. After the meeting, they undertook some due diligence and discovered a press article showing that Person A had previous convictions for blackmail and offences under the Insolvency Act 1986. Accordingly, CPUK decided to distance themselves from Person A and FPL and, on 9 June 2015, Ms Hallett told Mr T Ward that they were not going to proceed with the negotiations because of the involvement of Person A.

Possible arrangements to switch investments from the Loan Notes into the Bonds

680. In March 2015, FPL and HJL discussed the possibility of transferring all customers' funds currently invested in the Loan Notes into a range of new bonds issued by companies controlled by HJL.

681. Mr T Ward took a leading role in relation to this proposal. On 8 April 2015, Mr T Ward emailed Mr King saying that he "just wanted to float our proposed procedure" for the switch of the Loan Notes into the Bonds, stressing the importance of avoiding a decrease in funds invested by FPL "cashing in" the existing investments that "we intend to migrate to the Bonds". Mr T Ward asked Mr King to see if he had any issues with what was proposed following which he would roll out the process to Guinness Mahon for their approval.

Operation of FPL's bank account

682. The Authority alleges that Mr T Ward had access to FPL's bank account. We were taken to an email dated 11 May 2015 from Mr T Ward to Mr Page which said:

> "I paid £1500 into my No 2 Account and the £107 into My No 1 Account…. Hope that's ok?
>
> The balance left is £254.19 mate."

683. FPL's bank statements for that date show those two payments, made by Faster Payment in favour of Mr T Ward, and indeed show a balance of £254.19 following the transfers. A number of payments had been made on 24 April 2015, including two to Mr T Ward and his wife. There was an email on the same day from Mr Page to Mr T Ward which said "Thanks for sorting the banking".

684. Mr T Ward denied in interview with the Authority that he was able to access the bank account or that he transferred any money to himself, contending that he was not an authorised signatory for FPL's bank accounts.

685. In his cross-examination, Mr T Ward denied that he had access to Mr Page's login details and said that there was a single fob that Mr Page always kept to himself. He denied that the words "I paid" in the 11 May 2015 email indicated that he made the transactions saying it was simply "semantics".

686. However, on 12 May 2015, Mr Page emailed Mr T Ward telling him that he would like Mr T Ward to have access to the accounting system used by FPL and he

informed him that he had changed the password, disclosing what it was, and saying it was “like Metro for continuity”. Metro Bank was the bank with whom FPL held its accounts. It can be inferred from this email Mr T Ward already knew the password for the bank account.

687. In our view, the evidence set out above points overwhelmingly to the conclusion that Mr T Ward did, contrary to his assertions, have access to FPL’s bank account and was able to effect transactions on the account.

The Authority’s interventions

688. By June 2015, the Authority had identified that FPL had been involved in recommending pension switches and transfers into the Loan Notes. On 3 June 2015 the Authority conducted a short notice visit to FPL. The purpose of the visit was to gather further information from FPL and to assess whether any immediate steps needed to be taken to prevent consumer harm.

689. Mr Walmsley led the Authority’s team which visited FPL. They were met by Mr T Ward who took them to the meeting room to meet Mr Page. Mr T Ward asked each of the Authority’s representatives to state their name and (inappropriately) to disclose where they lived. The representatives gave their names, but not where they lived.

690. Mr Page was interviewed in the presence of Mr T Ward who remained as an observer for much of the meeting and took responsibility for locating the information and documents requested by the Authority. Mr David Worrow Jr subsequently joined the meeting.

691. Mr Page contends that, during the meeting, Mr Walmsley had said that the operating and compliance manuals which detailed FPL’s customer journey and operating rules were “some of the best manuals I had ever seen”. Mr Page also said that Mr Walmsley was impressed by the client journey but said that FPL “may need to go restricted”.

692. Mr Walmsley’s evidence was that at the meeting Mr T Ward was very direct and confident whilst Mr Page seemed more hesitant and more reactive, perhaps a little bit out of his depth.

693. As far as Mr Page’s contention is concerned, Mr Walmsley had no recollection of making any positive affirmation about the business model of FPL. He said that his role was to ask questions and gather information. He does recall seeing some client compliance manuals on a desk outside of the room and flipping through them. He says he was struck by the fact that “someone had gone to town to make this look like a good set of documents in terms of looking superficially compliant”. He said that to say that documents were “the best I had ever seen” were not words that a supervisor or an enforcement officer would use on a fact-finding visit.

694. We prefer Mr Walmsley’s evidence on this point. Mr Walmsley is an experienced official in relation to both supervisory and enforcement matters. As he said, his role was to gather information which would then be assessed by the Authority in the fullness

of time. It would be most unusual for any positive comment of the type attributed to him to have been made in this situation. Mr Page's memory can, as we have seen, play tricks on him. We think it highly plausible that Mr Walmsley did make a positive comment to the effect that he was pleased to see the compliance manuals but that it went no further than that. Mr Page, in our view, read more into the comment than was justified. This finding is corroborated by the fact that the note of the meeting, as referred to below, did not record any feedback given by Mr Walmsley at the meeting.

695. The Authority prepared a very detailed note of the meeting, typed up from contemporaneous handwritten notes, at which it was clear that Mr Page was very open about FPL's business. The note records Mr Page's observation about his relationship with Mr T Ward as that he worked very closely with him, saying, "we do everything together, he's a bit more shrewd than I am". The note also records Mr Walmsley observing that Mr Page was an IFA and Mr Page answering "yes, it could be an issue going forward, may need to go restricted…". On the basis of this evidence, we find that the point about 'going restricted' was raised by Mr Page, not by Mr Walmsley.

696. On 15 June 2015, Mr Walmsley wrote to Mr Page, thanking him for his cooperation with the Authority's visit team, for providing detailed answers to the Authority's questions, and facilitating the response to the Authority's information request.

697. The letter then expressed the Authority's immediate and serious concerns about FPL's business arrangements and asked the firm to vary its permission to add a requirement not to conduct pension-related regulated activities, including requirements to terminate the relationship with HJL pending the outcome of the Authority's review of the information and documents obtained during the visit. Mr Page was warned about a possible referral to Enforcement.

698. On 7 July 2015, the Authority held a meeting with FPL at the Authority's offices. Mr Page, Mr T Ward and Mr Tunkel attended on behalf of FPL. From the Authority's side, the meeting was led by Ms Hartley and, among others, Mr Walmsley was present. The meeting discussed the concerns the Authority had with FPL following the short notice visit. In particular, FPL was told that if a Voluntary Requirement along the lines proposed in the Authority's letter of 15 June 2015 was not signed shortly, the Authority was going to move forward with implementing the requirements itself. FPL was also told that enforcement action was still a possibility.

699. Mr T Ward took an active role at the meeting. According to the Authority's note of the meeting, Mr T Ward reiterated a request made by Mr Tunkel that the Authority set out in writing the large number of new points that the Authority had raised regarding the Products and the Pension Review and Advice Process. Mr T Ward is also recorded as stating that FPL was happy to give a declaration that they would never advise clients to invest in AIGO funds in the future. Ms Hartley confirmed in her evidence that, in her view, this demonstrated that Mr T Ward was holding himself out as having the authority to make a promise on behalf of FPL without consultation with Mr Page, which Ms Hartley said she would typically only expect from an approved person.

700. On 10 July 2015, Mr Page signed the Voluntary Requirement on behalf of FPL. In summary, this required FPL:

(1) to terminate its relationship with HJL;

(2) not to carry on any activities in relation to pension switches/transfers to any SIPP, including completing any business currently being processed which had not been completed, until independent verification was provided to the Authority that a robust and compliant advisory process was in place for pension switching advice;

(3) to implement a process of ongoing independent checks for all pension switching advice until the Authority was satisfied that the new advisory process was embedded in FPL's processes; and

(4) 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, other than in the ordinary and proper course of business.

701. On 13 July 2015, Ms Hartley received a telephone call from Mr Page and Mr T Ward, the latter taking the lead in informing the Authority that an external consultant had been appointed to review FPL's pension processes and, therefore, Mr T Ward was particularly keen to have the Voluntary Requirement lifted as soon as possible.

702. Ms Hartley's evidence was that during this phone call it was clear to her that Mr T Ward was answering questions on behalf of FPL. She said she would ask questions directly of Mr Page, but Mr T Ward tended to respond on his behalf or add his own comments following Mr Page's response. Ms Hartley said it got to the point where she had to inform Mr T Ward that he was not an approved person with the Authority and so needed to allow Mr Page to answer the Authority's questions. Ms Hartley's evidence is corroborated by a contemporaneous note of the meeting that was in evidence and we accept it. Ms Hartley observed in her evidence that this was a telephone call where she was surprised at the level of involvement from a non-approved person and that, after she raised the point, Mr T Ward did cease to be quite so dominant.

703. On 23 October 2015, following the review of FPL's processes by the external consultant, Ms Hartley informed Mr Page that the Authority would be prepared to vary FPL's permissions so that it could conduct pension business on a limited basis.

704. On 3 November 2015, Ms Hartley telephoned Mr Page to explain that it had been decided to refer FPL and Mr Page to Enforcement for investigation, reminding Mr Page that this was something that had been discussed previously.

Events after the Authority's intervention

Mr Page's actions in relation to his own pension

705. Following the Authority's intervention, Mr Page sought to obtain the release of his own investment in the Loan Notes. He emailed Guinness Mahon's trust company on 14 August 2015 as follows:

> "… please arrange the total disinvestment of my SIPP back into cash with immediate effect.
>
> Following dialogue with the regulator, I have been requested to sample the process and have agreed to use my personal pension as the test case.
>
> If we can do this, it may reduce the pressure to disinvest all cases imminently."

706. On 24 August 2015, he chased Guinness Mahon saying "I have a meeting with the FCA this Wednesday and I need to get this resolved".

707. Mr Page admitted in his cross-examination that he had lied in these emails. The emails were sent after the Authority had told Mr Page not to request the disinvestment of his and other funds. Mr Page's justification was that he made the request due to a threat from a Guinness Mahon executive who had told him that, if he continued with any client disinvestment, he would feel the full force of Hennessy Jones. Mr Page said that, by sending his emails, his intention was to make the Guinness Mahon executive think that the Authority were involved in the disinvestments.

Business agreement with Mr T Ward

708. There was in evidence a document bearing the date Wednesday 14 January 2015 and described as "Business Agreement between Financial Page Ltd and Thomas Henry Ward". The agreement confirms that in the event of a cessation of continuity of FPL's business for whatever reason, then all FPL clients with a total SIPP fund size in excess of £50,000 "will then fall under the custodianship of Mr T H Ward for an introduction to an alternative Independent Financial Adviser of his choosing". The agreement was not originally provided to the Authority but came to light after it was provided to FPL's Administrator.

709. The agreement stated that cessation of the business was to include the death, incapacity or bankruptcy of Mr Page, the forced closure or cessation of FPL's business, or the business going into an insolvency process.

710. There was a dispute as to whether the agreement was wrongly dated and was in fact entered into a year later, in January 2016.

711. On the face of it, it would appear more likely that an agreement of this nature would have been entered into after difficulties had emerged with FPL's business. In January 2015, FPL had only been undertaking business introduced through HJL for a few months and, from its perspective, all appeared to be going very well. Clearly, in January 2016 things were not going well; FPL had ceased its relationship with HJL, FPL had agreed a Voluntary Requirement restricting its business and both Mr Page and FPL had been referred to Enforcement. Mr Purchas suggested that the agreement unintentionally bore the wrong date because it was often the case that people referred inadvertently to the previous year when dating documents in January. However, doubt is cast on that theory by the fact that 14 January 2015 was indeed a Wednesday, as stated on the document and pointed out by Mr T Ward in his cross-examination.

712. Both Mr Page and Mr T Ward gave evidence in their cross examination which is consistent with the agreement having been entered into in January 2016. Mr Page was taken to the written representations made on his behalf to the RDC which, in defending Mr Page having entered into this agreement, stated that it was considered reasonable to consider how best to meet the needs of FPL's customers in the event of FPL's insolvency at a time when he had been notified of investigations that may lead to FPL being compromised.

713. Mr Page said he could not remember the date the agreement was signed, but he did say that the document was all his doing because, at the time, death threats were being made to him, he was suffering with bad depression and the suggestion was made to him that he should take out a £1 million life policy, which he declined. Other evidence that Mr Page gave on those issues clearly related to the period after the Authority's investigations had commenced. Mr T Ward said there was no reason to disbelieve the date actually written on the document. However, Mr T Ward did say that the agreement was entered into when Mr Page "was at a very low point". He also said it was at the time that there was a proposal to take out a life insurance policy, referred to above, and Mr Page was receiving threats. That evidence is consistent with the agreement having been entered into after the Authority's investigations had commenced.

714. On balance, we find that the agreement was entered into in January 2016. That is consistent with the circumstances that Mr Page found himself in that time. On his evidence, he was receiving threats and was suffering from depression. The purpose of the agreement was to preserve FPL's business in the event that it went under, which was a realistic possibility at the time due to the Authority's investigations. Although Mr T Ward said he could not remember when the agreement was entered into, his evidence as to the circumstances in which it was entered into are also consistent with the agreement being entered into in January 2016. It is unusual when dating a document to enter the day of the week it was signed as well as the date itself. On balance, we conclude that this was done so as to disguise the true date of the document and avoid any suggestion the year had been wrongly stated. Accordingly, it is likely that the document was backdated in order that it should appear that the agreement was entered into before the Authority's intervention.

715. As far as the merits of the agreement are concerned, Mr T Ward's evidence was that, if he did receive "custodianship" of clients, he could have undergone a "beauty parade" of IFAs to ensure they were properly looked after. Mr Page asserted that he was sure that the clients would have been looked after under Mr T Ward's custodianship.

Loan Agreement with Mr Worrow Sr

716. On 21 August 2015, FPL and Mr Page entered into an agreement, described as a Loan Agreement, with Mr Worrow Sr. The agreement provided for Mr Worrow Sr to lend to FPL £25,000, repayable on 1 January 2016. Under the heading "Collateral" the agreement provided for FPL to sell its "entire client base" along with "all rights that go

with it”, excluding monies derived from servicing rights. Mr Page guaranteed FPL’s obligations under the agreement.

717. Mr Page accepted that FPL received a payment of £25,000, out of which he paid £12,500 to Mr T Ward.

718. We observe that, although the agreement referred to a sale of the client base, in our view the provision is properly to be construed as the granting of security as collateral for the loan, so that it was never intended that the client base itself would be sold absolutely Although, of course, it would be open to Mr Worrow Sr to enforce the security were there to be a default under the loan agreement.

719. The Authority did not become aware of the agreement until 10 October 2016 when it obtained it from the Administrator of FPL.

720. Mr Page repeatedly referred in his evidence to winning in a legal case whereby it was held that the agreement was a “nonsense”. In fact, Mr Page was mistaken, because the legal case was one which related to the setting aside of a statutory demand and did not relate to the validity of the agreement. It is quite clear that the agreement was a valid loan agreement, and it was shown as such in FPL’s accounts. FPL received the loan made available under the agreement and, in later correspondence, it is clear that FPL acknowledged its indebtedness to Mr Worrow Sr, asking for further time to repay the loan.

Arrangements with a claims management company

721. On 9 November 2015, Ms Dawes of the Authority informed Mr Page when she would be available in order to discuss a suitable time for discussion about the scope of the Authority’s Enforcement investigation. Mr Page forwarded that email to Mr T Ward, informing him that this “could be an opportunity for a sale”.

722. On 22 January 2016, Mr T Ward emailed a representative of Get Claims Advice, a claims management company, saying that “meeting with your contacts re a possible sale of the client base may be a good way forward”.

723. On 28 January 2016, Mr Page returned to Get Claims Advice signed copies of a non-disclosure agreement and an introducer agreement. The non-disclosure agreement recited that each of the parties intended to disclose information to the other for the purpose of discussing the possibility of the parties entering into a joint venture and arranging the potential sale and/or novation of FPL’s client bank. The introducer agreement provided for Get Claims Advice to pay FPL commission for introducing customers who had been or believed they had been mis-sold pension transfers, pension switches or SIPP investments.

724. Mr Page provided the customer details to Get Claims Advice on 1 February 2016. The customers concerned were ones that had been novated to FPL from HCA and who had contacted Mr Page with concerns about the pension advice they had received. He, however, had not provided the advice because their pension recommendations had been made at a time when they were still clients of HCA. Mr Page said that the purpose of

the agreement was so that Get Claims Advice would deal with data subject access requests from those clients and that FPL received no monetary reward. However, as the agreement indicates, Get Claims Advice did have an obligation to pay FPL commission for being introduced to the clients.

725. On 14 July 2016, FPL was placed into administration. FPL was declared in default by the FSCS on 22 March 2017. FPL was subsequently placed into liquidation and dissolved on 6 February 2020.

Mr Page's reference

726. We now turn to the issues to be determined on Mr Page's reference. We approach each of the issues in turn, dealing with each of the key allegations made by the Authority in relation to the issue concerned, as set out at [11] above.

Issue 1: whether Mr Page has breached Statement of Principle 1 by failing to act with integrity in carrying out his controlled functions during the Relevant Period.

> *(1) Whether Mr Page acted dishonestly by causing FPL to hold out the Pension Review and Advice Process to customers as FPL providing bespoke, independent investment advice based on a comprehensive and fair analysis of the whole market*

727. For the reasons set out at [482] to [498] above, we have concluded that the service which was provided by the Firms cannot fairly be said to amount to the giving of independent advice. We found that the only service that any of the customers received from the Firms was a recommendation to invest in the Products, which was the predetermined outcome provided the customer had indicated a desire for capital protection and/or a fixed return – a likely consequence due to the leading questions in the Fact Find that we have identified above. If such a recommendation did not follow because, for example, the criteria for inclusion in the process were not met or the customer did not express a desire for a fixed return or capital protection, then none of the Firms intervened to carry out a further review of the customer's financial situation and recommend an alternative suitable product. The customer was simply left without any further services provided by the Firm.

728. Consequently, we have found that the statements in the Service Proposition and the Brochure that customers would, by entering into an agreement with the relevant Firm, receive bespoke advice from an IFA that was individually tailored to their individual needs and aspirations, that the Firms provided an independent advice service, operated independently, provided a comprehensive and fair analysis of the market, and that the Firms would place no restrictions on the investment markets that they would consider were all false and misleading.

729. Based on the test for dishonesty, as discussed at [60] to [64] above, in relation to the allegation of dishonesty against Mr Page, as set out above, we need to establish Mr Page's knowledge and belief as to the facts that we have found, as summarised above. We then need to consider whether in the light of Mr Page's knowledge and belief, his conduct was dishonest by ordinary standards.

730. Mr Page said in his evidence that by signing the Service Proposition a customer was signing up to receive the full advice model from an independent adviser. He said that those who received a recommendation through the Pension Review and Advice Process had received a recommendation based on a comprehensive and fair analysis of the market and that this had led Mr Page to believe that the Loan Notes were the best investments available for those who had indicated that they wished a fixed return with capital protection. He said that the Pension Review and Advice Process did meaningfully assess an individual's needs on the basis of the questions asked during the Fact Find. This in turn established if the client needed bespoke advice.

731. Those customers who the process identified as requiring bespoke advice, and who were not recommended the Loan Notes (which Mr Page says amounts to 65% of customers), were not at that stage offered any further service and did not receive a recommendation relating to any other product. Mr Page said that it was his intention to move to a position where he could service those clients and had started the process of trying to recruit another adviser to assist. However, this had not progressed due to the delays in the adviser concerned obtaining approval from the Authority.

732. Mr Page's evidence was that the Brochure was not sent to FPL customers. He said he saw boxes of printed Brochures at CAL's premises, but they were never sent out.

733. We do not accept Mr Page's evidence and submissions on this point.

734. It is clear that Mr Page recognised that the business generated through the Pension Review and Advice Process was an entirely separate line of business with different characteristics to the traditional IFA business that he had been involved in before FPL entered into a relationship with HJL. That is apparent from what he said in answer to a question from Mr Walmsley at the Authority's visit in June 2015. He acknowledged that his previous business was quite different in that generally he had known the client for years, went to see them in person, obtained an idea of what they wanted, and carried out the fact-finding process himself. That business clearly met Mr Page's description of what he did as an independent financial adviser, whilst business generated through the Pension Review and Advice Process clearly did not. As Mr Page told Mr Walmsley, it involved nothing more than a fact find process conducted by someone else and which he did not need to go through in any detail as it was "uniformed/similar".

735. As far as the Brochure is concerned, Mr Page's evidence is quite clearly contradicted by the contemporaneous documents. He was taken to two transcripts of calls between the Authority and consumers, both of whom referred to a brochure with FPL's name on it. Mr Page's only response when that evidence was put to him was to say that the consumers must have lied. That suggestion is simply not credible and we reject it.

736. The Service Proposition makes it absolutely clear that it related only to services in relation to pension switches. It said that if the customer required any other services then a separate service proposition would be put to them. Therefore, Mr Page's contention that the services of his pre-existing independent advice service were

available to customers introduced through the Pension Review and Advice Process was not correct. The Service Proposition made it clear that a separate agreement would be provided, and there is no evidence of FPL having entered into any such arrangements.

737. The evidence shows that there were some 860 customers who received a recommendation to invest in the Loan Notes during the Relevant Period. All those customers received automated Pension Recommendation Reports recommending that they switch their pension with the Loan Notes being the only product recommended as an appropriate investment. That was a quite different process to an individually tailored recommendation considering all investment markets. The number of customers processed could not realistically have been dealt with during the Relevant Period had they been given bespoke advice given the resources that Mr Page had available at the time. None of the customers were made aware that the recommendation they had received was as a result of this semi-automated process in which the IFA played no significant part. The customer did not know that if they indicated a preference for a fixed return and/or capital protection they would almost inevitably be recommended the Loan Notes.

738. Furthermore, none of the customers who did not receive such a recommendation were subsequently contacted with a view to offering them different services, i.e. bespoke advice of the kind that the Service Proposition suggested would be offered. Accordingly, it was not correct to say, as Mr Page submitted, that there was no restriction on the customer being offered another product. No other product was ever recommended to a customer who went through the Pension Review and Advice Process.

739. Therefore, to summarise the facts known by Mr Page as to how the process worked in practice:

(1) No whole of market assessment would take place. The only products available for recommendation to FPL's customers through the Pension Review and Advice Process were the Loan Notes and latterly when proposed by HJL, the Liquid Assets Bonds in place of cash.

(2) Mr Page accepted that not one customer who was a HJL lead, went through the Pension Review and Advice Process and appeared on the FPL new business register, invested in a product other than the Loan Notes or Liquid Assets Bond. Outside the Pension Review and Advice Process there are only seven customers on FPL's new business register for the Relevant Period that invested in anything other than the Products and these were not HJL leads.

(3) None of the customers who were "parked" awaiting more staff to deal with them received a recommendation or advice to invest in any other products.

(4) A customer would only be presented with the Service Proposition after they had been identified as suitable for the Pension Review and Advice Process after production of the Pension Summary Report.

(5) The prospect of a customer being recommended an investment in any product other than the Loan Notes depended on (i) that customer not indicating a

preference for fixed returns and/or capital protection; (ii) that customer not otherwise being rejected by LeadTracker; and (iii) that customer being onward referred to FPL.

(6) The process was not independent in that HJL had designed it.

(7) The process was that each lead who signed the Service Proposition would have a Fact Find conducted by HJL/CAL after completion of which the answers generated would be inputted into LeadTracker to generate the Pension Recommendation Report. There was no bespoke treatment of each client and no independent financial adviser had any significant input into that process.

(8) There was no mention of LeadTracker, or that an automated process was going to be used, in the Service Proposition.

740. What Mr Page understood to be the essence of the process was identified by him at a very early stage. When the Execution-Only Process was proposed to him, he identified that all he was being asked to do was to put his name to the business. Mr Page did not look at it any differently when HJL moved to an advised model. As Mr T Ward explained it in his email to Mr Page on 8 March 2014, set out at [547] above, "it will simply be a case of putting our name to it and effecting the transfer". Mr Page clearly accepted that characterisation when replying to Mr T Ward as he said that he would have a "good process and system in place to knock them out as and when, serious money too…".

741. Mr Page had identified in the meeting with the Authority in June 2015 that what he had to do was entirely different to when he met a client using his traditional business model. As Mr Purchas submitted, the possibility that at some later point in time Mr Page might be able to offer what was articulated in the Service Proposition to those customers who were "parked" reinforces the falsity of the statements in the Service Proposition and the Brochure. As Mr Page accepts, these customers were never considered for a recommendation let alone advised to invest in any other investments.

742. Therefore, we conclude in relation to Mr Page's knowledge, that he knew that the reality of the service provided through the Pension Review and Advice Process was that it provided restricted advice, namely advice that would be confined to considering whether or not a recommendation should be made to invest in the Loan Notes; a product which Mr Page regarded as suitable for a customer who indicated in the Fact Find that he wished to have a product which offered a fixed return and capital protection. Mr Page knew that a true description of the service being offered would be that the Firm was recommending a particular product which it regarded as being suitable for customers who met certain criteria, and that the suitability of the product for the customer concerned would be assessed through an automated process.

743. Based on his knowledge as an experienced IFA and his knowledge of how a truly independent adviser operates, as shown by his description to the Authority at the meeting on 3 June 2015 of how the rest of FPL's business operated, Mr Page clearly knew that the customer was not going to receive bespoke tailored independent advice according to the terms of the Service Proposition.

744. We now turn to the question of whether in the light of knowledge as to the falsity of the statements in the Service Proposition and the Brochure, Mr Page acted dishonestly in holding out the Pension Review and Advice Process as providing bespoke, independent investment advice based on a comprehensive and fair analysis of the whole market.

745. As the legal test for dishonesty requires, that question is to be answered objectively. It does not matter that Mr Page himself does not believe that he acted dishonestly in that regard. We accept that he genuinely believes that he was not dishonest.

746. In our view, by the standards of ordinary decent people Mr Page's actions were dishonest. In our view, by the standards of ordinary decent people Mr Page's actions were dishonest. Ordinary decent people would regard a person's pension pot, particularly if a modest pension pot, as being very important property rights. They would regard a person as having acted dishonestly when that person made a statement to such a person that they would receive an independent review of their individual circumstances and receive a bespoke tailored recommendation based on that review, when that person knew that the true position was that they were being offered something quite different. Mr Page never addressed that difference in either his evidence or his submissions.

747. We therefore conclude that Mr Page acted dishonestly by causing FPL to hold out the Pension Review and Advice Process to customers as FPL providing bespoke, independent investment advice based on a comprehensive and fair analysis of the whole market and thereby breached Statement of Principle 1 by failing to act with integrity.

(2) Whether Mr Page acted recklessly in relation to FPL's adoption and use of the Pension Review and Advice Process

(i) Risks attaching to the Products

748. As we concluded at [293] above, a reasonably competent IFA could form a view of the risk associated with investment in the Products by a careful but not exhaustive review of the various Information Memoranda and Fact Sheets. We concluded that a reasonably competent IFA who undertook such a review would conclude that the Products were evidently high risk. The fact that a small firm like FPL did not have the resources that would be available to a large firm, such as a bank, to undertake detailed due diligence on the Products, and those who were responsible for managing them, is not relevant.

749. We also said at [294] that, if the IFA could not form a judgment on the basis of documentation referred to above and could not easily find out what he needed to know to make that judgment, then the decision should be not to recommend the products in question.

750. It is readily apparent to us from what Mr Page said about his own experience and what he would expect to do as regards to due diligence on the products that FPL was to recommend, that he was not equipped to do the detailed due diligence on the Products

that would be necessary to satisfy himself that the Products would be suitable to be recommended to retail investors.

751. We found at [301] that Mr Page did not carry out a careful balancing exercise having considered all the relevant risk factors to assess whether the Products were high risk, relying primarily on the fact that he considered that the fixed returns were assured because of the nature of the underlying investments and that the principal amount, in the case of the Loan Notes, was guaranteed because of the existence of insurance.

752. We found at [304] that Mr Page appeared to take it as read that there was no risk that the relevant Cells would not be able to generate sufficient returns to service the interest payments, meet the significant costs of running the Cells and repay the principal amount of the Loan Notes.

753. At [310] we found that Mr Page placed undue reliance on insurance and that even where there was insurance in place, that it was of limited value.

754. We therefore concluded at [339] to [340] above that that it would have been obvious to any reasonably competent IFA who did no more than use his expertise to review the various Information Memoranda and Fact Sheets that the Products were high risk. We found that the features of the Products that are indicative of an investment carrying a high risk of loss are overwhelming, that is the risk of the issuer not being able to deliver the expected return over the life of the product and to repay the principal in full at the end of the term.

755. As a result, we found that a reasonably competent IFA would have concluded that the Products were not suitable to be recommended to retail investors except in very limited circumstances. Those circumstances might be where the investor, having been warned appropriately about the risks involved, was prepared to commit a small part of his investment portfolio on the basis that the assets concerned were those that he was willing to lose in the hope that the higher returns promised were achieved.

756. Our assessment is that Mr Page is a reasonably competent IFA. Our findings at [582] to [586] demonstrate that Mr Page's due diligence on the Loan Notes was woefully inadequate. He did not engage in any material respect with the features of the Loan Notes as set out in the Information Memoranda. As we have said, Mr Page's starting point should have been a careful review of the AIGO IM. As we found at [582] it was only in October 2014, some months after starting to recommend the Loan Notes, that Mr Page received the AIGO IM from Guinness Mahon and gave it some attention. It is not, however, readily apparent that Mr Page gave the AIGO IM anything other than a cursory review. He appeared to have relied on Guinness Mahon having undertaken a review and decided that the Loan Notes were suitable for inclusion in the GM SIPP. As we found at [322] above, Mr Page's heavy reliance on the fact that Guinness Mahon had accepted the Loan Notes as being suitable for inclusion in a SIPP was misplaced. We have also found that Mr Page's reliance on advice from Mr Tunkel was misplaced: see [319] to [322] above. Mr Page accepted in cross examination that the only advice he had ever seen was the advice given by Mr Tunkel on 12 March 2014 that related to

whether the Loan Notes were standard or non-standard and that advice did not address their suitability for retail customers, as Mr Page accepted.

757. Mr Page accepted in cross-examination that he did not find any equivalent product to the Loan Notes and so had nothing with which to compare what was being offered through the Loan Notes.

758. In our view, Mr Page acted recklessly in the following respects:

(1) By assuming that there was no risk that the relevant Cells would not be able to generate sufficient returns to service the interest payments, meet the significant costs of running the Cells and repay the principal amount of the Loan Notes.

(2) By placing undue reliance on the insurance arrangements, which meant that he gave little consideration to any of the risk factors relevant to the Products which, as we have found, he should have done.

759. As the authorities indicate, in the regulatory context, a reckless failure to consider whether something is a risk may be found to amount to a lack of integrity. That is exactly what happened in this case. Mr Page closed his mind to the need to make any kind of significant assessment of the risk factors attaching to the Products and did not make any serious attempt to analyse the features of the Products, as disclosed in the Information Memoranda. Had he done so, as we have found, it would have been obvious to him that the Products were high risk and unsuitable to be recommended to retail investors except in limited circumstances. The fact that Mr Page invested his own pension in them in our view makes no difference. He is much more experienced as regards investment matters than the typical customer who invested in the Loan Notes and Liquid Assets Bonds through the Pension Review and Advice Process. He may therefore have had an entirely different attitude to risk and capacity for loss.

(ii) The deficiencies with the Pension Review and Advice Process

760. Mr Page sought to defend the Pension Review and Advice Process robustly. He contended that the documents used in the process were fully compliant and of an industry standard. He said that he had generated numerous pension recommendation reports over the years and that those generated through the Pension Review and Advice Process were on a par with those if not better.

761. In relation to the Fact Find, with respect to the absence of soft facts, Mr Page contended that it was a “focused fact find” and asked enough questions to warrant the recommendations that were made. With respect to the absence of detail about the customer’s other investments, Mr Page said this was not an issue because the process only dealt with the customer’s pension arrangements and the rest of their investments would be dealt with later when he came to provide them with other services. He did not accept that the questions regarding the fixed rate of return and the capital protection arrangements were leading questions.

762. Mr Page contested Ms Tibbetts’s assessment of the suitability of FPL’s files but gave no specific details in response.

763. He was taken to FPL Customer File 1, which we have assessed as set out in the Appendix to this Decision. Mr Page suggested that there was other information available to the field agent which would have justified the recommendations made, despite the fact that this was not recorded on the system.

764. Mr Page was also taken to one of his own recommendations from June 2013, prior to FPL adopting the Pension Review and Advice Process. That was a very detailed report which was described as a focused review of pensions. The recommendation contained considerable detail on the customer's personal financial circumstances and advised him to remain with his current pension provider. The report went through alternative investments in some detail and rejected them all for clear reasons that were given.

765. We reject Mr Page's submissions. Mr Page is, as we have found, a highly experienced independent financial adviser. The pension recommendation report that he used before 2014 was, in our view, on the basis of the example we were taken to, an impressive document which clearly indicates that Mr Page knew what was necessary in order to prepare a compliant pension recommendation report. His contention that the report generated through the Pension Review and Advice Process was better than other reports that he had generated is simply not credible. Based on his previous experience of producing compliant reports, it must have been obvious to Mr Page that the reports generated by the Pension Review and Advice Process were not compliant.

766. The same is true of the Fact Find. Indeed, Mr Page himself admitted that he had told Mr Worrow Jr that the soft facts within the Fact Find needed further exploration, and, as we have found, the same is recorded in the minutes of FPL's Investment Committee Meeting held on 27 May 2015. Ms Preston-Hoar had raised the same issue when reporting to Mr Page about the failed file reviews in May 2015, and had also raised the issue of the leading questions in the Fact Find, so it was clear that Mr Page, by that stage, was fully aware of the risks involved in continuing to use the documentation that was in use at the time.

767. We accept Mr Purchas's submission that, given the defects in the Fact Find process, Mr Page would clearly have been aware of the high likelihood that the Pension Recommendation Report could not provide suitable advice.

768. We also accept that Mr Page would have been aware of the other defects in the templated Pension Recommendation Reports including that (i) they did not engage with an explanation of the advantages and disadvantages of the recommendation, instead referring to just the selected portfolio and cross-referring to the Fact Sheets; (ii) there was no explanation of counterparty risk; (iii) there was no explanation that the Products would not be covered by FOS and the FSCS; and (iv) there was no explanation as to why moving to a SIPP was suitable or an explanation of the risks compared to previous managed arrangements.

769. None of Mr Page's submissions or evidence that he gave in cross examination detract from our findings that there were obvious deficiencies with the Pension Review and Advice Process which failed to comply with the Authority's rules. We find that

those deficiencies would have been obvious to Mr Page, bearing in mind his knowledge and experience and yet he failed to give any meaningful consideration to whether or not the Pension Review and Advice Process was compliant with the Authority's rules.

770. As set out at [463] to [467] above, we have rejected Mr Page's contention that Mr Tunkel gave advice to the effect that the Pension Review and Advice Process complied with the Authority's requirements regarding the suitability of the recommendations that were made through the process.

(iii) Failure to manage conflicts of interest

771. As we have found at [500] to [510] above, the Pension Review and Advice Process was structured to result in customers switching their pensions to SIPPs investing in assets in which HJL had a material financial interest.

772. The Authority contends that Mr Page failed to take steps to manage and/or disclose the alleged conflicts of interest arising from (i) the structure of the Pension Review and Advice Process; (ii) HJL's role in the Pension Review and Advice Process; and (iii) Mr Stephen's and Mr King's common directorships.

773. Mr Page contends that the conflicts that he saw were raised with the parties concerned, clarification was sought and, where appropriate, action was taken.

774. However, Mr Page's difficulty is that he either did not recognise a number of the conflicts identified by the Authority or there is no evidence that he took meaningful steps to manage them. He denied that the overall design of the sales and advice process created a conflict of interest. He was, however, clearly alive to the need to identify and manage conflicts of interest. He said that he identified a conflict with CAL working from the same premises as HJL. Mr Page said in his witness statement that he was aware from his first meeting with Mr Stephen and Person A that "HJL were promoting AIGO". Mr Page also stated in his witness statement that it was unique for him to be building an association with an introducer who was tied to a product and did "put [him] on notice of a potential conflict". He says that HJL's involvement in AIGO was openly talked of. It is the Authority's case that Mr Page knew from the outset that there were conflicts of interest and yet did not take steps to manage them.

775. Mr Page accepted in his cross examination that he knew that HJL would receive 5% of the total sums raised from customers who were processed through LeadTracker and invested in the Loan Notes, that the Loan Notes were the only product that would be recommended to FPL's customers, that HJL had been involved with the development of LeadTracker, that HJL was responsible for sourcing the leads for FPL which were submitted to LeadTracker, and that, for the period July to October 2014, HJL undertook the Outsourced Functions on behalf of FPL and thereafter maintained a close involvement with CAL.

776. Mr Page was aware that Mr Stephen was also a director of AIGO. He was also aware that Mr Stephen was a director of HJ Liquid Assets plc which issued the Liquid Assets Bonds.

777. Mr Page said that the incentivisation for Mr Stephen and Mr King to ensure that customers were recommended the Products did not create a conflict because he was unaware that Mr Stephen was involved with LeadTracker. However, it was clear that Mr Page knew that HJL was responsible for sourcing leads and that there was a close connection between HJL and CAL. Had Mr Page examined the contractual arrangements between HJL and the marketing companies he would have seen that some of them were incentivised for providing leads by receiving a percentage of the monies raised.

778. As an experienced IFA, we would have expected Mr Page to have identified and managed the conflicts detailed above. Those are all conflicts that would have been obvious to a person of Mr Page's knowledge and experience. As we have found, once a conflict had been identified it should have been (i) managed and, if this was not possible, (ii) disclosed. The only attempts Mr Page made to manage the conflicts of interest was in seeking that CAL operate from different premises to HJL. We agree with Mr Purchas that this was not an effective management of the conflicts of interest set out above and did not happen until later on in the process.

779. Mr Page also relied on the provision of the Information Memoranda to customers. However, as we have found, customers were not provided with the Information Memoranda as a matter of course.

(iv) Failure to review advice given through the Pension Review and Advice Process

780. Mr Page contended that he had personal and direct access to LeadTracker which enabled him to generate his own spreadsheet of business submitted and inspect the progress of files. He says he also received client files at his Loughton office which he inspected, saying that he worked at the Loughton office over long periods to ensure that he had a close and thorough handle on the pipeline of work and full conduct of the advice. He said he would do random checks on Fact Finds.

781. Unfortunately, we have found no evidence in the materials before us to support Mr Page's assertions in this regard. Our review of the files, as set out in the Appendix, indicates the most basic of defects in the recommendations made which we would expect a person of Mr Page's experience to have picked up. We saw no evidence of email traffic between Mr Page and representatives of CAL picking up defects identified by file reviews. The small number of cases where customers entered the Pension Review and Advice Process but were not recommended an investment in the Products is a further indication of the lack of a meaningful review of files where the customer received a recommendation to switch their pension.

782. We therefore find that Mr Page failed to take reasonable steps to ensure that FPL reviewed in a meaningful way the advice given through the Pension Review and Advice Process.

(v) Failure to carry out adequate due diligence on HJL and CAL

783. We have set out at [423] to [426] a summary of the various obligations that the Firms had to undertake to oversee the performance of the Outsourced Functions carried out by HJL or CAL, as the case may be, on behalf of the Firms.

784. We found that there was no evidence that any of the Firms took meaningful steps to exercise due skill, care and diligence when deciding to appoint HJL or CAL, as the case may be, to perform Outsourced Functions. Nor was there any evidence that they took meaningful steps to establish methods for assessing the standard of performance of HJL or CAL, as the case may be, as service providers nor did they take any steps to supervise the outsourced functions and any of the risks associated with the outsourcing. The transfer of functions from HJL to CAL in October 2014 appeared to pass without any questions being asked on the part of FPL as to the reasons for the transfer or the resources of CAL.

785. In his submissions, Mr Page said that he worked very closely with CAL and "found the entire process to be compliant and professional". However, Mr Page gave no evidence of what he did by way of due diligence and supervision to come to that conclusion. He said he was informed that CAL's staff were salaried and he was not aware that they were otherwise incentivised. It would therefore appear that Mr Page simply relied on statements that were made to him rather than seeking to investigate the position for himself. He said he was unsure what due diligence "you would do on an administration service provider".

786. That clearly indicates that Mr Page did not regard it as part of his role to investigate the suitability of those who performed outsourced functions on behalf of FPL or monitor how those functions were being carried out in practice.

787. Consequently, it is an inevitable conclusion that Mr Page closed his mind to the risk that HJL, and then CAL, were not suitable to act as introducers and to the risk that they were unsuitable to conduct the Outsourced Functions for FPL. Such due diligence that Mr Page undertook was limited to establishing that the entities concerned existed and to formally identifying Mr King and Mr Stephen.

788. While we have concluded at [531] that it is likely that Mr Page became aware of Person A's background prior to June 2015, we find that if Mr Page was not aware prior to June 2015 Mr Page's failure to undertake even basic due diligence was illustrated by the fact that he stated that he was unaware of Person A's history, including both his bankruptcy and criminal convictions, until after the Authority's visit in June 2015. As we have found, Person A was the individual who initially brought the business model to Mr T Ward. It was clearly easy to investigate Person A's background, as illustrated by Ms Hallett's evidence as to how she found out about Person A's background by simple Internet searches. She quickly came to the view that it would be inappropriate to have a business relationship with a firm where Person A had significant influence and we would have expected Mr Page to have taken the same view had he been aware of Person A's background at the time the arrangements with HJL were entered into, which was only a relatively short time after Person A's last conviction.

(vi) Failure to establish that leads were generated in an appropriate manner

789. As we have found, leads were generated by HJL through its use of marketing companies whilst acting in its capacity as an IAR of FPL. It is clear from our findings that the marketing companies represented that they were acting on behalf of FPL. Accordingly, HJL were performing an outsourced function and the obligations in that regard, referred to at [783] above, were applicable to FPL. It was not sufficient or adequate to rely on an IAR making sure that leads were generated properly without the Firm carrying out its own due diligence in this regard. The Authority's position is that Mr Page did not carry out adequate due diligence in respect of the lead generation of customers who might be introduced to FPL.

790. As we found at [424] above, there was no evidence that any of the Firms took meaningful steps to understand how HJL was sourcing leads so as to be satisfied that HJL and the marketing companies were behaving in an appropriate manner. Mr Page did not appear to know which marketing companies were providing leads to HJL and were using FPL's name. A clear example of that is Taylor Barton, as illustrated by Mr Page's exchange of emails with Mr T Ward on 1 September 2014, as set out at [606] to [611] above, which commenced with Mr Page asking Mr T Ward "Who are Taylor Barton".

791. Mr Page took the position that, although HJL was FPL's introducer, HJL had their own controls in place and contracts with a number of Call Centres. It therefore appears that Mr Page believed that it was entirely HJL's responsibility to ensure that leads were sourced appropriately and that cold calling was not employed. Mr Page appeared to have paid no attention to the fact that when he was seeking to register HJL as an introducer through Financial Ltd, that firm would not permit the registration to take place until it had received a detailed report from Mr Page setting out the due diligence he had undertaken on HJL, something which never materialised. Mr Page must therefore have been aware that it would be expected that adequate due diligence would be undertaken on an introducer.

792. Mr Page's witness statement illustrates that he was alert to the risk of cold calling. He said in that statement that he enquired about leads at his first meeting with HJL and was told that any clients who were called had already expressed a wish to have a pension review and had been told that there was a cost of £250. In the light of these points, Mr Page concluded that "I was satisfied that there was no cold calling involved". Again, it appears that Mr Page did no more than rely on assurances given by HJL and did not investigate how, in practice, leads were generated. We regard that failure as reckless on Mr Page's part.

793. Despite Mr Page's conclusion, as our findings indicate, it is clear that cold calling did take place, particularly by Taylor Barton. The relevant evidence in the form of transcripts between the Authority and consumers referring to Taylor Barton cold calling them was put to Mr Page and he reluctantly accepted that possibly some cold calling had taken place. That is corroborated by the exchange of emails between Mr Page and

Mr T Ward that took place whilst Mr Page was on the call to Mr Raphael and Ms High on 1 September 2014, as set out at [606] to [611] above.

(vii) Mr Page's dealings with IFAC

794. In our view, in the early stages of FPL's operation of the Pension Review and Advice Process, Mr Page actively sought to conceal from IFAC the extent of FPL's business with HJL. We infer that Mr Page took this course of action because he suspected that IFAC would express concerns regarding both the structure of the process and the extent of the business being generated through it. This is demonstrated by Mr Page's email of 13 June 2014 to Mr T Ward, referred to at [572] above, where he referred to wishing to keep the business "off the radar". Similarly, our findings set out at [626] to [630] above indicate that Mr Page did not, at that stage, indicate to Ms Preston-Hoar that there were a large number of leads awaiting processing. That followed Mr Page's email of 8 September 2014 referred to at [624] above where he indicated that he would "just keep quiet about the HJ business" when talking to IFAC.

795. In our view, this approach of concealing the true position from IFAC demonstrates a failure to act with integrity on Mr Page's part.

796. Likewise, Mr Page's failure to seek to make any alterations to the Pension Review and Advice Process despite receiving the failed file reviews in May 2015, as described at [660] to [667] above, is another example of Mr Page closing his mind to the risks that the Pension Review and Advice Process did not comply with the Authority's rules. Mr Page only went back to HJL to raise the question of a lack of "soft facts" several months after issues were first raised, even though it was his evidence in cross-examination that he "always thought they needed more soft facts".

(viii) Conclusion as to whether Mr Page acted recklessly in relation to FPL's adoption and use of the Pension Review and Advice Process

797. We have found at [748] to [796] above:

(1) Mr Page closed his mind to the need to make any significant assessment of the risk factors attaching to the Products.

(2) The deficiencies in the Pension Review and Advice Process would have been obvious to Mr Page.

(3) The conflicts of interest relating to the structure and operation of the Pension Review and Advice Process would have been obvious to Mr Page but he took no steps to manage those conflicts.

(4) Mr Page failed to take reasonable steps to ensure that FPL reviewed in a meaningful way the advice given through the Pension Review and Advice Process.

(5) Mr Page closed his mind to the risk that HJL and CAL were not suitable to conduct the Outsourced Functions on behalf of FPL.

(6) Mr Page recklessly failed to investigate how leads were generated by HJL.

(7) Mr Page further closed his mind to the risk that the Pension Review and Advice Process was not compliant by failing to deal openly with IFAC and failing to seek to alter the process in the light of the failed file reviews conducted by IFAC.

798. In our view, those findings are sufficient to establish that Mr Page acted recklessly in relation to FPL's adoption and use of the Pension Review and Advice Process. Mr Page closed his mind to the serious risk that the process would (as subsequently transpired) result in FPL's customers receiving unsuitable advice and investing in products that were not suitable for them.

(3) Whether Mr Page closed his mind to the interests of customers when advising customers to switch the cash in their SIPP to Bonds issued by HJ Liquid Assets plc

799. We have found at [636] to [642] above that the initiative for holders of the Loan Notes to switch the cash element of their Portfolios into the Liquid Assets Bonds came from HJL and that Mr Page agreed to go along with that proposal without having undertaken any significant due diligence on the Liquid Assets Bonds. Shortly after giving his approval, Mr Page attempted to get the consent of the relevant customers by telephone and, for those he could not contact by telephone, a letter was sent with a recommendation to switch stating that if the customer did nothing the switch would take place in any event. We found that no Fact Find was undertaken during this process and that no explanation of the risks attaching to the Liquid Assets Bonds was given or any information given setting out the risks, benefits or costs of the proposed course of action.

800. Mr Page justified the approach taken on the basis that he considered the Liquid Assets Bonds to be intraday cash bonds. He denied that the Bonds were a high risk, speculative investment, but instead claimed that as they were issued by a fund dealing in assets that were readily converted to cash they were comparable with holding cash. As regards the "negative approval" letter to customers, Mr Page observed that it was open to customers to write back asking FPL not to make the switch.

801. We have already found that the Liquid Assets Bonds were a high risk investment. At [328] we found that there could be no basis for recommending investment in the Liquid Assets Bonds bearing in mind the capital security offered by a similar yielding gilt and the significant features of a high risk investment identified by Mr Lockie in relation to the Liquid Assets Bonds. We also found that Mr Page did not understand the features of the Liquid Assets Bonds, in particular, he did not appreciate that, just because the assets held were readily realisable into cash, this did not mean that there would be no loss of capital on such a realisation due to the risks involved in the bond issuer's trading strategy identified by Mr Lockie.

802. Although Mr Page insisted that he carried out considerable due diligence on the Liquid Assets Bonds, there was no evidence of that before us. When Mr Page was sent the term sheet for the Bonds, the issue date was then only ten days away and Mr Page started advising customers to invest in the Liquid Assets Bonds when they had not yet been listed and had no trading history.

803. In our view, it was incumbent on Mr Page to assess whether switching the cash element of a customer's Portfolio into the Liquid Assets Bonds was suitable for that customer. In the absence of a Fact Find, no suitability assessment was undertaken and the script that Mr Page used on the telephone failed to explain the risks of the Liquid Assets Bonds.

804. It was also inappropriate for FPL to proceed to make the switch in circumstances where the customer had not given their approval, on the basis that they were warned that the switch would happen if they took no action, as in effect this turned FPL into a discretionary fund manager, making the decision on the customer's behalf, in circumstances where they had undertaken no assessment of the suitability of the investment for the customer.

805. In our view, it is clear from the evidence that Mr Page proceeded with the switch because it was something that HJL wanted FPL to do. He carried out those wishes without addressing the question as to whether the switch was in the best interests of his customers. As we have found, it would have been obvious to Mr Page had he undertaken appropriate due diligence on the Liquid Assets Bonds that they were high risk investments and were unsuitable for retail investors except in limited circumstances.

806. Consequently, we find that Mr Page acted recklessly both in recommending the Liquid Assets Bonds to customers and the approach he took to effecting the switch, through telephoning customers and the "negative approval" letter.

(4) Whether Mr Page acted dishonestly by providing false and misleading information on FPL's application to the Authority for authorisation and, after FPL was authorised, failed to correct the misleading impression that had thereby been created.

807. We found at [558] above, that the primary motivation for FPL's application for authorisation was the contemplation of entering into the arrangements with HJL to participate in the Pension Review and Advice Process.

808. We found at [559] that Mr Page signed the various declarations in the application to the effect that the information provided was accurate and complete to the best of his knowledge and belief. We also found that the declarations on the form told the applicant that the Authority must be notified immediately of any significant changes to the information provided.

809. At [561] we found that the application did not take into account the potential arrangements for FPL participating in the Pension Review and Advice Process which were, at that stage, well advanced and was the primary motivation for FPL applying to be directly authorised.

810. In our view, the application should have been answered primarily on a prospective basis so that the Authority could have a clear picture of the nature of the business that FPL intended to carry on when authorised, notwithstanding the fact that the business contemplated had not yet started. It could not of course commence lawfully

until authorisation had been obtained. On that basis, the answers given and information provided in support, as detailed at [561] above, gave the Authority a highly misleading picture as to the nature of the business that FPL intended to carry on once it obtained its authorisation. By submitting an application in this form, Mr Page caused FPL to fail to be open and cooperative with the Authority and provide the Authority with the information that was necessary for it to assess the merits of FPL's application.

811. Even if, which we do not accept, it was appropriate for Mr Page to complete the application on the basis of FPL's business as it currently then stood without taking account of the arrangements contemplated with HJL, it was clearly incumbent on Mr Page to notify the Authority about the radical changes to FPL's business model that occurred when FPL started to participate in the Pension Review and Advice Process, bearing in mind FPL's obligation to update the information provided in the application. That was never done.

812. Mr Page did not accept that he should have told the Authority about the proposed business with HJL before it came to fruition. He said that did not happen until nine months after the application was made. He then sought to justify his lack of communication with the Authority on the basis that the Authority had not been helpful to him when he had called them for help.

813. Once again, Mr Page's memory seems to be playing tricks with him. As we have found, the application was made in April 2014 and leads started to be processed with a view to recommendations being made by FPL before FPL was authorised in July 2014. That was much shorter than the period of nine months suggested by Mr Page. In any event, we do not accept that Mr Page was entitled to wait until the business started before telling the Authority what was contemplated. The Authority was not told about the extent of the new line of business until its own investigations discovered it shortly before making the short notice visit in June 2015, many months after the business commenced.

814. The allegation against Mr Page is that he acted dishonestly by causing FPL to make the application with the false and misleading statements, as we found at [561] above, and by not updating information any time thereafter.

815. Based on the test for dishonesty, as discussed at [60] to [64] above, in relation to the allegation of dishonesty against Mr Page, as set out above, we need to establish Mr Page's knowledge and belief as to the facts that we have found, as summarised above. We then need to consider whether in the light of Mr Page's knowledge and belief, his conduct was dishonest by ordinary standards.

816. It is clear to us that Mr Page knew that, at the time of the application to the Authority, FPL intended to participate in the Pension Review and Advice Process. It had, on 2 May 2014, signed a Standard Service Agreement to that effect with HJL, whilst the application was under consideration by the Authority. During May 2014 the Brochure was being finalised and Pension Summary Reports began to be generated in FPL's name. Mr T Ward and Mr Worrow Jr were in correspondence regarding estimates of the volume of business that would be coming FPL's way. Nevertheless, as

we have found at [572], Mr Page still felt that it was appropriate to keep the business “off the radar” as far as IFAC was concerned. On 18 June 2014, Mr Page approved the Fact Find documentation.

817. It is therefore clear that the only obstacle in the way of FPL proceeding to complete the business arrangements with HJL was the granting of authorisation. Mr Page knew that at the time the application was made the arrangements were well advanced. He therefore knew at the time of the application that the answers given and information provided were false and misleading because he knew that the application should have been completed on a prospective basis.

818. Even if he did not know that, which we do not accept, he certainly knew that once the business had commenced upon FPL obtaining its authorisation, that the information previously provided was incorrect and the Authority should have been updated immediately.

819. We now turn to the question as to whether in the light of Mr Page’s knowledge as to the falsity of the statements in the application for authorisation and the knowledge that the Authority should have been updated as to changes in the information provided, he had acted dishonestly in causing those statements to be made in the first place and subsequently not updating the Authority as to the changes in the information provided.

820. As the legal test for dishonesty requires, that question is to be answered objectively. It does not matter that Mr Page himself does not believe that he acted dishonestly in that regard.

821. In our view, by the standards of ordinary decent people Mr Page’s actions were dishonest. Ordinary decent people would understand the need for the Authority to be given accurate information so that it can assess whether a firm is fit and proper to be authorised. The risk to consumers is considerable if the Authority is not given full and accurate information so as to enable it to carry out its statutory functions. Ordinary decent people would therefore consider that a person seeking authorisation for his firm from the Authority who provided statements to the Authority as to the proposed business of the firm that he knew to be false would thereby be acting dishonestly.

822. We therefore conclude that Mr Page acted dishonestly by causing FPL to provide false and misleading information on FPL’s application to the Authority for authorisation and, after FPL was authorised, failing to correct the misleading impression that had thereby been created.

(5) Whether Mr Page acted dishonestly by deliberately providing false and misleading information, or omitted to provide relevant information, to the Authority about FPL’s business arrangements

823. We have found at [598] above that, on 20 August 2014, in response to a request from Mr Raphael to provide a copy of FPL’s new business register providing details of all business FPL had arranged via a SIPP or SSAS arrangement, Mr Page, adopting a draft response prepared by Mr T Ward, stated that only six such transactions had been arranged. We found at [597] that by the time of that response a considerable number of

transactions had passed through the Pension Review and Advice Process, so that details had been submitted to Guinness Mahon and funds transferred. We found that the only remaining step to be taken was the issue of confirmation from Guinness Mahon that the transactions had been completed.

824. The Authority contends that at this stage Mr Page was deliberately keeping the Authority in the dark about the business FPL was conducting through introductions made by HJL. Mr Page denies that to be position, saying that his response was a fair description of the business that was being done with HJL at the time because the process was evolving quite quickly. He said that he had answered Mr Raphael's question correctly because he had asked for business that had been "arranged". He took the position that business was not to be considered as having been "arranged" until he received confirmation from Guinness Mahon that a "policy number" had been issued. He said that Guinness Mahon would not give any such confirmation in relation to any business introduced through FPL until they had received a copy of Mr Page's passport to conclude its due diligence on FPL.

825. In our view no person approved by the Authority to exercise controlled functions who was seeking to answer Mr Raphael honestly would have responded in the way that Mr Page did. It is not credible that Mr Page could have believed Mr Raphael would not be interested in knowing about transactions where, as far as FPL was concerned, everything had been done to complete those transactions and where the last step in the chain was a mere formality which was completely within FPL's control. It could not realistically have been said that there was any prospect that the transactions that had clearly been "arranged" according to the ordinary meaning of that word would not be, in fact, completed. Mr Page clearly knew that many more transactions involving a SIPP than those he disclosed had been arranged by FPL. He would also have known that Mr Raphael's purpose in making the request was to understand the nature of FPL's business at the time the request was made, so purely giving Mr Raphael historic information which took no account of developments since then would not achieve that objective. Accordingly, he deliberately gave an untruthful answer to Mr Raphael in response to his request. He also chose not to update the Authority after the business in question had formally completed.

826. The same is true of the information given by Mr Page during the telephone call on 1 September 2014 with Mr Raphael and Ms High and the follow-up email sent by Mr Page, drafted by Mr T Ward, after that call.

827. As we have found, during that call Mr T Ward instructed Mr Page not to inform the Authority that Taylor Barton did in fact cold call clients, when he knew that was the case. The strategy at that time was to tell the Authority as little as possible about FPL's current business, as demonstrated by Mr T Ward's email of 4 September 2014 to Mr Page, referred to at [619] above, where he said he had "taken the view that less is more in this situation" when providing Mr Page with a draft response to be sent to the Authority.

828. As the quotation from Mr Page's response, as set out at [620] above demonstrates, the response was misleading when it stated that FPL did not recruit any lead generation

companies and did not in any sense indicate the scale of the business now being undertaken through the Pension Review and Advice Process. Neither did it disclose the nature of the products that would be recommended through the process. We accept Mr Purchas's submission that in this response Mr Page deliberately did not tell the Authority that Taylor Barton engaged in cold calling.

829. The strategy of keeping the Authority in the dark about the arrangements is also illustrated by Mr Page's and Mr T Ward's pleasure at learning from Ms Preston-Hoar that the first return due to the Authority would only cover the period from July until the end of September 2014 and therefore a full year's accounts would not be needed until the following year, as discussed at [626] to [630] above.

830. Mr Page therefore knew that he had provided false information to the Authority, as described above. As was the case with the false information that Mr Page provided to the Authority in respect of FPL's application for authorisation, ordinary decent people would regard such behaviour as dishonest.

831. Accordingly, we find that Mr Page acted dishonestly by deliberately providing false and misleading information, or omitted to provide relevant information, to the Authority about FPL's business arrangements.

(6) Whether Mr Page acted dishonestly by deliberately providing false information to Guinness Mahon

832. We found at [705] to [707] above, that, on his own admission, Mr Page lied to Guinness Mahon in order to disinvest his funds, despite having been requested by the Authority not to do so. Clearly, that behaviour was dishonest and his behaviour is not excused by his assertion that he made the request due to a threat from a Guinness Mahon executive. There are other legitimate ways of dealing with a threat of that kind, if it occurred, for instance informing the Authority who clearly had an interest in the matter.

(7) Whether Mr Page recklessly entered into an agreement with Mr T Ward granting him custodianship of FPL clients in the event of FPL ceasing trading which was not in the best interest of customers

833. We have found at [714] above that the agreement pursuant to which Mr Page handed custodianship of FPL's client base to Mr T Ward in the event of FPL ceasing to carry on business was entered into in January 2016, after the Authority's intervention and after FPL had agreed to a Voluntary Requirement pursuant to which FPL agreed not to deal with or dispose of any of its assets otherwise than in the ordinary course of business without the consent of the Authority.

834. Arguably, the agreement with Mr T Ward falls within the scope of the restrictions in the Voluntary Requirement. At the very least, Mr Page should have notified the Authority of the proposal to enter into the agreement so that the matter could be discussed and determined. Mr Page did not act in the best interests of customers in entering into the agreement without considering the possible implications for the restrictions in the Voluntary Requirement.

835. In any event, we do not consider that this agreement was an appropriate way of dealing with succession to FPL's client base in the event of it ceasing to carry on business. Mr T Ward was not an approved person, was not a qualified investment adviser and he had a criminal conviction for obtaining money transfers by deception. We therefore agree with the Authority that it was reckless on the part of Mr Page to enter into such an agreement with Mr T Ward which was clearly not in the interests of FPL's customers.

(8) Whether Mr Page recklessly allowed FPL to breach an asset retention requirement imposed by the Authority by entering into a loan agreement and selling customer data

836. As we found at [716] to [720] above, Mr Page caused FPL to enter into an agreement whereby Mr Worrow Sr agreed to lend Mr Page £25,000, secured over FPL's client base. We found that agreement to be a valid legal agreement and the loan to Mr Page was made.

837. Although, as we found, the agreement is not to be construed as an outright sale of FPL's client base, it is clear to us that by providing the client base as collateral, FPL was "dealing with" its assets in breach of the Voluntary Requirement as it did not obtain the consent of the Authority to the transaction.

838. It appears that Mr Page gave no thought to the question as to whether the agreement breached the Voluntary Requirement. He therefore acted recklessly in causing FPL to enter into the agreement without seeking the consent of the Authority.

839. Likewise, in our view it is arguable that the agreement between FPL and Get Claims Advice, described at [721] to [724] above, was entered into in breach of the Voluntary Requirement. The agreement provided for FPL to receive payment for information concerning part of its client base and was therefore potentially dealing with its assets by entering into that agreement. Again, Mr Page failed to consider whether the agreement was in breach of the Voluntary Requirement and should have sought to clarify the position with the Authority before entering into the agreement. However, he gave no thought to the question as to whether the agreement breached the Voluntary Requirement. He therefore acted recklessly by causing FPL to enter into the agreement without discussing the matter with the Authority.

Conclusion on Issue 1

840. The findings that we have made as set out above demonstrate overwhelmingly that Mr Page breached Statement of Principle 1 (Integrity) of the Authority's Statements of Principle for Approved Persons when carrying out his functions as an approved person throughout the Relevant Period.

Issue 2: Financial Penalty

841. In our view Mr Page's failings are very serious. We would go as far to say that the allegations made against him are the most serious that we have encountered in respect of a small IFA firm in terms of (i) the number of separate allegations of acting without integrity; (ii) the impact that Mr Page's actions have had in relation to a large number of unsophisticated consumers; and (iii) the impact on other IFA firms in terms of the effect on the calls on the FSCS to which all authorised firms in the relevant category have to contribute.

842. In our view, the imposition of a very substantial financial penalty in this case is justified and appropriate. As the Authority's penalty policy states, the principal purpose of imposing a financial penalty is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour.

843. We are particularly concerned by the approach Mr Page took to his dealings with the Authority. Had he disclosed in his application for authorisation full details of the proposed business model, and in particular how the Pension Review and Advice Process was intended to operate, then the misconduct which has been the subject of is reference may never have occurred. Likewise, had he made full disclosure of the situation to Mr Raphael, the latter would not have been lulled into taking the comfort that he did from Mr Page's answers to his requests about the nature of the business FPL carried on. Once the Authority did obtain enough information about the way that FPL was operating, it acted swiftly to intervene following the short notice meeting held in June 2015. We have no doubt that had it known in August 2014 what it knew then, FPL's operation of the Pension Review and Advice Process would have been "nipped in the bud" and much of the consumer detriment that has occurred probably would not have happened.

844. It is a personal tragedy for Mr Page that he allowed his instincts and values as a respected IFA who had practised without blemish for many years to be overridden as a result of the volume of business and consequent high levels of remuneration participation in the Pension Review and Advice Process offered, well beyond what he had previously been used to earning in his small business. We have no doubt, as submitted by the Authority, that Mr Page was motivated by the financial gain to be obtained through a volume of business that he had never experienced before.

845. Consequently, he had allowed his judgment to be seriously compromised by the business proposal, as put to him by Mr T Ward, and closed his mind to the risks that in doing so he was putting his own interests above those of FPL's customers. In effect, he allowed his business, under the influence of Mr T Ward, who on his own admission was a much more forceful and shrewd character than Mr Page himself, to be used as a vehicle for HJL to promote its Products under the veneer of bespoke advice given by an IFA. Mr Page's assessment at the outset of the relationship with HJL was that there was a lot of money to be made by simply putting his firm's name to the process and his actions thereafter during the Relevant Period illustrate that his mindset did not change.

This was despite the fact that he appreciated that the Authority and his own compliance consultants may take a different view as to the merits of the Pension Review and Advice Process. He therefore sought to conceal the nature and full extent of the business that FPL was undertaking and ignored the signals that came from IFAC after it undertook the file reviews that all may not be well.

846. The Authority seeks the same level of financial penalty that it set out in the Decision Notice, which was calculated by applying the five-step framework set out [102] above.

847. We received no challenge from Mr Page to that approach and, therefore, in accordance with the usual practice, we should pay that policy due regard when carrying out our overriding objective of doing justice between the parties.

848. We see no reason to dispute the calculations made by the Authority to determine the financial penalty which Mr Purchas set out in detail in his closing submissions. In summary:

Step 1: The Authority calculates an amount of £186,933 to deprive Mr Page of the financial benefit derived directly from his breaches of Principle 1, inclusive of interest calculated as described below, up to the date of Mr Page's Decision Notice. The Authority seeks continuing interest on the principal amount of that benefit at the rate of 8% per annum from the date of the Decision Notice, consistent with the policy set out in DEPP 6.5B.1G which states that the Authority will ordinarily charge interest on the amount of the benefit. The rate of 8% per annum is consistent with the judgment debt rate of 8% simple per year under s 17 Judgements Act 1838 (as amended by Article 2 Judgements Debts (Rate of Interest) Order 1993). This rate of interest is also consistent with the amount of interest typically awarded by the FOS and in our view is the appropriate rate to be applied in the current circumstances.

Step 2: The Authority placed the seriousness of Mr Page's breach at Level 5, the highest level, which results in an additional penalty sum of £55,906, being 40% of the relevant net revenue earned by Mr Page during the Penalty Period.

We agree with that assessment, bearing in mind the following factors:

(1) Mr Page's motivation for financial gain for himself;

(2) the significant loss incurred by a large number of consumers many of whom were vulnerable;

(3) the length of time over which the breaches occurred;

(4) Mr Page's senior position at FPL;

(5) the number of serious allegations of dishonesty and reckless conduct; and

(6) the repeated instances of serious misleading of the Authority.

Step 3: The Authority added a sum equal to a further 20% of the penalty calculated above to take account of aggravating factors, in particular Mr Page's knowledge of the various alerts issued by the Authority in relation to pension switching and his failure to

bring the Pension Review and Advice Process to the attention of the Authority or implement changes once he realised there were defects in the process. The Authority identified no mitigating factors.

We agree with that assessment.

Step 4: The Authority considered that the Step 3 figure of £67,087 does not represent a sufficient deterrent to Mr Page and so increased the penalty at Step 4 by a factor of two as an adjustment for deterrence.

In view of the very serious nature of the allegations in this case and their impact, we agree with the Authority's assessment.

849. Consequently, the Authority seeks a financial penalty of £321,033. That is a very large sum to be imposed on the director of a small IFA firm. However, FPL took on a large amount of business during the Relevant Period and, in our view, the figure is justified by reference to the scale of the business conducted during that period, the seriousness of the breaches and the need to dissuade any other IFA firm from taking a similar path in the future.

850. We therefore determine that it will be appropriate for the Authority to impose a financial penalty of £321,033 on Mr Page, plus continuing interest on the amount of the benefit received by Mr Page, as calculated above.

Issue 3: Prohibition

851. Mr Page made no submissions challenging the imposition of a prohibition order were the allegations made against him to be established.

852. As we have found, Mr Page has been found to be lacking in integrity as a result of a series of breaches committed over a lengthy period. It is clear that the imposition of a prohibition order by the Authority under s 56 FSMA on the grounds that Mr Page is not a fit and proper person to perform any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm is a course of action reasonably open to the Authority on the basis of the findings that we have made. We therefore see no basis on which we should interfere with the Authority's decision in that regard.

Mr T Ward's reference

853. We now turn to the issues to be determined on Mr T Ward's reference. We approach each of the issues in turn, dealing with each of the key allegations made by the Authority in relation to the issues concerned, as set out at [13] above.

Issue 1: Whether Mr T Ward performed the CF 1 controlled function without approval in breach of s 63A FSMA and his conduct would have amounted to a breach of Statement of Principle 1 had he been so approved.

(1) Whether Mr T Ward knowingly performed, or had such knowledge and experience that he could reasonably be expected to have known that he was performing, a role as a director of FPL without approval, and chose not to seek such approval from the Authority.

(i)Relevant law and regulatory provisions

854. Section 63A(1) FSMA provides that if the Authority is satisfied that:

(a) a person has at any time performed a controlled function without approval; and

(b) at that time that person knew, or could reasonably be expected to have known, that he was performing a controlled function without approval,

it may impose a penalty on that person of such amount as it considers appropriate.

855. Section 63A (2) provides that a person performs a controlled function without approval at any time if at that time:

(a) they perform a controlled function under an arrangement entered into by an authorised person, or by a contractor of the authorised person, in relation to the carrying on by the authorised person of a regulated activity; and

(b) the performance of the function was not approved under s 59 FSMA.

856. Section 59(10) FSMA provides that an arrangement means any kind of arrangement for the performance of a function of an authorised person which is entered into by the authorised person or any contractor of theirs with another person; and includes, in particular, that other person's appointment to an office, their becoming a partner or their employment (whether under a contract of service or otherwise).

857. In order to satisfy the second limb of a contravention of section 63A (1) FSMA, it is necessary to show that either:

(a) the person had actual knowledge that he was performing a controlled function without approval; or

(b) objectively it is reasonable to expect that person to have known they were performing a controlled function without approval.

858. DEPP 6.2.9A sets out additional considerations that the Authority will have regard to when deciding whether to take action against a person under s.63A FSMA. These include the extent to which the person could reasonably be expected to have known that he was performing a controlled function without approval. The

circumstances in which the Authority would expect to be satisfied that a person could reasonably be expected to have known that he was performing a controlled function without approval include:

> (a) the person had previously performed a similar role at the same or another firm for which he had been approved;
>
> (b) the person's firm or another firm had previously applied for approval for the person to perform the same or a similar controlled function; and
>
> (c) the person's seniority or experience was such that he could reasonably be expected to have known that he was performing a controlled function without approval; and the person's firm had clearly apportioned responsibilities so that the person's role, and the responsibilities associated with it, were clear.

859. In this case the Authority contends that Mr T Ward performed the controlled function of "director" without approval. Section 417(1) FSMA, in relation to a body corporate, provides that a "director" includes:

> (a) a person occupying in relation to it the position of a director (by whatever name called); and
>
> (b) a person in accordance with whose directions or instructions (not being advice given in a professional capacity) the directors of that body are accustomed to act.

860. The Glossary in the Authority's Handbook defines "director" when used in relation to a body corporate as follows:

> "any person appointed to direct its affairs, including a person who is a member of its governing body and (in accordance with section 417(1) of the Act):
>
> (i)a person occupying in relation to it the position of a director (by whatever name called); and
>
> (ii) a person in accordance with whose directions or instructions (not being advice given in a professional capacity) the directors of that body are accustomed to act."

861. The definition in the Glossary set out above is identical, or almost identical, to the definition of "director" in the Companies Acts, Company Directors Disqualification Act 1986 and for the purposes of the Insolvency Act 1986. As was common ground, the case law that has built up in relation to the term may be "read across" into the different statutory context of FSMA and the controlled functions that the Authority seeks to regulate through the approved persons regime.

862. As the Authority submitted, under this regime a director of an authorised firm which is a body corporate is considered one of the persons responsible for directing its affairs, that is one of the persons responsible for the governance of the body, and such

persons require to be approved under s 59 FSMA as a CF1 in order to carry out that function.

863. The question we have to determine is whether Mr T Ward can be regarded as a "director" of FPL because of the actions he took and whether, in particular, he could be regarded as one of the persons responsible for directing FPL's affairs. If that were so, Mr T Ward could be properly described as a "de facto" director. As we have said, it was common ground that the case law on de facto directors, which has built up in the context of the other legislation referred to at [861] above, can be read across into the relevant provisions of FSMA and the Authority's regulatory provisions and the principles to be derived from those cases applied accordingly.

864. In broad terms, a de facto director is a person who purports to act as a director, whether or not held out by the company as such, but who has not been validly appointed as a director.

865. The authorities were reviewed in detail in the Supreme Court's decision in *Holland v HMRC* [2010] UKSC 51, which concerned proceedings under s 212 Insolvency Act 1986 and raised questions as to whether directors of a corporate director of certain companies were de facto directors. Lord Collins' judgment in *Holland* contains a detailed discussion of the evolution of the concept of de facto director. He referred at [91] to the "very difficult problem" that emerged of "identifying what functions were in essence the sole responsibility of a director or board of directors", noting the various formulations that had been suggested, including whether the individual was acting on an equal footing with others in directing the company's affairs, whether there was a holding out by the company of the individual as a director, and whether the individual was part of the corporate governing structure. He noted that in previous cases a number of judges had declined to formulate a single test and commented that it was just as difficult to define "corporate governance" as to identify those activities which are the sole responsibility of the board. At [93] he said that it did not follow that the concept of de facto director must be given the same meaning in different contexts, but in that context, namely the fiduciary duty of a director not to dispose wrongfully of a company's assets, the crucial question was whether the person had "assumed the duties of a director": was he "part of the corporate governing structure", and had the claimants proved that he "had assumed a role sufficient" to make him responsible?

866. In *Re UKLI Limited* [2013] EWHC 680 Hildyard J set out at [41] a number of characteristics of a de facto director that were relevant, although stressing that not every one is required to be established and there is inevitably some overlap between them. He said:

> (1) A *de facto* director must presume to act as if he were a director.
>
> (2) He must be or have been in point of fact part of the corporate governing structure and participated in directing the affairs of the company in relation to the acts or conduct complained of.

(3) He must be either the sole person directing the affairs of the company or a substantial or predominant influence and force in so doing as regards the matters of which complaint is made. Influence is not otherwise likely to be sufficient.

(4) He was not persuaded that an "equality of footing" test is required but considered the indicia to be whether the person concerned has undertaken acts or functions such as to suggest that his remit to act in relation to the management of the company is the same as if he were a *de jure* director.

(5) The functions he performs and the acts of which complaint is made must be such as could only be undertaken by a director, not ones which could properly be performed by a manager or other employee below board level.

(6) It is relevant whether the person was held out as a director or claimed or purported to act as such: but that, and/or use of the title, is not a necessary requirement, and even that may not always be sufficient.

(7) His role may relate to part of the affairs of the company only, so long as that part is the part of which complaint is made.

(8) Lack of accountability to others may be an indicator; so also may the fact of involvement in major decisions.

(9) The power to intervene to prevent some act on behalf of the company may suffice.

(10) The person concerned must be someone who was more than a mere agent, employee or advisor.

867. In *Smithton Ltd (formerly Hobart Capital Markets Ltd) v Naggar* [2014] EWCA Civ 939 Arden LJ, with whom Elias and Tomlinson LJJ agreed, referred to the judgment of Lord Collins in *Holland* and set out the following points as being potentially relevant in determining whether someone is a de facto director at [33] to[45]:

"34. The concepts of shadow director and de facto are different but there is some overlap.
35. A person may be de facto director even if there was no invalid appointment. The question is whether he has assumed responsibility to act as a director.
36. To answer that question, the court may have to determine in what capacity the director was acting (as in *Holland's case*).
37. The court will in general also have to determine the corporate governance structure of the company so as to decide in relation to the company's business whether the defendant's acts were directorial in nature.
38. The court is required to look at what the director actually did and not any job title actually given to him.
39. A defendant does not avoid liability if he shows that he in good faith thought he was not acting as a director. The question whether or not he acted as a director is to be determined objectively and irrespective of the defendant's motivation or belief.

> 40. The court must look at the cumulative effect of the activities relied on. The court should look at all the circumstances "in the round" (per Jonathan Parker J in *Secretary of State for Trade and Industry v Jones* [1999] BCC 336).
> 41. It is also important to look at the acts in their context. A single act might lead to liability in an exceptional case.
> 42. Relevant factors include: (i) whether the company considered him to be a director and held him out as such; (ii) whether third parties considered that he was a director.
> 43. The fact that a person is consulted about directorial decisions or his approval does not in general make him a director because he is not making the decision.
> 44. Acts outside the period when he is said to have been a de facto director may throw light on whether he was a de facto director in the relevant period.
> 45. In my judgment, the question whether a director is a de facto or shadow director is a question of fact and degree…"

868. Mrs Justice Falk, sitting in the High Court, addressed the issue of de facto directors in the recent case of *The Official Receiver v Batmanghelidjh & others (The Matter of Keeping Kids Company*) [2021] EWHC 175 (Ch). The judgment cites with approval the cases referred to above. At [167] she summarised the key points of most relevance to that case, as follows:

> "(a) Guidance should be obtained from looking at the purpose of the provision in question (*Holland* at [39]). The primary purpose of the disqualification legislation is the protection of the public. Those who assume the status and functions of a company director should be held to certain minimum standards in the public interest. The legislation has both a deterrent element and serves as an encouragement to improve standards of behaviour …I do not think that the purpose of the disqualification legislation is sufficiently different from the purpose of the legislation considered in *Holland* materially to affect the force of the observations in that case in a disqualification context.
>
> (b) There is no single test, but an important starting point is the company's corporate governance structure. The court is seeking to identify functions that were the sole responsibility of a director or board of directors, that is, the highest level of management of the company. Those who assume and exercise powers and functions that can only properly be exercised or discharged at that highest level of management will, consistent with the purpose of the disqualification legislation, be within its scope as de facto directors. Those who are subordinate and accountable to that highest level of management will not be.
>
> (c) The test has been described as whether the individual was participating, or had the ability to participate, in decision-making as part of the corporate governing structure (which I take to mean the highest level of management decision-making). Another way of putting it is to ask whether the individual was on an "equal footing" with others in directing the affairs of the company.
>
> (d) There is a distinction between being consulted about, advising on or otherwise being involved in, decision-making in some other capacity (even in circumstances where real influence is exerted) and actually participating in making a decision as a director.

(e) The question is one of fact and degree. It must be determined objectively, by reference to what the relevant individual actually did (including, for example, whether they were held out as a director and whether they took major decisions), and looking at the cumulative effect of the activities relied on in their overall factual context."

869. As regards the purpose of the provision in question, referred to in the first of the key points set out by Falk J, the purpose of the relevant provisions in this case are to ensure that only persons who are fit and proper to do so exercise governing functions on behalf of an authorised firm. It is clearly in the public interest that directors of a firm authorised to carry on regulated activities are fit and proper to do so and the penalty provisions of s 63A FSMA act as a deterrent from persons performing those functions without approval. We do not consider that the purpose of the financial services legislation is sufficiently different from the purpose of the legislation considered in *Holland* and *The Kids Company* to materially affect the force of the observations in those cases in a financial services context.

870. Mr Purchas invited us, in the light of the authorities, to consider the following in our assessment of whether Mr T Ward constituted a de facto director namely:

(1) Whether Mr T Ward formed part of the corporate governing structure and assumed a role which imposed on him the fiduciary duties of a director.

(2) The corporate governance of FPL and how Mr T Ward fitted in.

(3) The functions performed by Mr T Ward, rather than his job title, looking at those functions cumulatively.

(4) The question of whether Mr T Ward constituted a de facto director only needs to be proven in relation to a part of the affairs of the company, so long as that part is the part of which complaint is made. Therefore, the question does not extend to whether Mr T Ward acted as a de facto director in respect of FPL as a whole.

(5) The question of whether Mr T Ward constituted a de facto director is an objective question and so the belief of Mr T Ward as to whether or not he was acting in such a role is irrelevant to the question of whether he was a de facto director.

871. We agree that the factors identified by Mr Purchas are relevant factors to take into account in deciding whether, as a matter of fact and degree, Mr T Ward was a de facto director of FPL, but they are not exhaustive. We must carry out a multifactorial assessment, weighing up all relevant factors and decide whether on balance the facts demonstrate that Mr T Ward was acting as a de facto director.

872. Mr Lloyd, in his brief submissions on the legal principles, correctly identified that one of the important issues is the extent to which Mr T Ward acted as subordinate to, and only with the authority of, Mr Page which spoke to the broader point of his place, if any, in the corporate governance structure. That issue is clearly relevant to our consideration of where Mr T Ward fitted into the corporate governance structure of FPL.

(ii) Mr T Ward's role in relation to the operation of the Pension Review and Advice Process.

873. The Authority's position was that Mr T Ward did act as a de facto director in respect of FPL's adoption and operation of the Pension Review and Advice Process. There is no suggestion that Mr T Ward acted as a de facto director in respect of FPL's business as a whole, or in relation to that part of FPL's business that did not relate to the Pension Review and Advice Process.

874. The Authority relies on the matters set out at [876] below that Mr T Ward was the relevant decision maker in relation to a number of important decisions taken by FPL regarding the adoption and use of the Pension Review and Advice Process. The Authority's position is that these facts demonstrate that Mr T Ward was acting as a de facto director and making decisions at a corporate level. The Authority says that these are not the types of decision that are consistent with Mr T Ward's account that he did not act at a directorial level, but rather as a business manager.

875. The Authority's position is that the matters relied on principally relate to the decision by FPL to adopt and use the Pension Review and Advice Process, where it contends that Mr T Ward took the decision on a joint basis with Mr Page. The Authority also relies on Mr T Ward's role in the control and management of FPL's interactions and communications with others involved in the Pension Review and Advice Process, including HJL and Guinness Mahon.

876. The matters relied on by the Authority can be summarised as follows:

(1) Mr T Ward established the business relationship between FPL and HJL.

(2) Mr T Ward had a leading role in the negotiations with Financial Ltd for HJL to be registered as an IAR of FPL.

(3) Mr T Ward's correspondence with Mr Page shows that Mr T Ward was controlling and managing the conversations with HJL and that he was taking the lead on the next steps following receipt of the initial documentation relating to the Execution - Only Process.

(4) Mr T Ward made the joint decision with Mr Page to adopt the Pension Review and Advice Process.

(5) Mr T Ward was heavily involved in the implementation by FPL of the Pension Review and Advice Process.

(6) Mr T Ward controlled and managed FPL's interactions and communications with Guinness Mahon.

(7) Mr T Ward took the lead role in novating 237 customers from HCA to FPL.

(8) Mr T Ward took the lead role in the alteration to the charging date for ongoing servicing fees payable to FPL.

(9) Mr T Ward led the FPL side of the switch of the cash element of customers' investments to the Liquid Assets Bonds.

(10) Mr T Ward took the lead role in discussions between FPL and HJL both as to the possibility of transferring all customers' funds currently invested in the Loan Notes into a range of new bonds issued by companies controlled by HJL and as to the establishment of relationships with other SIPP providers .

877. Mr T Ward took the position throughout his cross-examination that no decision was taken without Mr Page's approval and that all proposals would have been referred to Mr Page, either by email or by telephone beforehand. Mr T Ward said that they were in constant touch with each other because they sat in the same office, but, if Mr Page was not there and the matter was urgent, he would contact him on the telephone.

878. Accordingly, Mr Lloyd submitted that all of the functions that Mr T Ward exercised were carried out by him in his role as Head of Operations, the functions that he performed not being the sort that only directors can perform. Simply because Mr T Ward was a lone point of contact on a matter does not mean that he controlled the process and giving instructions on behalf of FPL as Head of Operations was not a function exclusive to a director. Mr Lloyd submitted that the issue is whether Mr T Ward acted under Mr Page's authority, and was therefore subordinate to him. Mr Lloyd submitted that there was a distinction between influencing Mr Page, which was part of Mr T Ward's role as Head of Operations, and controlling him and there was clear evidence that Mr Page was not in fact controlled by Mr T Ward.

879. In our view, our findings of fact at [529] to [557] (in relation to points (1) to (3)), at [563] to [577] (in relation to points (4) and (5)), at [632] to [635] (in relation to points (6) and (7)), at [636] to [645] (in relation to points (6),(8) and (9)) and [668] to [681] (in relation to point (10)) are sufficient to establish, as a matter of fact, the matters relied on by the Authority, as set out at [874] above.

880. We are also of the view that those matters are sufficient to warrant the finding that Mr T Ward was directly involved in the making of the key decisions regarding the adoption and operation of the Pension Review and Advice Process by FPL; and, in that area of FPL's business, which came to be its dominant business activity, Mr T Ward is properly characterised as having acted as a de facto director, albeit he was not held out as such. In that area of FPL's business, and also in relation to its proposals to expand its business into other areas, Mr T Ward exercised decisive influence in the management of FPL.

881. FPL had no formal governance structure and there was no formalisation of Mr T Ward's role within the company. Mr Page says that Mr T Ward was given the title of "Head of Operations" but in our view that was simply a label and did not properly describe the functions that Mr T Ward undertook. Nevertheless, the key decisions in which Mr T Ward participated were clearly decisions that would be expected to be taken at the highest level of management decision-making in a company such as FPL. The adoption of the Pension Review and Advice Process had a transformational effect on the nature of FPL's business changing the entire business model of the Firm.

882. It is clear to us from our findings of fact that Mr T Ward was the key link between HJL and FPL and was instrumental in making all the decisions that FPL needed to make in order that the Pension Review and Advice Process would operate in a way that met

HJL's own requirements. That is consistent with our key finding that the whole process was designed as a means of promoting HJL's products.

883. Mr T Ward clearly bought into that concept entirely. He was asked by HJL to identify an IFA who might cooperate in the process. Having identified FPL, Mr T Ward then embedded himself into FPL's business, taking a 50% share in the income generated through the process, a higher proportion than that taken by Mr Page when account is taken of the fact that Mr T Ward did not bear any of the expenses of running FPL. He therefore had a clear interest in ensuring that the process generated maximum returns for FPL and he looked at all the proposals that came from HJL in relation to amending the process or changing the range of investments from the point of view of protecting the income flow that was coming his way. Mr T Ward therefore faced both ways; he helped HJL to achieve its objectives whilst at the same time ensuring that he achieved his own financial objectives through his arrangements with FPL. This explains why Mr T Ward took the initiative in drafting and agreeing the key documents to be used in the process, in particular the Brochure and the Service Proposition.

884. Against that background, Mr T Ward needed to ensure that the affairs of FPL were run in such a way as not to prejudice his interests. He was unlikely to take a back seat and leave all the key decisions to Mr Page alone. Everybody who has assessed the characters of both Mr Page and Mr T Ward has observed that he was a forceful and confident character who tended to take the lead on key matters and that Mr Page tended to stay in the background when Mr T Ward was present. That was the assessment of Ms Hartley, who observed Mr T Ward at the meeting with the Authority on 7 July 2015, as detailed at [699] above, and the subsequent telephone call which took place on 13 July 2015, as detailed at [702] above. It was also the assessment of Ms Hallett (see [670] above) and Ms Preston-Hoar who described Mr T Ward as Mr Page's "go to man" and Mr Walmsley, based on his experience at the short notice visit of June 2015. Ms Hallett also, correctly in our view, formed the impression that it was Mr T Ward who was driving the business and the process, while Mr Page was signing off the regulated advice. Her evidence, which we accept, was that she saw Mr T Ward as part of FPL, mainly because it was Mr T Ward who would lead all the conversations on the process including what they did from a transfer point of view, who signed what documents and the investments that FPL were going to make.

885. Despite his many protestations in his cross-examination that he knew nothing about regulatory matters and left all of that side of the business to Mr Page, it is clear that Mr T Ward took the initiative in the strategy to be followed in FPL's dealings with the Authority.

886. In a small firm such as FPL, we would expect the governance arrangements to be such that decisions in respect of fundamental matters relating to the relationship of the Firm with its regulator would be taken at the highest level of management. That, in particular, would be the case in relation to how, as a matter of strategy, to deal with the Authority's enquiries regarding a fundamental matter going to the heart of the Firm's business.

887. How to respond to Mr Raphael's enquiries and how to deal with the Authority in respect of the matters raised on the call of 1 September 2014 would clearly fall into that category. Our findings of fact, at [590] to [625] and [652] to [667], demonstrate that Mr T Ward took the lead in deciding the strategy to be followed in dealing with the Authority. He took the initiative in the drafting of the response to Mr Raphael's email request, including only presenting details of the small number of historic pension switches carried out by FPL. He gave clear instructions to Mr Page as to how to respond to the Authority's questions raised during the call between Mr Raphael and Ms High. In relation to the response to Mr Raphael on 4 September 2014 he set the strategy by telling Mr Page "I have taken the view that less is more in the situation and provide the draft for discussion attached". He sought Person A's views on the draft, once again indicating his concern for the interests of HJL. Likewise, he sought to interfere in relation to the file reviews undertaken by IFAC, notwithstanding his position that he had no expertise in relation to the giving of investment advice.

888. In our view, Mr T Ward sought to take a leading role in relation to these matters in order to protect both HJL's and FPL's business model and thereby protect his own interests. In those circumstances, he was unlikely to leave the decision-making entirely to Mr Page and there is no evidence that Mr Page did anything other than go along with Mr T Ward's proposals. The governing functions in relation to the relationship with the Authority were therefore exercised by Mr Page and Mr T Ward together, with Mr T Ward being the dominant figure. His role went well beyond merely influencing Mr Page; he was part of the decision-making process.

889. Furthermore, dealing with Guinness Mahon on major issues, agreeing to novate a large number of customers, changing the date for the payment of ongoing service fees, changing the investments to be made through the process, and establishing relationships with, or considering the acquisition of, a SIPP provider are all major decisions for a firm of FPL's size and go well beyond mere operational matters. As our findings show, Mr T Ward was at the heart of the decision-making process relating to those matters and implementing the decisions which ensued.

890. These conclusions are supported by Mr Page's characterisation of Mr T Ward as his business partner in a number of his communications, as we have found. He said in interview that he could not do what he did without Mr T Ward which confirms that Mr Page would not have been able to make the key decisions regarding the adoption and operation of the Pension Review and Advice Process on his own.

891. There are other points which are of relevance but on which we have placed little weight. The first is the role of Mr T Ward on FPL's Investment Committee. Whilst we have found that Mr T Ward had a more prominent role on that committee than he represented, the committee only operated for a short period of time and we do not believe that, as an organ of governance, it superseded in any way the role taken by Mr Page and Mr T Ward jointly in making the major decisions on behalf of FPL in relation to the Pension Review and Advice Process.

892. Likewise, although we have found that Mr T Ward had access to FPL's bank account and was able to effect transactions, the evidence shows that he did not do so

without either getting the approval of Mr Page or notifying him after the event so that he could intervene. What he did was not consistent only with the making of decisions of a directorial nature.

893. We have also placed no weight on Mr Stephen's evidence regarding the letter that he wrote to the Firm on 10 December 2015 to the effect that, in HJL's dealings with FPL, the business had been consistently presented and represented either by Mr Page in tandem with Mr T Ward or by Mr T Ward alone and that it was possible that Mr T Ward might be operating as a shadow director of FPL. In his evidence to the Tribunal, Mr Stephen said that he only wrote this letter for "commercial leverage". In our assessment, Mr Stephen was not a credible witness generally, and it is impossible for us to say whether he genuinely believed that Mr T Ward was a de facto director, based on his dealings with FPL or, whether, as he now contends, that was not and is not, his genuine belief. Mr Stephen is clearly someone who will say whatever he thinks will suit his purposes at the relevant time.

894. It follows from our findings that we reject Mr Lloyd's submission that Mr T Ward acted under Mr Page's authority and was therefore subordinate to him in matters relating to the Pension Review and Advice Process. As we have said, we have found that Mr T Ward's actions went beyond merely influencing Mr Page. We do not go so far to say that Mr T Ward controlled Mr Page. That is not the relevant test. Our findings are based on the fact that the major decisions relating to the Pension Review and Advice Process were taken by Mr T Ward and Mr Page jointly, that Mr T Ward took the lead in formulating proposals for consideration and the strategy to be followed in relation to the decisions that needed to be made, and he then participated in the making of those decisions.

895. We also reject Mr T Ward's evidence that no decision was taken without Mr Page's approval and that all proposals would have been referred to Mr Page, either by email or by telephone.

896. We have found very few emails that are consistent with the approach that Mr T Ward says that he took. However, as Mr Purchas submitted, there was a clear change of approach after the Authority intervened. Before sending a document to Mr Page for discussion, Mr T Ward's email normally started with Mr T Ward saying that he attached a draft for discussion, clearly indicating that he had prepared the draft himself.

897. That is to be contrasted with an email that Mr T Ward sent to Mr Page on 22 January 2016 where the email started as follows:

> "Following our call of this am I now attach the final draft of the FCA response as per your instruction."

898. Likewise on 1 February 2016 he sent an email where he said:

> "I now attach the above as dictated over the weekend. Please check it is as you wanted mate."

899. By this time, Mr T Ward was clearly astute enough to realise that one of the Authority's lines of investigation may be whether he was exercising controlled functions without approval.

900. We therefore conclude that Mr T Ward did act as a de facto director in respect of FPL's adoption and operation of the Pension Review and Advice Process. Consequently, Mr T Ward performed a controlled function on behalf of FPL, namely the CF 1 function, without the necessary approval.

(iii) Whether Mr T Ward knew, or could reasonably be expected to have known, that he was performing a role as a director of FPL without approval,

901. From our findings at [522] to [528] above, it is clear that:

(1) Mr T Ward's experience in financial services stems back to 1978.

(2) Mr T Ward worked for the SFA, during which time he supervised regulated firms.

(3) Mr T Ward was an approved person for nearly nine years, performing management or director roles at three regulated firms, including a role in compliance.

(4) Mr T Ward confirmed that he understood what controlled functions are and the need for approval when performing them.

(5) Mr T Ward was aware that the SFA had initiated proceedings to expel him from its register and that the Authority had considered prohibiting him from performing functions in relation to any regulated activity.

(6) Mr T Ward was aware that, if FPL applied for approval for him to perform a controlled function, the Authority would take into account his disciplinary history and criminal record, and that had he applied, the application would not be successful.

902. We have also found that Mr T Ward changed his approach to his communications with Mr Page once he was aware that FPL was under investigation, having realised that the role he performed at FPL without approval may be subject to scrutiny by the Authority.

903. In our view, these findings are sufficient to warrant the conclusion that Mr T Ward knowingly performed a role as a director of FPL without approval and chose not to seek such approval from the Authority.

904. Alternatively, he clearly had such knowledge and experience that he could reasonably be expected to have known that he was performing such a role.

(iv) Whether Mr T Ward demonstrated a lack of integrity

905. It is clear that Mr T Ward demonstrated a lack of integrity in acting as a de facto director without the necessary approval in circumstances where he knew, or had such knowledge and experience that he could reasonably be expected to have known, that he

was performing a role which required approval, as we have found above. In carrying out his functions without approval, Mr T Ward failed to meet the higher standards which are expected of financial services professionals and failed to meet the ethical standards which are expected of somebody in that position.

906. In those circumstances, it is not strictly necessary for us to consider whether in addition Mr T Ward acted without integrity in performing the functions that he did without the necessary approval in order for the Authority to make out its case on the integrity issue.

907. However, as the points were argued fully before us, we shall deal briefly with the other key allegations made against Mr T Ward, as set out at [13] above. These matters are also relevant when considering the financial penalty.

> *(2) Whether Mr T Ward recklessly closed his mind to the obvious conflict of interest presented by HJL's key role in the Pension Review and Advice Process and its material financial interest in customers investing in the Loan Notes, and to the risk that unsuitable advice might be provided to FPL's customers, and was instrumental in FPL's adoption and use of the Pension Review and Advice Process.*

908. The position that Mr T Ward took in relation to all of these matters is that regulatory matters were purely for Mr Page to consider and deal with and they were not matters for him.

909. That is not a credible position. As this Tribunal said in *Alistair Burns v FCA* [2018] UKUT 0246 (TCC) at [285], even if a governing body rests prime responsibility for matters such as compliance in one of their number who is more expert than the others on such matters, that does not absolve the other members of the governing body from obtaining a sufficient understanding of the business of the firm which they are ultimately responsible for managing, the key issues that are likely to arise out of its business model, and the manner in which they are being addressed. It is not acceptable for a director to rely entirely on another director having undertaken the necessary work to be satisfied that the firm is compliant with the Authority's regulatory requirements without himself taking a close interest in the manner in which those functions were being discharged.

910. Consequently, Mr T Ward acted recklessly by closing his mind to the risks to FPL's business which arose out of the following matters:

> (1) Mr T Ward was aware of the need to identify conflicts of interest and that they should be managed/disclosed.
>
> (2) Mr T Ward closed his mind to the conflict of interest presented by HJL's key role in the Pension Review and Advice Process and its material interest in the Loan Notes and the Liquid Assets Bonds. It was Mr T Ward's evidence that "Mr Page was dealing with it" and that he "did not see anything wrong with it".
>
> (3) Mr T Ward was aware that HJL had financial interests in the Loan Notes and the Liquid Assets Bonds. Despite this Mr T Ward closed his mind to those

conflicts. These points would have been apparent to Mr T Ward given the level of interaction he had with HJL during the Relevant Period.

(4) Mr T Ward agreed that there are risks in outsourcing and that a firm should ensure that the service provider has the ability, capacity and appropriate regulatory requirements but he took no account of those risks and thereby closed his mind to them.

(5) Mr T Ward closed his mind to the risk that unsuitable advice might be provided to FPL's customers. He suggested that FPL adopt a "*suck it and see approach*": see our finding at [547] above.

(6) As our findings in relation to Mr T Ward's role as a de facto director demonstrate, he was instrumental in the adoption and use of the Pension Review and Advice Process by FPL yet closed his mind to the risks that the process may not be compliant with the Authority's regulatory requirements

(3)Whether Mr T Ward disregarded the interests of FPL's customers and showed a willingness to enrich FPL, himself and third parties at their expense.

911. Mr T Ward states that he "completely" rejects this allegation, but, as Mr Purchas submitted, right from the outset Mr T Ward expressed this willingness. As set out at [547] above, in an email dated 7 March 2014, Mr T Ward stated that Mr Page and he would earn 3% on all transfers and that it would "simply be a case of putting our name to it and effecting the transfer". He goes on to say in the same email "that would generate us gross a ridiculous £200k plus per month!!!!!"

(4) Whether Mr T Ward placed the interests of HJL above the interests of FPL's customers.

912. We also accept that Mr T Ward did not have due regard to customers' interests in FPL's communications regarding the proposed change in customers' investments from cash to the Liquid Assets Bonds and the reinvestment of interest generated into those Bonds. Our findings at [640] demonstrate that Mr Ward had a leading role in preparing the "negative approval" letter that was drafted in early February 2015 which, as we found in relation to Mr Page's reference, was an inappropriate way in which to proceed. As we found at [641] Mr T Ward took the lead in dealing with Guinness Mahon on the arrangements for recording the switches.

913. It was also the case that Mr T Ward regularly reported to HJL, in particular Person A, on the progress of the switching process.

914. We have concluded that Mr T Ward had a dual role in that he assisted HJL in making or proposing changes to the existing arrangements which affected FPL as well as assisting with the implementation of those arrangements within FPL, without regard to customers interests. For example:

(1) Mr T Ward took instructions from HJL in relation to the novation of customers to FPL from HCA: see our findings at [632] to [635] above. Indeed,

Mr T Ward stated he was "happy to" follow HJL's lead on the matter in an email of 17 December 2014 to Mr Stephen.

(2) As we found at [680] and [681] above, in March 2015 Mr T Ward took a leading role in relation to the possibility of transferring all customers' funds currently invested in the Loan Notes into a range of new bonds issued by companies controlled by HJL.

(5) Whether Mr T Ward took deliberate steps to control and influence the content and flow of information that FPL disclosed to the Authority.

915. It is the Authority's case that Mr T Ward deliberately provided, on behalf of FPL, false and misleading information, and omitted to provide relevant information, to the Authority about FPL's business arrangements. The Authority contends that Mr T Ward intentionally did this to try to prevent the Authority from identifying misconduct by him and FPL, and in so doing acted dishonestly.

916. The Authority relies on the response given to Mr Raphael in August 2014 to his request for details of FPL's new business register, Mr T Ward's participation in the call with the Authority that took place on 1 September 2014, and the subsequent follow up email sent on 5 September 2014.

917. We have already dealt with these matters in relation to Mr Page's reference, finding at [823] to [831] above that Mr Page acted dishonestly by deliberately providing false and misleading information to the Authority, or omitted to provide relevant information to the Authority about FPL's business arrangements.

918. We come to the same conclusion in relation to Mr T Ward in respect of those matters.

919. We have found that the new business register sent to the Authority on 20 August 2014 was incomplete and created a misleading impression.

920. As we found at [594] above, Mr T Ward took the initiative in the drafting of the response that was provided by Mr Page to the Authority on 20 August 2014. In our view, Mr T Ward deliberately drafted a new business register that he knew was incorrect and knew that Mr Page would provide it to the Authority and would thereby be providing false information to the Authority. Mr T Ward stated that he understood the request to be for work that was completed rather than in the pipeline. As we found in relation to Mr Page, this is not credible given the wording of the request namely to provide a "detailed new business register stating all business the Firm has *arranged* via a SIPP or SSAS arrangement". As we found in relation to Mr Page's reference, many more transactions had clearly been "arranged" according to the ordinary meaning of that word and Mr T Ward knew that to be the case. In particular:

(1) As of 11 August 2014, he knew that FPL had pension switch business through the Pension Review and Advice Process.

(2) Mr T Ward was also receiving regularly, if not usually daily, summary spreadsheets on the numbers of customers coming through the Pension Review and Advice Process.

(3) On 18 August 2014, Mr T Ward was aware that the value of pension pots being switched was £802,000.

921. We therefore reject Mr T Ward's position that a new business register only indicates completed business and so there was nothing misleading. Mr T Ward accepted that he was "absolutely" aware of the requirement to be open and cooperative with the Authority, but his position was that FPL "answered the question". However, Mr T Ward knew that the request for the information was in connection with SIPP switching. As Mr Purchas submitted, and in common with our findings in relation to Mr Page, if he was seeking to be open and cooperative with the Authority, Mr T Ward should have made the Authority aware of the business that was in the pipeline. We therefore agree with Mr Purchas that Mr T Ward was equally culpable alongside Mr Page in that Mr T Ward prepared the false and misleading information that was provided to the Authority.

922. As set out above in respect of Mr Page, a telephone call took place on 1 September 2014 between Mr Page and the Authority. We have addressed the emails that we have found were sent during this call at [605] to [614] above.

923. Mr T Ward states that he wrote "DONT SAY THAT THEY COLD CALL MATE" on the basis that they "should not confirm any information about the marketing company until we knew what the true position was". This was not a credible reading of the email. As we found at [827] above, Mr T Ward instructed Mr Page not to inform the Authority that Taylor Barton did in fact cold call clients, when he understood that to be the case. As we also found, Mr T Ward's strategy was to tell the Authority as little as possible about FPL's current business.

924. As we found at [619] to [621] above, on 5 September 2014, an email was sent by Mr Page, but drafted by Mr T Ward, to the Authority relating to the possible use of cold calling in the Pension Review and Advice Process. It also stated that FPL did not use the services of unauthorised firms and described the activities FPL was involved in, but in so doing did not correct the misleading impression given by the new business register previously provided.

925. As we found in relation to Mr Page's reference, the email was deliberately intended to mislead the Authority about FPL's business.

926. As we found at [618] above, before Mr Page sent the email to the Authority, Mr T Ward sent the draft to Person A and Mr Page. The cover email stated "I [Mr T Ward] have taken the view that less is more in this situation…" It was clear from this email that the intention was not to give the full picture to the Authority and that Person A was involved in reviewing the draft that was ultimately sent to the Authority.

927. As Mr Purchas submitted, the email was a clear opportunity to be open with the Authority and to correct the misleading impression given by the information in the new

business register previously provided. Mr T Ward not only misled the Authority but failed to take the opportunity to be open and honest with the Authority.

928. We have found that Mr T Ward deliberately encouraged Mr Page to provide false and misleading information to the Authority and he knew that such false information would be provided to the Authority by Mr Page. Ordinary decent people would regard such behaviour as dishonest.

929. Accordingly, we find that Mr T Ward took deliberate steps to control and influence the content and flow of information that FPL disclosed to the Authority. He encouraged Mr Page to withhold important information from the Authority and deliberately drafted communications and instructed Mr Page to provide communications to the Authority that were false and/or misleading.

(6) Conclusion on integrity

930. The findings that we have made as set out above demonstrate overwhelmingly that Mr T Ward acted without integrity in performing functions for FPL during the Relevant Period. Had he been approved by the Authority to undertake the CF 1 function he would have breached Statement of Principle 1 (Integrity) of the Authority's Statements of Principle for Approved Persons when carrying out his functions as an approved person throughout the Relevant Period.

Conclusion on Issue 1

931. We find that Mr T Ward performed the CF 1 controlled function without approval in breach of s 63A FSMA and his conduct would have amounted to a breach of Statement of Principle 1 had he been so approved.

Issue 2: Financial Penalty

932. In our view Mr T Ward's failings are very serious. They are as serious as those of Mr Page, bearing in mind that we have found that Mr T Ward took all the major decisions relating to the adoption and use of the Pension Review and Advice Process jointly with Mr Page. Consequently, we repeat the observation that we made in relation to Mr Page's failings, namely that the allegations made against Mr T Ward are the most serious that we have encountered in respect of a small IFA firm in terms of (i) the number of separate allegations of acting without integrity; (ii) the impact that Mr T Ward's actions have had in relation to a large number of unsophisticated consumers; and (iii) the impact on other IFA firms in terms of the effect on the calls on the FSCS to which all authorised firms in the relevant category have to contribute.

933. In our view, the imposition of a very substantial financial penalty in this case is justified and appropriate. As we said in relation to Mr Page, the Authority's penalty policy states that the principal purpose of imposing a financial penalty is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour.

934. In common with what we said about Mr Page, we are particularly concerned by the approach Mr T Ward took to FPL's dealings with the Authority. He set the strategy of disclosing as little as possible about FPL's participation in the Pension Review and Advice Process and encouraged Mr Page to provide false and misleading information to the Authority. As we said in relation to Mr Page's reference, had the Authority not been misled then much of the consumer detriment that has occurred probably would not have happened.

935. The Authority seeks the same level of financial penalty that it set out in the Decision Notice, which was calculated by applying the five-step framework set out [102] above.

936. We received no challenge from Mr T Ward to that approach and, therefore, in accordance with the usual practice, we should pay that policy due regard when carrying out our overriding objective of doing justice between the parties.

937. We see no reason to dispute the calculations made by the Authority to determine the financial penalty which Mr Purchas set out in detail in his closing submissions. In summary:

Step 1: The Authority calculates an amount of £ 317,358 to deprive Mr T Ward of the financial benefit derived directly from his breach of s 63A FSMA inclusive of interest calculated as described below, up to the date of Mr T Ward's Decision Notice. The Authority seeks continuing interest on the principal amount of that benefit at the rate of 8% per annum from the date of the Decision Notice, consistent with the policy set out in DEPP 6.5B.1G which states that the Authority will ordinarily charge interest on the amount of the benefit. The rate of 8% per annum is consistent with the judgment debt rate of 8% simple per year under s 17 Judgements Act 1838 (as amended by Article 2 Judgements Debts (Rate of Interest) Order 1993). This rate of interest is also consistent with the amount of interest typically awarded by the FOS and in our view is the appropriate rate to be applied in the current circumstances.

Step 2: The Authority placed the seriousness of Mr T Ward's breach to be Level 5, the highest level, which results in an additional penalty sum of £99,241, being 40% of the relevant income earned by Mr T Ward during the period of Mr T Ward's breach.

We agree with that assessment, bearing in mind the following factors:

(1) Mr T Ward's conduct was deliberate. He knew, or had such knowledge and experience that he could reasonably be expected to have known, that he was performing a controlled function without approval and chose not to seek such approval from the Authority, knowing that if it were sought it would have been refused because of his past record;

(2) Mr T Ward's motivation was for financial gain for himself;

(3) the significant loss incurred by a large number of consumers many of whom were vulnerable;

(4) the length of time over which the breaches occurred;

(5) Mr T Ward's senior position at the Firm;

(6) the number of serious allegations of dishonesty and reckless conduct; and

(7) the repeated instances of encouraging the serious misleading of the Authority.

Step 3: The Authority identified no aggravating and mitigating factors.

We agree with that assessment.

Step 4: The Authority considered that the Step 3 figure of £99,241 represents a sufficient deterrent and so did not increase the penalty at Step 4.

938. Consequently, the Authority seeks a financial penalty of £416,558. That is a very large sum to be imposed on a person performing functions in a small IFA firm. However, FPL took on a large amount of business during the Relevant Period and in our view the figure is justified by reference to the scale of the business conducted during that period, the seriousness of the breaches and the need to dissuade any other IFA firm from taking a similar path in the future. We also believe that a penalty which is larger than that imposed on Mr Page is justified bearing in mind Mr T Ward's pivotal role in bringing the opportunity to work with HJL to FPL, his actions in putting the interests of HJL before those of FPL's customers and the fact that he received a greater financial benefit than Mr Page.

939. We therefore determine that it will be appropriate for the Authority to impose a financial penalty of £416,558 on Mr T Ward, plus continuing interest on the amount of the benefit received by Mr T Ward, as calculated above.

Issue 3: Prohibition

940. Mr T Ward made no submissions challenging the imposition of a prohibition order were the allegations made against him to be established.

941. As we have found, Mr T Ward has been found to have acted as a de facto director of FPL without approval and to all be lacking in integrity as a result of a series of breaches committed over a lengthy period. It is clear that the imposition of a prohibition order by the Authority under s 56 FSMA on the grounds that Mr T Ward is not a fit and proper person to perform any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm is a course of action reasonably open to the Authority on the basis of the findings that we have made. We therefore see no basis on which we should interfere with the Authority's decision in that regard.

VII. THE HENDERSON REFERENCE

Findings of Fact

Introduction

942. We start with our findings of fact which are specific to Mr Henderson's reference. These are to be read in conjunction with the findings that we have made on matters which are common to all of the references, as set out above.

Background to HCA and its involvement in the Execution-Only and Pension Review and Advice Processes

943. Mr Henderson has worked in the financial services industry since leaving university in 2004, including working at Legal and General and Bates Investment Services. He accepted in cross-examination that he was aware of the regulatory requirements relied on by the Authority in these references.

944. HCA was a small firm with its registered address in Neston, Merseyside. It was supervised by the Authority as a flexible portfolio firm and was authorised by the Authority on 15 February 2010 with permission, among other things, to provide investment advice (excluding Pension Transfers and Pension Opt Outs) and arranging (bringing about) deals in investments.

945. Between 30 October 2013 and 8 July 2015, Mr Henderson was the only CF 1 Director approved by the Authority at HCA. Mr Henderson was approved to perform the CF 1 (Director), CF 11 (Money Laundering Reporting) and CF 30 (Customer) controlled functions at HCA on 15 February 2013 and the CF10 (Compliance Oversight) controlled function on 17 July 2013. Prior to that time Mr Eric London performed the Compliance Oversight controlled function and continued to work on the compliance side part-time for a period after that date. Mr Henderson was the only CF 30 at HCA during the Relevant Period to have responsibility for the pension switches/transfers to the Loan Notes. Mr Henderson holds a Level 4 diploma in Financial Planning from the Chartered Insurance Institute and other qualifications related to investment risk and financial planning.

946. It was during the middle of 2013 that Mr Henderson was introduced to Mr Stephen and Mr King through Mr N Maynard. Mr Henderson and Mr N Maynard were involved in developing the technologies that led to LeadTracker.

947. Mr Stephen and Mr King described their relationship with Guinness Mahon to Mr Henderson, saying that they had a product investing in real estate projects on Guinness Mahon's approved investment list and were looking to transact more business for retail pension clients. That product became the Loan Notes.

948. The extent to which Mr Henderson carried out any independent due diligence on the Loan Notes is unclear. He says he relied on Mr N Maynard's pre-existing relationship with Mr Stephen and that Guinness Mahon had undertaken its own due

diligence on the Loan Notes. Mr Henderson appears to have relied heavily on information provided by HJL. Mr Henderson accepted in his cross-examination that the majority of the due diligence materials in HCA's files were from HJL. Mr Henderson says that he reviewed the AIGO IM, although no copy of the final version of the Information Memorandum is to be found in in his due diligence files; only a draft dated 30 October 2013. We accept that Mr Henderson reviewed the AIGO IM before entering into any arrangements with HJL, albeit in draft form.

949. HJL and CAL were newly incorporated entities when HCA agreed to work with them. It appears that Mr Henderson carried out limited due diligence on those entities and their officers. As we have said, this was largely focused on establishing that the entities existed and establishing the identity of the officers.

950. Mr Henderson appears to have relied on EFP's relationship with HJL and Mr N Maynard's relationship with HJL and says he was a "good judge of financial services companies". He said he had the feeling that HJL was a well-run organisation, based on his visit to their offices, and he had looked up Mr Stephen on the Internet.

951. As regards Mr Henderson's due diligence on HJL itself, Mr Henderson stated that he had looked at Mr Stephen and Mr King's CVs. No copies of Mr Stephen or Mr King's CVs are found in Mr Henderson's due diligence files. Mr Henderson also stated that in September 2013 he checked Companies House. However, the printout from Companies House shows that the first entries relating to HJL were made after September 2013 and so Mr Henderson could not have carried out the due diligence described on those dates.

952. Mr Henderson stated that he knew of Person A's background in around November or December 2013. Mr Henderson did not think it necessary to carry out any due diligence on Person A. He said that there was no reason to be alarmed by Person A's background because he was not an employee of HJL the time, he was simply a consultant to that company.

HCA's participation in the Execution-Only Process

953. On 30 October 2013, HCA entered into an agreement with HJL whereby HJL was appointed as HCA's IAR. In an email to Mr Stephen and Person A informing them that he had signed the agreement, Mr Henderson said "here's to a fruitful relationship and us all making a nice amount of money!" Mr Henderson accepted in his cross-examination that at that stage he knew that HJL would receive a commission from AIGO of 5% of the amount of each investment made in the Loan Notes.

954. On the same day Mr Henderson emailed Mr N Maynard attaching draft template letters and the client agreement to be used for the Execution-Only Process.

955. The final version of the client agreement referred to the fact that the customer had been introduced to HCA from HJL who was an IAR of HCA as HJL were not themselves permitted to conduct financial planning business.

956. The agreement said that the customer had requested HCA to review and submit the application to the Global SIPP administered by Guinness Mahon and that the customer had not requested HCA to provide financial advice in relation to investments.

957. However, the agreement also provided for the customer to permit HCA to contact them to perform a full financial planning review at any point in the next twelve months. This was to enable HCA to present its services to the customer with the hope that, by so doing, it would expand its client base within the UK. The agreement went on to state that HCA's typical fee would be £500 to deal with an execution only transaction, however, the fee would be waived on the proviso that the customer confirmed that they were happy for HCA to contact them in the future relating to other areas of financial planning.

958. No disclosure of any conflicts of interest was made in the customer agreement. However, in the covering email sending the draft to Mr N Maynard, Mr Henderson asked who HCA would invoice and how they would get paid. He said "It would look extremely suspect if we were being paid by Hennessy Jones would it not and I assume this represents a conflict in interest?"

959. In his evidence, Mr Henderson said that the conflict he was referring to was the fact that HCA were to be paid by HJL for the provision of training services. However, that explanation was given for the first time in his live evidence and in our view it is clear from Mr Henderson's email that his real concern was the potential conflict of interest if HCA were paid by HJL for providing the execution only services pursuant to the client agreement. This demonstrates that Mr Henderson was aware that there were potential conflicts between the interests of HJL and the interests of those who became customers of HCA through the client agreement. In addition, HCA had a conflict of interest policy which required it to notify a customer of any identified actual or potential conflict so the customer could make an informed decision about whether or not they wished to proceed.

960. By this time, Mr Henderson had read a draft of the AIGO IM and so would have been aware of the fact that HJL would be receiving a 5% commission and that HJL was promoting the Loan Notes in order to provide funding for its real estate activities. He accepted that he was also aware that Mr Stephen was identified as the main individual associated with the Commercial Property Fund and was part of the management team in relation to the Natural Resources Fund and the Residential Property Fund. However, he denied that the 5% commission acted as an incentive to HJL to procure investment into the Loan Notes, which is not credible.

961. Mr Henderson was aware that HJL would be involved in finding potential customers for investment in the Loan Notes through the Execution-Only Process and that these customers would receive no other advice. He accepted that there was a risk of customers being encouraged to invest in the Loan Notes for reasons of which he would not have been aware.

962. He did, however, deny that the incentives that HJL had for getting customers to invest in the Loan Notes could create a stark divergence of interest between HJL and

the customer given that it was in HJL's financial interest for customers to invest, but the customer risked switching their pension assets into something that was unsuitable.

963. Mr Henderson declined to comment further on that proposition and denied that it was something that he was aware of at the time, saying that it was something he just did not think about. We do not find that explanation credible in the light of his email to Mr N Maynard which clearly identified that there was a potential conflict. We therefore find that Mr Henderson was aware of the divergence of interest described at [959] above. He also said in his evidence that he wished he had disclosed the fact that HJL would be receiving a 5% commission in the execution only client agreement.

964. The first execution only pension switch into the Loan Notes facilitated by HCA took place on 12 December 2013. On 18 December 2013, HJL was registered as an IAR of HCA.

965. HCA's Compliance Officer's Annual Report for the period ended 28 February 2014, which was prepared by Mr Henderson and presented to and considered by HCA's Board, made reference to the arrangements agreed with HJL. The Report referred to the fact that HJL was an IAR which had introduced potential clients who wanted a pension review. These leads had been obtained through marketing companies who contacted people who had entered their details online in response to an offer of a free review of their retirement plans. The report said:

> "we still maintain HCA do not cold call or contact Clients through unsolicited post for example"

966. Mr Henderson confirmed that he did not check the marketing agreements used by HJL and did not check regularly whether cold calling was going on. However, Mr Henderson denied that HJL were cold calling, saying that he did not know what he could have done to monitor HJL's introducer agreements with the marketing companies, but that he was fully under the impression that the marketing companies were told not to cold call. As we found in relation to Mr Page's reference, some of the marketing companies did cold call, notably Taylor Barton, who referred to HCA as being an IFA on whose behalf they were acting during some of the calls they made.

967. The last HCA execution only transactions were completed on 11 August 2014.

HCA's participation in the Pension Review and Advice Process

968. On 30 January 2014, HCA signed an agreement for a licence to use LeadTracker. During February and March 2014, Mr Henderson assisted with the preparation of the scripts and other documentation to be used in the Pension Review and Advice Process. Mr Henderson also undertook compliance training for staff at HJL during this period.

969. During 2013, HCA had been the subject of enquiries by the Authority into their advisory practices where clients used a SIPP to invest in underlying non-standard investments. The Authority's concerns arose because of HCA's activity in relation to arranging for their clients to invest in carbon credits through a SIPP.

970. On 6 March 2014, the Authority wrote to Mr Henderson expressing its concerns that HCA's sales processes may not have complied with the Authority's requirements when it advised clients about moving money into SIPPs to invest in non-standard investments.

971. The Authority went on to say:

> "We take the view that advice should not be treated as being confined to a consideration of the advantages or disadvantages of a particular investment without considering the wider financial or investment context in which the advice is given. Advisers should consider whether the entire replacement contract, including the investments that will be held within it, is more suitable for the customer than the original investment; if it is not, the SIPP is unlikely to be suitable."

972. The Authority's letter noted that HCA had been open and transparent by disclosing the relevant activities and noted that HCA had stopped doing that type of business of its own accord. However, the Authority also said that its concerns about HCA's sales processes and advice were sufficiently serious that the Authority considered it necessary to invite HCA voluntarily to vary its permission.

973. Accordingly, on 14 March 2014, HCA agreed to a Voluntary Requirement to the effect that it would not carry on any regulated activities in relation to pension switches and/or pension transfers to any SIPP except where the member's funds are to be invested wholly in "standard investments". The Voluntary Requirement defined "standard investments" as being assets which must be capable of being: (i) accurately and fairly valued on an ongoing basis; and (ii) readily realised whenever required (up to a maximum of thirty days) for an amount that can be reconciled with the previous valuation.

974. This document was signed shortly after Mr Tunkel had written his letter of advice of 12 March 2014 to Mr Henderson on the question of whether the Loan Notes could be regarded as "standard assets", as referred to at [319] to [322] above. As we found at [320] above, Mr Tunkel's advice was heavily caveated and, in our view, a reasonably competent IFA would not have relied on it as definitive advice.

975. On 12 March 2014, the activities of HCA and HJL in relation to the Execution-Only Process came to the attention of the Authority. Mr Ali opened a case on that day following reports to the Authority of consumers having been contacted by representatives of HJL to discuss their pension planning and one consumer being recommended to move his pension from Scottish Widows to a SIPP with Guinness Mahon. The matter became linked to HCA because of the fact that HJL was registered as an IAR of HCA. In his evidence Mr Ali confirmed that he was aware of that link at the time.

976. On 9 May 2014, Mr Ali called Mr Henderson asking him to call him back. Mr Ali's evidence was that the purpose of telephoning Mr Henderson would have been to ask him to look into the reports and provide an explanation. There is no record of Mr Henderson having called Mr Ali back. On or about 27 May 2014, Mr Ali drafted an

email to Mr Henderson which was not ultimately sent, but was preserved on the Authority's records relating to the case opened by Mr Ali. The draft email stated that it had been brought to the Authority's attention that HJL may have been involved in pension-related activities, such as advising on SIPPs, but were only listed as an IAR on the Authority's register. The draft email asked Mr Henderson to provide Mr Ali with information as to what actions he was taking to address the issue as HCA was the principal for this firm; and what systems and controls HCA were going to put in place to ensure that all appointed representatives or IARs taken on in the future only used the correct permissions which the principal had been granted by the Authority.

977. The reason the email was not sent was because Mr Ali became aware that another case had been opened relating to Mr Henderson. This was opened on 30 May 2014 because the Authority had received an email on 22 May 2014 from a regulated firm reporting that one of the firm's clients had been approached by Taylor Barton about the possibility of transferring their pension to a new provider and that the client had then been referred to HCA.

978. It does not appear that Mr Ali or anybody else at the Authority took any further action in relation to this matter at the time. We address below what took place between the Authority and HCA before it intervened in relation to HCA in July 2015.

979. On 2 April 2014, Mr Henderson asked Ms Farrell to visit HCA in order to conduct a compliance review. On 10 April 2014, that visit took place and was followed up by a written report from Ms Farrell. The report makes no reference to the arrangements with HJL, the Loan Notes or HCA's plans to participate in the Pension Review and Advice Process. Although Mr Henderson said at first in his cross examination that he thought that Ms Farrell was aware of the Loan Notes in April 2014 there is no evidence to support that assertion and he agreed that he did not discuss with Ms Farrell the processes that were being used with HJL or the Pension Review and Advice Process at that time. Ms Farrell confirmed in her witness statement that she did not recall during the meeting on 10 April 2014 that there was anything not standard or contentious about the business being conducted. She also recalled no mention of an automated model for producing pension recommendations or any conversation regarding the underlying investments that HCA was recommending. The compliance report notes that customer files were not reviewed during the visit.

980. Bearing in mind Mr Henderson's admission regarding the processes, and the fact that there is no reference in the compliance report to either the Loan Notes or the Pension Review and Advice Process, we find that the matter was not discussed with SimplyBiz at that time and that Ms Farrell was not aware of the Loan Notes at the time of the visit and the preparation of her report.

981. On 2 May 2014, HCA entered into a Standard Service Agreement with HJL pursuant to which HJL commenced acting as the provider of the Outsourced Functions as well as continuing to source leads for HCA. That agreement was in similar terms to the agreement signed between HJL and FPL on the same day, as described at [359] above. The first pension switch conducted on an advised basis by HCA took place on 8 May 2014.

Events during HCA's use of the Pension Review and Advice Process

982. On 2 September 2014, Mr Raphael telephoned Mr Henderson seeking information regarding HCA's business in respect of SIPPs. It would appear that the call was prompted because of an external complaint to the Authority. On 3 September 2014, Mr Raphael provided Mr Henderson with links to the two alerts issued to IFAs in relation to SIPPs and underlying unregulated investments, together with links to the consumer alert and accompanying leaflet that had recently been issued.

983. Also on 3 September 2014, Mr Henderson replied to Mr Raphael saying that he would ensure that the material provided by Mr Raphael would be passed on to HCA's IARs and he confirmed that "we no longer advise on unregulated, non standard investments..." Mr Raphael responded thanking Mr Henderson for his confirmation and matters were not pursued any further at that stage.

984. As we found in relation to Mr Page's reference, on 13 October 2014 the Pension Review and Advice Process changed with HJL no longer being both introducer and performing the Outsourced Functions. HJL continued to act as introducer, whilst CAL performed the Outsourced Functions for the Pension Review and Advice Process. Unlike FPL, HCA did not appear to enter into a new agreement with CAL, but as we found at [361] above, in practice CAL did provide administration services to HCA.

985. In December 2014, Mr Slater was assigned a case concerning HCA and its pensions-related business. The Authority had received information regarding HCA's activities through its Contact Centre. There was a concern as to whether HCA was breaching the terms of the Voluntary Requirement that it entered into in March 2014 to the effect that it would not carry on any regulated activities in relation to pension switches and/or pension transfers to a SIPP except where the member's funds were to be invested wholly in standard investments. The information concerning HCA's activity in this area, which would have been available to Mr Slater at the time through the Authority's systems but which he does not specifically remember reviewing, included the following:

(1) An intelligence report prepared by the Authority dated 10 March 2014 reporting that consumers were contacted by representatives of HJL to discuss their pension planning one of whom was told that he could improve his situation by moving his Scottish Widows contract to the GM SIPP. Attached to the report were copies of a summary of the AIGO IM, including particulars of the various Cells and copies of customer documentation for the Execution-Only Process, including a letter from HCA acknowledging completion of a client agreement and stating that the papers were ready for submission to Guinness Mahon to transfer the customer's funds into the GM SIPP. That letter also confirmed that the customer had not requested that HCA advise on the suitability of the transaction or the underlying proposed investments.

(2) An email from a regulated firm to the Authority in October 2014 expressing concern at a letter the firm had received from Scottish Widows informing the firm that its client had transferred his pension from Scottish Widows to a GM SIPP and that Guinness Mahon had informed the firm that HCA

had advised the client to invest in unregulated investments. The firm expressed concern that HCA may have breached the terms of its Voluntary Requirement, which appeared on the Authority's register.

986. It was therefore clear that by March 2014 the Authority had some information regarding the nature of the Loan Notes and the Execution-Only Process. In October 2014, it knew that HCA was still involved in pension switches and that concern had been expressed to the Authority by another regulated firm that those switches may be being made into unregulated investments.

987. Mr Slater confirmed in his cross-examination that it would appear that "red flags" were in existence in March 2014 and known to the Authority as regards to HCA's involvement in execution only business relating to the Loan Notes.

988. On 8 January 2015, Mr Slater emailed Mr Henderson by way of a follow-up to the communications that Mr Henderson had had with Mr Raphael in September 2014 and the earlier communications regarding the Voluntary Requirement. Mr Slater asked Mr Henderson for HCA's new business register covering the period from 1 January 2014 to date and a copy of the firm's current PII certificate.

989. In response to a request for clarification by Mr Henderson as to what was to be provided, Mr Slater gave further information as to what he wanted in order for him to build a picture of what products were being recommended, both in terms of the pension provider and the underlying investment, as well as the source of the business. Mr Slater explained that he wanted to understand whether the firm had arrangements with any introducers and that the involvement of one introducer in a high number of cases would be a trigger for further investigation, particularly where the introducer had links to the proposed underlying investment. Mr Slater also requested Mr Henderson confirm whether in each case advice was provided on the underlying investment and on the SIPP arrangement.

990. On the same day Mr Henderson responded to confirm that he would provide the information requested. He also noted that HCA did not undertake any pension transfers and that it only recommended standard investments in line with the requirements of the Voluntary Requirement.

991. On 23 January 2015, Mr Henderson provided Mr Slater with a copy of the firm's new business register by email. Mr Slater noticed that a very significant proportion of the business undertaken by HCA involved switches to one SIPP provider, namely Guinness Mahon. The "investment" column of the new business register described the investments as either "Loan Note" or "Standard Asset". This did not give Mr Slater all the information he needed because it did not enable him to assess properly the investments being recommended and the nature of the business being undertaken by HCA. He therefore asked for more information on the new business register, including copies of the documents given to customers in relation to Guinness Mahon and clarification of the reference to standard assets. Mr Slater also asked Mr Henderson to provide copies of three named client files.

992. In response to the query about standard assets, on 6 February 2015, Mr Henderson simply provided a copy of the Authority's own guidance on standard assets. Mr Slater said he would have expected Mr Henderson to provide him with details of the underlying investment recommended in each case and he thought Mr Henderson was being evasive in failing to respond properly to his request.

993. Mr Slater said that as a result of the nature of Mr Henderson's replies he strongly suspected that this might be a case of pension mis-selling. Although he had a strong sense that something was not right at HCA, he did not understand specifically what or why. He suspected that Mr Henderson had been providing inadequate advice to customers, but had not got to the bottom of this and had not taken the view that there had definitely been breaches of the Authority's rules or what had been breached. He kept an open mind at this stage.

994. On 9 February 2015, Mr Slater asked Mr Henderson to provide an explanation of the underlying assets included in each SIPP and repeated his request for copies of the client files.

995. On 13 February 2015, Mr Henderson provided a limited explanation of the underlying investments. He repeated that the investment was "classed as a standard asset" as it was a structured product. He said "the actual investment notes are a series of ten year 8% coupon loan notes with a 30 day realisation. If you require further information then please let me know what it is you require and I will do my best to provide you with these." He also provided the client files.

996. For each customer file Mr Henderson included a file review sheet headed "ADVICE REVIEW – PENSION SWITCH RELATED CONTRACTS". They each purported to be a detailed file review undertaken of each of the customer files concerned undertaken by Mr Henderson in March, April and August 2014 respectively.

997. When providing the files to the Authority, Mr Henderson also told the Authority that he reviewed around 30% of high-risk customer files, which would include pension switches, to confirm they were compliant.

998. It is the Authority's case that Mr Henderson specifically created the file review sheets for provision to the Authority to give a false impression that compliance checks were being conducted on a regular basis, an issue we return to later at [1143] to [1147] below.

999. Mr Slater's review of the client files led him to be "fairly certain" that there were failings in the advice given by HCA, namely that the advice did not match customers' circumstances. Mr Henderson also provided Mr Slater with a memorandum explaining that he had identified 19 cases in which HCA had provided pension transfer advice outside the Firm's permissions. Mr Henderson explained that in the course of responding to Mr Slater's request for client files he had identified that pension transfer advice had been given to one of the customers. That prompted him to review other customer files which resulted in Mr Henderson identifying a total of 19 cases in which HCA had acted outside of its permissions.

1000. Mr Slater was concerned on reading Mr Henderson's memorandum. He did not believe it was credible that Mr Henderson, as the sole adviser, could have given pension transfer advice in 19 cases and not noticed. That suggested to Mr Slater that Mr Henderson did not have control over what business was being done by his firm and that there might be another person or party involved. He said that there was sufficient information now for the Authority to think that it needed to look closer at the position. He could see that there were potential connections with other parties, but it was not 100% clear.

1001. Mr Henderson had provided some explanation as to the software, namely Lead Tracker and that it was an issue with LeadTracker that led the firm to give pension transfer advice. However, Mr Henderson's memorandum did not provide a full explanation as to the function of LeadTracker and did not make clear exactly what Mr Henderson's role was in the advice process. The memorandum also did not include an explanation as to the role of third parties in the advice process. Mr Slater was concerned by the use of software given that it resulted in HCA acting outside its permissions in 19 cases, apparently without Mr Henderson's knowledge.

1002. As a result of the information provided by Mr Henderson on 13 February 2015, Mr Slater now believed that the advice given did not take into account customers' needs and circumstances and he became aware, through fact sheets included in customer files, of some information about the Cells. Mr Slater also knew about 19 pension transfers conducted outside HCA's permissions suggesting that Mr Henderson might not have control over the advice being given by HCA. This information further enhanced Mr Slater's suspicions that HCA and Mr Henderson were involved in pension mis-selling and that it was highly likely that misconduct had occurred.

1003. On 17 February 2015, Mr Slater emailed Mr Henderson asking him:

(1) whether he provided customers with any information regarding the Cells other than the fact sheets annexed to the suitability reports;

(2) whether all of the customers in the new business register who had been recommended to the GM SIPP were also recommended an investment in the Loan Notes issued by the Cells; and

(3) to confirm that the new business register contained all business transacted by HCA during the period from 1 January 2014 onwards.

1004. On 10 March 2015, Mr Henderson answered the second question set out above, confirming that the Loan Notes were the only investments recommended.

1005. Mr Slater continued to correspond with Mr Henderson, obtaining further information from him and other sources, adding to Mr Slater's understanding of the pensions business being conducted by HCA, including the scale of the business involving the GM SIPP and AIGO, the advice process used by HCA and the nature of the Loan Notes.

1006. Mr Slater maintained a note under the heading "High Risk Cases – Background Research" relating to HCA, recording action taken since Mr Slater's original request

on 8 January 2015. There is an entry in this document for 20 March 2015 when Mr Slater records:

> "Whatever the true situation I have serious doubts about the firm's knowledge or due diligence on the funds albeit I have very little evidence to go on. To try to get a better understanding of the position I have asked the SIPP Operator for their understanding as they would seem to be the trustees to the pension funds… to see if they confirm the applicability of the twelve month notice period. However, if they confirm that the AIGO Bespoke Cautious Portfolio satisfies the thirty day realisation rule then my suggestion that the firm is breaching the VoP probably falls away. At the moment I still think we will prove that the underlying assets are non-standard.
>
> However, even if my worries about breaching the VoP fall away, it would still seem there is a case to consider. Firstly, as the firm has written over 400 of these cases over the last year, and virtually nothing else, it would seem inconceivable that there is not a suitability issue in the advice being given. Furthermore, in submitting information to me the firm has identified 19 pension transfer cases for which it does not have permission."

1007. Mr Henderson took advice from Ms Farrell as regards the information request from the Authority.

1008. Mr Henderson forwarded to Ms Farrell without comment the email chain of communications between himself and Mr Slater starting with the request for the new business register up to 6 February 2015, that is up to Mr Henderson's response saying that the underlying investments were standard assets.

1009. On 13 February 2015 at 00.22 Ms Farrell asked:

> " Is he trying to see whether the SIPP recommendation has been based on using the SIPP for a particular asset held by the client?"

1010. At 05.27 Mr Henderson replied "Unsure".

1011. At 08.17 Ms Farrell asked "Have the pensions you sent them gone into a sipp". Mr Henderson responded "Yes" at 08.24.

1012. At 08.28 Ms Farrell asked "And have any of them used property".

1013. Mr Henderson responded to this question at 12.29 saying "the loan note invests in property etc to provide the fixed return".

1014. Earlier, at 12.24, Mr Henderson said to Ms Farrell:

> "Fact [find] States clients wishes for capital protection and fixed returns. There is only one provider and investment which offers this. Guinness Mahon. Their charges are 0.5% p.a. which is very cheap."

1015. At 12.45 Ms Farrell responded:

> "I would say they are trying to find out why a sipp and not a pp and how is it possible without justification. Have you done a cost comparison with a pp"

1016. At 12.57 Mr Henderson said "We have done one for every case and only transferred if cheaper".

1017. At 17.07 Ms Farrell responded "That's what they will want to hear".

1018. A further email exchange occurred on 19 and 20 February 2015. This followed Mr Henderson having forwarded to Ms Farrell Mr Slater's email of 17 February 2015, which contained the three questions set out at [1003] above, Mr Henderson's only comment being "???"

1019. At 22.38, on 19 February 2015, Ms Farrell asked Mr Henderson "which question are you not sure of ". At 22.48 Mr Henderson responded saying "It's all very strange" and at 23.10 "I don't understand what they are looking for?"

1020. At 23.18 Ms Farrell responded:

> "You need to let them know what information is given to clients in relation to AIGO funds
>
> do all your sipp recommendations go into AIGO funds
>
> And have you advised on any other business not showing on the nbr"

1021. At 23.24 Mr Henderson replied "No not advised on any other business". At 03.14 on 20 February 2015 Ms Farrell asked "Are the aigo funds an unregulated" to which Mr Henderson replied "Regulated but foreign regulator".

1022. At 10.07 Ms Farrell asked "What percentage of business goes to that fund" to which Mr Henderson replied "High %".

1023. At 12.02 Ms Farrell replied:

> "So that's why they're checking you
>
> !!!"

1024. The final response we have in this chain is from Mr Henderson to Ms Farrell at 12.05 where he says "Really?"

1025. It was put to Mr Henderson in his cross-examination that it was obvious from this email chain that Ms Farrell was not aware of the volume and proportion of HCA's business which was going into the AIGO Cells. Mr Henderson denied that was the case but said he had no answer to the question as to why Ms Farrell would be asking these questions if she knew what the true position was. As Mr Purchas put it to Mr Henderson, if Ms Farrell had known that 100% of HCA's SIPP switching business was going to one entity, Ms Farrell would have explained that the reason why the Authority was

asking the questions was because a high percentage of HCA's SIPP business was going to one entity.

1026. Mr Kershaw set out in his evidence all the material interactions recorded on SimplyBiz's systems in the period October 2013 to July 2015. Mr Kershaw noted that, as referred to above, on 10 April 2014 Ms Farrell conducted a compliance visit to HCA and there was a copy of the resulting report on the system. There were further requests for information and guidance between June 2014 and June 2015, none of which related to the Pension Review and Advice Process.

1027. There are no records of any onsite visits to HCA other than the April 2014 compliance audit, although Ms Farrell herself undertook a number of visits to Mr Henderson which were not recorded, including the on-site visit which took place on 16 May 2015, the report that was generated after that visit also did not appear on SimplyBiz's records.

1028. There are a number of other interactions between Ms Farrell and Mr Henderson which are not recorded on SimplyBiz's systems, including the email exchange referred to above and assistance provided by Ms Farrell to Mr Henderson in early June 2015 in advance of the Authority's short notice visit referred to below.

1029. Ms Farrell is quite open about this in her witness statement. She says that it was not until February 2015 that she began to be provided with additional information from Mr Henderson as to the business model used by HCA and that she was not previously aware of the automated nature of the advice model or the nature of the underlying investments.

1030. Ms Farrell says that she provided Mr Henderson with the help she did in February 2015, and later in May and June 2015, in her personal capacity as a favour to him because he was having money problems and could not afford to pay SimplyBiz for assistance. She says the work was done in her own time, in the evenings and at weekends. We note that 16 May 2015, the date of the report, was a Saturday, and the contemporaneous documents are consistent with that explanation. Ms Farrell also admitted to having received four payments from Mr Henderson in her personal account, one on 24 March 2015, two on 16 May 2015 and one on 7 July 2015. She says these payments were unsolicited, but Mr Henderson wanted to thank her personally for her assistance during 2015. Those payments are consistent with rewarding Ms Farrell for the work she did at the times described above.

1031. In our view, the tone of the emails in February 2015 clearly demonstrate that Ms Farrell knew nothing about the Loan Notes and the Pension Review and Advice Process before that time. Mr Henderson's denials are not credible and he could offer no alternative explanation as to why Ms Farrell was asking basic questions about HCA's business if she already knew about it.

1032. Ms Farrell explained why none of the interactions referred to above are to be found on SimplyBiz's records. In view of the tone of the email exchange in February

2015 we have no good reason to believe that there are other interactions that took place before then that are also not recorded.

1033. On 30 March 2015, HCA terminated HJL's appointment as its IAR. The last entry on HCA's new business register in respect of a switch into the GM SIPP is dated 29 May 2015. During the period that HCA used the Pension Review and Advice Process some 800 customers were advised to switch their pensions into the GM SIPP.

1034. As mentioned above, on 16 May 2015 Ms Farrell attended HCA's office for an onsite visit and produced a report of that visit shortly thereafter. The meeting was arranged to discuss the firm's systems and controls.

1035. By this point, Ms Farrell had been provided with a lot more details regarding HCA's business. Consequently, she noted concerns with the advice process used by HCA and the investment selection process. She set out a large number of flaws and recommendations. It was during that meeting that Ms Farrell started to understand the extent of the automation of the process and the issues around the lack of personalised advice.

1036. It is clear from the report that Ms Farrell identified the serious flaws with the Pension Review and Advice Process and the suitability of the Loan Notes, as we have found to be the case. In particular:

(1) Ms Farrell noted her concern that it was not adequately clear that HCA was collating enough information regarding clients to support the suitability of the advice given. She suggested that the fact find be reviewed and pointed out a number of issues with it. She also recommended a number of points in relation to assessing attitude to risk.

(2) Ms Farrell pointed out that the Authority had advised against using suitability reports pre-filled with templated objectives and the importance of personalising the report based on the client, noting that the client's specific objectives should match the "soft fact" notes from the fact-finding records.

1037. Ms Farrell recommended that HCA apply adequate due diligence to check product suitability for its clients and whether that was monitored in advice checks. She also recommended that file reviews demonstrate that, if appropriate, HCA does not assume the product to be suitable for all HCA clients. She also recommended monitoring of the guaranteed element of investment return and the carrying out of ongoing reviews.

1038. The report advised that HCA address the recommendations made as a matter of urgency.

The Authority's interventions

1039. On 3 June 2015, the Authority made a short notice visit to FCA. The team was led by Mr Slater. As explained by Mr Slater, the purpose of the visit was to obtain further information from HCA in relation to the business being undertaken, to assess

the risk of consumer detriment and to establish what steps needed to be taken to address any ongoing risks.

1040. In his witness statement, which was not challenged on this point, Mr Slater explained that the visit was critical to the Authority's understanding of the business model and advice process used by HCA. He explained that during the course of the visit, the Authority obtained additional documentary evidence and also had an extensive meeting with Mr Henderson in which they were able to ask him questions about the nature of HCA's business, in particular regarding the Loan Notes, the role of HJL and CAL, and the sale and advice process used by HCA. Mr Slater says that it became clear to him during the course of the discussions at the visit how limited Mr Henderson's role was in the advice process.

1041. On 15 June 2015, Mr Slater wrote to Mr Henderson setting out the Authority's serious concerns relating to HCA's business model. Consequently, HCA were invited to agree to the terms of a Voluntary Requirement.

1042. On 8 July 2015 HCA entered into a Voluntary Requirement. Among other things HCA agreed:

(1) to terminate its relationships with HJL and CAL;

(2) not to carry on any regulated activities with respect to non-standard investments, including, in particular, the Loan Notes; and

(3) not in any way dispose of, deal with or diminish the value of any of its assets without the prior consent of the Authority other than in the ordinary and proper course of business.

1043. On 9 November 2015, Enforcement commenced its investigations into HCA and Mr Henderson.

1044. On 10 February 2016, HCA was placed into administration and into voluntary liquidation on 15 February 2017. On 22 March 2017, the FSCS declared HCA to be in default.

Issue 1: whether Mr Henderson has breached Statement of Principle 1 by failing to act with integrity in carrying out his controlled functions during the Relevant Period.

1045. We approach this issue by dealing with each of the key allegations made by the Authority against Mr Henderson, as set out at [15] above.

(1) Whether Mr Henderson acted recklessly by closing his mind to the conflict of interest inherent in the Execution-Only Process

1046. Our findings at [953] to [967] above demonstrate that:

(1) Mr Henderson was aware that there were potential conflicts between the interests of HJL and the interests of customers who became customers of HCA

through the execution-only client agreement. He said that it would look "extremely suspect" if HCA were being paid by HJL.

(2) Mr Henderson was aware of HJL's role in the development of the Execution-Only Process.

(3) Mr Henderson was aware of the functions HJL performed in connection with the Execution-Only Process.

(4) Mr Henderson was aware of the 5% commission payable to HJL from October 2013 and was also aware of Mr Stephen being identified in the AIGO IM as the main individual concerned with the management of the Commercial Property Fund, as well as his significant role in relation to the other Funds.

(5) Mr Henderson was aware that the incentives that HJL had for getting customers to invest in the Loan Notes could create a stark divergence of interest in the "outcome" of the Execution-Only Process between HJL and the customer.

1047. Mr Lloyd submitted, based on the authorities we have reviewed above, that in a conflict of interest context, to establish recklessness the Authority must show:

(1) that there was a conflict of interest;

(2) whether any steps were taken to manage it fairly, in particular as regards whether it was adequately disclosed to customers;

(3) whether there was an unacceptable risk that the conflict(s) in question would not be managed fairly if Mr Henderson failed to take further steps to mitigate it, that risk being one that would have been obvious to a person in his position and having his level of experience; and

(4) was Mr Henderson aware of the same?

1048. We accept that formulation, except that in our view it is not necessary to show that Mr Henderson was aware of the risk that the conflict would not be managed fairly if the risk would have been obvious to a person of his knowledge and experience.

1049. Mr Lloyd submitted that Mr Henderson's position was that he did not consider the commission arrangements to constitute a conflict of interest because the 5% payment did not "[differ] significantly from the commission arrangements which other providers maintain over their products". The amount of the commission is not especially significant. Rather, the question is whether there was divergence between the interest of the customer on the one hand, and HJL and/or HCA on the other, in the "outcome" of the Execution-Only Process.

1050. Mr Lloyd submitted that HCA, which received no fee from HJL (save for the provision of compliance and money laundering training), and no fee from AIGO, does not appear to have been in a position of conflict.

1051. As regards to the steps taken to manage any conflicts that were present, Mr Lloyd submitted that Mr Henderson took sufficient steps to ensure that customers were sent the AIGO IM and that was sufficient to suggest that any conflict was managed adequately.

1052. In our view, the conflicts of interest that we identified in relation to the Pension Review and Advice Process, as discussed at [511] to [514] above, are equally applicable to the Execution-Only Process. In addition to the 5% commission payable to HJL, HJL had an overarching involvement in the Outsourced Functions from the beginning to the end of the process, with an interest in the leads generated through the marketing companies that it appointed being invested into the Loan Notes. That created a serious divergence of interest between what HJL wanted, which was customers to invest in the Loan Notes, and what might be in the customers' interests which was to obtain a better product in which to invest their pension pot, but in circumstances where those customers would not be receiving any advice. In those circumstances, this was a serious conflict of interest that needed to be managed fairly in order that the customer could make an informed decision as to whether or not to proceed with the switch.

1053. In addition, as we have found, further conflicts arose because of Mr Stephen's position as a director of both HJL and AIGO and because the underlying loans were advanced by the Cells largely to companies associated with Mr Stephen.

1054. As we have found, once a conflict had been identified it should have been (i) managed where possible to prevent it giving rise to a material risk of damage to the interests of HCA's customers or (ii) disclosed.

1055. No attempt was made by Mr Henderson, on his own account, to manage the conflicts of interest. Mr Henderson's evidence was that he "just didn't think" about whether there was a conflict.

1056. Mr Lloyd's submission regarding the provision of the AIGO IM is not relevant. Mr Henderson's evidence was that the AIGO IM was provided to all customers related to the Pension Review and Advice Process and we have seen no evidence that the AIGO IM was provided to customers who participated in the Execution-Only Process.

1057. Accordingly, we accept Mr Purchas's submission that there is no evidence that customers were informed about the conflicts or given details about HJL's material financial interest in the amount invested by customers into the Loan Notes.

1058. Mr Henderson is an experienced IFA. As we have found, he was clearly aware that there was a conflict of interest. That conflict arose regardless of whether HCA was paid by HJL for undertaking its work, although HCA in effect expected to get a benefit in kind through access to clients who could be offered other services. Therefore, to a person of Mr Henderson's experience, it would be obvious that there was a material and unacceptable risk of damage to customers participating in the Execution-Only Process if the relevant conflicts were not managed fairly, or disclosed. He closed his mind to the risks involved.

1059. Accordingly, we find that Mr Henderson's conduct in failing to manage the obvious conflicts of interest that arose was reckless.

(2) Whether Mr Henderson acted dishonestly by causing HCA to hold out the Pension Review and Advice Process to customers as HCA providing bespoke, independent investment advice based on a comprehensive and fair analysis of the whole market

1060. For the reasons set out at [482] to [498] above, we have concluded that the service which was provided by the Firms cannot fairly be said to amount to the giving of independent advice. We found that the only service that any of the customers received from the Firms was a recommendation to invest in the Products, which was the predetermined outcome provided the customer had indicated a desire for capital protection and/or a fixed return – a likely consequence due to the leading questions in the Fact Find that we have identified above. If such a recommendation did not follow because, for example, the criteria for inclusion in the process were not met or the customer did not express a desire for a fixed return or capital protection, then none of the Firms intervened to carry out a further review of the customer's financial situation and recommend an alternative suitable product. The customer was simply left without any further services provided by the Firm.

1061. Consequently, we have found that the statements in the Service Proposition and the Brochure that customers would, by entering into an agreement with the relevant Firm, receive bespoke advice from an IFA that was tailored to their individual needs and aspirations; that the Firms provided an independent advice service, operated independently, and provided a comprehensive and fair analysis of the market; and that the Firms would place no restrictions on the investment markets that they would consider were all false and misleading.

1062. Based on the test for dishonesty, as discussed at [60] to [64] above, in relation to the allegation of dishonesty against Mr Henderson, as set out above, we need to establish Mr Henderson's knowledge and belief as to the facts that we have found, as summarised above. We then need to consider whether in the light of Mr Henderson's knowledge and belief of those facts, his conduct was dishonest by ordinary standards.

1063. Mr Henderson's position was that he genuinely believed that customers introduced through the Pension Review and Advice Process received bespoke, independent investment advice, that is advice that is tailored specifically to their own circumstances. He said that it was bespoke because if certain criteria were met they would receive a recommendation for a particular product, that product being the Loan Notes and which would be recommended provided the customer had expressed a preference for capital protection and a fixed return. He said that he did not think that it was necessary to have told customers that the recommendation that they received had been arrived at through an automated process as he did not think HCA needed to mention their "report writing system". With regard to the statements in the Brochure to the effect that an IFA would contact them to discuss the recommendation, Mr Henderson said that he did call a number of customers.

1064. Mr Henderson said that he did not capitalise on the opportunity to contact customers who did not get a recommendation through LeadTracker for whatever reason. He accepted that the only recommendation that would materialise through the LeadTracker process was a recommendation to invest in the Loan Notes, provided the

criteria mentioned above were met. He accepted that no customer who received the Service Proposition invested in another product.

1065. In his short submissions on this issue, Mr Lloyd maintained the position that the advice given could be regarded as independent because Mr Henderson had the ability to remove the customer from the process uninfluenced by HJL. He also submitted that the fact that customers would only be recommended the Loan Notes and no other product through the process does not demonstrate that a whole of market approach had not been taken. Only, if the customers met certain criteria would they be recommended the Loan Notes and it was not a foregone conclusion that everybody would be invested in the Loan Notes from inception.

1066. Mr Lloyd submitted that LeadTracker did meaningfully assess the customer's needs; of 4,433 customers who entered the process, 2,263 did not proceed, thus demonstrating that the process involved an assessment of the needs of each customer.

1067. It is clear that Mr Henderson knew there was no whole of market assessment that would take place. There was no evidence before us of a whole of market assessment taking place before Mr Henderson agreed that the Loan Notes would be the only product recommended to customers through the Pension Review and Advice Process. Neither was there any evidence from Mr Henderson that he kept monitoring the market through the time he used the Pension Review and Advice Process to ascertain whether there was now a better product on the market.

1068. As we have said, the only products available for recommendation to HCA's customers through the Pension Review and Advice Process were the Loan Notes. While Mr Henderson states that it was anticipated that LeadTracker would be developed to "offer a wider suite of products", he accepts that it was not.

1069. Consequently, Mr Henderson must have known that the statement regarding a whole of market assessment set out in the Service Proposition was not an accurate description of the process. Mr Henderson's evidence was that it was not a foregone conclusion that everybody would be invested in Loan Notes. However, as Mr Purchas submitted, that is not the issue. The issue is the substantial difference between what was set out in the Service Proposition about there being a whole of market review or a review of all standard assets opposed to consideration of one product only.

1070. Mr Henderson knew that a customer would only be presented with the Service Proposition after they had been identified as suitable for the Pension Review and Advice Process and after production of the Pension Summary Report. As such the prospect of a customer being recommended into any product other than the pre-selected Loan Notes depended on (i) that customer not indicating a preference for fixed returns or capital protection; (ii) that customer not otherwise being rejected by LeadTracker; and (iii) that customer being onward referred to him.

1071. As Mr Henderson accepted, he did not take any steps in relation to any customer who fell into the third category mentioned above. Accordingly, he knew that the process as operated by him could not result in any customer receiving bespoke advice if they

were not recommended the Loan Notes. Mr Henderson was also aware that the process was not independent in that HJL had been involved in the structuring of it and had a clear interest in as many customers as possible being recommended the Loan Notes, for the reasons that we have previously set out.

1072. That conclusion is reinforced by the fact that each customer who signed the Service Proposition would, after completion of the Fact Find conducted by HJL/CAL, have their answers entered into LeadTracker so that the Pension Recommendation Report could be generated. There was no bespoke consideration of each client.

1073. The fact that Mr Henderson said there was no need to mention LeadTracker in the Service Proposition does not, as Mr Purchas submitted, address the difference between what customers were told, namely that they would receive an independent review of their individual circumstances, and receive a bespoke tailored recommendation based on their individual circumstances, when that was not going to happen.

1074. Mr Henderson did reconsider the wording of the Service Proposition, but did not modify it to reflect the true operation of the Pension Review and Advice Process. As we found at [376] above, HCA amended the document to reflect the terms of the Voluntary Requirement that HCA agreed to on 14 March 2014, as referred to at [973] above. However, the revised document still maintained that HCA would "recommend investments based on a comprehensive and fair analysis of the market" and would "place no restrictions on the Investment Markets we will consider…"

1075. Mr Henderson maintains that he understood that the revised description was an accurate description of the service offered. However, as Mr Purchas submitted, in light of the number of leads who were advised to invest in the Loan Notes, and the fact that no customer who received the Service Proposition invested in another product, this is not credible.

1076. Finally, turning to Mr Lloyd's other submissions, we rejected at [488] above the proposition that because Mr Henderson was in control of who could be taken out of the process that meant that he was acting independently. Neither does the large number of customers who did not proceed indicate that the process assessed the needs of each customer. The statistics provided indicate that, of those cases that did not proceed, the main reasons for not proceeding were not advice related, but rather because the customer switched IFA, was no longer interested or could not be contacted.

1077. As a result of our findings set out above as to Mr Henderson's knowledge, we conclude that he knew that the reality of the service provided through the Pension Review and Advice Process was that it provided restricted advice, namely advice that would be confined to considering whether or not a recommendation should be made to invest in the Loan Notes, a product which Mr Henderson regarded as suitable for a customer who indicated in the Fact Find that he wished to have a product which offered a fixed return and capital protection. Mr Henderson knew that a true description of the service being offered would be that the Firm was recommending a particular product which it regarded as being suitable for customers who met certain criteria, and that the

suitability of the product for the customer concerned would be assessed through an automated process.

1078. Based on his knowledge as an experienced IFA and his knowledge of how a truly independent adviser operates, Mr Henderson must have known that the customer was not going to receive tailored independent advice according to the terms of the Service Proposition.

1079. We now turn to the question as to whether in the light of knowledge as to the falsity of the statements in the Service Proposition and the Brochure, Mr Henderson acted dishonestly in holding out the Pension Review and Advice Process as providing bespoke, independent investment advice based on a comprehensive and fair analysis of the whole market.

1080. As the legal test for dishonesty requires, that question is to be answered objectively. It does not matter that Mr Henderson himself does not believe that he acted dishonestly in that regard. We accept that he genuinely believed that he was not dishonest.

1081. In our view, by the standards of ordinary decent people Mr Henderson's actions were dishonest In our view, by the standards of ordinary decent people Mr Henderson's actions were dishonest. Ordinary decent people would regard a person's pension pot, particularly if a modest pension pot, as being very important property rights. They would regard a person as having acted dishonestly when that person made a statement to such a person that they would receive an independent review of their individual circumstances and receive a bespoke recommendation based on their individual circumstances, when that person knew that the true position was that they were being offered something quite different.. Mr Henderson never addressed that difference in his evidence.

1082. We therefore conclude that Mr Henderson acted dishonestly by causing HCA to hold out the Pension Review and Advice Process to customers as HCA providing bespoke, independent investment advice based on a comprehensive and fair analysis of the whole market. He thereby breached Statement of Principle 1 by failing to act with integrity.

(3) Whether Mr Henderson acted recklessly in relation to HCA's adoption and use of the Pension Review and Advice Process.

(i) Lack of due diligence on the Loan Notes and failure to give due consideration to the risk that the Loan Notes were unsuitable

1083. As we concluded at [293] above, a reasonably competent IFA could form a view as to whether the Loan Notes were high risk simply by a careful but not exhaustive review of the various Information Memoranda and Fact Sheets. We concluded that a reasonably competent IFA who undertook such a review would conclude that the Loan Notes were evidently high risk. The fact that a small firm like HCA did not have the resources that would be available to a large firm, such as a bank, to undertake detailed

due diligence on the Loan Notes and those who were responsible for managing them is not relevant.

1084. We also said at [294] that if the IFA could not form a judgment on the basis of documentation referred to above and could not easily find out what he needed to know to make that judgment, then the decision should be not to recommend the products in question.

1085. It is readily apparent to us from what Mr Henderson said about his own experience that he was not equipped to do the detailed due diligence on the Loan Notes that would be necessary to satisfy himself that they would be suitable to recommend to retail investors. Mr Henderson accepted in his cross-examination that a new product should be subject to additional scrutiny due to a lack of a measurable track record. He accepted that HCA did not have internal analysts to consider the risk profile of the Cells. He accepted that there was no analysis in HCA's files of why the Loan Notes had been selected compared to any other product. Mr Henderson said the reason for that was because he had not identified any other product that had a captive insurance policy and which paid an 8% coupon.

1086. Mr Henderson also accepted that most of the materials received for him to carry out his due diligence were provided by HJL and he relied heavily on the information provided by HJL. The extent to which Mr Henderson carried out any independent due diligence is unclear. He says he relied on Mr N Maynard's pre-existing relationship with Mr Stephen and that Guinness Mahon had undertaken its own due diligence on the Loan Notes. As we have said, it is for an IFA to undertake his own diligence so as to satisfy himself that investments are suitable for customers who are being advised to invest in them.

1087. No copy of the final version of the AIGO IM was found in Mr Henderson's due diligence files; just a copy of a draft dated 30 October 2013. It is not clear whether Mr Henderson undertook a detailed review of the AIGO IM.

1088. We found at [301] that Mr Henderson did not carry out a careful balancing exercise, having considered all the relevant risk factors, to assess the risk associated with investment in the Loan Notes. He relied primarily on the fact that he considered that the fixed returns could be assured because of the nature of the underlying investments and that the principal amount of the Loan Notes was guaranteed because of the existence of insurance.

1089. We found at [302] that there was no evidence that Mr Henderson gave any weight to any of the factors that led Mr Lockie to conclude that a reasonably competent IFA would have placed the Loan Notes within the "high risk" category.

1090. We found at [304] that Mr Henderson appeared to take it as read that there was no risk that the relevant Cells would not be able to generate sufficient returns to service the interest payments, meet the significant costs of running the Cells and repay the principal amount of the Loan Notes.

1091. At [305] we rejected Mr Henderson's view that the lack of regulatory oversight was not a significant risk factor and found that he was wrong in his assessment that neither the FOS nor the FSCS provide cover in respect of investment products, as opposed to advice.

1092. At [310] we found that Mr Henderson placed undue reliance on insurance and that, even where there was insurance in place, it was of limited value. At [312] we found that there was no proper basis for Mr Henderson's assessment that the Nevis regulatory regime was not meaningfully different to that of the United Kingdom.

1093. We therefore concluded at [339] to [340] above, that it would have been obvious to any reasonably competent IFA who did no more than use his expertise to review the various Information Memoranda and Fact Sheets that the Loan Notes were high risk. We found that the features of the Loan Notes that are indicative of an investment carrying a high risk of loss - that is the risk of the issuer not being able to deliver the expected return over the life of the product and to repay the principal in full at the end of the term - are evident and overwhelming.

1094. As a result, we found that a reasonably competent IFA would have concluded that the Loan Notes were not suitable to be recommended to retail investors except in very limited circumstances. Those circumstances might be where the investor, having been warned appropriately about the risks involved was prepared to commit a small part of his investment portfolio on the basis that the assets concerned were those that he was willing to lose in the hope that the high returns promised were achieved.

1095. Our assessment is that Mr Henderson is a reasonably competent IFA. None of the evidence before us demonstrates that Mr Henderson carried out anything other than very superficial due diligence on the Loan Notes. There is no evidence that he was engaged in any material respect with the features of the Loan Notes as set out in the AIGO IM. Mr Henderson's starting point should have been a careful review of the AIGO IM. He appeared to have relied on Guinness Mahon having undertaken a review and decided that the Loan Notes were suitable for inclusion in the GM SIPP. As we found at [322] above, Mr Henderson's heavy reliance on the fact that Guinness Mahon had accepted the Loan Notes as being suitable for inclusion in a SIPP was misplaced. We have also found that Mr Henderson's reliance on advice from Mr Tunkel was also misplaced: see [319] to [322] above. The only advice that HCA appears to have received is that given by Mr Tunkel on 12 March 2014 that related to whether the products were standard or non-standard, but did not address the suitability of the Loan Notes for retail customers.

1096. Mr Henderson was unable to provide any evidence that he had found any equivalent product to the Loan Notes and so had nothing with which to compare what was being offered through the Loan Notes.

1097. In our view, Mr Henderson acted recklessly in the following respects:

(1) By assuming that there was no risk that the relevant Cells would not be able to generate sufficient returns to service the interest payments, meet the significant costs of running the Cells and repay the principal amount of the Loan Notes.

(2) By placing undue reliance on the insurance arrangements, which meant that he gave little consideration to any of the risk factors relevant to the Loan Notes that, as we have found, he should have done.

1098. As the authorities indicate, in the regulatory context a reckless failure to consider whether something is a risk may be found to amount to a lack of integrity That is exactly what happened in this case. Mr Henderson closed his mind to the need to make any kind of significant assessment of the risk factors attaching to the Loan Notes and did not make any serious attempt to analyse the features of the Loan Notes, as disclosed in the AIGO IM. Had he done so, as we have found, it would have been obvious to him that the Loan Notes were high risk and unsuitable to be recommended to retail investors except in limited circumstances.

(*ii) Failure to establish that leads were generated in an appropriate manner*

1099. As we have found, leads were generated by HJL through its use of marketing companies and acting in its capacity as an IAR of HCA. It is clear from our findings that the marketing companies represented during their calls that they were acting on behalf of HCA. Accordingly, HJL were performing an outsourced function and the obligations in that regard referred to at [783] above were applicable to HCA. It was not sufficient or adequate for HCA to rely on an IAR making sure that leads were generated properly without it carrying out its own due diligence on the manner in which leads were generated. The Authority's position is that Mr Henderson did not carry out adequate due diligence in respect of the lead generation of customers who might be introduced to HCA.

1100. As we found at [424] above, there was no evidence that any of the Firms took meaningful steps to understand how HJL was sourcing leads so as to be satisfied that HJL and the marketing companies were behaving in an appropriate manner.

1101. Mr Henderson accepted in evidence that HCA should not be cold calling clients and that it was not something that should be done on behalf of the Firm either. He was alert to the risk of cold calling.That is demonstrated by the assertion made in HCA's Compliance Officer's Annual Report for the period ended 28 February 2014, referred to at [965] above, that HCA did not cold call potential clients. Nevertheless, as we found at [966] above, Mr Henderson did not check the marketing agreements used by HJL and did not check regularly whether cold calling was going on. He appeared to have relied entirely on the impression he formed that the marketing companies were told not to cold call. As we found, cold calling did in fact take place, particularly by Taylor Barton, who referred to HCA as being an IFA on whose behalf they were acting during the calls they made.

1102. We regard Mr Henderson's failure to consider the need to monitor how leads were being generated as reckless on his part. As Mr Purchas submitted, where leads are being sourced by an entity which is seeking to encourage them to invest into products in which

that entity has a financial interest, that part of the process needs to be understood and monitored carefully to ensure that the customer is treated fairly throughout.

(iii) Failure to manage conflicts of interest

1103. As we have found at [500] to [510] above, the Pension Review and Advice Process was structured to result in customers switching their pensions to SIPPs investing in assets in which HJL had a material financial interest.

1104. The Authority contends that Mr Henderson failed to take steps to manage and/or disclose the alleged conflicts of interest arising from (i) the structure of the Pension Review and Advice Process; (ii) HJL's role in the Pension Review and Advice Process; and (iii) Mr Stephen's role as a director of HJL and the issuer of the Loan Notes.

1105. Mr Henderson was live to the issue of considering conflicts of interest. During the Relevant Period, HCA had a conflict of interest policy which stated that it would take into account any conflicts of interest in the outcome of a transaction carried out on behalf of a customer.

1106. The HCA Compliance Officer's Report for the period ended 28 February 2014 recorded that, with respect to HCA's pension business, there was no evidence of any conflicts of interest.

1107. Mr Henderson was also aware of HJL's control over the lead introduction process, its involvement in the development of the Pension Review and Advice Process, its interest in leads investing in the Loan Notes through the Pension Review and Advice Process and Mr Stephen's common directorship of HJL and AIGO.

1108. Mr Henderson was aware that HJL would receive 5% of the proceeds of the issue of the Loan Notes, as stated in the AIGO IM. Despite this, he stated that he did not think there was a risk that a customer could be inappropriately influenced (given HJL's involvement in the process) as HCA was providing the advice. This was even though the advice was actually being generated by LeadTracker and not by HCA. He said that it did not occur to him to check how the lead generators were remunerated and he did not see that, although HJL received a percentage of the proceeds of the Loan Notes, there was therefore an incentive for HJL to get customers that were being introduced to HCA to invest in the Loan Notes.

1109. Mr Henderson knew the Fact Find element of the Pension Review and Advice Process involved asking questions that favoured the particular characteristics of the Loan Notes and that the Fact Finds were being undertaken by HJL and then CAL, but with a continuity of employees.

1110. Despite these matters being known to him, Mr Henderson maintained in his oral evidence that there was no conflict in there being a potential divergence of interest between the interests of HJL in having customers invest in the Loan Notes and the customers wanting to invest in something that was suitable for them. However, as we have found, there was in fact a clear conflict of interest in that HJL wanted customers (which they had paid marketing companies to source) to switch their pensions into an

investment in the Loan Notes; whereas those customers were seeking, and thought they had been offered, independent advice considering the whole investment market. What customers were getting, in effect, was restricted advice tied to a single set of products. As Mr Purchas submitted, there was an objectively unreasonable risk of substantial harm to those customers arising from the involvement of HJL in the design and structure of the process and its operation of the outsourced services.

1111. As an experienced IFA, we would have expected Mr Henderson to have identified and managed the conflicts detailed above. Those are all conflicts that would have been obvious to a person of Mr Henderson's knowledge and experience. As we have found, once a conflict had been identified it should have been (i) managed, and if this was not possible, (ii) disclosed. We do not accept that Mr Henderson did not recognise these conflicts of interest and accordingly we must conclude that he closed his mind to his obligations to consider them.

1112. The only evidence that Mr Henderson could refer to as demonstrating that he sought to manage or disclose the conflicts of interest that arose was his assertion that a hardcopy of the AIGO IM was attached to the Pension Recommendation Reports. However, as we have found, customers were not provided with the Information Memoranda as a matter of course.

(iv) The deficiencies with the Pension Review and Advice Process

1113. Mr Henderson sought to defend the Pension Review and Advice Process.

1114. In relation to the Fact Find and the absence of soft facts, Mr Henderson contended that it asked all the relevant questions.

1115. However, Mr Henderson was taken to one of HCA's own documents, which was headed "Guidance on standards for Pension Switch Related Contracts" which was dated October 2013. This document was created from a template provided by SimplyBiz, adapted for use by HCA, and it sets out detailed guidance as to how the fact finding process should be addressed.

1116. Under the heading " Know Your Customer – guidance" the document states:

> "No advice should be given to a client, and no transaction should be executed for a client… unless the adviser has on file, sufficient personal data about the client to provide evidence that the advice or the transaction is appropriate."

1117. Further on, the document states in bold:

> "It is important through all fact-finding for the file/adviser to demonstrate the use of soft facts. Whilst fact finds gather key information even when completed well they do not tend to give a true picture of the clients circumstances and more importantly their objectives from the meeting. Reference should be made specifically to soft facts in the file review feedback."

1118. In a similar vein, the document goes on to say:

> "The fact find should document the client's current personal and financial details, and should gather sufficient soft facts about the client to be able to demonstrate a suitable knowledge of the clients' circumstances and objectives. Reference should be made to emergency funds and how client's circumstances would impact on this."

1119. In that context, reference was made to the need to obtain sufficient information to justify a recommendation, such as income, expenditure, affordability, details of existing products and attitude to risk.

1120. Reference was also made to obtaining details of the client's objectives. It said:

> "The clients' financial objectives, goals and purpose of investment should be clearly and appropriately prioritised by both the adviser and the client. There should be sufficient hard and soft facts are noted in the Fact Find to clearly demonstrate how these objectives and priorities have been reached."

1121. As we have found, the Fact Find used in relation to the Pension Review and Advice Process clearly did not comply with this guidance. In her report, in May 2015, Ms Farrell identified the deficiencies in the Fact Find making reference to the absence of any procedure for obtaining soft facts and more details of the customer's objectives and circumstances.

1122. Mr Henderson was asked by the Tribunal why he did not benchmark the Fact Find against the guidance he already had in the document referred to above. He gave no explanation as to why that exercise was not undertaken, but said that it was his intention to incorporate the guidance into the LeadTracker system.

1123. Mr Henderson therefore must have known that there were obvious deficiencies in the Fact Find. Likewise, he must have known that the Pension Recommendation Report did not provide bespoke individual advice. He would have been aware that answers to the questions in the Fact Find were often not explored further or addressed in the Pension Recommendation Report, such as those relating to ethical views. Mr Henderson was taken to a file relating to an HCA customer where that was the case. In view of his long experience as an IFA, Mr Henderson must have been aware of these defects or chose not to investigate them any further.

1124. Given the defects in the Fact Find process, and his knowledge of them, Mr Henderson would clearly have been aware of the high likelihood that the Pension Recommendation Report could not provide suitable advice. As submitted by Mr Purchas, he would also realise that there were other defects in the templated Pension Recommendation Reports including that:

(1) they did not provide an explanation of the advantages and disadvantages of the recommendation, instead referring to just the selected portfolio and cross-referring to the Fact Sheets;

(2) there was no explanation of counterparty risk;

(3) there was no explanation that the products would not be covered by FOS and the FSCS; and

(4) there was no explanation as to why moving to a SIPP was suitable or an explanation of the risks compared to previous managed arrangements.

1125. None of Mr Henderson's evidence given in cross examination detract from our findings that there were obvious deficiencies with the Pension Review and Advice Process which failed to comply with the Authority's rules. We find that those deficiencies would have been obvious to Mr Henderson, bearing in mind his knowledge and experience, and yet he failed to give any meaningful consideration to whether or not the Pension Review and Advice Process was compliant with the Authority's rules.

1126. We have rejected Mr Henderson's evidence that any part of the Pension Review and Advice Process was subject to review by Ms Farrell at any time before May 2015.

(v) Failure to take control of the Pension Review and Advice Process

1127. Mr Henderson states that he performed spot checks on 5-10 Pension Recommendation Reports per week and listened to samples of recordings of Fact Find meetings on LeadTracker. Mr Henderson stated that he "intermittently" checked files, but the numbers he checked reduced as the process became more automated. Mr Henderson says he received a hard copy of the Pension Recommendation Report before it was sent to the customer, but we have not seen any evidence to that effect.

1128. Mr Henderson says, on his own account, that he did not read and check every single Report, and what he did do appeared to focus on correcting numerical and spelling errors rather than the suitability of the recommendations made.

1129. We have not seen any evidence of Mr Henderson's file reviews or any records of which files he checked, other than the review sheets sent to the Authority with the three files in 2015, as referred to above.

1130. As we have found, Fact Sheets accompanied Pension Recommendation Reports. These were originally prepared by HJL who also updated them from time to time. Mr Henderson's evidence was that any change would have to be authorised by him, but we have seen no evidence of Mr Henderson having given instructions to that effect.

1131. On the basis of the lack of evidence as to the steps that Mr Henderson took in practice to review the advice given through the Pension Review and Advice Process, we find that Mr Henderson failed to take reasonable steps to ensure that HCA reviewed in any meaningful way the advice given through the Pension Review and Advice Process.

(vi) Failure to have in place appropriate systems and controls

1132. In this regard, the Authority relies on the fact that HCA gave investment advice with respect to a number of potential pension transfers, as opposed to pension switches. As we found at [1002] above, Mr Henderson himself identified cases in which HCA had provided pension transfer advice outside the Firm's permissions. As a consequence,

HCA was in contravention of s 20 FSMA by carrying on the regulated activity of advising on pension transfers without the relevant permission.

1133. It would therefore appear that Mr Henderson had not checked what arrangements were in place to ensure that pension transfer cases were filtered out through the LeadTracker process and he did not argue otherwise. Neither was it clear what processes HCA had in place to check whether recommendations were being made in respect of pension transfers.

1134. This was a serious failing and it appears that Mr Henderson gave no thought to the obvious risk that pension transfers could be recommended and what systems and controls ought to be in place to mitigate that risk.

(vii) Failure to carry out adequate due diligence on HJL and CAL

1135. We have set out at [423] to [426] a summary of the various obligations that the Firms had to undertake to oversee the performance of the Outsourced Functions carried out by HJL or CAL, as the case may be, on behalf of the Firms.

1136. We found that there was no evidence that any of the Firms took meaningful steps to exercise due skill, care and diligence when deciding to appoint HJL or CAL, as the case may be, to perform Outsourced Functions. Nor was there any evidence that they took meaningful steps to establish methods for assessing the standard of performance of HJL or CAL, as the case may be, as service providers nor did they take any steps to supervise the Outsourced Functions and monitor any of the risks associated with the outsourcing. The transfer of functions from HJL to CAL in October 2014 appeared to pass without any questions being asked on the part of HCA as to the reasons for the transfer or the resources of CAL.

1137. As we have found, Mr Henderson carried out very limited due diligence on HJL, Mr Stephen and Mr King and no due diligence on Person A. We also found that Mr Henderson relied on EFP's relationship with HJL and Mr N Maynard's relationship with HJL. He said that he was a "good judge of financial services companies". He was therefore really relying on his own intuition and in our view that was a reckless way to approach the matter.

1138. We agree with the Authority that Person A was a key point of contact for Mr Henderson and that his role was of such significance that Mr Henderson should have undertaken due diligence on him.

1139. In respect of the change from HJL to CAL, Mr Henderson did not appear to take any steps to consider if CAL were suitable to perform the services on behalf of HCA. Mr Henderson failed to carry out adequate due diligence and there is no evidence to suggest that Mr Henderson consulted SimplyBiz's opinion on outsourcing the services to HJL in May 2014 or CAL in October 2014.

1140. Consequently, it is an inevitable conclusion that Mr Henderson closed his mind to the risk that HJL, and then CAL, were not suitable to act as introducers and to the risk that they were unsuitable to conduct the Outsourced Functions for HCA.

(viii) Conclusion as to whether Mr Henderson acted recklessly in relation to HCA's adoption and use of the Pension Review and Advice Process

1141. We have found at [1083] to [1140] above that:

(1) Mr Henderson closed his mind to the need to make any significant assessment of the risk factors attaching to the Loan Notes.

(2) Mr Henderson's failure to consider the need to monitor how leads were being generated was reckless on his part.

(3) The conflicts of interest relating to the structure and operation of the Pension Review and Advice Process would have been obvious to Mr Henderson, but he took no steps to manage those conflicts.

(4) The deficiencies in the Pension Review and Advice Process would have been obvious to Mr Henderson.

(5) Mr Henderson failed to take reasonable steps to ensure that HCA reviewed in a meaningful way the advice given through the Pension Review and Advice Process.

(6) Mr Henderson gave no thought to the obvious risk that pension transfers could be recommended and what systems and controls ought to be in place to mitigate that risk.

(7) Mr Henderson closed his mind to the risk that HJL and CAL were not suitable to conduct the Outsourced Functions on behalf of HCA.

1142. In our view, those findings are sufficient to establish that Mr Henderson acted recklessly in relation to HCA's adoption and use of the Pension Review and Advice Process. Mr Henderson closed his mind to the serious risk that the process would (as subsequently transpired) result in HCA's customers receiving unsuitable advice and investing in products that were not suitable for them.

(4) Whether Mr Henderson deliberately provided, on behalf of HCA, false and misleading information to the Authority about the compliance checks that he was undertaking and thereby acted dishonestly

1143. The Authority contends that the file review sheets sent with each of the three files provided to the Authority on 13 and 14 February 2015 purported to be a detailed file review undertaken of those customer files by Mr Henderson in March, April and August 2014 respectively. When providing the files to the Authority, Mr Henderson also told the Authority that he reviewed around 30% of high risk customer files, which included pension switches, to confirm they were compliant.

1144. The Authority contends that Mr Henderson specifically created the file review sheets for provision to the Authority to give a false impression that compliance checks were being conducted on a regular basis.

1145. Mr Henderson's evidence was that the review sheets were created from handwritten notes and that they were typed up to make them easier to decipher. In his

covering email to Mr Slater, he said that he had tried to keep the files for each client as compact as possible.

1146. In our view the evidence is not sufficiently cogent and compelling that we should rely on it to find the serious allegation of dishonesty against Mr Henderson. The Authority was unable to produce metadata which would show when the review sheets were created and accepts that they may have been created after the event.

1147. We therefore find that the Authority has not made out its case on this point.

Conclusion on Issue 1

1148. The findings that we have made, as set out above, demonstrate overwhelmingly that Mr Henderson breached Statement of Principle 1 (Integrity) of the Authority's Statements of Principle for Approved Persons when carrying out his functions as an approved person throughout the Relevant Period.

Issue 2: Financial Penalty

Limitation

1149. Mr Henderson contends that the Authority had the requisite knowledge of his misconduct relied on in the Decision Notice prior to 9 February 2015. It is contended on his behalf that the Authority's action in imposing a financial penalty against Mr Henderson is time barred in some respects. As a consequence, he pleads that the Authority is not entitled to impose a financial penalty on him pursuant to s 66 FSMA in respect of his alleged misconduct from 30 October 2013, which is the start of the Relevant Period.

1150. Section 66(4) FSMA sets out the limitation period for the issue of regulatory proceedings to impose a financial penalty pursuant to the powers in s 66(1) FSMA as follows:

> "(4) A regulator may not take action under this section after the end of the relevant period beginning with the first day on which the regulator knew of the misconduct, unless proceedings in respect of it against the person concerned were begun before the end of that period.
>
> (5) For the purposes of subsection (4) –
>
> > (a) a regulator is to be treated as knowing of misconduct if it has information from which the misconduct can reasonably be inferred; and
> >
> > (b) proceedings against a person in respect of misconduct are to be treated as begun when a warning notice is given to him under section 67(1).
>
> (5ZA) "The relevant period" is –
>
> > (a) in relation to misconduct which occurs before the day on which this subsection comes into force, the period of 3 years, and

> (b) in relation to misconduct which occurs on or after that day, the period of 6 years."

1151. Therefore, the Authority must begin proceedings before the end of the relevant period, meaning that a warning notice must be given to the individual against whom action is taken within the relevant period. In this case, the warning notice given to Mr Henderson was issued on 7 February 2015. Therefore, in relation to misconduct which occurred before 25 July 2014 (the day on which s 66(5ZA) came into force) the relevant limitation period expired on 8 February 2018 (the day the warning notice was deemed to be issued). In relation to misconduct which occurred after 25 July 2014 there is no limitation issue because the warning notice was issued well within the six-year period specified in s 66 (5ZA) (b).

1152. It was common ground that the leading authority on the question of limitation is *Andrew Jeffery v FCA* (2013)(FS/2010/0039) ("*Jeffery*"). In that case, having referred to s 66 laying down two tests, namely the "knowledge" test in s 66(4) and the "reasonable inference" test in s 66(5), the Tribunal said this at [332] to [338]:

> "332. The first of these is a subjective test which looks at the actual knowledge of the Authority. It relates to actual knowledge of the misconduct. That has to be construed by reference to s 66(1). For time to start running in this respect the Authority must have actual knowledge that the particular person against whom action is to be taken has either failed to comply with a statement of principle issued under s 64, or has otherwise contravened as provided by s 66(2)(b).
>
> 333. The second test – the inference test – is an objective test. It is whether, absent actual knowledge, the Authority ought, on the basis of the information available to it, and applying a test of reasonableness, to have inferred that the relevant person had failed to comply with a statement of principle or had otherwise contravened.
>
> 334. There is a particularity to each of these tests. It is not sufficient that the Authority has information in its hands that would give rise to a mere suspicion. Nor is it enough that the information might suggest that there was misconduct, but that the person in question has not been identified as the apparently guilty party. The Authority must either know or be treated, by reasonable inference, as knowing of the misconduct by a particular person. The reference in s 66(4) to "*the* misconduct" (our emphasis) clearly refers to the particular misconduct in respect of which action is to be taken against a particular person, and not to conduct of a similar nature in respect of which information may have been obtained earlier.
>
> 335. Questions will arise as to the degree of certainty required before time can be regarded as running. There is a clear purpose in s 66 that the Authority should be allowed a reasonable period to investigate before being required to issue a Warning Notice. Consistent with that purpose, and to provide a balance for the affected person, the time at which the limitation clock is set cannot be when the case has been fully investigated and the Authority is ready to proceed. Time must start running at an earlier stage in the process.

336. Some assistance on the correct approach can here be derived from the cases on s 14A of the Limitation Act 1980. In *Haward v Fawcetts,* Lord Nicholls (at [9] and [10]) referred to the degree of certainty required before knowledge can be said to exist, and the degree of detail required before a person can be said to have knowledge of a particular matter. Referring to the guidance of Lord Donaldson in *Halford v Brookes* [1991] 1 WLR 428, 443, it was noted that knowledge does not mean knowing for certain and beyond possibility of contradiction. It means knowing with sufficient confidence to justify embarking on the preliminaries to the issue of a writ, such as submitting a claim to the proposed defendant, taking advice, and collecting evidence; suspicion, particularly if it is vague or unsupported, will indeed not be enough, but reasonable belief will normally suffice. In other words, the claimant must know enough for it to be reasonable to investigate further. As to the degree of detail required, what is necessary is not a full appreciation of all the relevant facts, but a "broad knowledge of the essence" of the relevant acts and omissions (*Spargo v 35 North Essex District Health Authority* [1997] PIQR P235, per Brooke LJ).

337. These principles are instructive, but not in our view determinative, of the construction of s 66(4). That construction must have regard to the context and the evident purpose of s 66. On that basis, for time to start running it is not necessary that the Authority has the full picture that would justify the issue at that stage of a Warning Notice. Although the Authority may only take action under s 66(1) if it appears to it that the relevant person is guilty of misconduct, the limitation period starts to run from an earlier time, when the Authority knows or has information from which the misconduct can reasonably be inferred. The Authority must, however, have sufficient knowledge of the particular misconduct, or such knowledge must be capable of being reasonably inferred, to justify an investigation. Mere suspicion is not enough, nor is any general impression that misconduct may have taken place.

338. There will be cases where information about possible misconduct will be received by the Authority piecemeal and over an extended period. At an early stage in the process such information may be inadequate for the Authority to know of a particular misconduct by a particular person, or to be able to infer such misconduct. A mere allegation or assertion unsupported by evidence would be unlikely to be regarded as sufficient to amount to knowledge of misconduct or as information from which it would be reasonable for the Authority to have inferred misconduct, although it might be expected to give rise to further enquiry. Knowledge of an allegation of misconduct is not the same as knowledge of the misconduct. As an investigation progresses more information may come to light as a result of which there comes a time when the Authority either knows, or it can reasonably be inferred from information which the Authority has, that there is substance to an allegation of misconduct in relation to a particular person. It is only at the latter stage that the time limitation begins to run in respect of that misconduct. Provided a Warning Notice is issued in respect of the misconduct within two (now three) years from the earliest time when the Authority knew of the misconduct or the misconduct could be reasonably inferred, the Authority may rely on all the information it is obtained both before and after that time."

1153. In *Alistair Rae Burns v FCA* [2018] UKUT 0246 (TCC) in following *Jeffery* the Tribunal said this at [322]:

> "The decision in *Jeffrey* indicates that in order for the limitation period to start running the Authority must know enough for it to be reasonable to investigate further, and that what is necessary is not a full appreciation of all the relevant facts but "a broad knowledge of the essence": see [336] of the decision. However, these principles need to be applied in the context of the particular misconduct that is being alleged. In this case, the relevant misconduct is Mr Burns's failure to appreciate that there was a conflict, and consequently the failure on the part of TMI to manage that conflict. It is apparent from our findings on the facts that the Authority had no knowledge of those matters until its further investigations that commence with its letter of 20 December 2012. As the Tribunal in Jeffrey said at [337] of its decision, the Authority must have sufficient knowledge of the **particular misconduct**, [emphasis added] or such knowledge must be capable of being reasonably inferred, to justify an investigation."

1154. In Mr Henderson's case, the particular misconduct which is relevant is Mr Henderson's conduct in terms of the adoption and use of the Execution-Only Process and then the Pension Review and Advice Process. The question is at what point the Authority had sufficient information either to know that Mr Henderson's alleged misconduct in relation to those matters amounted to a breach of Statement of Principle 1 on the part of Mr Henderson or reasonably to infer it.

1155. The Authority's position is that the evidence that was available prior to 9 February 2015 gave rise to concerns about how HCA was conducting its business, but there was no information provided that could have supported more than a suspicion that Mr Henderson was acting improperly, let alone that he had breached Statement of Principle 1, until later on that year. The Authority contends that the information received by the Authority prior to its short notice visit in June 2015 was limited. The Authority says it was in terms of HCA being involved in arrangements with HJL about sourcing customers to invest in the Loan Notes, and there was no information about Mr Henderson's involvement, let alone information regarding an alleged lack of integrity on his part.

1156. It was common ground that even if knowledge had arisen sufficient that the Authority is time barred, it is not the case that the Authority cannot rely on misconduct that occurred after the relevant date which is of a similar nature because that is a new breach for the purposes of bringing an action by the Authority. As the Tribunal said in *Jeffrey* at [339], where the Authority becomes aware of more than one act of misconduct of which a particular person appears to be guilty, the time limit operates separately in respect of each breach.

1157. Mr Lloyd submitted in relation to the alleged misconduct which occurred before 25 July 2014, and was therefore subject to the three-year limitation period that:

(1) the Authority had sufficient information to justify an investigation before 7 February 2015, but did not act on the information;

(2) the Authority had sufficient information by May 2014 to infer that Mr Henderson had failed to comply with a statement of principle; and

(3) Mr Slater's enquiries from January 2015 were in effect an investigation, hence satisfying the test of an investigation being justified.

1158. Mr Lloyd relied primarily on the information that Mr Ali had in his possession in May 2014. In particular, Mr Lloyd relied on the email that the Authority had received on 22 May 2014 regarding the activities of Taylor Barton purportedly acting on behalf of HCA referred to at [977] above. Mr Lloyd submitted that it was reasonable to infer that the Authority objectively had knowledge to justify an investigation at that point and that Mr Ali could reasonably have taken matters further.

1159. Furthermore, Mr Lloyd submitted, Mr Raphael had raised concerns on 2 September 2014 that HCA may have been involved in giving advice on unregulated investments; and Mr Slater, who would have been able to access the previous information obtained by Mr Ali and Mr Raphael, was looking into complaints that HCA may have breached the terms of its Voluntary Requirement by engaging in regulated activities relating to pension switches to SIPPs investing in non-standard investments. As we found, Mr Slater had access to an intelligence report which related to the Execution-Only Process, but by early February 2015 was still in the process of gathering information about the business conducted by HCA as regards pension switches.

1160. In our view, the material available to the Authority by early February 2015, if put together and considered as a whole, gave rise to no more than a mere suspicion that HCA and, by inference, Mr Henderson as the sole CF1, had been guilty of misconduct.

1161. We accept that the information that was available to the Authority in May 2014 should probably have prompted further enquiries at that time, particularly if the intelligence report of March 2014 was considered together with the information then available to Mr Ali. However, for reasons which are not clear, he did not pursue the matter and, had he done so, the Authority might have been in a position to take intervention action at an earlier point. However, it takes matters far too far to suggest that the information available in May 2014 was sufficient to trigger an investigation. The Authority had knowledge of an execution only model, perhaps being used by Mr Henderson. It knew that HJL were in some form of arrangement with HCA and that cold calling might be taking place. Put together, those were all matters that merited further enquiries, but the Authority would need considerably more information to trigger any kind of investigation, let alone an investigation as to whether Mr Henderson had been guilty of misconduct which breached Statement of Principle 1. None of the information available to the Authority at that point indicated that a breach of that Principle by Mr Henderson could reasonably have been inferred.

1162. In particular, none of the information available to the Authority, or which it ought to have known at that point, could lead to an inference that Mr Henderson had been reckless in relation to the conflicts of interest in the Execution-Only Process, reckless as to the adoption and use of the Pension Review and Advice Process or dishonest in

respect of the statements made in the Service Proposition and the Brochure. Put at its highest, the Authority was aware of certain factual elements relating to those matters.

1163. With regard to Mr Slater's enquiries, we accept his evidence that, by the time of Mr Henderson's response to his further enquiries on 6 February 2015, Mr Slater had a strong suspicion that this might be a case of pension mis-selling but it is clear that he did not understand specifically how or why. Quite rightly, he was keeping an open mind at that stage.

1164. We therefore find that, until the short notice visit in June 2015, the Authority was not aware of the key elements of misconduct complained of against Mr Henderson.

1165. We therefore determine the limitation issue in favour of the Authority and we may proceed to consider whether a financial penalty should be imposed on Mr Henderson in respect of his conduct throughout the Relevant Period.

Determination of the financial penalty

1166. In our view, Mr Henderson's failings are very serious. In common with the other Applicants on these references, they are among the most serious that we have encountered in respect of a small IFA firm in that he acted recklessly in allowing HCA to adopt a seriously flawed business model and acted dishonestly in misrepresenting the features of that model to a large number of unsophisticated customers, causing serious harm to those investors. His behaviour has also had a serious impact on other IFA firms in terms of the effect on the calls on the FSCS to which all authorised firms in the relevant category have to contribute.

1167. In our view, the imposition of a very substantial financial penalty in this case is justified and appropriate. As the Authority's penalty policy states, the principal purpose of imposing a financial penalty is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches, and helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour.

1168. It is a personal tragedy for Mr Henderson that he allowed his instincts and values as a respected IFA to be overridden as a result of the volume of business, and consequent high levels of remuneration, participation in the Execution-Only Process and the Pension Review and Advice Process offered. We have no doubt, as submitted by the Authority, that Mr Henderson was motivated by the financial gain which would be obtained through a volume of business that he had never experienced before.

1169. Consequently, he had allowed his judgment to be seriously compromised by the business model, as put to him by HJL, and closed his mind to the risks that in doing so he was putting his own interests above those of HCA's customers. He allowed his business to be used as a vehicle for HJL to promote the Loan Notes under the veneer of bespoke advice given by an IFA.

1170. The Authority seeks the same level of financial penalty that it set out in the Decision Notice, which was calculated by applying the five-step framework set out at [102] above.

1171. We received no challenge from Mr Henderson to that approach and, therefore, in accordance with the usual practice, we should pay that policy due regard when carrying out our overriding objective of doing justice between the parties.

1172. We see no reason to dispute the calculations made by the Authority to determine the financial penalty and which Mr Purchas set out in detail in his closing submissions. In summary:

Step 1: The Authority calculates an amount of £101,379 to deprive Mr Henderson of the financial benefit derived directly from his breaches of Principle 1, inclusive of interest calculated as described below, up to the date of Mr Henderson's Decision Notice. The Authority seeks continuing interest on the principal amount of that benefit at the rate of 8% per annum from the date of the Decision Notice, consistent with the policy set out in DEPP 6.5B.1G which states that the Authority will ordinarily charge interest on the amount of the benefit. The rate of 8% per annum is consistent with the judgment debt rate of 8% simple per year under s 17 Judgements Act 1838 (as amended by Article 2 Judgements Debts (Rate of Interest) Order 1993). This rate of interest is also consistent with the amount of interest typically awarded by the FOS and in our view is the appropriate rate to be applied in the current circumstances.

Step 2: The Authority placed the seriousness of Mr Henderson's breach at Level 5, the highest level, which results in an additional penalty sum of £31,140 being 40% of the relevant net revenue earned by Mr Henderson during the Penalty Period.

We agree with that assessment, bearing in mind the following factors:

(1) Mr Henderson's motivation for financial gain for himself;

(2) the significant loss for a large number of consumers many of whom were vulnerable;

(3) the length of time over which the breaches occurred;

(4) Mr Henderson's senior position at the Firm; and

(5) the serious allegation of dishonesty and the number of allegations of reckless conduct.

Step 3: The Authority added a sum equal to a further 25% of the penalty calculated above to take account of aggravating factors, in particular Mr Henderson's previous involvement in carbon credits (another high risk unregulated investment), knowledge of the various alerts issued by the Authority in relation to pension switching and his failure to bring the Pension Review and Advice Process to the attention of the Authority or implement changes once he realised there were defects in the process. The Authority identified no mitigating factors.

We agree with that assessment.

Step 4: The Authority considered that the Step 3 figure of £38,925 would not represent a sufficient deterrent to Mr Henderson and so, at Step 4, increased the Step 3 figure by a multiple of two as an adjustment for deterrence.

In view of the very serious nature of the allegations in this case and their impact, we agree with the Authority's assessment.

1173. Consequently, the Authority seeks a financial penalty of £179,179. That is a very large sum to be imposed on the director of a small IFA firm. However, HCA took on a large amount of business during the Relevant Period and in our view the figure is justified by reference to the scale of the business conducted during that period, the seriousness of the breaches and the need to dissuade any other IFA firm from taking a similar path in the future.

1174. In view of the seriousness of the core allegations of recklessness and dishonesty in relation to the business model of HCA that we have found to be established, we have not considered it appropriate to reduce the penalty on account of our finding that the Authority did not make out its case in relation to the separate allegation of dishonesty in respect of misleading the Authority over the three file reviews.

1175. We therefore determine that it will be appropriate for the Authority to impose a financial penalty of £179,179 on Mr Henderson, plus continuing interest on the amount of the benefit received by him, as calculated above.

Issue 3: Prohibition

1176. Mr Henderson made no submissions challenging the imposition of a prohibition order were the allegations made against him to be established.

1177. As we have found, Mr Henderson has been found to be lacking in integrity as a result of a series of breaches committed over a lengthy period. It is clear that the imposition of a prohibition order by the Authority under s 56 FSMA on the grounds that Mr Henderson is not a fit and proper person to perform any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm is a course of action reasonably open to the Authority on the basis of the findings that we have made. We therefore see no basis on which we should interfere with the Authority's decision in that regard.

VIII. THE BHIM REFERENCES

Findings of fact

Introduction

1178. We start with our findings of fact which are specific to Mr R Ward's and Mr Freer's references. These are to be read in conjunction with the findings that we have made on matters which are common to all of the references, as set out above.

Background to BHIM and its involvement in the Pension Review and Advice Process

1179. Mr R Ward has worked in financial services since the early 1970s and set up his own financial services firm, Robert Ward & Company, in 1984. Robert Ward & Company was regulated by the Personal Investment Authority between 1997 and 2001, then by the Financial Services Authority until April 2006. That business was sold in 2003 and Mr R Ward joined the company that bought it.

1180. The client base of the business was acquired by BHIM in 2006 and Mr R Ward joined the Firm at the same time, joining up with Mr Freer who used to work for Robert Ward & Company. It was envisaged that Mr Freer was going to run BHIM, and Mr R Ward would work there on a self-employed basis.

1181. Mr R Ward became bankrupt in June 2011 as a result of a dispute with HMRC over tax that he owed. His bankruptcy was discharged on 14 May 2013. He stopped practising as a financial adviser because of the bankruptcy, but on 16 October 2014 was approved by the Authority to perform the CF 1 (Director) and CF 3 (Chief Executive) controlled functions at BHIM. Mr R Ward took his role as Chief Executive as being to guide business development, as well as to oversee the Firm's finances, liaise with Mr Freer as regards compliance matters and keep abreast with regulatory changes which affected his area of the business.

1182. Mr Freer began working for Robert Ward & Company in 2002 as a para--planner. In 2003, he qualified as an IFA, which led him to getting clients of his own. He started BHIM in 2006 to service these clients, being the sole director before Mr R Ward joined the Firm. Mr Freer was approved on 29 June 2006 to perform the CF 1 (Director) and CF 10 (Compliance Oversight) controlled functions. He was approved to perform the CF 30 (Customer Function) on 1 November 2007.

1183. Mr R Ward agreed that he had substantial experience in financial services. Mr R Ward also emphasised in his evidence that he had experience of commercial and residential property having worked in the property industry for ten years before becoming an IFA. He also accepted that he had a reasonably good grasp of BHIM's regulatory obligations.

1184. In terms of his specific role at BHIM, he stated that:

(1) It was incumbent on him to ensure the business carried out at BHIM was carried out in a responsible and effective manner.

(2) He also accepted that in adopting a new line of business he would need to be satisfied that it was consistent with BHIM's regulatory requirements.

(3) While he stated that it was prudent to seek advice and guidance "you're ultimately responsible if you're at the top. It's a lonely place, but you're that person."

1185. Mr Freer was an experienced IFA and he confirmed that he was familiar with the Authority's Rules. He said that he had read the alerts issued by the Authority in 2013 and 2014, and subsequently sent to the Firm, regarding pension switching into SIPPs investing into unregulated products. He also confirmed that he understood the requirement that advice needed to be suitable for the individual client and the need to

carry out an adequate fact find in order to assess suitability – this included gaining an understanding of customers' overall financial position including their income and expenditure, and their other assets, property holdings and savings for retirement.

1186. BHIM operated from premises owned by Mr R Ward in Cheltenham, Gloucestershire. It was supervised by the Authority as a flexible portfolio firm and was authorised to conduct regulated activities, including advising on investments (except Pension Transfers and Pension Opt Outs) and arranging (bringing about) deals in investments.

1187. During the first half of 2014, the Authority conducted some enquiries into the Firm's advisory practices where clients used a SIPP to invest in non-standard investments. As a result of those enquiries, BHIM was invited to enter into a Voluntary Requirement, which the Firm agreed to.

1188. Accordingly, on 16 June 2014, BHIM agreed to a Voluntary Requirement to the effect that it would not carry on any regulated activities in relation to pension switches and/or pension transfers to any SIPP except where the member's funds were to be invested wholly in "standard investments". The Voluntary Requirement defined "standard investments" as being assets which must be capable of being (i) accurately and fairly valued on an ongoing basis; and (ii) readily realised whenever required (up to a maximum of thirty days) for an amount that could be reconciled with the previous valuation. BHIM also agreed not to hold itself out as providing independent advice in relation to personal pension schemes, such advice to be instead described as restricted advice.

The arrangements for BHIM's participation in the Pension Review and Advice Process

1189. Sometime before 9 September 2014, Mr R Ward was introduced by a contact to Mr Mark Sorby, who in turn was being introduced to a lead generator and wondered if Mr R Ward would be interested in meeting the lead generator as well. That led to an arrangement to meet Mr Worrow Jr on 9 September 2014. The entry in Mr R Ward's diary for that day shows an appointment at what was then HJL's office in Maddox Street and the name "Hennessy Jones" is recorded in Mr R Ward's diary entry.

1190. Mr R Ward contended that at no point did he believe that BHIM was going to enter into a contract with HJL for the generation of leads. His evidence was that at all times he was dealing with Mr Worrow Jr in his capacity as director of CAL and that was the only company that BHIM had any relationship with in relation to the Pension Review and Advice Process.

1191. However, in our view, Mr R Ward must have known at that initial meeting that Mr Worrow Jnr had a connection with HJL; bearing in mind that at that time, as we have found, the only entity involved in the generation of leads relating to the Products was HJL as CAL was not engaged in the administration side of the process until October 2014. Mr R Ward also confirmed in his witness statement that Mr Sorby had told him

that he thought that Mr Worrow Jr worked for Hennessy Jones and that explained why he wrote "Hennessy Jones" in his diary.

1192. As Mr R Ward said in his witness statement, Mr Worrow Jr introduced himself as someone whose business was lead generation. We reject Mr R Ward's evidence that he introduced himself as Mr David Worrow of CAL, for the reasons set out above. It appears from Mr R Ward's witness statement that Mr Worrow described to him the essence of the LeadTracker system and the Pension Review and Advice Process.

1193. Mr R Ward had asked Mr Freer to accompany him to the meeting with Mr Worrow Jr, but Mr Freer was unable to do so because of illness. However, on 8 September 2014, Mr R Ward emailed Mr Freer informing him that it appeared that there was a business opportunity to engage in personal pension transfers into "an FCA approved fund which is awaiting listing". Mr Ward said that the issue to him was whether the activity proposed constituted advice and fell inside or outside the Firm's altered permissions, and he indicated that they would need to talk to the FCA "first" on that point.

1194. On the evening of 9 September 2014, Mr R Ward emailed Mr Freer, reporting to him on the results of the meeting with Mr Worrow Jr. He described Mr Worrow as a "consummate professional who is into running funds". He said that Mr Worrow did not have the relevant permissions to give advice and did not want them as "he will have a potential conflict of interest". Mr Worrow had created a "suite of compliant documents to do a complete fully advised pension transfer" and "They actually do everything including the reports and suitability paperwork in our name". Guinness Mahon was named as the SIPP provider. Mr R Ward referred to the fact that he had hard copies of the documents provided to him by Mr Worrow at the meeting.

1195. As regards the role of BHIM, Mr R Ward said:

> "What they want is a compliant sign off on their documents and for us to append a level 4 qualified individual as signatory for the firm. We actually do nothing but get paid plus trail. They charge 3% of [which] they take 2% and we get 1%... We also are required to do a regular compliance visit to do file checking on whatever number and basis we require of our work but not less than monthly."

1196. Mr R Ward went on to say that "They have work that they would like us to take straightaway… This is low-paying work but because of the volume it is excellent".

1197. Mr R Ward went on to say that there was a likelihood of there being 100 cases per week and the commitment would, in the main, be a compliance trip to London once a month, possibly moving to once a week. He said that "I am thinking that we would pay £10 per signature which is electronic anyway plus £500 per compliance trip plus expenses". The payment was to be made to Mr Freer for undertaking the "compliance" work Mr R Ward had described.

1198. The documents given to Mr R Ward at the meeting were provided to Mr Freer on 10 September 2014. They included some Fact Sheets relating to the Bonds, specimens of the Pension Recommendation Report (including one in the name of HCA), copies of Fact Finds, a Standard Service Agreement between HJL and Furness Financial

Management and a Service Proposition from Furness Financial Management. Mr Freer asked Mr Ward for an explanation of the documents, saying in an email timed at 10.54 on 10 September 2014:

> "Who are these companies? Hennessy, Furness, Henderson?"

1199. Although neither Mr R Ward nor Mr Freer said that they could remember the contents of any discussion that took place after Mr Freer raised these questions, they both accept that a discussion did take place.

1200. It is clear that the documents that Mr Freer had received, and had been asked to review by Mr R Ward, were the key documents that would be used in the Pension Review and Advice Process were BHIM to agree to participate in it. Accordingly, we infer that Mr R Ward would have explained to Mr Freer that Furness and Henderson were IFA firms who had previously agreed to participate in the process by signing a Standard Service Agreement with HJL and that the products that would be recommended to customers would have been the Bonds, details of which were set out in the Fact Sheets. Therefore, there could be no doubt that both Mr R Ward and Mr Freer were aware at this point of the role that HJL performed, namely: (i) as the promoter of the Bonds and adviser in relation to the assets which would be acquired by the Issuers; (ii) as generator of the leads, as indicated in the Standard Service Agreement; and (iii) as, at that stage, the entity which carried out the administration of the Pension Review and Advice Process.

1201. Although he denied it in his cross-examination, it was clear to us that Mr Freer was sent this documentation in order that he could review it from a compliance point of view as they were similar documents to those that would be entered into by BHIM. Mr Freer says that he only took a cursory glance at these documents because none of them had BHIM's name on and he would only review documents that BHIM was being asked to sign. We reject that account as not being credible; as we have said it was quite clear that the documents were sent to Mr Freer so that he could review them from the perspective of their suitability for BHIM.

1202. We also reject Mr R Ward's evidence to the effect that the documents were not relevant because the only interest that BHIM had at that stage was in generating leads for its business and there was no intention to enter into a wider relationship. The only reasonable inference to be drawn from the documents, and the fact that they were given to Mr R Ward, is that Mr Worrow Jr provided them so that BHIM could review them from the perspective of whether they would be willing to enter into arrangements on those terms. It was also clear from those documents that HJL was going to have a leading role in the process. None of the documents concerned mentioned CAL and there is no evidence to support Mr R Ward's assertion that he was only looking to enter into an arrangement with CAL at that point.

1203. This is corroborated by the fact that matters then moved swiftly towards BHIM finalising arrangements for participation in the Pension Review and Advice Process.

1204. Following the discussion that took place after Mr Freer's email that morning, Mr R Ward emailed Mr Worrow Jr at 12.22 saying that Mr Freer had come back to him regarding the compliance issues saying that he "is happy for us to proceed". Mr R Ward added:

> "All that he has said is that he must see the printed (scanned) actual BHIM documents before use to formally complete his file."

1205. We note that Mr R Ward was corresponding with Mr Worrow Jr at a HJL email address, so again there was no mention of CAL. Mr Worrow replied that once he had the logo and letterhead, he would turn everything around as quickly as he could. Those logos were provided to Mr Worrow less than an hour later.

1206. On 11 September 2014, Mr R Ward provided Mr Worrow Jr with Mr Freer's electronic signature. We do not find credible Mr R Ward's assertion that this was provided in the context of a relationship relating exclusively to the generation of leads. Bearing in mind the documents that were then being considered, it must have been provided in the context of being used on the reports to be generated through the Pension Review and Advice Process and, indeed, Mr Worrow confirmed that would be the case in an email to Mr R Ward on the same day.

1207. On 12 September 2014, Mr Worrow Jr emailed Mr R Ward and Mr Freer attaching what he described as finalised documents. Mr R Ward in particular was asked to review the Brochure and the section on the management team, where Mr Worrow said that he had expanded words previously provided by Mr R Ward.

1208. Mr Freer responded that day saying that he was happy with all of the documentation, although he did say that he thought that some of the wording in the Brochure could be better, although he was happy to leave it as it was as it was not a compliance issue. He finished the email by saying:

> "From a compliance point of view I cannot see any issues and you have been using these templates for a while without any problem so I say, if it ain't broke don't fix it!"

1209. Mr Worrow Jr replied later that day thanking Mr Freer for reviewing the documents so quickly and telling him that he would send finalised versions for his records.

1210. As well as the Brochure and the Service Proposition, one of the documents attached to Mr Worrow's first email of 12 September 2014 was a Standard Service Agreement between HJL and BHIM, in the form also signed by FPL and HCA, providing for HJL to provide both lead generation services and administration services. The signature block, which was not completed, contemplated that the agreement would be signed by Mr Stephen on behalf of HJL.

1211. It does not appear that this agreement was in fact ever executed. That may have been the case because CAL started to provide the administration services in October 2014. However, as we have found in relation to the other references, no entity other

than HJL was involved in the lead generation and it was HJL who had the relationship with the marketing companies, not CAL. Therefore, even if this agreement was never signed and BHIM never recognised that it entered into a lead generation agreement with HJL, in practice it did because the leads which passed through the Pension Review and Advice Process were generated by HJL pursuant to the marketing agreements that it entered into.

1212. Furthermore, the Pension Summary Reports that started to be produced in BHIM's name in October 2014 clearly disclosed that the customer had been introduced to BHIM by HJL. Mr Freer accepted in his cross-examination that he would have seen Pension Summary Reports at this time which contained that disclosure. Mr Freer's answer was that he should have picked this up at the time.

1213. He said that his only interest in how leads were being generated was whether or not they were being cold called, stating "Other than that, I don't really care".

1214. BHIM entered into a Standard Service Agreement with CAL on 13 October 2014. Unfortunately, no full copy of this agreement has been traced. The copy that was in evidence only has every other page and Schedule 1, which sets out the services to be provided, is missing. Mr Ward's signature on behalf of BHIM does, however, appear on the copy. However, consistently with the agreements with HCA and FPL which, we have found, were also executed on 13 October 2014, we infer that the only services to be provided by CAL would be the administration services relating to the Pension Review and Advice Process with leads continuing to be generated by HJL.

1215. Mr R Ward's position was that it was Mr Freer's responsibility to review the documentation sent to BHIM in September and October 2014 from a compliance point of view and, having sent the documentation to Mr Freer for that purpose, relied on him to have carried out that task. Mr Freer's position was that he regarded Mr R Ward as having responsibility for the Standard Service Agreement because that was a commercial agreement and not something that he needed to have much involvement in from the compliance point of view. He did, however, accept in his cross-examination that with hindsight he wished he had reviewed the agreement and should have done so, bearing in mind that it involved outsourced services. He accepted that his review of the other documentation was not as thorough as it should have been, explaining that he was looking at it shortly after he returned to work from his illness. He accepted that he should have seen the different roles that HJL were performing, in terms of generating leads and its involvement on the product side, but he did not put the various strands together.

1216. It follows from the findings set out above that neither Mr R Ward nor Mr Freer carried out any due diligence on HJL before BHIM started to participate in the Pension Review and Advice Process. Nor is there any evidence that either of them carried out any due diligence on CAL before entering into the agreement with that company on 13 October 2014.

1217. It also appears to be the case that neither Mr R Ward nor Mr Freer gave any serious thought to the compliance implications of using the documentation that they had been

asked to sign off on. The position they took was that, at the stage these documents were reviewed, BHIM was only looking to enter into arrangements for the generation of leads. Whether that was true or not, and in our view, it is not credible in view of the nature of the documentation they were asked to review, there is no evidence that any proper consideration was given to the question as to whether the documentation was compliant from the point of view of BHIM's obligations under the Authority's rules.

1218. It appears that some processing of leads took place before BHIM signed the agreement with CAL on 13 October 2014. The Authority has identified a Pension Enquiry Form branded with BHIM dated 25 September 2014. Mr Freer accepted in his evidence that CAL may have begun some of the outsourced functions prior to the signing of the agreement.

1219. Mr Freer and Mr R Ward did visit Mr Worrow Jr in his office in London on 20 October 2014. Mr R Ward says that the purpose of that visit was to finish off the due diligence on CAL, although it is not clear what was actually discussed at that meeting. Mr R Ward says that he was merely doing the "PR bit".

1220. In terms of due diligence on the Bonds, Mr R Ward suggests that was undertaken after 20 October 2014, which was clearly after the date on which the agreement with CAL had been signed. However, it is clear from the material that was given to Mr R Ward on 9 September 2014, that BHIM had information relating to the Bonds before 20 October 2014, by which time CAL had already started processing leads for BHIM.

1221. As we have found, there is no significant material in evidence relating to any due diligence on the Bonds, other than the usual checks that are required on the entities involved to satisfy money laundering regulations and to check that the entities actually exist.

1222. Mr R Ward accepted in his cross-examination that he did not read or carry out a careful review of the Information Memoranda, saying that he just glanced through them as they were part of the documentation provided, but he then left it for Mr Freer to review them. As he accepted, that was contrary to what he said in his witness statement, where he asserted that he did read all the documents provided to customers through the process, including the Information Memoranda.

1223. It is clear that Mr R Ward regarded due diligence on the Bonds as being entirely Mr Freer's responsibility. His view was that it was sufficient to ask Mr Freer whether he was satisfied with what he had done. In that context, it appears that Mr Freer informed Mr R Ward that he was content with the legal opinion from the solicitors that the Bonds were standard assets.

1224. It would appear that Mr R Ward carried out limited monitoring of the investments being made by Issuers. He said that in February 2015 he attended a meeting with HJL to observe the discussions on asset allocation. He accepted that to be the position, contrary to his statement in both his witness statement and earlier in his cross-examination that he had attended a number of meetings throughout 2015 and not just one in February.

1225. Mr Freer says that he did not review any of the documentation relating to the Bonds until after the meeting on 20 October 2014 referred to above, where he says it became apparent for the first time that BHIM would be recommending products with fixed returns over a fixed time period. As we have found, it would have been apparent to Mr Freer prior to that meeting that the Pension Review and Advice Process as used by BHIM would involve the recommendation of the Bonds and he had also already been provided with material relating to the Bonds. It is not clear what due diligence Mr Freer actually conducted in relation to the Bonds other than reviewing the documents provided by HJL.

Events during BHIM's use of the Pension Review and Advice Process

1226. It would appear that the first switch recommended by BHIM into the Avalon SIPP was completed on 3 November 2014.

1227. In the context of the launch of the Liquid Assets Bonds, on 24 November 2014 Mr Worrow Jr sent Mr Freer an email attaching a term sheet for the Liquid Assets Bonds without explanation. Mr Freer replied the same day saying that he thought that in principle "this is fine". Mr Worrow Jr thanked Mr Freer for that response saying that he would have the "advice reports amended with these for future clients". It was clear that this exchange therefore related to the proposal to replace the cash element of portfolios with investments in the Liquid Assets Bonds, as we saw in relation to Mr Page's reference.

1228. It was put to Mr Freer that no due diligence was carried out on the Liquid Assets Bonds before he gave his approval. Mr Freer disputed that, but there was no evidence that he could point to showing that due diligence was undertaken by either himself or Mr R Ward. He did not know who made the decision to move cash into the Liquid Assets Bonds , and whether this was led by HJL, but he believed that he had discussed the matter with Mr R Ward.

1229. In our view, based on what we found in relation to Mr Page's reference, the initiative to make the change came from HJL. In the absence of any evidence of due diligence having been undertaken, we find that neither Mr R Ward nor Mr Freer undertook any due diligence on the Liquid Assets Bonds.

1230. It was not until 6 February 2015 that the Residential, SME and Commercial Bonds were listed on GXG Main Quote, although they had been recommended to customers by BHIM for some time before then. The Liquid Assets Bonds were listed on GXG Main Quote on 31 March 2015. Mr Freer and Mr R Ward said that they were aware that the Bonds were unlisted at the time of the recommendations. It is not clear when they became aware of that position. As a result of pensions being transferred prior to the Bonds being listing, many customers saw their pension funds remain in cash with Avalon, rather than being invested, whilst listing of their respective Bonds was awaited.

1231. Both Mr R Ward and Mr Freer took the position that they had quickly identified concerns with CAL and the Pension Review and Advice Process after they started

working with CAL, and consequently had taken steps to terminate the agreement with CAL in February or March 2015.

1232. We have seen no evidence that Mr R Ward took any steps at that time to terminate the agreement and that is consistent with what we have seen in a number of emails. For instance, on 12 February 2015, Mr R Ward sent an email to Mr Worrow Jr agreeing to a reduction in the upfront fees payable to BHIM for a period of three months and agreeing to explore further business opportunities. On 10 April 2015, Mr R Ward sent an email to Mr Freer informing him that he was going to London shortly to look at how the Firm should consider the issue of doing not only ISAs, but also a full financial review through the CAL process.

1233. In the light of these emails, we reject Mr R Ward's and Mr Freer's evidence that any remaining business done after March 2015 was run-off business; not least because the statistics show that 111 customers invested over £2 million between April and July 2015.

1234. Mr R Ward suggested in his evidence that the agreement could not be terminated immediately because of a threat of litigation. That threat was not credible. BHIM could easily have taken the position that it was necessary to terminate the agreement in order to comply with its regulatory obligations if it was of the view that the process was non-compliant. In fact, the agreement continued until it was terminated in July 2015 after the Authority's intervention, as referred to below.

The Authority's interventions

1235. On 30 March 2015, Mr Slater asked Mr Freer to provide a copy of the Firm's full new business register for the period from 1 January 2014 to date together with a copy of the Firm's current PII certificate. Mr Slater said that this request was part of the Authority's follow-up work subsequent to the entering into of the Voluntary Requirement in 2014.

1236. There was then prolonged correspondence between Mr Freer and Mr Slater following requests by Mr Slater for further information.

1237. On 25 June 2015, Mr Freer emailed Mr R Ward saying that as a result of the information provided, Mr Freer thought that the Authority would have only two questions namely:

> "1. How did we arrive at Avalon and subsequently Guinness Mahon for the SIPPs?
>
> 2. How did we arrive at Hennessy Jones portfolios for the clients?"

1238. He asked Mr R Ward whether BHIM could answer those questions, which Mr R Ward answered in the positive, saying "This is the reverse engineering one".

1239. Mr R Ward denied that the honest answer to those questions would be that Avalon and the Bonds were chosen because HJL had selected them.

1240. The Authority subsequently decided to conduct a short notice visit to BHIM. The visit took place on 15 and 16 July 2015 and the team was led by Mr Slater. The visit was prompted by concerns regarding the conduct of BHIM's pension business and that it might be involved in recommending customers invest in unsuitable high risk assets through SIPPs. The note of that meeting records that Mr R Ward told the Authority that the cases introduced through the Pension Review and Advice Process had been done in a very short time between February and March 2015 and then had stopped, which, as we have found, is untrue.

1241. Mr Slater was very concerned following the visit about the pension switching business being conducted by BHIM. Accordingly, on 17 July 2015, Mr Slater wrote to Mr R Ward inviting BHIM to enter into a Voluntary Requirement. Among other things, the Voluntary Requirement proposed required BHIM:

(1) to terminate its relationships with HJL and CAL;

(2) not to carry on any regulated activities in relation to pension switches and/or pension transfers to any SIPP, including completing any business currently being processed which has not been completed, until independent verification is provided to the Authority confirming that a robust and compliant advisory process is in place for pension switching advice;

(3) to implement a process of ongoing independent checks on all new pension switching advice until such time as the Authority is satisfied that the new advisory process referred to above is embedded into the Firm's processes; and

(4) not in any way dispose of, deal with or diminish the value of any of its assets without the prior consent of the Authority other than in the ordinary and proper course of business.

1242. BHIM and its solicitor, Sara Teasdale, then entered into correspondence with the Authority over the terms of the proposed Voluntary Requirement. On 22 July 2015, Ms Teasdale wrote to Mr Slater asking for an extension of time to respond to the request for a Voluntary Requirement until 7 August 2015. She also confirmed that BHIM would not be transacting any new SIPP switching business before 7 August 2015. Ms Teasdale then set out the cases which represented pre-existing pipeline business. In relation to this, she stated that, after retraining, staff would work through the remaining pipeline with a view towards transfers being made to "platform and DFM".

1243. On the same day Mr Slater responded, copying in Ms Hartley. Mr Slater explained what action BHIM should take in relation to different categories of pipeline business.

1244. For those customers who have not yet been provided with any advice (referred to by Mr Slater as "Group 1" customers), Mr Slater said that BHIM should write to them explaining that the firm was no longer providing advisory services. For those customers who had been given advice, but at that point either remained in their existing pension arrangement (referred to as the "ceding scheme") or who had been moved to a SIPP but whose funds were yet to be invested ("Group 2" and "Group 3" customers respectively), BHIM should inform them that the Bonds were subject to a review by the Authority and that they should seek advice from another IFA as BHIM could not offer this service.

1245. Mr Slater said to Ms Teasdale that he was prepared to agree to the extension of time to consider the proposed Voluntary Requirement, if BHIM gave an undertaking that it would not conduct any switching of personal pensions until the Authority was satisfied that the advice process was compliant.

1246. Mr Slater's understanding was that a "DFM" was a discretionary fund manager who would invest a customer's funds in accordance with certain parameters and objectives set by the fund manager or customer. His understanding was that a "platform" was a service through which a customer could invest through a single provider (the platform) in the various investments that were made available by the platform. His understanding was that the use of a DFM or a platform did not necessarily involve a pension arrangement because a customer might simply maintain an investment account with a platform and/or a DFM. However, the customer might also choose to invest through a tax-efficient wrapper such as a SIPP. For these reasons, platforms might offer a SIPP account as part of their service and the customer could then invest in funds or products available on the platform and hold them within a SIPP. Similarly, a DFM might be engaged to make and manage investments on behalf of a customer who held the investments within a SIPP.

1247. Mr Slater's understanding is shared by the Tribunal, and we accept his evidence on this point which was unchallenged. Ms Hartley in her evidence said that she also shared Mr Slater's understanding.

1248. Based on his understanding, Mr Slater thought Ms Teasdale was suggesting that BHIM's intention was for pre-existing customers to be transferred from their existing pension arrangements to a DFM or a platform. To maintain the tax benefits, a customer would need to switch or transfer from one pension arrangement to another pension arrangement. He therefore understood Ms Teasdale to mean that the transfer would be to a SIPP involving either a DFM or a platform.

1249. In his response to Mr Teasdale, Mr Slater did not specifically refer to her comments regarding transfers to "platform or DFM", but he did note that he was confused by BHIM's comments in relation to pre-existing business and he confirmed that BHIM was not to undertake any switching of personal pensions to SIPPs until the Authority was satisfied that it had a robust advisory process in place.

1250. On 23 July 2015, Ms Teasdale replied to Mr Slater, confirming that BHIM would not switch any personal pensions to SIPPs between the date of the letter and 7 August, confirming that that included pipeline business.

1251. In relation to Group 1 customers, Ms Teasdale stated that BHIM's intention was for an IFA to speak to those customers and to "discuss the possibility of transfer to platform i.e. not a SIPP switch." Her email noted that the recent visit had not raised concerns about the Firm transferring customer's pensions to a platform and "the firm's intention is therefore to continue transacting transfers to platform, but not pension switches direct to SIPP". She explained that CAL were not involved in any transfers to platforms and that those transfers would not have involved investment in the Bonds.

1252. Ms Hartley responded to this email because Mr Slater was out of the office. Ms Hartley accepted the undertaking as proposed in order to allow the Firm time to seek legal advice as to the effect of the requirement notice. She said that the Authority's view remained that the concerns identified during the visit were such that the Firm's permissions should be varied as set out in the draft notice of requirement.

1253. Mr Slater says that he did not understand Ms Teasdale's comment that BHIM's intention was to have an IFA speak to customers and "discuss the possibility of transfer to platform i.e. not a SIPP switch". As he explained, to avoid tax consequences, a switch or transfer from an existing pension scheme would need to be into another pension arrangement (through a platform or otherwise).

1254. In her evidence, which was not challenged on this point, Ms Hartley said she did not address Ms Teasdale's comment about the possibility of transferring to a platform directly. The reason for this was that the proposed Voluntary Requirement did not allow the firm to conduct any switches or transfers to a SIPP for any customers until independent verification was provided that a robust and compliant process was in place to provide advice on the pension switch or transfer. She said that, until this was addressed, it was immaterial to which product BHIM were proposing to move their customers and whether that product had been provided by a platform or other SIPP provider.

1255. Later on 23 July 2014, Ms Teasdale replied to Ms Hartley's email stating that the Authority's position with regard to the variation of BHIM's permissions was noted.

1256. On 4 August 2015, Mr Slater wrote to Mr R Ward providing detailed feedback following the short notice visit to BHIM. Mr Slater's letter highlighted the Authority's significant concerns including about poor systems and controls and BHIM's sales and advisory process.

1257. The letter also addressed the issue of pipeline business, setting out again the points made in Mr Slater's email of 22 July 2015. It emphasised that BHIM was not able to review the recommendations made to pipeline customers because the Firm agreed to a requirement preventing all regulated pension activity.

1258. Mr R Ward's observation on this letter, as expressed to Mr Freer in an email on the same day, was that the Authority had "restricted the whole thing to the work that we were doing with CAL". It appears from that comment that Mr R Ward had not appreciated that the terms of the proposed Voluntary Requirement would restrict all of BHIM's pension switching business, whether carried out through CAL or through its other IFA business based in the Cheltenham office. The clarification sought by Ms Teasdale regarding the ability to continue pension switches to a platform may therefore be seen as an attempt to seek clarification that the existing business in Cheltenham which, insofar as it involved transfers to SIPPs, involved the transfer of the assets concerned to an account held through a platform. However, as Ms Hartley explained, there was no basis to give any clarification because the terms of the proposed Voluntary Requirement clearly covered all pension switching business, wherever carried out.

1259. On 14 August 2015, BHIM attended a meeting at the offices of the Authority. Mr R Ward attended for BHIM accompanied by Ms Teasdale and her colleague, Mr Brocklehurst. Ms Daisy Martin and Ms Laura Dawes, as well as Mr Slater, attended for the Authority.

1260. Ms Teasdale started by explaining there were two parts to BHIM's business – Cheltenham, which was where the advisory service was held; and London where the work was outsourced to CAL. She said that BHIM were seeking to wind down the latter business and wanted to deal with any pipeline customers compliantly. She said that she understood that there were also concerns regarding the Cheltenham business.

1261. Mr R Ward stated that it was BHIM's intention to advise the clients previously handled by CAL through the Cheltenham office. The note of the meeting states that "This will be into DFMs and Platforms rather than SIPPs". Mr Slater stated that the proposed Voluntary Requirement was to apply to the entirety of BHIM's business; including the Cheltenham office.

1262. Ms Teasdale raised a concern about the wording of the proposed Voluntary Requirement, noting that it stopped BHIM from conducting all pension business. To address this, Ms Teasdale suggested that the Voluntary Requirement could be amended to include the word "SIPP" before "pension switching advice" in paragraph (3) of the draft Voluntary Requirement, so as not to impact BHIM's Cheltenham office to such an extent. The Authority agreed to consider this.

1263. On 2 September 2015, Ms Teasdale emailed Mr Slater explaining that BHIM had collated a list of those clients whose funds had already been transferred to Guinness Mahon/Avalon but where the funds had not yet been invested, that is the "Group 3" pipeline customers described in Mr Slater's email of 22 July 2015. Ms Teasdale sought the Authority's agreement for BHIM to write to these customers to explain that the Hennessy Jones' Bonds were subject to an ongoing review by the Authority and to suggest that their funds were put into a cash bond.

1264. On 8 September 2015, Ms Hartley spoke to Ms Teasdale on the telephone and discussed BHIM's proposed changes to the Voluntary Requirement, namely, to limit the scope of the requirement to preventing BHIM from conducting activities in relation to pension switches to SIPPs (rather than all pension switches).

1265. Having consulted Mr Slater and Ms Dawes, Ms Hartley agreed to the amendment proposed by Ms Teasdale and informed her of the same on 9 September 2015. She also said that the Authority was content with the proposal to put consumers that remained uninvested into a cash bond.

1266. On 17 September 2015, Ms Teasdale emailed Ms Hartley attaching a copy of the Voluntary Requirement signed by Mr R Ward which included the agreed amendment. Thus, the third paragraph of the Voluntary Requirement required BHIM to implement a process of ongoing independent checks on "all pension SIPP switching advice until such time as the Authority was satisfied that the new advisory process was embedded into the Firm's processes".

Events following the Authority's interventions

1267. Between 27 and 29 July 2015, Mr R Ward had an email exchange with Mr Worrow Jr in which Mr R Ward explained that BHIM would need to sever its business relationship with CAL as a result of the Authority's intervention.

1268. It appears, however, that BHIM started to develop a business relationship with a company called Financial Support Services Limited ("FSS") shortly after this time and after, it appears, CAL ceased providing administration services. We have seen a copy of an agreement dated 12 August 2015 entered into between FSS and BHIM relating to the use of customer data held by BHIM which arose as a result of, the agreement recites, BHIM's relationship with HJL. Mr R Ward knew that FSS had close links to HJL, and Mr Stephen had signed the agreement between FSS and BHIM on behalf of FSS.

1269. According to Mr R Ward's evidence, Mr King had set up FSS to develop the advice process to encompass a wider range of products and BHIM were working with them on the design process.

1270. During August 2015, there was correspondence between FSS and Mr R Ward showing that preparations were being made for FSS to start lead generation for BHIM. Various documents were provided to Mr R Ward which included the full name of FSS.

1271. It appears that leads were being generated by October 2015. On 9 October 2015, Mr King emailed Mr R Ward informing him that 187 clients had so far been signed for BHIM by FSS and passed to Cheltenham, 92 of which had been accepted.

1272. On 9 November 2015, Enforcement commenced its investigations into BHIM, Mr R Ward and Mr Freer. On 18 December 2015, the Authority sent an information request to Mr R Ward asking for various documents in relation to the period from 1 December 2014 to 17 September 2015. Among the documents requested were copies of all minutes, agendas, supporting papers and notes relating to any BHIM board or committee meetings, or other discussions within BHIM where, among other things, the Bonds, HJL, CAL, Avalon, or Guinness Mahon were discussed.

1273. Ms Teasdale responded on behalf of BHIM. She started her response by saying:

> "Please note that BHIM never had any business relationship with HJL beyond the fact that it invested customer monies in HJ Bonds. The recommendation to invest in those bonds came through CAL, not HJL. In relation to each and every request relating to HJL, please note that BHIM's position is that no such documentation exists."

1274. In response to the request for board minutes etc the response was as follows:

> "This documentation does not exist. BHIM is a small business and has not historically kept formal board or committee papers as discussions were had on a frequent but informal basis and were not minuted or recorded in any formal way. There are no relevant documents in existence matching this request."

1275. During its investigation, Enforcement conducted interviews with two former directors of BHIM during which the Authority was told that minutes that fell within the categories requested by the Authority did in fact exist. Consequently, on 11 November 2016, Mr R Ward provided to the Authority a series of minutes of meetings held between July 2014 and February 2016. These minutes were headed either as "management meeting" or "Board meeting".

1276. Following the signing of the Voluntary Requirement, Ms Hartley had further communications with Ms Teasdale and Mr R Ward about the handling of pipeline customers, in particular the "Group 3" pipeline customers described in Mr Slater's email of 22 July 2015.

1277. On 18 December 2015, Ms Teasdale and Ms Hartley had an exchange of emails and a telephone call following which Ms Hartley agreed that the "Group 3" customers could have their uninvested cash placed with a DFM (specifically, Beaufort) for them to onward invest it in the Henderson Money Market Fund.

1278. On 21 December 2015, Ms Hartley had a telephone call with Mr R Ward who was seeking to clarify certain aspects of what BHIM had been doing and its relationship with the Authority. The Authority's note of this telephone call records that Mr R Ward said that he wanted Ms Teasdale to explain "her understanding of the wording of the [Voluntary Requirement] and to ensure that the wording was correct, so he was not forced to make redundancies". In her oral evidence, Ms Hartley said her impression was that Mr R Ward was trying to find alternative ways to work with the "Group 3" customers and that he was concerned about the business which he had set up and did not want it to be negatively impacted.

1279. On the same day, Ms Hartley emailed Ms Teasdale to inform her that the Authority was content for a list of named consumers provided by Ms Teasdale to have their cash invested into the Henderson Money Market Fund, emphasising that this agreement extended only to those customers and that particular fund.

1280. On 23 December 2015, Ms Hartley emailed Ms Teasdale as a follow-up to the call that she had with Mr R Ward on 21 December 2015, asking Ms Hartley to provide some further information. In particular, she asked a number of questions in relation to BHIM's business relationship with the firm described by Mr R Ward as "FSF" during the call on 21 December 2015. She asked for the following:

> "1. Provide the full company name;
>
> 2. Describe the nature of the business relationship with FSF;
>
> 3. Describe the activities that FSF conduct for BIM; and
>
> 4. Provide a Copy of any contractual agreement between BIM and FSF."

1281. On 8 January 2016, Ms Teasdale replied as follows to the numbered questions set out above:

> "1. Robert knows them as FSS and he presumes that this is a trading title."
>
> "2. The business relationship is that of an IFA and a lead provider only."
>
> "3. FSS provide qualified leads for BHIM to progress only."
>
> "4. To date BHIM only received leads that have been substandard and as such they do not have an agreed contract. Mr Ward is however keen to clarify that he would expect a statement with any agreed contract to the effect that FFS guarantees that no client passed to BHIM has been cold called. There is currently an ongoing issue with regards to the mechanism for the fee to be charged by FFS, and Mr Ward's view is that if this is not resolved they will cease working with FFS and look for somebody else to work with."

1282. On 22 January 2016, in providing further answers to the information request made by the Authority on 18 December 2015, Mr Brocklehurst said in respect of the due diligence material obtained in relation to CAL, that it would not be normal practice for BHIM, or, in its opinion, any similar firm to perform in-depth due diligence upon a firm of lead providers.

1283. On 16 March 2016, in a further information request from the Authority the Authority asked, among other things, for copies of all of Mr R Ward's emails between him and Mr Freer, and between Mr R Ward and/or Mr Freer and a series of named individuals at HJL/CAL as well as any other persons at those entities not listed, any persons at Avalon and any persons at Guinness Mahon, during the period 1 June 2014 to 17 September 2015.

1284. Initially, Mr R Ward only provided a fraction of the emails which were later received. Mr R Ward initially provided 320 emails, but subsequently provided 14,500 further emails some of which were material to the investigation, including the 9 September 2014 email sent by Mr R Ward to Mr Freer which detailed the meeting with Mr Worrow Jr on that day from an HJL email address and an email from Mr Worrow Jr using an HJL email address to Mr R Ward and Mr Freer attaching various documents on 12 September 2014, including the draft Standard Services Agreement between HJL and BHIM, as referred to at [1210] above.

1285. The additional material was only provided after the Authority identified that certain relevant material had obviously not been provided and asked Mr R Ward to provide the additional emails.

1286. On 18 March 2016, Ms Hartley received an email from Mr R Ward attaching a suitability letter that BHIM proposed to use with certain Guinness Mahon clients. On the same day, Ms Hartley replied to Mr R Ward's email raising several significant concerns, particularly relating to a proposal to move all customers currently invested in cash out of the Guinness Mahon SIPP to Beaufort. Ms Hartley was concerned because BHIM had not provided these customers with a recommendation compliant with the Authority's rules which she said needed to be a personal recommendation, tailored to customers' needs and circumstances. She also highlighted certain issues with the example suitability letter provided. Ms Hartley said that the only acceptable way

forward would be for BHIM to re-issue revised suitability letters that had been reviewed by an independent third party in accordance with paragraph 2 of the Voluntary Requirement.

1287. On 31 March 2016, Mr R Ward said that BHIM's concern was that the Guinness Mahon SIPP was only able to accommodate a limited number of products and that this created a "one size fits all" position. He explained that the solution was either for Guinness Mahon to provide a whole of market offering (which it was not set up to do) or that BHIM move the clients onto a competitively costed platform, proposing Nucleus in that regard. Mr R Ward said that this would cost less than the use of a SIPP with open market access and "allows an unfettered world of standard investments and DFMs".

1288. Ms Hartley was concerned that Mr R Ward was suggesting moving customers without a proper assessment and that the proposed solution might not be suitable for them. On 18 April 2016, she replied to Mr R Ward's email confirming that the position remained as set out in her email of 18 March 2016.

1289. On 21 July 2016, Ms Hartley emailed Mr R Ward to inform him that the Authority had been advised by Guinness Mahon of "an extremely serious issue". She said that she understood that he had instructed Guinness Mahon to transfer six clients who were placed into the Henderson Money Market Fund to the Nucleus platform. She reminded Mr R Ward that BHIM was under a restriction such that no pension business was permitted to be undertaken until a review had been conducted by an independent third party which had not yet happened. She informed Mr R Ward that he must tell Guinness Mahon not to transfer those customers, provide confirmation to the Authority that he had done this, and tell the customers that BHIM was not permitted to transfer their monies.

1290. On 16 August 2016, Mr R Ward emailed Ms Hartley stating that having reviewed the emails between Ms Teasdale and Ms Hartley, alongside the Voluntary Requirement, there was an agreement between the Authority and BHIM that BHIM "has permissions to do pension work to Platform" and that Ms Hartley's emails to Ms Teasdale "clarifies the position as to only prohibit new work into SIPP". Mr R Ward sought confirmation from Ms Hartley to that effect.

1291. On 24 August 2016, Ms Hartley replied to Mr R Ward. She said that the Authority's position remained the same as set out in her emails dated 18 March 2016 and 21 July 2016 which made clear that, in accordance with the Voluntary Requirement, BHIM was not allowed to carry on any activities in relation to pension switches and/or transfers to any SIPP, including completing any business currently being processed, until independent verification was provided which confirmed that a robust and compliant advisory process was in place to provide pension switching advice. It was also made clear that should BHIM wish to move these customers, who were pipeline customers, it would need to get an independent third party to review and confirm that any movement of the customers' funds into a new pension product was suitable in each customer's circumstances.

1292. Ms Hartley did not feel that there was any ambiguity about the terms of the Voluntary Requirement which prevented BHIM from conducting any pension switches to SIPPs until independent verification of its advice process had been received.

1293. Mr R Ward replied on the same day, explaining that the pipeline business was completed by the investment of the customers' funds into a standard asset (the cash fund). He claimed that, at this point, this changed their status to 'completed' and that they were no longer pipeline business. He further stated that the change in status of these clients left BHIM with "only the issue of diversification into standard asset portfolios which due to the restrictive nature of the SIPP used could only be achieved outside of that SIPP and by using a platform based non-SIPP personal pension". He asked Ms Hartley to confirm that the cases had been completed and that they were no longer subject to the Voluntary Requirement.

1294. On 30 August 2016, Ms Hartley replied informing Mr R Ward that she could not give him the confirmation requested. She told him that the point of the Voluntary Requirement was to ensure customers were not given unsuitable advice and that she had made the options clear to him in her emails dated 18 March 2016 and 21 July 2016. After further inconclusive correspondence on 7 September 2016 Ms Hartley closed the correspondence by telling Mr R Ward, as previously advised, that the only way BHIM could provide advice was to comply with the Voluntary Requirement.

1295. At the end of her email of 30 August 2016, Ms Hartley asked Mr R Ward to provide to the Authority a new business register dating from 1 July 2015 to date which showed the client name, date, product type, amount of investment, name of product provider and whether the transaction was advised or non-advised.

1296. On 21 September 2016, Mr R Ward emailed Ms Hartley providing the new business register for the period requested. The new business register recorded a total of 30 transactions involving pensions after the date of the Voluntary Requirement. However, the Authority later discovered that in the period covered by the new business register, BHIM had in fact advised customers in 76 transactions involving pension switches to a single SIPP provider, Nucleus, and the new business register provided to the Authority recorded only 29% of those transactions.

1297. On 9 December 2016, the Authority exercised its own initiative powers to impose a variation of permission and requirements on BHIM such that it was required to cease carrying on any regulated activity with effect from 12 December 2016.

1298. On 27 April 2017, the FSCS declared BHIM in default. On 5 September 2019, BHIM was placed into creditors' voluntary liquidation.

Mr R Ward's reference

1299. We now turn to the issues to be determined on Mr R Ward's reference. We approach each of the issues in turn, dealing with each of the key allegations made by the Authority in relation to the issue concerned, as set out at [17] above.

Issue 1: whether Mr R Ward has breached Statement of Principle 1 by failing to act with integrity in carrying out his controlled functions during the Relevant Period.

(1) Whether Mr R Ward acted recklessly after his approval as Director and Chief Executive in continuing to allow: (i) BHIM to use the Pension Review and Advice Process; (ii) the Bonds to be recommended to BHIM's customers; and (iii) BHIM to work with HJL and CAL.

(i) failure to take reasonable steps to ensure there was adequate due diligence on the Bonds

1300. We have found at [1221] to [1225] above that there was very limited due diligence undertaken on the Bonds by Mr R Ward or Mr Freer.

1301. It is clear that Mr R Ward regarded due diligence on the Bonds as being entirely Mr Freer's responsibility and that it was sufficient for him to ask Mr Freer whether he was satisfied with what he had done. For the reasons we set out below in relation to the adoption of the Pension Review and Advice Process, this was not an acceptable position for Mr R Ward to take.

1302. Mr R Ward took the position that the only due diligence was that required in relation to a lead generation company. However, as we have found, both Mr R Ward and Mr Freer knew that the relationship being proposed by HJL/CAL went beyond mere lead generation at an early stage of the process, and that they knew by 9 September 2014 that what was being proposed was a process through which the only product to be recommended to customers was an investment in the Bonds.

1303. It is clear from our findings set out above that Mr R Ward gave no serious consideration to the Fact Sheets and the Information Memoranda. Had he done so, as a reasonably competent financial services professional with many years of experience, he would have appreciated that the Bonds were high risk investments and were unlikely to be suitable for most retail customers.

1304. It is clear from Mr R Ward's email of 9 September 2014 to Mr Freer, as referred to at [1194] to [1197] above, that the meeting with Mr Worrow Jr was not just about lead generation, but the entire Pension Review and Advice Process, with a view to customers introduced through that process being invested in the Bonds. At that stage, the features of the Bonds could only be considered on the basis of the Fact Sheets which had been provided. However, even from those documents, the high risk and illiquid nature of the Bonds would have been readily apparent to both Mr R Ward and Mr Freer. Mr R Ward confirmed that he reviewed the Fact Sheets and therefore knew the features of the Bonds as described in them. He also accepted, in his cross examination, that the SME Bonds, at least, were high risk.

1305. Mr R Ward was made aware that potential SIPP providers would not permit retail investors to invest in the Bonds. During April 2015, BHIM were looking at the possibility of an alternative SIPP provider. One of those potential providers emailed Mr R Ward on 17 April 2015 saying that the Bonds were only acceptable for high net worth

or sophisticated clients and not for retail use. Another SIPP provider took the same view on the basis that the Bonds were illiquid with an unsure resale market and therefore difficult to value. Nevertheless, Mr R Ward took no steps to review the risk profile of the Bonds and BHIM continued to recommend them to customers.

1306. It is therefore clear that Mr R Ward closed his mind to the risk that the Bonds were high risk and not suitable for retail investors. He also closed his mind to the need to ensure that adequate due diligence was undertaken on the Bonds. He therefore acted recklessly in that regard.

(ii) Failure to establish that leads were generated in an appropriate manner

1307. The Authority's position is that no adequate due diligence was carried out in respect of the lead generation of customers who might be introduced to BHIM.

1308. In our view, Mr R Ward as Chief Executive had a responsibility to ensure that appropriate due diligence was conducted on the methods that were to be used to generate leads on behalf of BHIM. Mr R Ward confirmed in his cross examination that the risk of cold calling was something he was alert to.

1309. As we have found, there is no contemporaneous evidence indicating that any due diligence was undertaken on how leads were sourced. As referred to above, both Mr R Ward and Mr Freer believed that CAL was generating leads. However, they both accepted that they discovered later in the process that HJL was generating the leads. In our view, that would clearly have been apparent from the documents made available to Mr R Ward on 9 September 2014 and subsequently passed to Mr Freer. These documents include the Pension Summary Report request form which referred to HJL as the introducer and the HJL/BHIM draft Standard Service Agreement.

1310. As we found at [1214] above, the only service to be provided by CAL under the Standard Service Agreement entered into on 13 October 2014 was administration services, and therefore there was no basis for Mr R Ward's assertion that CAL had been contracted to provide leads to BHIM.

1311. Therefore, it is clear that Mr R Ward took no steps to ensure that consideration was given as to how leads were generated and, in particular whether potential customers were being cold called. He must have been aware that there was a risk that lead generation companies would engage in cold calling and therefore that this was a risk that needed to be managed. Mr R Ward was therefore reckless in closing his mind to this obvious risk.

(iii) Failure to manage conflicts of interest

1312. As we have found at [500] to [510] above, the Pension Review and Advice Process was structured to result in customers switching their pensions to SIPPs investing in assets in which HJL had a material financial interest.

1313. The Authority contends that Mr R Ward failed to take steps to manage and/or disclose the alleged conflicts of interest arising from (i) the structure of the Pension

Review and Advice Process; (ii) HJL's role in the Pension Review and Advice Process; and (iii) the role of two of HJL's directors as directors of each of the Issuers and their financial interest in the Bonds.

1314. Mr R Ward was alive to the possibility of a conflict of interest. His report to Mr Freer of his meeting with Mr David Worrow Jr on 9 September 2014, mentioned at [1194] above, referred to a conflict of interest that Mr Worrow Jr had identified in the context of introducing clients to funds which he "was running".

1315. Mr R Ward's account was that this was Mr Worrow's explanation of the issue and related to a supposed conflict that Mr Worrow would have had, had he become approved, with other IFAs he was working with. As Mr Purchas submitted, that is not a credible explanation for the plain meaning of Mr R Ward's email and the conflict is obvious, namely between Mr Worrow running funds and advising customers to invest in them, something that the Pension Review and Advice Process was meant to address.

1316. Indeed, that appears to reflect Mr Freer's understanding of the conflict. When asked about this interview, Mr Freer said that he understood that Mr R Ward was referring to a conflict of interest where the same individual was generating leads and providing advice to customers.

1317. We therefore accept that it was apparent to Mr R Ward from the very outset that there was a conflict where Mr Worrow Jr had an interest in leads potentially investing in funds he ran and those potential customers having an interest in receiving true independent whole of market advice.

1318. In the light of that knowledge, Mr R Ward was obliged to ensure that adequate steps were taken to manage and/or disclose the conflict. Mr R Ward said that it was Mr Freer's role to consider the possibility of any conflict of interest arising from the Bonds. As we have said, that is not an acceptable approach for a Chief Executive to take. It was his responsibility to engage with Mr Freer to ensure that the point was being dealt with. Mr R Ward therefore closed his mind to the serious risk of a conflict of interest that he was clearly aware of.

1319. As we have found, Mr R Ward was aware of HJL's involvement in the process. He was aware of the fact that Mr Worrow Jr was a representative of HJL and had seen documents which clearly described him as such. Mr Freer had asked Mr R Ward who was "Hennessy" on receipt of the documentation from Mr R Ward following the meeting held on 9 September 2014. As we have found, we infer that Mr R Ward would have explained HJL's role to Mr Freer.

1320. Mr R Ward accepted that he was aware of the commission payable to HJL, and that Mr Stephen and Mr King were directors of the Issuers. However, he does not accept these matters constituted conflicts of interest. We have already found that such matters did give rise to a conflict of interest.

1321. Mr R Ward knew that the Pension Review and Advice Process involved CAL, which was run by Mr Worrow Jr, undertaking the Fact Find and that the focus was on a single set of products, the Bonds.

1322. It must have been obvious to Mr R Ward that HJL had been involved in the structuring of the Pension Review and Advice Process, and that if this was not evident from the outset it must have become clear as the process advanced, with the close connection between HJL and CAL appearing from their interactions with the products being recommended through LeadTracker, those being exclusively the Bonds promoted by HJL.

1323. As we have found, there was a clear divergence in interest in the outcome of the process in that HJL wanted customers (which they had paid marketing companies to source) to switch their pensions into an investment in the Bonds; whereas those customers were seeking, and thought they had been offered, independent advice considering the whole investment market, but what they were getting was akin to restricted advice tied to a single set of products.

1324. As we have also found, there was an objectively unreasonable risk of substantial harm to those customers arising from the involvement of HJL in the design and structure of the process and its operation of the Outsourced Functions.

1325. Bearing in mind the state of Mr R Ward's knowledge as to these matters, it is not credible that he did not see this conflict of interest unless he closed his mind to the need to consider it.

1326. There is no evidence of Mr R Ward seeking to manage or disclose this conflict of interest. As we have found, the Information Memoranda were not sent to customers as a matter of course.

> *(iv) whether it should have been obvious to Mr R Ward that there was a significant risk that the Pension Review and Advice Process was not compliant*

1327. We found at [1217] above that Mr R Ward gave no serious thought to the compliance implications of using the documentation which we found at [1200] were the key documents that would be used in the Pension Review and Advice Process were BHIM to agree to participate in the process. We found that those documents were provided to Mr R Ward in hardcopy form on 9 September 2014.

1328. We also found at [1215] above, that Mr R Ward took the position that it was Mr Freer's responsibility to review the documentation from a compliance point of view and that he simply relied on Mr Freer having told him that he had undertaken that review and was content with it.

1329. In our view this was a serious abrogation of responsibility on the part of Mr R Ward. As this Tribunal said in *Alistair Burns v FCA* [2018] UKUT 0246 (TCC) at [285], even if a governing body rests prime responsibility for matters such as compliance in one of their number who is more expert than the others on such matters, that does not absolve the other members of the governing body from obtaining a sufficient understanding of the business of the firm which they are ultimately responsible for managing, the key issues that are likely to arise out of its business model, and the manner in which they are being addressed. It is not acceptable for a director to rely

entirely on another director having undertaken the necessary work to be satisfied that the firm is compliant with the Authority's regulatory requirements without himself taking a close interest in the manner in which those functions were being discharged. That was particularly important in this case because Mr Freer had only recently returned to work after illness at the time that the opportunity to participate in the Pension Review and Advice Process arose. Mr Freer clearly needed support from Mr R Ward at a time when he was still adjusting to the demands of his return to work, and he did not get it.

1330. As Mr Purchas correctly submitted, directors are ultimately responsible for the operation of the firm's business and are required to provide challenge to those with day-to-day responsibility for particular areas. Directors also need to maintain an understanding of their firm's business, and the issues and risks arising from the business and how they are being addressed. Mr R Ward accepted this in his cross examination, bearing in mind that he was the key link between BHIM and HJL.

1331. Mr R Ward has had substantial experience of financial services and he should have appreciated that his role as Chief Executive involved responsibility for ensuring that the process for providing advice to customers was undertaken in a proper and appropriate way so that it would result in suitable advice being given to customers. Although he was not approved as Chief Executive until October 2014, it was clear that Mr R Ward was taking a leading role in the management of the business before that time and he should certainly have satisfied himself that the Firm was broadly compliant with its regulatory obligations.

1332. Mr R Ward knew of the limited time that Mr Freer could have spent in reviewing the documents before he gave his "sign off" from the compliance point of view on 12 September 2014. In those circumstances, he should have taken steps to satisfy himself as to what, in fact, Mr Freer had done. That would, of course, have involved him becoming familiar with the documentation concerned himself before he could make an assessment as to whether Mr Freer's review had been adequate.

1333. Therefore, it is clear that Mr R Ward closed his mind to the obvious risk that the documentation which BHIM had approved for its participation in the Pension Review and Advice Process was not compliant with the Authority's regulatory requirements regarding the provision of suitable advice to customers. As we have found, a reckless failure to consider whether something is a risk may be found to amount to a lack of integrity. Mr R Ward closed his mind to the need to make any kind of significant assessment of the documentation to be used in relation to the Pension Review and Advice Process. Had he done so, it would have been obvious to him that the Pension Review and Advice Process did not comply with the Authority's regulatory requirements regarding suitability of recommendations. Consequently, Mr R Ward acted recklessly in that regard.

(v) Failure to take reasonable steps to ensure that BHIM reviewed in a meaningful way the advice given through the Pension Review and Advice Process

1334. As we examine later, Mr Freer's review of the advice being given through the Pension Review and Advice Process was very limited. Mr R Ward was not involved in

any compliance reviews, and he relied on Mr Freer to have undertaken this work. He approved arrangements whereby Mr Freer would be paid £10 for each file review. Mr Ward said that the amount that Mr Freer was paid was not relevant, but in our view Mr R Ward's agreement to the payment of such a small sum is clear evidence that he only envisaged a cursory review of the files being undertaken by Mr Freer. He therefore closed his mind to the risk that file reviews would not be carried out adequately.

1335. It is also clear that there is no evidence that Mr R Ward took steps to satisfy himself that Mr Freer was undertaking his review of the customer files in an appropriate fashion. Again, it was his position that these matters could be left to Mr Freer alone and he did not need to be involved.

1336. We therefore find that Mr R Ward failed to take reasonable steps to ensure that BHIM reviewed in a meaningful way the advice given through the Pension Review and Advice Process.

(vi) Failure to have in place appropriate systems and controls

1337. In this regard, the Authority relies on the fact that BHIM gave investment advice with respect to at least five pension transfers, as opposed to pension switches, outside the Firm's permissions. Mr R Ward accepts that was the case and that at least four customers transferred as a result. As a consequence, BHIM was in contravention of s 20 FSMA by carrying on the regulated activity of advising on Pension Transfers without the relevant permission.

1338. It would therefore appear that Mr R Ward had not checked what arrangements were in place to ensure that pension transfer cases were filtered out through the LeadTracker process, and he did not argue otherwise. Neither was it clear what processes BHIM had in place to check whether recommendations were being made in respect of pensions transfers.

1339. This was a serious failing, and it appears that Mr R Ward gave no thought to the obvious risk that pension transfers could be recommended and what systems and controls ought to be in place to mitigate that risk.

(vii) Failure to carry out adequate due diligence on HJL and CAL

1340. We have set out at [423] to [426] a summary of the various obligations that the Firms had to undertake to oversee the performance of the Outsourced Functions carried out by HJL or CAL, as the case may be, on behalf of the Firms.

1341. We found that there was no evidence that any of the Firms took meaningful steps to exercise due skill, care and diligence when deciding to appoint HJL or CAL, as the case may be, to perform Outsourced Functions. Nor was there any evidence that they took meaningful steps to establish methods for assessing the standard of performance of HJL or CAL, as the case may be, as service providers nor did they take any steps to supervise the Outsourced Functions and any of the risks associated with the outsourcing.

1342. We found at [1211] above that, in practice, leads were generated for BHIM by HJL through the marketing companies that HJL engaged. Neither Mr R Ward nor Mr Freer gave any thought to how those leads were actually being generated.

1343. Accordingly, Mr R Ward failed to ensure that any due diligence was carried out on HJL as a lead provider or provider of outsourced services or on CAL as either a lead provider or provider of outsourced services.

1344. As we have found, the decision to work with HJL was taken by Mr R Ward and Mr Freer on the basis of Mr R Ward's meeting with Mr Worrow Jr on 9 September 2014 and Mr Freer's review of the documents emailed to him by Mr R Ward on 10 September 2014.

1345. Mr Freer and Mr R Ward made the decision to work with Mr Worrow Jr on 10 September 2014 in a very short period of time. We have rejected the evidence of Mr R Ward and Mr Freer that this approval was for the lead generation process only.

1346. The only evidence of any due diligence on HJL was that which Mr Freer conducted as part of his due diligence on the Bonds which included Companies House searches on the directors of HJL and obtaining certified copies of documents proving the directors' identities.

1347. It is common ground that, from 13 October 2014, CAL was undertaking the outsourced services. The Authority has seen no evidence that Mr R Ward gave any consideration to whether CAL was suitable to perform the Pension Review and Advice Process on behalf of the Firm.

1348. Accordingly, Mr R Ward closed his mind to the risk that HJL, and then CAL, were not suitable to act as introducers and to the risk that they were unsuitable to conduct Outsourced Functions for BHIM.

(viii) Conclusion as to whether Mr R Ward acted recklessly in relation to BHIM's adoption and use of the Pension Review and Advice Process

1349. We have found at [1300] to [1348] above that:

(1) Mr R Ward closed his mind to the risk that the Bonds were high risk and not suitable for retail investors. He also closed his mind to the need to ensure that adequate due diligence was undertaken on the Bonds.

(2) Mr R Ward took no steps to ensure that consideration was given as to how leads were generated and, in particular, whether potential customers were being cold called. Mr R Ward was therefore reckless in closing his mind to this obvious risk.

(3) The conflicts of interest relating to the structure and operation of the Pension Review and Advice Process would have been obvious to Mr R Ward, but he took no steps to manage those conflicts.

(4) Mr R Ward closed his mind to the obvious risk that the documentation which BHIM had approved for its participation in the Pension Review and Advice Process was not compliant with the Authority's regulatory requirements regarding the provision of suitable advice to customers.

(5) Mr R Ward failed to take reasonable steps to ensure that BHIM reviewed in a meaningful way the advice given through the Pension Review and Advice Process.

(6) Mr R Ward gave no thought to the obvious risk that pension transfers could be recommended and what systems and controls ought to be in place to mitigate that risk.

(7) Mr R Ward closed his mind to the risk that HJL, and then CAL, were not suitable to act as introducers and to the risk that they were unsuitable to conduct Outsourced Functions for BHIM.

1350. In our view, these findings are sufficient to establish that Mr R Ward acted recklessly after his approval as Director and Chief Executive in continuing to allow: (i) BHIM to use the Pension Review and Advice Process; (ii) the Bonds to be recommended to BHIM's customers; and (iii) BHIM to work with HJL and CAL.

(2) Whether Mr R Ward recklessly allowed BHIM to breach a term of a Voluntary Requirement

1351. As we have found, after the Voluntary Requirement was entered into, BHIM advised customers in 76 transactions involving pension switches to a SIPP account held on Nucleus, a platform provider. The Authority's position was that these transfers were effected in breach of the terms of the Voluntary Requirement.

1352. Mr R Ward's position was that he understood, as did his solicitor Ms Teasdale, that the Voluntary Requirement did permit transfers to Nucleus because these were transfers to a platform and the Voluntary Requirement did not seek to prevent transfers to platforms with a view to a DFM managing the assets concerned. He said that the position had been clarified through the discussions and correspondence with the Authority which led to the amendment to the terms of the Voluntary Requirements, as described at [1259] to [1266] above. Mr Ward said that he had requested Ms Teasdale to seek to have the word "direct" inserted into the terms of the Voluntary Requirement so as to permit transfers directly to a platform rather than directly into a SIPP. Although Mr Ward said in his witness statement that the word "direct" was inserted into the Voluntary Requirement that was signed, it is clear that that was not the case, as Mr R Ward accepted in his cross-examination.

1353. As we found at [1246] above, Mr Slater was of the view that even if the customer's assets were transferred to a platform, if the "wrapper" around those assets was a SIPP, then this would breach the terms of the Voluntary Requirement. That was also Ms Hartley's understanding, and she did not think that there was any ambiguity in the wording of the Voluntary Requirement.

1354. As we indicated at [1247] above, our understanding is the same as Mr Slater and Ms Hartley. It is therefore clear to us that BHIM breached the terms of the Voluntary Requirement by advising customers to move their pensions to a SIPP account on the Nucleus platform.

1355. Mr R Ward had clearly convinced himself that the transfers to Nucleus did not breach the terms of the Voluntary Requirement, on the mistaken basis that transfers to a platform were permitted, even though the assets were to be held under a SIPP "wrapper". If he believed that to be the case, then clearly, he should have clarified that specific point with Ms Hartley, and he clearly had that opportunity when he had the discussions with her in March 2016 over the proposals to move certain customers to Beaufort. He clearly did not check the precise wording of the Voluntary Requirement. If he had done so, he would have seen clearly that the word "direct" was not to be found. That would have raised alarm bells with him that there may be an issue in switching customers to Nucleus and that what he wanted to achieve, which was for the Cheltenham business to operate as it had before the Voluntary Requirement was entered into, may not be possible.

1356. Mr R Ward therefore made an assumption that the transfers were permitted without seeking to clarify the position. A person with Mr R Ward's knowledge and experience would, in the situation which he found himself, have appreciated, having examined the clear wording of the Voluntary Requirement, that there was a risk that the Firm would be in breach if it proceeded to effect the transfers to Nucleus. The position could have been clarified by asking the Authority the simple question: "If BHIM advises on pension switches where the assets concerned are to be transferred to a platform provider to be held under a SIPP wrapper would that be permitted under the terms of the Voluntary Requirement?"

1357. In our view, by failing to read the terms of the final version of the Voluntary Requirement and failing to ask the Authority the question posed above, Mr R Ward acted recklessly by closing his mind to the risk that BHIM would breach the terms of the Voluntary Requirement.

(3) Whether Mr R Ward acted dishonestly in making false and misleading statements to the Authority concerning BHIM's relationship with HJL and CAL

1358. The Authority relies on the following matters:

(1) Mr R Ward repeatedly told the Authority falsely that he had no idea that HJL had any involvement in the Pension Review and Advice Process.

(2) Mr R Ward claimed that he had no idea that HJL had any involvement in the advice process even as introducers of leads. That was clearly false and misleading. The Authority notes, as examples, that he makes this claim despite emails with Mr Worrow Jr in relation to the advice process using an HJL email address and signature, the approval of documents which refer to HJL and ongoing emails with HJL including in respect of marketing companies being used. Mr R Ward had access to these emails.

(3) Mr R Ward told the Authority during the short notice visit on 15 and 16 July 2015, at a meeting on 14 August 2015 and in a telephone conversation on 22 December 2015 that (i) BHIM had started working with CAL only in December 2014; (ii) he had quickly identified concerns with CAL and the Pension Review and Advice Process; and (iii) BHIM had taken steps to terminate its agreement with CAL in February or March 2015. These statements were false.

(4) Mr R Ward's statement that he started to have concerns about Mr Worrow Jr, is not consistent with the fact that (i) the Pension Review and Advice Process continued; and (ii) BHIM was looking to enter into further business with Mr Worrow.

(5) Mr R Ward suggested that the remaining business was run-off business which was not credible.

(6) Mr R Ward deliberately sought to create the impression that BHIM started working with CAL in December 2014 and, having quickly identified concerns with CAL and the advice process, sought in February or March 2015 to terminate BHIM's agreement with CAL orally as a result. That was not the true position, with the relationship commencing in September 2014, the agreement with CAL being dated October 2014 and continuing until July 2015 when the Authority intervened.

1359. Our findings of fact, as set out above, are sufficient to make good the Authority's contentions set out above as to the falsity of the statements made to the Authority.

1360. However, we are not satisfied that Mr R Ward acted dishonestly in making those statements. Our overall assessment of Mr R Ward as a witness is that he has a reckless approach to answering questions, often making statements which suited his own position without reference to the underlying documents. Our assessment is that he followed the same approach when dealing with HJL/CAL at the outset and also in his interactions with the Authority, both at the short notice visit in July 2015 and his subsequent interviews with the Authority. He simply did not bother to check when particular events happened before giving answers.

1361. Therefore, he may well have thought, for example, that he had concerns about Mr Worrow Jr as early as February 2015 whereas in fact those concerns did not materialise until later, that is after the time that he was discussing possible further business with Mr Worrow. His reckless approach to documents and events is demonstrated by his attitude to the Voluntary Requirement, as detailed above, his failure to review in any meaningful way the documentation regarding the Pension Review and Advice Process that he was given and his failure to investigate adequately where the leads were coming from.

1362. We therefore reject Mr Lloyd's submission to the effect that Mr R Ward simply made honest mistakes in making false statements. However, we are not satisfied that Mr R Ward deliberately sought to mislead the Authority in relation to these matters. He simply did not take seriously his obligation to ensure that the answers he gave to the Authority were materially correct and, in that regard, he was clearly reckless.

(4) Whether Mr R Ward acted dishonestly by deliberately telling the Authority that BHIM did not have minutes of board meetings

1363. As we found out [1275] above, clearly there were minutes described as either "management meeting" or "Board meeting" in existence which should have been provided in response to the Authority's request. However, to be fair to Mr R Ward, these minutes were fairly informal in style and he did answer, through his solicitors, the question to the effect that discussions were "not minuted or recorded in any formal way". That is consistent with the form of most of the documents concerned.

1364. However, that is not to say that there was no need for the documents to be provided. Again, Mr R Ward closed his mind to the risk that the documents concerned, which he knew existed, fell within the scope of the documents required by the Authority. Consistent with his whole approach, we think it is likely that Mr R Ward knew that informal minutes did exist but did not bother to examine them and consider whether in the interests of being fully open and cooperative with the Authority, they should have been provided. In our view, a person of Mr R Ward's knowledge and experience, if he had taken the trouble to examine the documents concerned, would have concluded they should have been provided to the Authority, notwithstanding their relatively informal nature.

1365. Therefore, we are not satisfied that Mr R Ward acted dishonestly by deliberately failing to provide documents that he knew should have been given to the Authority. Neither did he make an honest mistake. He acted recklessly in responding to the Authority's request.

(5) Whether Mr R Ward failed to be open and cooperative, and recklessly provided the Authority with incomplete and inaccurate information in response to requests from the Authority

(i) Failure to provide relevant emails

1366. As we found at [1283] to [1285] above, Mr R Ward failed to provide a large number of his emails in response to the Authority's information request, some of which were material to the investigation.

1367. Mr R Ward's position is that he believed the emails to have been lost, but that they were subsequently located on an external hard drive which he gained access to later. However, that is to be contrasted with Mr R Ward's position in interview where he said that he had asked his son to look for various emails but might not have provided him with the details of what information was required, and then had not checked to see if the emails found by his son were complete.

1368. We agree with Mr Purchas's submission that by adopting such an approach, Mr R Ward clearly ran a substantial risk that the response to the Authority's information request would omit important and material documents directly related to the

information request, which it clearly did. Again, we regard Mr R Ward's approach as reckless in this regard.

(ii) Failure to provide a complete copy of BHIM's new business register

1369. As we found at [1296] above, Mr R Ward allowed BHIM to provide the Authority with incomplete and misleading information in its new business register provided on 21 September 2016 about the pension switches that BHIM had conducted during the period of the Voluntary Requirement.

1370. Mr R Ward said in his cross examination that Mr Freer was responsible for maintaining the new business register and that it was reasonable for him to rely on the work of Mr Freer to prepare the new business register properly without checking it himself.

1371. However, we agree with the Authority that the context in which the request was made is important. The Authority were investigating BHIM in respect of a possible breach of the Voluntary Requirement. As Mr Purchas submitted, it was therefore very important that Mr R Ward simply did not just delegate the responsibility of complying with his obligations. In that context, Mr R Ward ran the risk that incomplete or inaccurate information would be provided. The risk was obvious. The discrepancies were so large it would have been obvious to Mr R Ward that the new business register was incomplete if he looked at it. Accordingly, we find that Mr R Ward acted recklessly in relation to this issue.

(iii) Failure to provide full details regarding FSS

1372. As described at [1280] above, the Authority asked Mr R Ward on 23 December 2015 to provide details about FSS and its relationship with BHIM. When Mr R Ward provided his response on 8 January 2016, he did not provide the full company name as expressly requested, but rather indicated that he only knew FSS by a trading title.

1373. That explanation of only knowing it by a trading title was, as Mr Purchas submitted, clearly incorrect. As we found at [1270] above, during August 2015 various documents were provided to Mr R Ward which included the full name of FSS.

1374. In our view, this is another example of Mr R Ward acting recklessly. He did not take the trouble to check what documentation he had before answering the Authority's enquiries.

Conclusion on Issue 1

1375. The findings that we have made as set out above demonstrate overwhelmingly that Mr R Ward has breached Statement of Principle 1 by failing to act with integrity in carrying out his controlled functions during the Relevant Period.

Issue 2: Financial Penalty

1376. In our view Mr R Ward's failings are very serious. In common with the other Applicants on these references, they are among the most serious that we have encountered in respect of a small IFA firm in that he acted recklessly in allowing BHIM to adopt a seriously flawed business model and abrogated his clear responsibilities as Chief Executive of BHIM to take reasonable steps to ensure that BHIM's business was carried out in a compliant fashion. His behaviour has also had a serious impact on other IFA firms in terms of the effect on the calls on the FSCS to which all authorised firms in the relevant category have to contribute.

1377. In our view, the imposition of a very substantial financial penalty in this case is justified and appropriate. As the Authority's penalty policy states, the principal purpose of imposing a financial penalty is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour.

1378. We have no doubt that Mr R Ward was heavily influenced by the opportunity that the Pension Review and Advice Process offered to generate significant levels of income for BHIM at a time when, as Mr Ward admitted in his cross examination, it was in a challenging financial situation. Mr R Ward was party to the decision to adopt the process without giving any serious thought as to whether it would be in the interests of the Firm's customers to do so. We have no doubt, as submitted by the Authority, that Mr R Ward was motivated by the financial gain to be obtained through a large volume of business where, according to his report to Mr Freer on 9 September 2014, "we actually do nothing".

1379. Consequently, he allowed his judgment to be seriously compromised by the business model, as put to him by Mr Worrow Jr on behalf of HJL, and closed his mind to the risks that in doing so he was putting his own interests above those of BHIM's customers. He allowed BHIM to be used as a vehicle for HJL to promote its Bonds under the veneer of bespoke advice given by an IFA.

1380. The Authority seeks the same level of financial penalty that it set out in the Decision Notice, which was calculated by applying the five-step framework set out at [102] above.

1381. We received no challenge from Mr R Ward to that approach and, therefore, in accordance with the usual practice, we should pay that policy due regard when carrying out our overriding objective of doing justice between the parties.

1382. We see no reason to dispute the calculations made by the Authority to determine the financial penalty which Mr Purchas set out in detail in his closing submissions. In summary:

Step 1: The Authority considered that it is not practicable to quantify any financial benefit that Mr R Ward derived directly from the breach.

Step 2: The Authority placed the seriousness of Mr R Ward's breach to be Level 5 which results in a penalty sum of £35,247, being 40% of the relevant net revenue earned by Mr R Ward from 16 October 2014, the date on which he assumed his responsibilities as Chief Executive, until 12 December 2016. The Authority considered that Mr R Ward's relevant income for that period was £88,119, comprising salary payments which he received from the Firm.

We agree with that assessment, bearing in mind the following factors:

(1) Mr R Ward's motivation for financial gain for himself;

(2) the significant loss for a large number of consumers many of whom were vulnerable;

(3) Mr R Ward's senior position at the Firm; and

(4) the considerable number of separate allegations of reckless conduct.

Step 3: The Authority added a sum equal to a further 25% of the penalty calculated above to take account of aggravating factors, in particular, Mr R Ward's previous involvement in carbon credits (another high risk unregulated investment), knowledge of the various alerts issued by the Authority in relation to pension switching and his failure to bring the Pension Review and Advice Process to the attention of the Authority or implement changes once he realised there were defects in the process. The Authority identified no mitigating factors.

We agree with that assessment.

Step 4: The Authority considered that the Step 3 figure of £44,058 does not represent a sufficient deterrent to Mr R Ward and so, at Step 4, increased the Step 3 figure by a multiple of two as an adjustment for deterrence, rounded down to the nearest £100.

In view of the very serious nature of the allegations in this case and their impact, we agree with the Authority's assessment.

1383. Consequently, the Authority seeks a financial penalty of £88,100. That is a very large sum to be imposed on the Chief Executive of a small IFA firm. However, BHIM took on a large amount of business during the Relevant Period and in our view the figure is justified by reference to the scale of the business conducted, the seriousness of the breaches and the need to dissuade any IFA firm from taking a similar path in the future.

1384. In view of the seriousness of the core allegations of recklessness in relation to the business model of BHIM that we have found to be established, we have not considered it appropriate to reduce the penalty on account of our finding that the Authority did not make out its case in relation to the limited separate allegations of dishonesty in respect of misleading the Authority, although we did find that Mr R Ward acted recklessly in relation to those matters.

1385. We therefore determine that it will be appropriate for the Authority to impose a financial penalty of £88,100 on Mr R Ward, as calculated above.

Issue 3: Prohibition

1386. Mr R Ward made no submissions challenging the imposition of a prohibition order were the allegations made against him to be established.

1387. As we have found, Mr R Ward has been found to be lacking in integrity as a result of a series of breaches committed over a considerable period of time. It is clear that the imposition of a prohibition order by the Authority under s 56 FSMA on the grounds that Mr R Ward is not a fit and proper person to perform any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm is a course of action reasonably open to the Authority on the basis of the findings that we have made. We therefore see no basis on which we should interfere with the Authority's decision in that regard.

Mr Freer's reference

1388. We now turn to the issues to be determined on Mr Freer's reference. We approach each of the issues in turn, dealing with each of the key allegations made by the Authority in relation to the issue concerned, as set out at [19] above.

Issue 1: whether Mr Freer has breached Statement of Principle 1 by failing to act with integrity in carrying out his controlled functions during the Relevant Period.

> *(1) Whether Mr Freer acted dishonestly by causing BHIM to hold out the Pension Review and Advice Process to customers as BHIM providing bespoke, independent investment advice based on a comprehensive and fair analysis of the whole market*

1389. For the reasons set out at [482] to [498] above, we have concluded that the service which was provided by the Firms cannot fairly be said to amount to the giving of independent advice. We found that the only service that any of the customers received from the Firms was a recommendation to invest in the Bonds, which was the predetermined outcome provided the customer had indicated a desire for capital protection and/or a fixed return – a likely consequence due to the leading questions in the Fact Find that we have identified above. If such a recommendation did not follow because, for example, the criteria for inclusion in the process were not met or the customer did not express a desire for a fixed return or capital protection, then none of the Firms intervened to carry out a further review of the customer's financial situation and recommend an alternative suitable product. The customer was simply left without any further services provided by the Firm.

1390. Consequently, we have found that the statements in the Service Proposition and the Brochure that customers would, by entering into an agreement with the relevant Firm, receive bespoke advice from an IFA that was individually tailored to their individual needs and aspirations, that the Firms provided an independent advice service, operated independently, provided a comprehensive and fair analysis of the market, and that the Firms would place no restrictions on the investment markets that they would consider were all false and misleading.

1391. Based on the test for dishonesty, as discussed at [60] to [64] above, in relation to the allegation of dishonesty against Mr Freer, as set out above, we need to establish Mr Freer's knowledge and belief as to the facts that we have found, as summarised above. We then need to consider whether in the light of Mr Freer's knowledge and belief relating to those facts, his conduct was dishonest by ordinary standards.

1392. Mr Freer's position was that a review of the fixed income market had been undertaken and that, as a result of the comparison of other products on the market to the Bonds, the latter was the preferred product on the basis that it offered good returns based on investments Mr Freer considered generally to be low risk, particularly the property investments. Accordingly, Mr Freer said that the Bonds were the best product on the market for each customer who was recommended them. The Pension Review and Advice Process filtered out customers for whom the Bonds were unsuitable, the Bonds being considered suitable for those customers who had expressed a preference for capital protection and a fixed return.

1393. Mr Freer accepted that the process operated with the aim of making recommendations to as many clients as possible for whom the Bonds were considered suitable. He therefore accepted that the process did not result in advice that was bespoke to each client but added that was where BHIM wanted the process to get to. He accepted that all those who wanted a fixed return and/or had a preference for capital protection were treated in the same way and were recommended no product other than the Bonds.

1394. Mr Freer said that those customers who did not express a preference for fixed returns were directed to the Cheltenham office to be given advice about other investments. He said that during the period that BHIM had operated the Pension Review and Advice Process approximately a dozen customers were given a full investment review, as a result of which, some invested into personal pensions through a platform but not under a SIPP wrapper. He said that the reason BHIM became "cross" with Mr Worrow Jr was that they were expecting a large number of leads which were suitable to be given a full review by the Cheltenham office, but they only received approximately a dozen, with a large number simply being assessed by LeadTracker as suitable to be recommended the Bonds.

1395. Mr Freer accepted that the Brochure gave the impression that it was BHIM who was undertaking the work in compiling the Pension Summary Reports and conducting the reviews. He accepted that the Brochure gave the impression that each customer was being considered on an individual basis whereas, as indicated above, he accepted that in fact they were not receiving bespoke advice through the Pension Review and Advice Process. He also accepted that the Service Proposition gave the impression that customers would get individual consideration by an IFA of their particular circumstances.

1396. He said that treating a group of customers in the same way was standard practice i.e. a client base would be segmented so as to identify suitable products for particular segments. In Mr Freer's view, it was accurate to describe the process as the giving of independent advice because, although the process was structured to give advice into

one set of products through a templated process, the products concerned were chosen by BHIM following a comprehensive review of the market for fixed income products.

1397. It is clear from Mr Freer's evidence that he knew there was no whole of market assessment that would take place for each customer on an individual basis every time a recommendation was made.

1398. Although it was Mr Freer's evidence that the Bonds were, in his view, the best product in the fixed income market, there is no contemporaneous evidence of a whole of market assessment prior to recommendations being issued to customers to invest in the Bonds. Nor is there any evidence of any ongoing assessment of the market during the Relevant Period by Mr Freer.

1399. Mr Freer was aware of how the Pension Review and Advice Process worked. In particular, that a customer would only be presented with the Service Proposition after production of the Pension Summary Report and them being identified as potentially suitable to invest in the Bonds, and that the Bonds would be the only product recommended at the end of the process.

1400. Mr Freer also accepted that LeadTracker worked as a form of robo-advice and that, through it, a specific class of customers (retail investors with modest pension sums that would be likely to select fixed returns and/or capital protection) would be filtered into investing in the Bonds.

1401. Mr Freer knew that each HJL lead went through the semi-automatic process of a Fact Find conducted by HJL/CAL and then the answers were inputted into LeadTracker to generate the Pension Recommendation Report. As we have said, there was no bespoke treatment of each client.

1402. There may well have been an aspiration to generate leads for whom a detailed review by the Cheltenham office would be suitable. However, there is no evidence from the Firm's new business register that any such review was undertaken or, if it was, that it did result in the recommendation of a different product to be held within a personal pension scheme. This is the case even in relation to the dozen or so customers that Mr Freer said were referred to the Cheltenham office for that purpose.

1403. Mr Freer accepted the various reports were produced by way of a templated process, and that the Bonds were the only products recommended through LeadTracker.

1404. While Mr Freer disputed knowledge that HJL were involved, as Mr Purchas submitted, that is not credible given the references to HJL's involvement throughout the materials that he was presented with including those he reviewed which resulted in the compliance sign-off on 10 September 2014 and the finalised BHIM documents he reviewed and approved on 12 September 2014. As a result, Mr Freer must also have known that the process was not independent in that HJL had been involved in the structuring of it and had a clear interest in as many customers as possible being recommended the Bonds, for the reasons that we have previously set out.

1405. As a result of his knowledge of the matters detailed above, Mr Freer must have known that the statement regarding a review of the whole of the investment market set out in the Service Proposition was not an accurate description of the process. There is a substantial difference between what was set out in the Service Proposition as to a whole of market review as opposed to consideration of one product alone. As we have found, there was no evidence of such a whole of market review having occurred.

1406. Mr Freer knew that the prospect of a customer being recommended any product other than the pre-selected Bonds depended on (i) that customer not indicating a preference for fixed returns or capital protection; (ii) that customer not otherwise being rejected by LeadTracker; and (iii) that customer being onward referred to him.

1407. As a result of our findings set out above as to Mr Freer's knowledge, we conclude that he knew that the reality of service provided through the Pension Review and Advice Process was that it provided restricted advice, namely advice that would be confined to considering whether or not a recommendation should be made to invest in the Bonds, a product which Mr Freer regarded as suitable for a customer who indicated in the Fact Find that he wished to have a product which offered a fixed return and capital protection. Mr Freer knew that a true description of the service being offered would be that the Firm was recommending a particular product which it regarded as being suitable for customers who met certain criteria, and that the suitability of the product for the customer concerned would be assessed through an automated process. That is consistent with his explanation that BHIM had assessed the Bonds as being suitable for a particular segment of customers, namely those who had expressed a desire to invest in a product offering a fixed return with capital protection. That, as Mr Freer knew to be the case, was quite different to a bespoke recommendation that had been made following an assessment of the customer's individual circumstances and a review of the whole market of investment products.

1408. Based on his knowledge as an experienced IFA, his knowledge of how a truly independent adviser operates and the evidence he gave during his cross-examination, Mr Freer knew that the customer was not going to receive bespoke independent advice according to the terms of the Service Proposition.

1409. We now turn to the question as to whether in the light of his knowledge as to the falsity of the statements in the Service Proposition and the Brochure, Mr Freer acted dishonestly in holding out the Pension Review and Advice Process as providing bespoke, independent investment advice based on a comprehensive and fair analysis of the whole market.

1410. As the legal test for dishonesty requires, that question is to be answered objectively. It does not matter that Mr Freer himself does not believe that he acted dishonestly in that regard. We accept that he genuinely believes that he was not dishonest.

1411. In our view, by the standards of ordinary decent people, Mr Freer's actions were dishonest. Ordinary decent people would regard a person's pension pot, particularly if a modest pension pot, as being very important property rights. They would regard a

person as having acted dishonestly when that person made a statement to such a person that they would receive an independent review of their individual circumstances and receive a bespoke recommendation based on those circumstances, when that person knew that the true position was that they were being offered something quite different.. Mr Freer never addressed that difference in his evidence.

1412. We therefore conclude that Mr Freer acted dishonestly by causing BHIM to hold out the Pension Review and Advice Process to customers as BHIM providing bespoke, independent investment advice based on a comprehensive and fair analysis of the whole market and thereby breached Statement of Principle 1 by failing to act with integrity.

(2) Whether Mr Freer acted recklessly in relation to BHIM's adoption and use of the Pension Review and Advice Process

(i) Lack of due diligence on the Bonds and failure to give due consideration to the risk that the Bonds were unsuitable

1413. As we concluded at [293] above, a reasonably competent IFA could form a view as to whether the Products were high risk simply by a careful but not exhaustive review of the various Information Memoranda and Fact Sheets. We concluded that a reasonably competent IFA who undertook such a review would conclude that the Products were evidently high risk. The fact that a small firm like BHIM did not have the resources that would be available to a large firm, such as a bank, to undertake detailed due diligence on the Bonds and those who were responsible for managing them is not relevant.

1414. We also said at [294] that, if the IFA could not form a judgment on the basis of the documentation referred to above and not easily find out what he needed to know to make that judgment, then the decision should be not to recommend the products in question.

1415. We found at [1225] above that Mr Freer did not review any of the documentation relating to the Bonds until after 20 October 2014. However, as we have found, Mr Freer had some details of the Bonds from 9 September 2014, namely the Fact Sheets. We therefore find that it is likely that Mr Freer was aware of, and considered the main features of, the Bonds from 9 September 2014, but did so only on the basis of the Fact Sheets and without considering the Information Memoranda. We also found that it was not clear what due diligence Mr Freer actually conducted in relation to the Bonds other than reviewing the documents provided by HJL in September 2014 and it is not clear at what point, if at all, Mr Freer reviewed the Information Memoranda. However, the high risk and illiquid nature of the Bonds would have been apparent from the Fact Sheets alone.

1416. As we found at [1228] above, there was no evidence showing that due diligence was undertaken by either himself or Mr R Ward in relation to the Liquid Assets Bonds.

1417. A further indicator of the lack of due diligence undertaken by Mr Freer was the fact that BHIM permitted customers to switch into the Bonds before they had actually been listed, with the consequence that their funds sat in cash until the listing occurred.

In any event, as we have found, GXG Main Quote offered little by the way of regulatory protection, which Mr Freer ultimately accepted in his cross-examination also admitting that he did not know that much about it - another indication of the lack of due diligence that he undertook on the Bonds. He further accepted, in his cross-examination, that the capital protection afforded through the CPA and the existence of the fixed and floating charges over the Issuer's assets were a means of recovering only some of the monies owed to the holders of Bonds if there was a "disaster scenario" such as the Issuer going into liquidation.

1418. Mr Freer accepted in his cross-examination that he did not consider the trading and investment strategies of the Issuers. In relation to the residential and commercial property bonds, he did not look at the volume of trading that was expected to take place or how the secondary market might work. He appeared to have relied on the fact that, in his opinion, "bricks and mortar" was a reliable sector, and his evidence was that, although the success of the trading strategies relied on acquiring properties at below market value and selling them at a quick turnover, this was not high risk. We agree with the Authority that is not a credible position to take. Mr Freer did accept that a lack of trading history increased the risk profile "to a certain extent".

1419. Mr Freer stated that, while Mr Stephen's experience was not strictly speaking in the underlying sectors which the Issuers were involved in, he was successful and there would have been a team of people behind him. However, Mr Freer did not do any due diligence into who the members of that team would be and if they were capable of executing the trading strategy. We agree with the Authority that there is an obvious mismatch between the stated trading strategies of the Issuers and the description of the experience of those identified in the Information Memoranda as being responsible for implementing the strategies. This should have raised concerns rather than led to an assumption that there might be a more experienced team beyond the directors.

1420. We found at [329] above that the risk warnings in the Information Memoranda were very specific in their statement that the Bonds were only suitable for investors who could afford to lose the entirety of their investment and were consistent with the features of the Bonds described in the Information Memoranda.

1421. At [333] above we rejected Mr Freer's view that the Bonds were less risky than investing in a collective investment scheme because they offer a fixed coupon with a defined date upon which they will pay out the capital. We also found at [334] that Mr Freer accepted that no secondary market developed in relation to the Bonds and that the fact that the Bonds were originally listed on GXG Main Quote did not in itself guarantee any liquidity which, as we found at [335], was reinforced by the opinion given by DWF LLP on 4 August 2014.

1422. We found at [338] that Mr Freer accepted that the Commercial Bonds and the SME Bonds were not on balance low risk investments.

1423. We therefore concluded at [339] to [340] above that it would have been obvious to any reasonably competent IFA who did no more than use his expertise to review the various Information Memoranda and Fact Sheets that the Bonds were high risk. We

found that the features of the Bonds that are indicative of an investment carrying a high risk of loss i.e. the risk of it not delivering the expected return over its life and repaying principal in full at maturity, are overwhelming.

1424. As a result, we found that a reasonably competent IFA would have concluded that the Bonds were not suitable to be recommended to retail investors except in very limited circumstances. Those circumstances might be where the investor, having been warned appropriately about the risks involved, was prepared to commit a small part of his investment portfolio on the basis that the assets concerned were those that he was willing to lose in the hope that the higher returns promised would be achieved.

1425. Our assessment is that Mr Freer is a reasonably competent IFA. None of the evidence before us demonstrates that Mr Freer carried out anything other than very superficial due diligence on the Bonds or that he was engaged in any material respect with the features of the Bonds as set out in the Information Memoranda. Mr Freer's starting point should have been a careful review of the Information Memoranda, but there is no evidence that ever happened.

1426. Mr Freer was unable to provide any evidence that he had found an equivalent product to the Bonds and so he had nothing with which to compare what was being offered through the Bonds including by way of past performance.

1427. In our view, Mr Freer acted recklessly in the following respects:

(1) By assuming that there was no risk that the relevant Issuers would not be able to generate sufficient returns to service the interest payments, meet the significant costs of running the Issuers and repay the principal amount of the Bonds.

(2) By giving no consideration to (i) the obvious risk factors that led Mr Lockie to conclude that a reasonably competent IFA would have placed the Bonds within the "high risk" category, as detailed at [327] above; and (ii) the risk warnings in the Information Memoranda.

1428. As the authorities indicate, in the regulatory context a reckless failure to consider whether something is a risk may be found to amount to a lack of integrity That is exactly what happened in this case. Mr Freer closed his mind to the need to make any kind of significant assessment of the risk factors attaching to the Bonds and did not make any serious attempt to analyse the features of the Bonds, as disclosed in the Information Memoranda. Had he done so, as we have found, it would have been obvious to him that the Bonds were high risk and unsuitable to be recommended to retail investors except in limited circumstances.

(ii) Failure to establish that leads were generated in an appropriate manner

1429. As we found at [1309] above, there was no contemporaneous evidence indicating that any due diligence was undertaken on how leads were sourced.

1430. Mr Freer's evidence was that, although he was alert to the risk of cold calling, other than that he did not care how leads are generated. Accordingly, he accepted that he took no steps to ascertain how leads were being obtained.

1431. As we also found at [1309] and [1310] above, Mr Freer did discover that HJL was generating the leads and indeed it would clearly have been apparent from the documents which were passed to him on 9 September 2014 that it was HJL and not CAL who was responsible for generating leads.

1432. In our view, Mr Freer must have been aware that there was a risk that lead generation companies would engage in cold calling and therefore that this was a risk that needed to be managed. Mr Freer was therefore reckless in closing his mind to this obvious risk.

(iii) Failure to manage conflicts of interest

1433. As we have found at [500] to [510] above, the Pension Review and Advice Process was structured to result in customers switching their pensions to SIPPs investing in assets in which HJL had a material financial interest.

1434. The Authority contends that Mr Freer failed to take steps to manage and/or disclose the alleged conflicts of interest arising from (i) the structure of the Pension Review and Advice Process; (ii) HJL's role in the Pension Review and Advice Process; and (iii) the role of two of HJL's directors as directors of each of the Issuers and their financial interest in the Bonds.

1435. Mr Freer was alive to the possibility of a conflict of interest. In his interview with the Authority, he accepted that it was a conflict of interest to generate a lead and also give advice.

1436. We therefore accept, as we found in relation to Mr R Ward, that it was apparent to Mr Freer from the outset when he received Mr R Ward's report of the meeting with Mr Worrow Jr on 9 September 2014 that there was a conflict where Mr Worrow Jr had an interest in leads potentially investing in funds he ran and those potential customers having an interest in receiving true independent whole of market advice.

1437. As the CF 10 responsible for compliance at BHIM it was Mr Freer's responsibility to ensure that this conflict of interest was managed and/or disclosed.

1438. As we have found, Mr Freer was aware of HJL's involvement in the process. He was aware of the fact that Mr Worrow Jr was a representative of HJL and had seen documents which clearly described him as such. Mr Freer had asked Mr R Ward who was "Hennessy" when he received the documentation following the meeting held on 9 September 2014 and we have found that Mr R Ward would have explained HJL's role to Mr Freer.

1439. Mr Freer knew that the Pension Review and Advice Process involved CAL, which was run by Mr Worrow Jr, undertaking the Fact Find and that the focus was on a single set of products, the Bonds. Mr Freer knew that the questions raised in the Fact Find

reflected features of the Bonds that, if selected, would then justify a recommendation to invest in the Bonds.

1440. It must have been obvious to Mr Freer that HJL had been involved in the structuring of the Pension Review and Advice Process and that, if this was not evident from the outset, it must have become so as the process advanced. The close connection between HJL and CAL should have been apparent from their interactions with the products being recommended through LeadTracker, those being exclusively the Bonds which were promoted by HJL.

1441. As we have found, there was a clear divergence in interest in the outcome of the process in that HJL wanted customers (which they had paid for) to switch their pensions into the Bonds; whereas those customers were seeking, and thought they had been offered, independent advice from across the whole of investment market. However, in fact, what they were getting was akin to restricted advice tied to a single set of products.

1442. As we have also found, there was an objectively unreasonable risk of substantial harm to those customers arising from the involvement of HJL in the design and structure of the process and its operation of the Outsourced Functions.

1443. Bearing in mind the state of Mr Freer's knowledge as to these matters, it is not credible that he did not see this conflict of interest unless he closed his mind to the need to consider it.

1444. There is no evidence of Mr Freer seeking to manage or disclose this conflict of interest. He stated that the Information Memoranda were provided to customers and that he requested that this be done. There is no documentary evidence supporting that assertion. Mr Freer accepted that he did not monitor whether or not the Information Memoranda were sent to customers and that it was an assumption that it was sent. In any event, as we have found, the Information Memoranda were not sent to customers as a matter of course.

(iv) Whether it should have been obvious to Mr Freer that there was a significant risk that the Pension Review and Advice Process was not compliant

1445. Mr Freer attempted to defend the adequacy of the Pension Review and Advice Process as a means of providing suitable advice to those customers for whom the Bonds were an appropriate investment.

1446. However, his explanation was unconvincing. He did not accept that the Fact Find asked leading questions as regards the desire for capital protection and fixed returns. He did not accept that it was necessary to ask questions about the customers other savings and investments because this process was designed only to look at the customer's existing pension investments and ascertain whether it was appropriate to switch them into the Bonds.

1447. Nevertheless, after being pressed on these matters in his cross examination, Mr Freer accepted that there were obvious flaws in the process and that he realised that this was the case at an early stage. He said that he raised with CAL whether (i) soft facts

could be gathered; (ii) the process could deal with inconsistencies that arose between the answers given in the Fact Find in relation to the customer's attitude to risk and the customer's risk profile; and (iii) customers could be informed that the Bonds were non-mainstream investments. He also accepted that the Pension Recommendation Report gave no explanation as to why the customer was being advised to switch from his existing pension to an investment in the Bonds and that he would have preferred that to have been included.

1448. Mr Freer said that, although all these issues were raised with CAL, he was told that the system at that time did not allow his points to be accommodated. He said that, looking back with hindsight, he wished he had done more but at the time he did not realise that he should have done so. Mr Lloyd submitted that this demonstrated that Mr Freer had not appreciated the risks attaching to the process at the time and therefore he did not turn a blind eye to those risks.

1449. Although Mr Freer suggested that some changes were in fact made to the Fact Find at his suggestion, there is no evidence that this was the case. On his own admission his knowledge of the contents of the Fact Find appear to have been limited until January 2015 to the "outputs" from LeadTracker. Those "outputs" were what could be seen on screen as the answers to the various questions in the Fact Find rather than the questions themselves. However, as we have found, on 10 September 2014 Mr Freer approved from a compliance point of view the specimen Fact Find which was provided to him on 9 September 2014. That specimen contained all the questions used on behalf of BHIM and the other Firms.

1450. Mr Freer had substantial experience of financial services such that he should have appreciated the importance of ensuring that the process for providing advice to customers was undertaken in a proper and appropriate way so that a recommendation on suitability could be given.

1451. Likewise, Mr Freer should have known from that experience of the risks of outsourcing essential parts of the advice process to a third party. Mr Freer's evidence was that he had also completed compliance specific courses.

1452. We have found that, on 9 September 2014, Mr R Ward had provided Mr Freer with the key documents to be used in relation to the Pension Review and Advice Process. He "signed off" those documents on 10 September 2014. That meant that he must have spent very little time considering whether or not it was appropriate to adopt the Pension Review and Advice Process.

1453. As we found at [1208] above, in relation to the finalised documents, Mr Freer said that he was happy with all the documentation and that from a compliance point of view he saw no issues. It was clearly the case that Mr Freer had approved the essential documentation, including the Pension Summary Report, the Pension Recommendation Report, the Brochure and the Service Proposition.

1454. In our view, even if, as appears to be the case, Mr Freer only undertook a cursory view of the documentation, from both that documentation and subsequently the outputs

from the Fact Find that he saw, it would have been obvious to him that the scope of the Fact Find was limited to only the yes/no or limited question options that were identified on the LeadTracker output. Consequently, he would have been aware that the Fact Find had leading questions which steered the customer towards selecting features which would in due course be relied on as justifying a recommendation to invest in the Bonds.

1455. Furthermore, as Mr Purchas submitted, it should have been obvious to Mr Freer that the Fact Find process was deficient in: not seeking to explore with customers anything more than the high-level questions identified e.g. on ethical objectives or the reasons for a customer's preference for fixed returns and/or guarantees; and asking no questions about the client's other financial circumstances such as other savings and investments, liabilities and other sources of income, or about a customer's knowledge, experience and understanding of investments. It should therefore have been obvious to Mr Freer from the information available to him that a process based on such a limited Fact Find could not comply with the Authority's rules. Indeed, as we have found, Mr Freer himself identified these deficiencies at an early stage in the process but was unsuccessful in achieving any changes to the documentation or the script used.

1456. Consequently, as Mr Purchas submitted, given the defects in the Fact Find process, Mr Freer would clearly have been aware of the high likelihood that the Pension Recommendation Report could not provide suitable advice.

1457. Mr Freer would also have realised the other defects in the templated Pension Recommendation Reports including that (i) they did not engage with an explanation of the advantages and disadvantages of the recommendation, instead referring to just the selected portfolio and cross-referring to the Fact Sheets; (ii) there was no explanation of counterparty risk; (iii) there was no explanation that the products would not be covered by FOS and the FSCS; and (iv) there was no explanation as to why moving to a SIPP was suitable or an explanation of the risks compared to previous managed arrangements.

1458. It follows that we reject Mr Lloyd's submission that Mr Freer was unaware of these risks. We accept that he was under considerable pressure at the time he was asked to review the documentation in September 2014 and that, if Mr R Ward had himself identified the flaws in the process, the opportunity should not have been pursued. However, Mr Freer did not say that these pressures prevented him from identifying the flaws in the process, which he agreed that he subsequently did. If the pressure of work was such that he could not realistically perform his functions as CF 10 at the time, then the appropriate course would have been to have informed Mr R Ward of that fact. In the circumstances, if there was no adequate internal resource the Firm could have taken external advice, such as from compliance consultants, as to the compliance implications of the proposals.

1459. None of Mr Freer's evidence that he gave in cross examination detracts from our findings that there were obvious deficiencies with the Pension Review and Advice Process which failed to comply with the Authority's rules. We find that those deficiencies would have been obvious to Mr Freer, bearing in mind his knowledge and

experience and yet he failed to give any meaningful consideration as to whether or not the Pension Review and Advice Process was compliant with the Authority's rules.

(v) Failure to take reasonable steps to ensure that BHIM reviewed in a meaningful way the advice given through the Pension Review and Advice Process

1460. As we have found, it was self-evident that there were close dealings between HJL and CAL in terms of not just product selection and report production, but the overall operation of the system. We accept Mr Purchas's submission that had Mr Freer undertaken any meaningful monitoring of the process he would have identified these close links. However, Mr Freer did not undertake any compliance reviews until 11 February 2015 and before then he undertook only short reviews of files which were not sufficient to monitor the process.

1461. It is a matter of considerable concern that Mr Freer did not appear to have understood key aspects of the process, in particular the client journey. He said in his cross examination that the Fact Find was carried out before the Pension Summary Report. Our findings in respect of the steps in the process and the order in which they occurred clearly demonstrate that this understanding was incorrect. Mr Freer also said that he believed that customers with strong ethical views would be filtered out of the process. However, it is clear that the process did not allow that to happen and there were a number of instances where investors who had expressed ethical concerns were nevertheless recommended the Bonds. These matters indicate failures in Mr Freer's monitoring of the process.

1462. As we have found, Mr Freer did not have access to the hardcopy Fact Finds and only reviewed the outputs of the questions asked other than at his compliance visits which commenced on a monthly basis on 11 February 2015. He accepted that he did not have access to the audio recordings of the Fact Finds until February or March 2015 and there was no evidence before us as to the extent to which he listened to these recordings, again other than on his compliance visits from February 2015 onwards.

1463. With respect to the file reviews undertaken by Mr Freer, it was apparent that only between 5 and 10 minutes was spent reviewing the LeadTracker outputs and the Pension Recommendation Reports on each file, and that these reviews were only addressing factual consistency and accuracy and were clearly not sufficient to have addressed the suitability of the advice.

1464. The monthly compliance visits commenced in February 2015 by which point 112 customers had already been advised. Mr Freer was only able to provide evidence of 12 file reviews.

1465. On the basis of these findings, Mr Freer failed to take reasonable steps to ensure that BHIM reviewed in a meaningful way the advice given through the Pension Review and Advice Process.

(vi) Failure to have in place appropriate systems and controls

1466. As we found in relation to Mr R Ward's reference, BHIM gave investment advice with respect to at least five pension transfers, as opposed to pension switches, outside the Firm's permissions.

1467. There is no evidence that Mr Freer gave any thought to the obvious risk that pension transfers could be recommended through the LeadTracker process and what systems and controls ought to be in place to mitigate that risk.

(vii) Failure to carry out adequate due diligence on HJL and CAL

1468. Our findings in relation to this issue are the same as those set out at [1340] to [1344] above. For convenience, we set them out again by reference to Mr Freer's own position.

1469. We have set out at [423] to [426] a summary of the various obligations that the Firms had to undertake to oversee the performance of the Outsourced Functions carried out by HJL or CAL, as the case may be, on behalf of the Firms.

1470. We found that there was no evidence that any of the Firms took meaningful steps to exercise due skill, care and diligence when deciding to appoint HJL or CAL, as the case may be, to perform Outsourced Functions. Nor was there any evidence that they took meaningful steps to establish methods for assessing the standard of performance of HJL or CAL, as the case may be, as service providers nor did they take any steps to supervise the Outsourced Functions and any of the risks associated with the outsourcing.

1471. We found at [1211] above that, in practice, leads were generated for BHIM by HJL through the marketing companies that HJL engaged. Neither Mr R Ward nor Mr Freer gave any thought to how leads were actually being generated.

1472. Accordingly, Mr Freer failed to carry out any due diligence on HJL as a lead provider or provider of outsourced services or CAL as either a lead provider or provider of outsourced services.

1473. As we have found, the decision to work with HJL was taken by Mr R Ward and Mr Freer on the basis of Mr R Ward's meeting with Mr Worrow Jr on 9 September 2014 and Mr Freer's review of the documents emailed to him by Mr R Ward on 10 September 2014.

1474. Mr Freer and Mr R Ward made the decision to work with Mr Worrow on 10 September 2014 in a very short period of time. We have rejected the evidence of Mr R Ward and Mr Freer that this approval was for the lead generation process only.

1475. The only evidence of any due diligence on HJL is that which Mr Freer conducted as part of his due diligence on the Bonds which included Companies House searches on the directors of HJL and obtaining certified copies of documents proving the directors' identities.

1476. It is common ground that from 13 October 2014, CAL was undertaking the outsourced services. The Authority has seen no evidence that Mr Freer gave any consideration to whether CAL was suitable to perform the Pension Review and Advice Process on behalf of the Firm.

1477. Accordingly, Mr Freer closed his mind to the risk that HJL, and then CAL, were not suitable to act as introducers and to the risk that they were unsuitable to conduct Outsourced Functions for BHIM.

(viii) Conclusion as to whether Mr Freer acted recklessly in relation to BHIM's adoption and use of the Pension Review and Advice Process

1478. We have found at [1413] to [1477] above that:

(1) Mr Freer closed his mind to the risk that the Bonds were high risk and not suitable for retail investors. He also closed his mind to the need to ensure that adequate due diligence was undertaken on the Bonds.

(2) Mr Freer took no steps to ensure that consideration was given as to how leads were generated and, in particular whether potential customers were being cold called. Mr Freer was therefore reckless in closing his mind to this obvious risk.

(3) The conflicts of interest relating to the structure and operation of the Pension Review and Advice Process would have been obvious to Mr Freer, but he took no steps to manage those conflicts.

(4) Mr Freer closed his mind to the obvious risk that the documentation which BHIM had approved for its participation in the Pension Review and Advice Process was not compliant with the Authority's regulatory requirements regarding the provision of suitable advice to customers.

(5) Mr Freer failed to take reasonable steps to ensure that BHIM reviewed in a meaningful way the advice given through the Pension Review and Advice Process.

(6) Mr Freer gave no thought to the obvious risk that pension transfers could be recommended and what systems and controls ought to be in place to mitigate that risk.

(7) Mr Freer closed his mind to the risk that HJL, and then CAL, were not suitable to act as introducers and to the risk that they were unsuitable to conduct Outsourced Functions for BHIM.

1479. In our view, those findings are sufficient to establish that Mr Freer acted recklessly in relation to BHIM's adoption and use of the Pension Review and Advice Process. Mr Freer closed his mind to the serious risk that the process would (as subsequently transpired) result in BHIM's customers receiving unsuitable advice and investing in products that were not suitable for them.

(2) Whether Mr Freer recklessly allowed BHIM to breach a term of a Voluntary Requirement

1480. We found in relation to Mr R Ward's reference that BHIM breached the terms of the Voluntary Requirement by advising on pension switches to be held by Nucleus on a platform through a SIPP. We also found that Mr R Ward acted recklessly by closing his mind to the risk that BHIM would breach the terms of the Voluntary Requirement: see [1351] to [1357] above.

1481. Mr Freer confirmed that he was aware of the wording of the Voluntary Requirement. He was shown an example of a suitability report that he was responsible for preparing in relation to one of the switches to Nucleus. That report clearly referred to Nucleus being a platform through which investors could hold investments through a variety of wrappers, including a SIPP where the assets concerned were pension assets. The report stated clearly that the Nucleus Pension was a SIPP.

1482. Mr Freer took the same position as Mr R Ward, namely that his belief was that the lawyers had clarified that a transfer to a platform was acceptable because that is what had been discussed with the Authority. Mr Freer said that Mr R Ward had also confirmed to him that was the position.

1483. We have seen no evidence that Mr Freer himself had any discussions with the lawyers to obtain the comfort that he said he relied on. We think he said that to try and protect his own position.

1484. However, this was a matter on which Mr R Ward was taking the lead and as he was Chief Executive, in our view, it was reasonable for Mr Freer to have taken the position that he could rely on what Mr R Ward had told him about how the Voluntary Requirement was to be construed in the light of the discussions Mr R Ward and BHIM's lawyers had had with the Authority. That is the case even though, as we have found, Mr R Ward was not entitled to take the position he did as to the meaning of the terms of the Voluntary Requirement.

1485. Mr Freer had not been a party to the discussions between Mr R Ward and the lawyers on the one hand and the Authority on the other hand. He was not therefore in a position to contradict what he was being told. The only criticism that we would make is that, bearing in mind that the terms of the Voluntary Requirement appear to be clear, he should have asked Mr R Ward whether the lawyers' advice was in writing and, if it was not, ask that it be reduced to writing so that he could take comfort that the position was as it had been described to him.

1486. However, we do not find that Mr Freer's failure to take that step was reckless as opposed to being possibly careless. We therefore find that the Authority has not made out its case against Mr Freer on this issue.

(3) Whether Mr Freer acted dishonestly in making false and misleading statements to the Authority concerning BHIM's relationship with HJL and CAL

1487. The Authority relies on the following matters:

(1) Mr Freer repeatedly told the Authority falsely that he had no idea that HJL had any involvement in the Pension Review and Advice Process.

(2) Mr Freer claimed that he had no idea that HJL had any involvement in the advice process even as introducers of leads. That was clearly false and misleading. The Authority notes, as examples, that he makes this claim despite emails with Mr Worrow Jr in relation to the advice process using an HJL email address and signature, the approval of documents which refer to HJL and ongoing emails with HJL including in respect of marketing companies being used. Mr Freer had access to these emails.

(3) Mr Freer told the Authority during the short notice visit on 15 and 16 July 2015, at a meeting on 14 August 2015 and in a telephone conversation on 22 December 2015 that (i) BHIM had started working with CAL only in December 2014; (ii) he had quickly identified concerns with CAL and the Pension Review and Advice Process; and (iii) BHIM had taken step to terminate its agreement with CAL in February or March 2015. These statements were false.

(4) Mr Freer's statement that he started to have concerns about Mr Worrow Jr, is not consistent with the fact that (i) the Pension Review and Advice Process continued; and (ii) BHIM was looking to enter into further business with Mr Worrow.

(5) Mr Freer states that terminating the agreement with CAL was Mr R Ward's responsibility and he did not seek evidence that he had done so. Mr Freer suggested that all the remaining business was run-off business which was not credible.

(6) Mr Freer deliberately sought to create the impression that BHIM started working with CAL in December 2014 and, having quickly identified concerns with CAL and the advice process, sought in February or March 2015 to orally terminate BHIM's agreement with CAL. That was not the true position, with the relationship commencing in September 2014, the agreement with CAL being dated October 2014 and continuing until July 2015 when the Authority intervened.

1488. Our findings of fact, as set out above, are sufficient to make good the Authority's contentions set out above as to the falsity of the statements made to the Authority.

1489. However, we are not satisfied that Mr Freer acted dishonestly in making these statements. The matters concerned were primarily the responsibility of Mr R Ward who took the lead in communicating with the Authority on these issues. Our assessment is that Mr Freer simply followed the line taken by Mr R Ward and did not himself make any assessment about whether what was being told to the Authority was correct.

1490. However, we do regard Mr Freer's approach to these matters as being reckless. We reject Mr Lloyd's submission that Mr Freer made honest mistakes in making false statements. He did not, however, make any enquiries of his own to verify the line being taken by Mr R Ward with the Authority, which he should have done bearing in mind that he was also subject to interview by the Authority in relation to these matters. He

therefore closed his mind to his obligation to ensure that the answers he gave to the Authority were materially correct and, in that regard, he was clearly reckless.

(4) Whether Mr Freer acted dishonestly by deliberately telling the Authority that BHIM did not have minutes of board meetings

1491. Mr R Ward was responsible for answering the Authority's information request with respect to board minutes. As we have found, he gave a reckless answer to the request.

1492. Mr Freer had no part in drafting the response to the Authority's information request. The Authority's case against Mr Freer is based on the fact that he initially told the Authority in interview that board meetings did take place and minutes were kept, but after a break in the interview he changed his account to say there were no such minutes until August 2015. Mr Freer's explanation for this change was that he had been told in the break by his solicitor that there may have been no minutes until later on.

1493. The Authority says that, if that was the position, Mr Freer could have said that he was not sure, as opposed to maintaining that there were no such minutes until August 2015.

1494. Mr Freer was unwise to tell the Authority that he thought that minutes were first instituted after August 2015. As the Authority says, he should have said that on reflection he was unsure of the position and would have to check rather than purport to give a definitive answer. However, in our view, that in itself is insufficient to constitute a finding of dishonesty on Mr Freer's part. When he gave his answer, he did not know whether minutes did or did not exist and was clearly unsure of the position.

1495. Our conclusion is that, although Mr Freer did not deliberately give the Authority an untrue answer, he did not make an honest mistake. He acted recklessly by not checking the position before giving his revised answer to the Authority during his interview.

(5) Whether Mr Freer acted recklessly in failing to provide the Authority with a complete copy of BHIM's new business register

1496. As we found at [1296] above, Mr R Ward allowed BHIM to provide the Authority with incomplete and misleading information in its new business register provided on 21 September 2016 about the pension switches that BHIM had conducted during the period of the Voluntary Requirement.

1497. Mr Freer accepted in his cross-examination that, in the light of the Authority's request for the new business register, the responsibility for which was delegated by Mr R Ward to Mr Freer, it was Mr Freer's responsibility to ensure that the accuracy of the register was checked before it was provided to the Authority.

1498. Mr Freer's evidence was that the discrepancy arose because those further down the line who were responsible for preparing the register only included pension switches which he had effected rather than the wider business.

1499. Mr Freer agreed that it would have been an unusual request by the Authority for a new business register that was limited in that way. Clearly, therefore, it should have occurred to him that the new business register being provided was not what the Authority was seeking.

1500. Bearing in mind the importance of the Authority's request in the context of its investigation into whether there had been a breach of the Voluntary Requirement it was incumbent on Mr Freer to ensure that the new business register was checked before it was sent. He clearly did not address his mind to that issue and accordingly we conclude that he acted recklessly in failing to do so.

Conclusion on Issue 1

1501. The findings that we have made as set out above demonstrate overwhelmingly that Mr Freer has breached Statement of Principle 1 by failing to act with integrity in carrying out his controlled functions during the Relevant Period.

Issue 2: Financial Penalty

1502. In our view Mr Freer's failings are very serious. In common with the allegations against the other Applicants on these references, they are among the most serious that we have encountered in respect of a small IFA firm in that he acted recklessly in being a party to all the decisions to adopt a seriously flawed business model and acted dishonestly in misrepresenting the features of that model to a large number of unsophisticated customers, causing serious harm to them. His behaviour has also had a serious impact on other IFA firms in terms of the effect on the calls on the FSCS to which all authorised firms in the relevant category have to contribute.

1503. In our view, the imposition of a very substantial financial penalty in this case is justified and appropriate. As the Authority's penalty policy states, the principal purpose of imposing a financial penalty is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour.

1504. It is a personal tragedy for Mr Freer that he allowed his instincts and values as a respected IFA to be overridden as a result of the volume of business, and consequent high levels of remuneration, participation in the Pension Review and Advice Process offered.

1505. We have no doubt that Mr Freer was heavily influenced by the opportunity that the Pension Review and Advice Process offered to generate significant levels of income for BHIM at a time when it was in a challenging financial situation. Mr Freer was party to the decision to adopt the process without giving any serious thought as to whether it would be in the interests of the Firm's customers to do so. We have no doubt, as submitted by the Authority, that Mr Freer was motivated by the financial gain to be obtained through a large volume of business where, according to Mr R Ward's report to Mr Freer on 9 September 2014 "we actually do nothing".

1506. Consequently, Mr Freer allowed his judgment to be seriously compromised by the business model, as put to BHIM by HJL, and closed his mind to the risks that in doing so he was putting his own interests above those of BHIM's customers. He was party to the decision which allowed BHIM to be used as a vehicle for HJL to promote its Bonds under the veneer of bespoke advice given by an IFA.

1507. The Authority seeks the same level of financial penalty that it set out in the Decision Notice, which was calculated by applying the five-step framework set out at [102] above.

1508. We received no challenge from Mr Freer to that approach and, therefore, in accordance with the usual practice, we should pay that policy due regard when carrying out our overriding objective of doing justice between the parties.

1509. We see no reason to dispute the calculations made by the Authority to determine the financial penalty which Mr Purchas set out in detail in his closing submissions. In summary:

Step 1: The Authority calculates an amount of £1,825 to deprive Mr Freer of the financial benefit derived directly from his breaches of Principle 1, which represents the payments he received for compliance checks on files of customers who received advice from BHIM through the Pension Review and Advice Process, inclusive of interest calculated as described below, up to the date of Mr Freer's Decision Notice. The Authority seeks continuing interest on the principal amount of that benefit at the rate of 8% per annum from the date of the Decision Notice, consistent with the policy set out in DEPP 6.5B.1G which states that the Authority will ordinarily charge interest on the amount of the benefit. The rate of 8% per annum is consistent with the judgment debt rate of 8% simple per year under s 17 Judgements Act 1838 (as amended by Article 2 Judgements Debts (Rate of Interest) Order 1993). This rate of interest is also consistent with the amount of interest typically awarded by the FOS and in our view is the appropriate rate to be applied in the current circumstances.

Step 2: The Authority placed the seriousness of Mr Freer's breach at Level 5 which results in a penalty sum of £10,184 being 40% of the relevant net revenue earned by Mr Freer from 9 September 2014 until 12 December 2016. The Authority considered that Mr Freer's relevant income for that period was £25,460, comprising salary payments which he received from the Firm.

We agree with that assessment, bearing in mind the following factors:

(1) Mr Freer's motivation for financial gain for himself;

(2) the significant loss for a large number of consumers many of whom were vulnerable;

(3) Mr Freer's senior position at the Firm; and

(4) the considerable number of separate allegations of reckless conduct and one finding of dishonesty which we have found to be established.

Step 3: The Authority added a sum equal to a further 25% of the penalty calculated above to take account of aggravating factors, in particular Mr Freer's previous involvement in carbon credits (another high risk unregulated investment), knowledge of the various alerts issued by the Authority in relation to pension switching and his failure to bring the Pension Review and Advice Process to the attention of the Authority or implement changes once he realised there were defects in the process.

The Authority identified no mitigating factors. However, in our view a mitigating factor is the fact that Mr Freer had only recently returned to work following a period of illness and he was put under undue pressure as a result of being asked by Mr R Ward to review proposals for participation in the Pension Review and Advice Process on short notice which explains in part his inadequate response to the proposals. Furthermore, as we have said, Mr Freer alone expressed some remorse for his actions, albeit late in the process. In our view, these mitigating factors cancelled out the aggravating factors so we would make no adjustment for aggravating and mitigating factors.

Step 4: The Authority considered that its Step 3 figure does not represent a sufficient deterrent to Mr Freer and so, at Step 4, increased the Step 3 figure by a multiple of four as an adjustment for deterrence.

In view of the very serious nature of the allegations in this case and their impact, we agree with the Authority's assessment. Accordingly, the figure for Step 3 which we have arrived at, namely £10,184, should be increased to £40,700, rounded down to the nearest £100.

1510. Consequently, the financial penalty will be £40,736. That is a very large sum to be imposed on the director of a small IFA firm. However, BHIM took on a large amount of business during the Relevant Period and in our view the figure is justified by reference to the scale of the business conducted, the seriousness of the breaches and the need to dissuade any IFA firm from taking a similar path in the future.

1511. In view of the seriousness of the core allegations of recklessness and dishonesty in relation to the business model of BHIM that we have found to be established, we have not considered it appropriate to reduce the penalty on account of our finding that the Authority did not make out its case in relation to the limited separate allegations of dishonesty (although we did find that Mr Freer acted recklessly in relation to those matters) and one allegation of recklessness in respect of misleading the Authority.

1512. We therefore determine that it will be appropriate for the Authority to impose a financial penalty of £40,736 on Mr Freer plus continuing interest on the amount of the benefit received by Mr Freer, as calculated above.

Issue 3: Prohibition

1513. Mr Freer made no submissions challenging the imposition of a prohibition order were the allegations made against him to be established.

1514. As we have found, Mr Freer has been found to be lacking in integrity as a result of a series of breaches committed over a considerable period of time. It is clear that the

imposition of a prohibition order by the Authority under s 56 FSMA on the grounds that Mr Freer is not a fit and proper person to perform any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm is a course of action reasonably open to the Authority on the basis of the findings that we have made. We therefore see no basis on which we should interfere with the Authority's decision in that regard.

IX. DISPOSITION

1515. The references are dismissed. Our decision is unanimous.

X. DIRECTIONS

1516. In relation to Mr Page's disciplinary reference, we determine that the appropriate action for the Authority to take is to impose on him a financial penalty of £321,033, plus continuing interest on the amount of the benefit received by Mr Page since the date of his Decision Notice, calculated as set out in this decision. That penalty is to be imposed pursuant to s 66 (3)(a) FSMA for Mr Page's breach of Statement of Principle 1 by failing to act with integrity in carrying out his controlled functions during the Relevant Period.

1517. In relation to Mr T Ward's disciplinary reference, we determine that the appropriate action for the Authority to take is to impose on him a financial penalty of £416,558, plus continuing interest on the amount of the benefit received by Mr T Ward since the date of his Decision Notice, calculated as set out in this decision. That penalty is to be imposed pursuant to s 63A (1) FSMA for Mr T Ward having performed the CF 1 function for FPL without approval in breach of the requirements of that provision and because his conduct would have amounted to a breach of Statement of Principle 1 had he been so approved.

1518. In relation to Mr Henderson's disciplinary reference, we determine that the appropriate action for the Authority to take is to impose on him a financial penalty of £179,179, plus continuing interest on the amount of the benefit received by Mr Henderson since the date of his Decision Notice, calculated as set out in this decision. That penalty is to be imposed pursuant to s 66 (3)(a) FSMA for Mr Henderson's breach of Statement of Principle 1 by failing to act with integrity in carrying out his controlled functions during the Relevant Period.

1519. In relation to Mr R Ward's disciplinary reference, we determine that the appropriate action for the Authority to take is to impose on him a financial penalty of £88,100. That penalty is to be imposed pursuant to s 66 (3)(a) FSMA for Mr R Ward's breach of Statement of Principle 1 by failing to act with integrity in carrying out his controlled functions during the Relevant Period.

1520. In relation to Mr Freer's disciplinary reference we determine that the appropriate action for the Authority to take is to impose on him a financial penalty of £40,736 plus continuing interest on the amount of the benefit received by Mr Freer since the date of his Decision Notice, calculated as set out in this decision. That penalty is to be imposed pursuant to s 66 (3)(a) FSMA for Mr Freer's breach of Statement of Principle 1 by

failing to act with integrity in carrying out his controlled functions during the Relevant Period.

1521. In accordance with s 133 (6) FSMA we have dismissed the non-disciplinary references. It is therefore open to the Authority to make a prohibition order against each of the Applicants prohibiting them from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm.

1522. We remit the references to the Authority with a direction that effect be given to our determinations.

Signed On Original

JUDGE TIMOTHY HERRINGTON
UPPER TRIBUNAL JUDGE
RELEASE DATE: 04 May 2022

APPENDIX

Observations of the Tribunal on customer files

Note: files are referred to by the file number given in the hearing bundle

FPL

FPL File 1

The projected fund of the existing policy is taken from the provider's online calculator, not a contract specific illustration. The provider warns that this calculator "is not an illustration calculator and should not be used for comparison purposes."

The customer's responses are clearly confused, stating a desire for a retirement income of 10% of current (very low £2,000) income of which 10% is to be funded by this pension. Taken at face value this means a pension of £20 per year. This suggests the Fact Find has been completed incorrectly but is nevertheless restated as the objective being addressed in the final report. This suggests that an adviser has given no thought to the customer's needs.

The Fact Find stated that the customer wished to make continuing contributions, but this was neither addressed in the report nor recommended. The customer's stated ethical investment objective was ignored in the report.

The Pension Recommendation Report makes no comment on the fact that the transfer value is less than the face value of the ceding policy. It would be important to tell the customer why it is worth suffering a penalty on transfer.

There is an inconsistency in stating there is no fixed term when you have a desired retirement age in the context of a pension arrangement.

FPL File 3

The report like others does not expand on anything given in the Fact Find other than the brief comments in the covering letter.

Nothing is said to link the recommendations to the objectives asserted.

There is no indication given as to whether the projected fund size will be sufficient to meet the income aspiration identified in the Fact Find (which it is not).

This is particularly troubling in this case because the effect of the advice is that the customer stops making contributions to their pension arrangements. No reasonably competent IFA would give that advice, so the conclusion is that the adviser has given no thought to the advice they are giving.

The interview transcripts in the document record that the customer had questions about the disposition of death benefits which the interviewer could not answer and said the adviser would address in the advice to be given. There is no mention of it in the recommendation letter.

FPL File 5

The Pension Recommendation Report, in common with the other files, does not expand on anything given in the Fact Find other than the brief comments in the covering letter. Nothing is said to link the recommendations to the objectives asserted. There is no indication given as to whether the projected fund size will be sufficient to meet the income aspiration identified in the Fact Find (which it is not).

This case is a good illustration of how the advisers were not significantly involved in the creation of the recommendations. The LeadTracker file runs to over 200 pages evidencing considerable activity as the case made its way through the process. It seems that at no point was there any consideration that the case with a fund value of just £5,200 that would generate a fee of £156 was worth pursuing, two thirds of which would be paid to CAL. As a consequence, it is unlikely that Mr Page spent any significant time in reviewing the Pension Recommendation Report.

FPL File 7

The presentation of the future value of the existing plans is misleading because it shows a failure to understand how with-profits plans work. It applies the published bonus rates to the current basic with-profits value, whilst making no allowance for the current level of terminal bonus which makes up more than half of the overall value available on transfer. These terminal bonuses are assumed to be nil at the stated retirement age. This leads to a report that suggests the GM Global SIPP will have a value of £87,968 compared to the existing policies at around about £31,000. This is very misleading and although there is a comment in the Pension Recommendation Report to the effect that it is not possible to make a comparison, this comparison is nevertheless made.

The preferred term was stated to be medium term (5-10 years), but the recommendation was for a Loan Note with a term of 10 years.

The Pension Recommendation Report fails to point out that the ceding policy offers minimum value guarantee and through the with-profits bonus system gives a close approximation of fixed returns.

FPL File 9

There is no indication given as to whether the projected fund size will be sufficient to meet the income aspiration identified in the Fact Find (which all it is not).

FPL File 11

The projection of the value of the fund if invested in the GM SIPP has three flaws:

- It assumes the coupons paid by the AIGO notes are reinvested, but they were not
- It assumes that continuing contributions would be paid, but they were not recommended
- It assumes a 12-year term when the underlying investment had only a 10-year duration

The report then gives a comparison illustration to compare the customer's existing policy with the GM SIPP on a like for like basis and this shows that the outcome is better on the current plans, a fund of £31,200 compared to the Global SIPP at £30,788. The table describes this as a negative cost difference of £422.

The report summarises this as a cost saving of £935 over the life of the plan which is entirely unsupported by the earlier factual statements.

Despite making the recommendation for a replacement investment that looks worse in the projections, the Pension Recommendation Report acknowledges that the customer did not want a guarantee and inverted the comparison in the recommendation saying it was better. It also ignored the client's desire for a medium term (5-10 year) investment.

FPL File 13

This contained another Pension Recommendation Report where the illustrated value of the ceding plans was higher that the GM SIPP projections. Statements as to poor health and being unemployed seemed to have no influence on the outcome of the advice.

Rather alarmingly, the report stated that the Standard Life plan may be entitled to protected tax free cash which "you were not interested in investigating". Protected tax-free cash to a person approaching the age of 55 when it could be drawn, in poor health and unemployed is a valuable benefit, it is conceivable that the whole fund may have been available to the customer tax-free. Even if the lack of interest was genuine the advice letter should have explored the option, rather than committing the fund to a 10- year fixed term investment for a clearly vulnerable person.

FPL File 17

This report does not make comparison between the ceding and new plans, for two of three policies, and the one comparison done is more favourable for the ceding policy than the AIGO Loan Note.

Common with all the FPL files reviewed, the case for ongoing professional services on a portfolio holding a 10-year loan note where no ongoing contributions are recommended is not made clear; it is hard to see why it is necessary.

FPL File 19

The existing policies' projected values were considerably higher than the GM SIPP projections, yet the switch was still recommended.

HCA

HCA File 4

The client expressed an ethical concern in respect of investments which was not expanded upon in the Fact Find nor was it addressed in the suitability letter.

HCA File 7

The projection is based on a 22-year term to retirement at a fixed return of 8% before the SIPP managers 0.5% plus VAT fee, applied to a transfer value of £26,005 to produce a fund of £236,404. This has two problems:

- It assumes the coupons paid by the Loan Notes are reinvested, they were not
- It assumes a 22-year term when the underlying investment had only a 10-year duration

The report then gives a comparison illustration to compare the customers policy with the GM SIPP on a like for like basis and this shows that the outcome is better on the current plans, a fund of £77,600 compared to the GM SIPP at £72,200. The two projections together are very different and very misleading, but only the large number is given prominence in the summary letter.

The ceding pension arrangement's transfer value had a £15,083 deduction on transfer which amounted to 23% of the fund value, the suitability letter made no comment on the deduction, why it has been applied nor why it was justified to take such a high cost to transfer to the GM SIPP. Failure to mention the transfer penalty compounds the difficulty that the projections in the suitability letter show that the existing plan is likely to have a higher fund value than the recommended plan at the selected retirement age.

There are hints of possible protected lump sum in the file, which is not explored, nor is the fact that the client states that they are currently unemployed and living off their savings, there is no evidence on file of any other assets.

It is apparent that this client probably had other more pressing needs than a transfer of their pension fund which have been wholly overlooked by the advice.

HCA file 8

Client was aged 50 and the selected retirement age on the ceding plan was 55. The fact find was conducted over the telephone and the lead generator's telesales operator put forward the age of 65 from his script, there was a manual adjustment to the client's summary report request form where the retirement age was requested. No mention of the discrepancy was made in either the telephone conversation or in the suitability letter.

The report's projections assumed contributions would continue yet acknowledged that the client did not want this and they were not implemented.

HCA file 12

There is little of note in the file, other than the general theme of all the files reviewed that there seemed to be little link between the suitability letter and matters highlighted in the fact find.

The covering letter offers a projected fund of £78,746 (page 1) and refers to the projections section in the report.

The projection is based on a 12-year term to retirement at a fixed return of 6.8% before the SIPP managers 0.5% plus VAT fee, applied to a transfer value of £26,099 and continuing contributions of £128.45 per month. This is stated to produce £78,476. However:

- It assumes the coupons paid by the Loan Notes are reinvested, they were not
- It assumes a 13-year term when the underlying investment had only a 10-year duration

HCA file 13

Other than the common shortcomings of the files reviewed, there is little of note in this file other than this is another where the projected value is much higher than the illustrations and were based on the flawed premise of reinvestment of coupons and the Loan Note lasting for longer than its 10-year term.

HCA file 14

This is another file where the projected values of the ceding scheme were higher than the plan recommended, by £10,000.

HCA file 15

The Fact Find disclosed that the client had been widowed which is something likely to influence advice given and which was not covered in the suitability letter.

HCA file 17

This is another case where the projected fund value of the recommended plan was lower than the projections on the ceding plan. The client said that he had a short-term outlook, yet the advice is based on an investment product with a 10-year fixed term.

BHIM

BHIM file 1

There were hints of poor health expressed on the telephone fact find interview which were not explored, neither was the client's expressed statement that they had ethical investment considerations. The telesales operator conducting the interview worked very hard to lead the client into stating that they preferred fixed returns.

The client told the interviewer about other assets they had and how they would all have a bearing on their desired retirement income. This takes up nearly 7 pages of the interview transcript, but none of these assets or conversation were mentioned at all in the suitability letter.

The projected fund value of the recommended plan was lower than that of the ceding plan.

BHIM file 2

The suitability letter projects the return from the HJ Cautious Portfolio for a 27-year term at the proffered coupon rate with income reinvested, even though these underlying bonds only had a 10-year life, and the coupons were only ever going to be distributed. This gives a very misleading and unrealistic projection which dominates the report.

BHIM file 7

The client objected to the fact find interviewer stating she had an annual income, when in truth the employment was for fixed three-month term. These objections were

ignored. The interviewer also ignored the stated desired retirement age of 55 and recorded it as 65 which led to the 10-year bond being illustrated over 20 years to give an unrepresentative and unrealistic projection. The suitability letter did not make a comparison of the costs in the old and new scheme and the only rationale given for the transfer was for the guarantees in the new plan (acknowledging in the same letter that there was no capital guarantee) and ignored the fact that the ceding Prudential policy was a with profits plan which had a capital guarantee.

BHIM file 8

In the fact find interview the client hinted at having ethical concerns for their investments which were ignored. Client also only agreed to a preference for a fixed return after being given an assurance that there were no additional costs for guarantees. The suitability letter gave no projection at all, and the term to the selected retirement age was less than the 10-year term of the underlying investment product. In many ways the recommendation failed to address any of the client's circumstances or needs.

BHIM file 10

There is no reference to the transfer charge in one of the ceding plans in the suitability letter, and another plan was not projected. There are hints in the paper that the Prudential plan contains some guaranteed growth rates which have not been explored, either in the file papers nor mentioned in the suitability letter.

BHIM file 14

Inconsistencies in the answers on the fact find concerning a desired income of 25% of earnings of which 25% would be funded by the pension fund were not probed nor mentioned in the suitability letter. Transfer penalties in the ceding plans were not mentioned in the suitability letter.

BHIM file 18

This client was hurried away from the ethical concerns question in the fact-finding interview. There was no cost comparison done between the ceding plans and the new plans, and the rationale for the transfer was predicated only on the guarantees in the recommended plan.

Looking at the suitability letter’s standard appendix description of with profits plans, because the transferring plans were with-profits plans, it is interesting to note that some of the stated criticisms of with profits would apply equally to the way the HJL Bonds were presented as being structured.

The recommended SIPP was the Avalon SIPP, whereas the SIPP applied for was a GM SIPP.

BHIM file 19

The fact find interview caused inconsistencies in the client's stated target retirement income which were not bottomed out. The major problem was a suitability letter which predicted the returns on the underlying bonds for 30 years with full reinvestment of the coupon.

The recommended SIPP was the Avalon SIPP, whereas the SIPP applied for was a GM SIPP.