FINANCIAL CONDUCT AUTHORITY

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FINAL NOTICE

To:	**Pembrokeshire Mortgage Centre Limited (trading as County Financial Consultants) (in liquidation)**
Reference Number:	479220
Address:	2 Sovereign Quay, Havannah Street, Cardiff, CF10 5SF
Date:	1 December 2022

1. ACTION

1.1. For the reasons given in this Final Notice, the Authority hereby imposes on Pembrokeshire Mortgage Company (PMC) a financial penalty of £2,354,331 pursuant to section 206 of the Act.

1.2. PMC is currently in liquidation and as such the realisation of saleable assets is currently uncertain. The Authority will give preference to creditors (some of whom may be consumers) with a valid provable debt, ahead of its financial penalty, in order to maximise funds available for redress.

2. SUMMARY OF REASONS

Overview

2.1. The Authority takes this action against PMC for breaches of Principle 3 (Management and Control), Principle 7 (Communications with Clients) and Principle 9 (Customers: Relationships of Trust) of the Authority's Principles for

Businesses (the Principles) that occurred between 8 June 2015 and 7 December 2017 (the Relevant Period). The breaches relate to advice provided to customers to transfer out of occupational Defined Benefit Pension Schemes, in particular the British Steel Pension Scheme, into alternative pension arrangements.

2.2. By failing to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems, PMC failed to ensure that it communicated with its customers in a way that was fair, clear and not misleading. PMC also failed to take reasonable care to ensure the suitability of the advice it provided to its customers in respect of Pension Transfers.

2.3. PMC's unsuitable Pension Transfer advice disproportionately affected British Steel Pension Scheme members, who made up the majority of PMC's Pension Transfer advice customers during the Relevant Period. Many of these individuals were in a vulnerable position due to the uncertainty surrounding the future of the British Steel Pension Scheme. It was therefore critical that they could depend on PMC to provide them with suitable advice that was clear, fair and not misleading. It was also crucial that the advice was in their best interests. Unfortunately, many of PMC's British Steel customers did not receive the advice they needed to be able to make a sufficiently informed decision about their Pension Transfer.

Consumer harm

2.4. During the Relevant Period PMC advised 420 customers on whether to transfer out of their Defined Benefit Pension Scheme. Notwithstanding guidance published by the Authority which created a presumption of unsuitability in respect of transferring out of a Defined Benefit Pension arrangement, PMC advised 403 of these customers (approximately 96%) to complete a Pension Transfer. The remaining 17 customers (4%) proceeded to complete a Pension Transfer having been classified as Insistent Clients. 268 of the 420 customers, or 64%, were members of the British Steel Pension Scheme.

2.5. The gross revenue earned by PMC from Defined Benefit Pension Transfer work during the Relevant Period was £2,075,193.33, consisting of £1,910,873.29 in initial fees and £164,320.04 in ongoing fees.

2.6. The total value of the transferred funds on which PMC gave advice was £123 million, with an average transfer value per customer of approximately £293,000 (£314,000 for British Steel Pension Scheme members).

2.7. As of August 2022, the Financial Services Compensation Scheme (FSCS) has upheld 196 Pension Transfer claims against PMC and paid out over £12.7 million in compensation to customers of PMC. In 78 cases (40%), the FSCS awarded the claimant the maximum compensation available of £85,000. Had it not been for the compensation limit of £85,000, the total compensation payable to customers would have been approximately £14.2 million.

2.8. One British Steel customer who was advised by PMC to transfer out of their Defined Benefit Pension Scheme had a child with long term care needs. The customer's child was totally dependent on them, the customer was paying a mortgage and had no other significant assets or investments. PMC assessed the customer to be a "low risk" investor with limited capacity for loss. Key objectives for the customer were to retire soon in order to care for their dependent child and to leave a fund to safeguard their child's future upon their death.

2.9. The Defined Benefit Pension was central to the customer being able to meet their income needs, and those of their child, during retirement. Notwithstanding these clear objectives, the customer was given unsuitable advice by PMC to transfer out of their Defined Benefit Pension Scheme into another arrangement.

2.10. In another case, PMC's Transfer Value Analysis indicated that the Proposed Arrangement that the customer was being advised to transfer into might run out of funds during the customer's retirement. However, this was not adequately explained to the customer. Failings such as these were particularly egregious given the lasting impact PMC's advice had on its customers' pension arrangements and their financial wellbeing in retirement.

2.11. The Authority has carried out significant work in response to the harm caused to members of the British Steel Pension Scheme by authorised firms providing unsuitable Pension Transfer advice. The Authority has both taken intervention action in the form of requirements to vary permissions to stop ongoing harm at relevant firms and has initiated enforcement investigations against culpable firms and individuals, of which the investigation into PMC is one.

PMC's Advice relating to Defined Benefit Pensions

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

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

2.14. The starting point for Pension Transfer advice is the presumption of unsuitability in respect of a transfer of funds out of a Defined Benefit Pension Scheme. This is in accordance with the guidance set out in COBS 19.1.6G that a firm should only consider a Pension Transfer, conversion or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the customer's best interests. For the majority of customers, it is likely to be in their best interests to remain in their Defined Benefit Pension Scheme because of the valuable guarantees and protections it offers in respect of retirement income.

Regulatory failings

2.15. Between 8 June 2015 and 7 December 2017 (the Relevant Period), PMC failed to adequately monitor and oversee the quality and suitability of Pension Transfer advice given to its customers. For example, there were inaccuracies in Transfer Value Analysis (TVAS) Reports which meant that some customers were not in a sufficiently informed position when taking the decision to transfer their pension out of a Defined Benefit Pension Scheme. Customers were also provided with Suitability Reports that contained misleading and unclear information.

2.16. PMC also used similar wording across the Suitability Reports provided to customers and recommended the same SIPP product to 96% of its British Steel Pension customers. In doing so, PMC failed to provide customers with Personal

Recommendations that were sufficiently tailored to their personal circumstances. Necessary information was also missing from a number of customer files such that, in those circumstances, PMC should not have provided a Personal Recommendation at all, and in doing so breached regulatory requirements.

2.17. The issues with PMC's monitoring and oversight of the quality and suitability of its Pension Transfer Advice became particularly acute, and existing failings were amplified, between August and November 2017, when PMC was advising an average of 65 customers per month, which represented a very substantial increase in the volume of PMC's Pension Transfer business. By contrast, PMC provided Pension Transfer advice to 46 customers across the whole of 2016. This increased demand was primarily driven by a large number of British Steel Pension Scheme members seeking advice over a short period of time.

2.18. PMC failed to ensure that additional and appropriate resources were in place to deal with the increased demand. As a result, important steps in the Pension Transfer advice process were bypassed or modified. This negatively impacted PMC's ability to deliver complex, thoughtful and challenging advice to customers whose advice and information needs were high and created a heightened risk that customers would receive unsuitable advice.

2.19. During the Relevant Period PMC failed to:

(1) Ensure the adequate monitoring and oversight of the Pension Transfer advice provided to customers, including having in place appropriate systems and controls to facilitate effective challenge and scrutiny of the reasons why PMC recommended almost all of its customers to transfer out of their Defined Benefit Pension;

(2) Implement a system to ensure that steps in the Pension Transfer advice process were not bypassed or modified in such a way as to risk the quality and suitability of advice provided to customers;

(3) Implement adequate systems and controls to ensure that at the fact-finding stage advisers gathered all necessary information regarding the customer, including details regarding their financial situation, investment and retirement objectives, and risk appetite; and

(4) Allocate additional and appropriate resources to respond to the significant increase in Defined Benefit Pension Scheme work, which was largely driven by the influx of British Steel members seeking Pension Transfer advice, particularly during the second half of 2017.

2.20. These failings created a significant risk that, when providing Defined Benefit Pension Transfer advice to its customers, PMC would fail to communicate information to them in a way that was clear, fair and not misleading. In particular:

(1) In many cases PMC's Suitability Reports failed to meet the customer's information needs. The reports used generic standardised wording, such that reports nominally compiled for different customers were not sufficiently tailored to the individual customer's circumstances;

(2) There were two cases where PMC's Suitability Reports were provided after the customer had already signed discharge forms in respect of their Defined Benefit Pension Scheme, such that they could not have informed the decision to transfer;

(3) In some cases, Suitability Reports failed to explain adequately why the transaction was suitable for the customer and contained inaccuracies, errors and inconsistencies. PMC also failed to ensure that customers understood fund comparison analysis and advice; and

(4) In some cases, the Transfer Value Analysis regarding the Defined Benefit Pension Transfer was inadequate and did not support the recommendation to transfer to the Proposed Arrangement.

2.21. PMC failed to ensure that documents that were key to customers' decisions regarding their pensions were issued in a timely manner and were drafted with sufficient care and precision so as to be clear, fair and not misleading. As a result, customers were not placed in an adequately informed position when making difficult and critical choices regarding their pension arrangements.

2.22. The Authority reviewed a statistically representative sample of 20 of PMC's completed Pension Transfer advice files from across the Relevant Period. For a significant proportion of these customers, their pension fund was their most valuable asset and many had limited additional resources or other pension provisions. The Authority found that a significant proportion of the files reviewed were not compliant with regulatory rules and guidance relating to the suitability of Pension Transfer advice.

2.23. In particular, in a significant proportion of cases PMC failed to:

(1) Obtain the necessary information from the customer concerning their financial situation;

(2) Properly assess, on the basis of the information obtained, or give due consideration to, whether the customer could financially bear the risks associated with the Pension Transfer;

(3) Properly assess whether the Pension Transfer that was recommended met the customer's investment objectives;

(4) Properly assess whether the customer had the necessary experience and knowledge to understand the risks involved in the Pension Transfer recommendation and failed to give due consideration to the customer's lack of knowledge and experience in that context;

(5) Undertake adequate Pension Transfer Analysis to compare the benefits likely to be paid under the Defined Benefit Pension Scheme (the Ceding Arrangement) with the benefits provided by the Proposed Arrangement (being the arrangement into which the customer would transfer funds from the Ceding Arrangement);

(6) Adequately consider the customer's financial situation and retirement needs when assessing whether it was suitable for them to transfer out of the Defined Benefit Pension Scheme; and

(7) Challenge the stated preferences of the customer when making recommendations, without appropriate questioning or testing of their rationale and motivations.

2.24. The combined effect of these failings created a significant risk of unsuitable advice being given to PMC's customers. This is particularly serious for the following reasons:

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

(2) The decision to transfer out of a Defined Benefit Pension Scheme can affect customers, and sometimes their dependants, for the rest of their lives;

(3) The weaknesses in PMC's Pension Transfer monitoring and checking procedures were systemic, including its internal controls in respect of Defined Benefit Pension advice; and

(4) PMC's unsuitable advice resulted in large numbers of customers risking their retirement income by transferring out of their Defined Benefit Pension Scheme in circumstances where it was not in their best interests to do so.

2.25. Whilst PMC has acknowledged some of the regulatory failings in its Pension Transfer advice process that were identified by the Authority and said that it would ensure that these did not happen again, it was also of the view that much of the advice it provided to its customers was suitable. This in itself reflects a misunderstanding of the harm that unsuitable Pension Transfer advice can cause. Once funds are transferred out of a Defined Benefit Pension Scheme the position is irrevocable because valuable, guaranteed benefits are foregone, and this can have life changing consequences for the customer.

Sanction

2.26. The Authority hereby imposes on PMC a financial penalty of £2,354,331 pursuant to section 206 of the Act.

3. DEFINITIONS

3.1. The definitions below are used in this Notice:

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

"the Authority" means the Financial Conduct Authority.

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

"British Steel Pension Scheme" or "BSPS" means the British Steel Defined Benefit Pension Scheme that was in force during the period 8 June 2015 to 13 December 2017.

"Ceding Arrangement" means the customer's existing pension arrangement with safeguarded benefits.

"CETV" means Cash Equivalent Transfer Value, which is a lump sum available to the member upon transferring their pension benefits into an alternative pension. It is calculated according to actuarial principles.

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

"Critical Yield" means an illustration of the annual growth rate (net of charges) that the customer would need to obtain upon investment of the CETV in order to replicate the benefits provided by the Defined Benefit Pension Scheme.

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

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

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

“EG” means the Authority’s Enforcement Guide.

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

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

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

“Pension Protection Fund” or “PPF” means a statutory public corporation which protects people with a Defined Benefit Pension when an employer becomes insolvent. If the employer doesn't have sufficient funds to pay the pension they promised, the PPF will provide compensation instead. However, some reduction may apply.

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

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

“PMC” or “the firm” means Pembrokeshire Mortgage Centre Limited (trading as County Financial Consultants).

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

“Principles” means the Authority’s Principles for Businesses set out in the Authority’s Handbook.

“Proposed Arrangement” means the arrangement with flexible benefits into which the customer would move their funds from the Ceding Arrangement.

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

"Relevant Period" means the period from 8 June 2015 to 7 December 2017.

"SIPP" means Self-Invested Personal Pension.

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

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

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

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

4. FACTS AND MATTERS

Background

4.1. PMC was a small independent financial adviser firm based in Pembrokeshire, Wales, which traded under the name of "County Financial Consultants". It was authorised by the Authority on 2 June 2008 and during the Relevant Period had permissions to carry on regulated activities including advising on Pension Transfers, advising on investments and arranging (bringing about) deals in investments. PMC initially started by advising British Steel workers on their redundancy packages before expanding into advice on Defined Benefit Pension

Transfers. PMC entered into liquidation on 2 September 2020. Liquidators were appointed on 2 September 2020 and were removed on 22 March 2021. John Dean Cullen and Rachel Helen Lai of Menzies LLP were appointed as liquidators on 22 March 2021.

4.2. During the Relevant Period, PMC advised 420 customers on whether to transfer out of their Defined Benefit Pension Schemes.

4.3. On 30 November 2017, PMC gave an undertaking to the Authority to cease all Defined Benefit Pension transfer business.

4.4. On 7 December 2017, following intervention by the Authority, PMC applied for voluntary requirements to be imposed on it, whereby PMC was required to cease all regulated activities relating to Defined Benefit Pension Transfers. On 12 April 2018 PMC voluntarily applied to remove its permission to carry out all regulated activities relating to Pension Transfers on a permanent basis.

Defined Benefit Pension Transfers

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

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

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

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

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

The British Steel Pension Scheme (BSPS)

4.10. During the Relevant Period 268 (or approximately 64%) of PMC's 420 Pension Transfer customers were members of the British Steel Pension Scheme.

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

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

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

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

(a) remain in the BSPS and therefore move into the PPF; or

(b) transfer their benefits into BSPS 2.

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

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

4.17. On 31 March 2022 the Authority launched a consultation paper for a redress scheme under section 404 of the Act for BSPS members who had suffered financial loss as a result of unsuitable Pension Transfer advice. The paper estimated the average amount lost per consumer to be approximately £60,000.

4.18. The consultation paper made reference to the finding of the Rookes Review, an independent review of the support given to BSPS members during restructuring and 'Time to Choose', that BSPS members experienced, and were influenced by, a set of unique circumstances. These included the following:

(1) distrust of their employer;

(2) limited information on alternative options;

(3) tight timescales to make a decision; and

(4) limited support.

4.19. Some BSPS members were in vulnerable circumstances. For example, BSPS members tended to have no other assets and relied more on income from their DBPS than members of other schemes.

PMC's Pension Transfer advice business

4.20. PMC generated Defined Benefit Pension Transfer advice business through its relationship with the steelworker community which was developed via direct contact with potential customers, as well as via referrals and introducers. This part of PMC's business grew rapidly over a relatively short period of time due to the circumstances surrounding the BSPS and the choices faced by BSPS members. During 2015 PMC advised 48 customers on Defined Benefit Pension transfers, none of whom were BSPS members. By contrast, in 2017 PMC advised 334 customers on Defined Benefit Pension Transfers, of which 253 were BSPS members.

4.21. During 2017, PMC advised approximately seven times as many Defined Benefit Pension Transfer customers as it had in each of the previous two years. Furthermore, 261 customers (most of whom were BSPS members) received advice from PMC during a four-month period between 1 August 2017 and 30 November 2017. At this point, PMC was advising an average of 65 customers per month.

4.22. During the Relevant Period, PMC completed Defined Benefit Pension Transfers totalling almost £123 million. Of that figure, approximately £84 million (or 68.5%)

represented the sum transferred away from the BSPS. The average transfer value was approximately £293,000 (£314,000 for BSPS members).

4.23. Despite the substantial increase in Defined Benefit Pension Transfer business during 2017, PMC had only limited personnel working on Defined Benefit Pension cases. Capacity quickly became an issue. The Authority considers that taking on a large number of cases without adequately increasing staff numbers led to a further deterioration in both the quality of the advice provided and the level of compliance checking carried out. It also exacerbated existing systems and controls issues in PMC's Pension Transfer advice processes.

Charges

4.24. PMC's income from Defined Benefit Pension Transfer advice rose sharply during the Relevant Period.

4.25. PMC stated that their adviser charges were usually based on a percentage of the amount invested, but that it sometimes also agreed a charge with customers consisting of a fixed fee or a combination of a fixed fee and a percentage of the amount invested.

4.26. The most common method of payment was for PMC's charges to be deducted from funds invested. Client agreements also stipulated that fees may still be due even if the customer did not proceed with the investment.

4.27. There were two types of charges that PMC levied on its customers, both of which were typically calculated as a percentage of the amount invested:

(1) a one-off initial advice fee of up to 4% for investments of up to £250,000, and up to 3% for investments of between £250,000 and £1 million; and

(2) an annual ongoing advice fee of 1% for investments up to £1 million and 0.75% for those over £1 million.

4.28. Suitability Reports and customer agreements sampled by the Authority often incorporated a 2% initial advice charge and a 0.5% annual ongoing advice charge. The average amount customers paid in initial advice fees was approximately

£2,800. However, a significant number of customers paid over £5,000, and in one case a customer paid £17,663 in initial advice fees.

4.29. During the Relevant Period, PMC generated £1,910,873.29 in initial advice fees.

4.30. Whilst the ongoing advice charge was an optional service for customers, the sharp rise in PMC's Defined Benefit Pension Transfer customers over this period also translated into additional income from this service. The approximate value of ongoing advice charges generated by PMC during the Relevant Period was £164,320.04. Depending on the ongoing service option selected by the customer, in return for the payment of an ongoing advice fee, PMC agreed to provide services such as analysing the customer's portfolio annually and advising on any recommended changes.

PMC's Pension Transfer advice process

4.31. During the Relevant Period:

(1) Demand for Defined Benefit Pension Transfer advice outweighed the resources available at PMC;

(2) Staff did not always follow PMC's procedures for giving advice in respect of whether to transfer out of a DBPS; and

(3) PMC did not have adequate policies and procedures relating specifically to Defined Benefit Pension Transfers, despite this growing to be a substantial part of their overall business.

4.32. In particular:

(1) PMC's usual process was for an adviser to meet with the customer and then to debrief with an administrator or paraplanner before the administrator or paraplanner drafted a Suitability Report. However, during the Relevant Period, Suitability Reports were drafted by administrators or paraplanners without having first spoken to either the customer or the adviser. As a result, information gathered by the adviser that was not apparent from PMC's files would not be considered or reflected in the draft Suitability Report (although Suitability Reports were reviewed and checked

by advisers before being issued to customers). The risks associated with this process were exacerbated by the fact that appropriate records of discussions with customers and information provided by customers were, in a number of instances, not reflected in PMC's files.

(2) Due to the increase in the volume of Suitability Reports that were being prepared, less time was spent writing each individual report. There was therefore a focus on quantity rather than quality. The Suitability Reports sampled by the Authority contained numerous typographical and numerical errors. Further, the Suitability Reports were templated and insufficiently personalised.

(3) PMC did not have adequate policies and procedures that were specifically tailored to providing advice on Defined Benefit Pension Transfers, despite this growing to be a substantial part of PMC's business. Whilst PMC produced some documents to guide the advice and sales process these were basic, generic documents.

Compliance Checking

4.33. Given the very high volumes of advice being provided by limited numbers of staff at PMC in respect of Defined Benefit Pension Transfers, it was important that PMC took appropriate steps to monitor and check the quality of the advice provided to customers, and took appropriate remedial action where PMC identified that the required standards were not being met.

4.34. PMC had a number of documents that set out how files should be checked for compliance, and in or around April 2016, PMC instituted a process for review of Defined Benefit Pension Transfer advice provided by PMC. However, there is limited evidence of effective review or challenge in respect of PMC's suitability determinations. In particular:

(1) Although from around April 2016 100% of PMC's files were said to have been subject to external review, the suitability determination was only overturned in one or two cases. Given that PMC advised 334 customers in 2017 alone, this amounts to a pass rate of between 99.4% to 99.7%;

(2) Whilst a checklist was apparently used to ensure that files were complete and suitable for submission, there was no written evidence of this checklist having been completed in any of the 20 customer files reviewed by the Authority. Two populated checklists (relating to different files) that were provided to the Authority contained limited free text and appeared to restate customer information and views rather than engaging in a suitability analysis;

(3) A second checklist that appears to have been used by PMC records the dates on which certain documents and tasks were completed during the advice process. However, it does not record an analysis of suitability. Nor does the checklist allow the reviewer to record any reasons as to why they considered the Personal Recommendation made by PMC to be appropriate; and

(4) For most of the Relevant Period, including during peak periods of Pension Transfer advice activity in 2017, PMC had very limited personnel dedicated to Pension Transfer advice.

4.35. In summary, during the Relevant Period, PMC did not have proper processes for effective challenge and scrutiny of the Pension Transfer advice given to customers, despite PMC advising 96% of its customers to transfer out of their Defined Benefit Pension Schemes. Often only rudimentary compliance reviews were recorded. The lack of monitoring undertaken by PMC therefore created a risk of inappropriate customer outcomes. These failings are apparent from the individual customer files reviewed by the Authority.

The Authority's review of PMC's advice

Background

4.36. The Authority monitored the Defined Benefit Pension transfer advice market and identified firms that had advised on a significant volume of British Steel Pension Scheme transfers. PMC was one such firm identified by the Authority. Having visited PMC and reviewed the processes adopted by the firm in respect of this workstream, the Authority identified:

(1) Concerns in respect of PMC's Pension Transfer advice process, monitoring systems and record-keeping. In particular, the Authority considered that PMC failed to demonstrate that it had considered and understood the nature, scale and complexity of the risks arising from the firm's business model, and the risks consequently posed to customers. The Authority also identified that PMC had not put in place appropriate processes to manage those risks;

(2) Concerns, based on a review of a sample of files, that the Pension Transfer advice provided by PMC was unsuitable, including because the advice was insufficiently tailored to each customer's individual circumstances. The Authority found that despite Suitability Reports containing clear references to the benefits of not transferring, customers were still ultimately advised by PMC to transfer; and

(3) Little or no evidence that PMC obtained the necessary information regarding customers' investment objectives. The overarching objective in all the files reviewed was to transfer away from the British Steel Pension Scheme, with some commonality in the language used across the various files.

Review by the Authority of a representative sample of PMC's files

4.37. The Authority then requested and assessed a further 20 files against the applicable rules found in the Authority's Conduct of Business Sourcebook (COBS) relating to suitability. All of these files related to customers who completed Pension Transfers out of their Defined Benefit Pension Scheme. Of this sample of 20 files, 14 related to customers who were former British Steel Pension Scheme members.

4.38. The results of the file review exercise conducted by the Authority demonstrated that:

(1) PMC failed to collect the necessary information to give Pension Transfer advice in 65% of cases, which meant that PMC should not have proceeded to make a Personal Recommendation to the customer. The consequence was that in 15% of total cases the Authority was unable to assess whether the firm's advice was suitable (see "*Information collection failures*" below);

(2) PMC gave unsuitable Pension Transfer advice in 60% of cases (giving suitable advice in only 25% of cases) (see *"Unsuitable pension transfer advice"* below);

(3) PMC gave unsuitable investment advice in 30% of cases (see *"Unsuitable investment advice"* below); and

(4) Poor quality communications with customers were identified in 85% of the files reviewed. PMC failed to communicate with customers in a manner that was clear, fair and not misleading (see "*Poor quality communications with customers"* below).

4.39. The average transfer value for the 12 customers who received unsuitable Pension Transfer advice was approximately £276,000. Eleven of the 12 customers who received unsuitable advice were members of the British Steel Pension Scheme. For most of these customers, their Defined Benefit Pension was their most significant, and in some cases their only, valuable asset. This demonstrates the importance of ensuring that these customers received suitable advice, especially given the impact that the decision to transfer their pension would have on their future retirement income and, therefore, their future quality of life.

Information collection failures

4.40. The overarching suitability requirement in COBS 9.2.1R (1), in force at the time, was for a firm to take reasonable steps to ensure that a Personal Recommendation (which includes, in this context, a recommendation to transfer or not to transfer a pension) is suitable for its customer. To do so, a firm must first obtain the necessary information regarding: (a) the customer's knowledge and experience in the investment field relevant to the pension transfer; (b) the customer's financial situation; and (c) the customer's investment objectives (COBS 9.2.1R(2)(a)-(c)).

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

4.42. The Authority's review of 20 customer files revealed that in three cases the files contained insufficient information such that PMC should not have proceeded to make a Personal Recommendation, as a full suitability assessment could not be made. This therefore put the customer at risk of receiving unsuitable advice. The information missing from the files included the customer's expenditure plans in retirement.

4.43. Customer A, for example, had been a steelworker for over 30 years. At the time of seeking advice from PMC, Customer A wished to retire early, as did their spouse who had recently suffered from cancer and undergone surgery, so they could travel together. Based on the estimated transfer value, Customer A's British Steel pension was by far their most valuable asset, and so critical to their quality of life in retirement.

4.44. PMC provided Pension Transfer advice to Customer A in circumstances where PMC had failed to gather sufficient information to properly assess the degree of Customer A's reliance on their British Steel pension. This included information regarding the precise nature and extent of Customer A's state pension entitlement, and Customer A's income needs in retirement, including the estimated cost of travel, being one of Customer A's stated intentions for retirement.

Failure to gather information on retirement expenditure

4.45. PMC failed to take reasonable steps to ensure that advisers gathered sufficient information on a customer's anticipated expenditure during retirement. This information was missing either in full or in part from 11 of the 20 files reviewed by the Authority during its file review exercise. COBS 9.2.2R(3) requires a firm to obtain information regarding the financial situation of the customer, including details of their regular financial commitments.

4.46. This information is relevant to assessing how much income the customer will need during their retirement and whether their DBPS, or the Proposed Arrangement being considered, would generate sufficient income to cover their anticipated financial commitments in the future. It is also necessary to gather information as to the other financial resources, if any, that are available to the customer. A proper assessment of a customer's income needs during retirement cannot be made if information regarding anticipated retirement expenditure is either not obtained, is not described in sufficient detail, or there are material information gaps.

4.47. The fact-find templates, known as "Confidential Financial Review forms", used by PMC only included two questions designed to capture realistic retirement income needs. With regard to information on customers' retirement income needs, it is apparent that PMC frequently did not capture this information in their customer files or take these factors into consideration when making Personal Recommendations. The failure to obtain necessary information is illustrative of PMC's failure to take reasonable care to ensure the suitability of the Pension Transfer advice provided to its customers.

Failure to gather information on the customer's financial situation

4.48. Information on the customer's financial situation was missing in 9 out of the 20 files reviewed, consequently creating material information gaps. PMC therefore failed to comply with requirements to obtain information on the customer's assets and other sources of income and liabilities in accordance with COBS 9.2.2R(3).

4.49. This information was relevant to PMC's holistic understanding of the customer's financial situation and the likely impact of the proposed Pension Transfer on the customer's overall financial position. The missing information included the customer's investment objectives, tax position and matters such as their ability to access state benefits. Without obtaining this information, PMC was not in a position to accurately assess the customer's reliance upon their Defined Benefit Pension as well as their overall financial resilience.

Failure to gather information about the Ceding Arrangement

4.50. Necessary information about the Ceding Arrangement was missing in 6 out of the 20 files reviewed by the Authority. PMC therefore failed to comply with requirements to obtain information on the customer's Ceding Arrangement in accordance with COBS 9.2.2R(1). This information was necessary to enable PMC to carry out the required Transfer Value Analysis, including considering how the loss of Defined Benefit Pension Scheme benefits would impact the customer's investment objectives and general financial situation going forward.

4.51. For example, where a firm fails to obtain information on figures regarding commuting the Defined Benefit Pension for tax-free cash when this is one of the customer's main objectives, the firm is not in a position to assess whether the transfer into the Proposed Arrangement better meets the customer's objectives.

Example of multiple failures to gather information – Customer E

4.52. At the time of receiving advice from PMC, Customer E was in their mid-40s and had four dependent children. Based on the estimated transfer value, Customer E's Defined Benefit Pension was their most significant asset, and so critical to their quality of life in retirement. PMC provided Pension Transfer advice to Customer E in circumstances where PMC had failed to gather sufficient information to properly assess the degree of Customer E's reliance on their Defined Benefit Pension.

4.53. There is no evidence on file that PMC obtained any details about Customer E's estimated current or anticipated retirement expenditure, including essential costs, lifestyle and discretionary expenditure. Further, large sections of the fact-find were left blank, including key information such as any amounts held by the customer in bank accounts or shares. Accordingly, the Ceding Arrangement and Proposed Schemes could not be properly compared to determine whether, and if so how, Customer E's retirement income needs were best met.

4.54. PMC was unable to show that it had collected the necessary information to complete an accurate Transfer Value Analysis. Nor did its analysis account for the possibility of late retirement (which had been raised in the fact-find) or early retirement (which had been raised in the Suitability Report). Further, the Transfer Value Analysis appears to have been undertaken using the incorrect Normal Retirement Date. This meant that the calculation as to the required growth rate and longevity of the fund were inaccurate.

4.55. Customer E followed PMC's advice and transferred out of their Defined Benefit Pension Scheme, giving up the guaranteed benefits that they would otherwise have been entitled to. The lack of information on file in relation to Customer E was such that the Authority was unable to assess the suitability of the Pension Transfer advice. PMC should not have provided Pension Transfer advice in breach of regulatory requirements, as it had failed to obtain sufficient information to ensure the suitability of the advice.

Unsuitable pension transfer advice

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

4.57. The Authority's file reviews of the 20 customer files found that 12 customers (60%) received unsuitable transfer advice. Of these, 11 were former British Steel Pension Scheme members.

Customers reliant on the Defined Benefit Pension Scheme

4.58. In 11 out of the 20 files reviewed by the Authority, PMC failed to assess, or give adequate consideration to, whether customers were reliant on the income from their Defined Benefit Pension Scheme and whether they could financially bear the risks involved in a Pension Transfer. This was despite knowing that following the recommended Pension Transfer, the customers' retirement income would depend on the performance of the new investment in the Proposed Arrangement.

4.59. At the time of receiving advice from PMC, Customer Y was in their late 40s, had a dependent child, and had worked as an electrical engineer for over 30 years. Based on the estimated transfer value, Customer Y's Defined Benefit Pension was their most significant asset, and so critical to their quality of life in retirement. The information provided by the customer suggested that they were reliant on the income from the Defined Benefit Pension Scheme and could tolerate no, or very limited, loss. Further, the customer strongly agreed with the statement *"I would rather know that I was getting a guaranteed rate of return than be uncertain about my investment"*.

4.60. PMC failed to demonstrate a reasonable basis for believing that the customer was financially able to bear any risks associated with transferring out of the Defined Benefit Pension Scheme, which required an objective assessment by the firm. PMC recommended a Pension Transfer despite identifying in the Suitability Report that based on the Critical Yield figures, as a low risk investor, the customer would be *"highly likely to be worse off"* than if they *"remained in the scheme and accepted the benefits that are guaranteed"*. Although Customer Y's objective of improved death benefits was achieved by transferring out of the scheme, this was at the expense of giving up the guaranteed income upon which the customer was reliant. There was no evidence that PMC adequately explored alternatives to meet this objective. By acting in accordance with PMC's advice, Customer Y transferred out of a Defined Benefit Pension Scheme and in doing so forfeited guaranteed benefits that would have secured their financial stability in retirement, in circumstances where they could tolerate no, or very limited, loss.

4.61. In 16 out of the 20 files reviewed by the Authority, the destination investment was the same for all 16 customers. Of the 268 BSPS customers who received Pension Transfer advice from PMC during the Relevant Period, 257 (96%) were recommended the same SIPP product. Of the remaining 152 non-BSPS customers who received Pension Transfer advice from PMC during the Relevant Period, 91 customers (60%) were advised to transfer into the same SIPP product.

4.62. PMC's rationale for advising the vast majority of its BSPS customers to transfer into a single well known fund, was that BSPS members were vulnerable to market volatility and potential losses in the short term. Accordingly, PMC advised customers to transfer into a "smoothed fund". "Smoothed Managed Funds" aim to deliver growth over the medium to long term, employing a "smoothing" process with the aim of sheltering clients from some of the impact of adverse market movements. However, the smoothing service inevitably attracts a fee.

4.63. The Authority considers that if PMC's view was that transferring out of the Defined Benefit Pension Scheme exposed customers to market volatility which they did not have the capacity to withstand, they should not have been advised to transfer out of their Defined Benefit Pension Scheme in the first place. Accordingly, there would have been no need to transfer into smoothed funds that would attract smoothing service fees.

Objective of leaving BSPS not in customers' best interests

4.64. Even though PMC was aware of the Authority's Guidance on the Presumption of Unsuitability set out in COBS 19.1.6G(2) (or, from 8 June 2015 to 1 April 2018, in COBS 19.1.6G), PMC advised customers to transfer out of their DBPS against this presumption because:

(1) They were of the view that BSPS members considered the greatest risk to their pension as being invested in BSPS 2 or a Government scheme and

had decided independently of PMC's advice that they did not want to take this risk. With regard to BSPS 2, customers were concerned by the level of uncertainty and the reduction in the size of the funds payable to those drawing upon their pension under BSPS 2. The Suitability Reports for several of the customers used the same templated wording in respect of BSPS 2, which read *"You are concerned with the BSPS2 as you are unsure as to what the scheme has to offer and you have your doubts as to whether it will be successful at all"*; and

(2) PMC was of the view that despite its best endeavours to explain the guaranteed benefits of a customer's existing British Steel Pension Scheme, a common customer objective was to take control of their pension and the vast majority of customers had very strong opinions on the route they wished to take. Some customers said they had lost trust in BSPS and felt that they had been treated poorly by the scheme.

4.65. PMC has said that members were not advised to await details of BSPS 2 for these reasons. This advice was not in the best interests of the customer on the basis that they had not taken into consideration details of all the options available to them. Although there is evidence within Suitability Reports that some key benefits of the Pension Protection Fund were set out, this was not sufficiently detailed.

4.66. Whilst it was appropriate for PMC's advisers to have regard to a customer's stated objectives, PMC was required to take reasonable steps to ensure that advisers explained the benefits of the guaranteed schemes and provided suitable advice to customers taking into account all their circumstances. If a PMC adviser was of the view that a transfer out of the Defined Benefit Pension Scheme was not in the best interests of the customer, even if that meant certain of the customer's stated objectives could not be achieved, then that advice should have been made clear.

4.67. PMC's approach to advice frequently meant that a transfer out of the Defined Benefit Pension Scheme was deemed the best option, based primarily on the opinion of the customer, without an adequate assessment of customer circumstances or a sufficient degree of challenge. PMC failed to justify why the objective of taking "control" or separation from BSPS 2 or the Pension Protection Fund outweighed the benefit of the guarantees these schemes provided such that it was in a customer's best interests to transfer out of the Defined Benefit Pension Scheme.

4.68. In the advice provided by PMC, the unchallenged opinions of the customer often prevailed with alternative options to transfer being ruled out. This is contrary to the Authority's Guidance regarding the Presumption of Unsuitability in relation to transfers out of Defined Benefit Pension Schemes.

Other objectives not in customers' best interests

4.69. PMC failed to demonstrate why other specific objectives which drove Pension Transfers were in the customer's best interests, when taking a holistic view of the customer's circumstances and having regard to the primary purpose of a pension. For example:

(1) In the case of Customer F, the customer expressed a desire for control and flexibility and to have *"his money pot…in his own hands"*. However, it was not apparent from the customer's financial circumstances or retirement requirements, that transferring out of their Defined Benefit Pension Scheme was otherwise in their best interests. The Authority observed a similar pattern in other files, where PMC's advice to the customer to transfer out of their Defined Benefit Pension Scheme prioritised factors such as the customer's emotional response to the situation they faced with British Steel, rather than their retirement needs and risk profile.

(2) Another common objective that appeared on files was the maximisation of death benefits. In 12 out of the 20 files reviewed by the Authority (60%), consideration was not given as to how these objectives could be met without transfer out from the Defined Benefit Pension Scheme, such as by using another non-guaranteed pension provision, for example, to buy life cover, therefore retaining the valuable benefit of the Defined Benefit Pension Scheme.

(3) In several files reviewed by the Authority, the interplay between an early retirement objective and reliance on the Defined Benefit Pension Scheme's guaranteed income was not considered in the assessment contained in the Suitability Report. Because this analysis was not completed, there were also examples of PMC advising customers to transfer in order to achieve potentially unrealistic and unaffordable objectives. For example, in the case of Customer G transfer was recommended with the intention that the

customer would flexibly access funds from the pension at age 55 when they had no other significant assets to draw upon apart from the home in which they resided. There was no documented discussion with the customer about the longevity of the fund and ensuring that the customer would be able to fund their retirement in the long term.

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

4.71. The Authority's file review exercise revealed examples of where this tension was resolved in favour of a Pension Transfer, but where PMC did not demonstrate the rationale behind this. Instead, the advice provided by PMC set out in generic terms the disadvantages of the transfer and balanced this with the customer's supposedly adequate level of knowledge of their options, risk and investments. This was used as a means of justifying the transfer even though it was not in the customer's best interests. This approach had the following impact:

(1) PMC incorrectly represented that the customer had sufficient knowledge and appreciation of the risks, taking into account the customer's strong views on transferring out of their DBPS;

(2) PMC failed to analyse and present findings as to how the trade-off was resolved; and

(3) PMC did not carry out proper analysis of the customer's attitude to the transfer risk.

4.72. This meant that PMC did not satisfy the requirement in COBS 9.2.1R(1) to take reasonable steps to ensure that the Personal Recommendation was suitable for the customer.

Lack of necessary attitude to transfer risk, insufficient knowledge and experience

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

4.74. In 8 out of the 20 files reviewed by the Authority (40%), PMC either did not assess, or did not give adequate consideration or sufficient weight to, the customer's attitude to transfer risk, whether the customer had the necessary knowledge and experience in order to understand the risks involved, and whether they were able to bear the financial risks associated with losing guaranteed benefits from a Defined Benefit Pension Scheme. Where information was obtained from the customer regarding their knowledge and experience of the associated risks, there is no evidence that this was explored, verified or challenged. The information contained in the files often showed that the customer lacked experience, whereas PMC did not assess them to be inexperienced.

4.75. In the case of Customer I, they provided attitude to risk responses which indicated that they preferred a guaranteed rate of return rather than being uncertain about their investment return. This customer was in their early 30s, however they were making an irrevocable decision to transfer out of their DBPS which would affect them for the rest of their life. The advice provided by PMC to the customer was to transfer out of their Defined Benefit Pension Scheme, with the alternative of the Pension Protection Fund being rejected due to the customer's desire for flexibility and to have control over their pension.

4.76. The mismatch between the attitude to risk and required Critical Yield was recognised in the Suitability Letter which stated in capital letters that as a low risk investor the customer was *"highly likely to be worse off than if [they] remained in the scheme"*. However, it was stated that the customer had nevertheless "agreed" that transfer out of the Defined Benefit Pension Scheme was more appropriate. This was in breach of the requirement to ensure that the transaction meets customer objectives, which includes appropriate risk taking that reflects their risk profile.

Transfer unnecessary to protect the pension fund

4.77. In 8 out of 20 files reviewed by the Authority, PMC recommended a transfer out of the Defined Benefit Pension Scheme in order to protect the customer's pension fund, in circumstances where either the Ceding Arrangement, or alternative choices which did not involve transfer, would have provided better protection and created less risk for the customer.

4.78. This was particularly relevant for BSPS customers. Although Suitability Reports often referred to the protection afforded by the Pension Protection Fund, many reports also stated, using template wording, that customers were very concerned about the Pension Protection Fund taking over. No assessment was given as to how this issue was dealt with by PMC as part of its advice.

4.79. This demonstrates a failure to engage in a meaningful analysis of suitability, or to explain the customer's response to PMC's assurances or risk warnings. The files reviewed by the Authority indicate that PMC failed to appropriately engage with resolving the tension between customers' preferences to move away from their Defined Benefit Pension Scheme therefore avoiding the Pension Protection Fund, and their desire or need for guaranteed benefits, their limited capacity for loss and their level of risk aversion.

Poor Pension Transfer Analysis

4.80. Prior to 1 October 2018 PMC was required to gather information to enable it to carry out the necessary Transfer Value Analysis (TVAS) in accordance with COBS 19.1.2R(1). This analysis was required so that advisers at PMC could compare the benefits of the Ceding Arrangement with those offered by the Proposed Arrangement.

4.81. The Transfer Value Analysis was a report which compared the benefits to be paid to the customer under their existing Defined Benefit Pension Scheme against the Proposed Arrangement. The main output from the Transfer Value Analysis was a series of percentages, known as "Critical Yields". The Critical Yields illustrated the annual growth rate (net of charges) that the customer would need to achieve on an investment of the Cash Equivalent Transfer Value (CETV) in order to replicate the benefits provided by the Defined Benefit Pension Scheme.

4.82. In order to complete the TVAS, PMC was required to collect information on the benefits payable and options available under the Ceding Arrangement, the benefits payable and options available under the Proposed Arrangement, and the effect of replacing the former with the latter, taking into account the customer's relevant circumstances.

4.83. PMC should have taken steps to ensure that the comparison had been completed by its advisers and that the TVAS included sufficient information for the customer to be able to make an informed decision regarding a Pension Transfer. PMC should also have taken reasonable steps to ensure that customers understood the comparison and that its advisers explained to customers the reasons for recommending that the customer transfer out of their Defined Benefit Pension Scheme, particularly if the results of the TVAS did not support the transfer.

4.84. PMC failed to undertake adequate Pension Transfer Analysis to compare the benefits likely to be paid under the Defined Benefit Pension Scheme with benefits anticipated to be provided under the Proposed Arrangement. This was because PMC consistently failed to take into account the customer being able to access up to 25% of the value of their DBPS fund in tax-free cash at the start of their retirement. In failing to take this information into account, PMC provided customers with misleading calculations and comparisons.

4.85. Further, PMC failed to carry out analysis using the correct Preferred Retirement Date for the customer. This may have created a misleading picture about how the Ceding Arrangement and the Proposed Arrangement compared, resulting in the customer not being properly informed about the decision they were making. Using the incorrect tax-free cash sum or incorrect Proposed Retirement Date figures, created the risk that the wrong Critical Yield figure was provided to the customer.

4.86. The TVAS documents also provided an indication, using Critical Yield figures, of the level of risk that the customer would have to accept in order to achieve the same benefits. Where the analysis showed that the benefits of remaining in the Ceding Arrangement outweighed those likely to be available under the Proposed Arrangement, this was a strong indication that the transfer was not in the customer's best interests.

4.87. At the time of receiving advice from PMC, Customer H was in their mid-30s, married with two dependent children and had worked as a steelworker for over 10 years. Customer H's attitude to investment risk was assessed to be "low to lowest medium risk". In its advice, PMC warned (using text in capital letters) that, based on the Critical Yield figures, and given that Customer H was "a low risk investor", Customer H would be *"worse off than if [they] remained in the scheme"*. Nevertheless, PMC advised Customer H to transfer out of their Defined Benefit Pension Scheme on the basis that their *"main drivers cannot be met by the scheme"*. PMC did not take reasonable steps to ensure that the customer understood the key outcomes from the TVAS as required by COBS 19.1.1R. The advice was also unsuitable because it advised a customer with a high Critical Yield and a low risk tolerance to transfer out of a Defined Benefit Pension Scheme.

Unsuitable investment advice

4.88. The Suitability requirement in COBS 9.2.1R extends to the Proposed Arrangement into which the firm has recommended the customer should transfer their pension funds. Just as the adviser must ensure that the customer can bear the transfer risk, so they must ensure that there is a reasonable basis for believing that the customer can bear the risks associated with the Proposed Arrangement.

4.89. In 6 out of the 20 files reviewed by the Authority, investment advice provided by PMC was deemed unsuitable by the Authority. Reasons for this view included that:

(1) The recommendation made was unsuitable for how, or when, the customer intended to access their pension fund. PMC advised customers to transfer out of Defined Benefit Pension Schemes in circumstances where the Proposed Arrangement was designed to be a medium to long term investment. The customer intended to draw an income from the funds in the Proposed Arrangement in the near future. However, they had insufficient funds in cash to facilitate this.

(2) Upon transfer out of the Defined Benefit Pension Scheme the customer incurred unnecessary or excessive adviser or product charges. Where the Proposed Arrangement entails such charges, the recommendation is unlikely to be in the customer's best interests.

(3) The customer was not willing to take the required risk with the sum invested. There was a failure by PMC to carefully assess the responses to the Attitude to Risk questionnaire in making a Personal Recommendation.

(4) The customer did not have the capacity to bear the risk associated with the Proposed Arrangement in respect of the SIPP. Although the SIPP was described as a "cautious fund", SIPPs are often used to invest in unregulated investments that are high risk and therefore unsuitable.

4.90. For example, at the time of receiving advice from PMC, Customer L was approaching the age of 55, had been employed as a steelworker for over 35 years, and had suffered what was described in the Fact Find as a *"massive heart attack"* two years earlier. Based on their responses to the Attitude to Investment Risk questionnaire, Customer L was assessed to be low risk, with no or very limited capacity for loss. It was also apparent from Customer L's responses that they would rather have a guaranteed rate of return and would prefer to hold money in a bank account than invest in shares. In those circumstances, there was no reasonable basis for the conclusion that Customer L could bear the risk of the investment into a SIPP. Despite this, PMC recommended a SIPP which included investments in equities.

4.91. Further, at the time of the advice, Customer L was only months away from reaching their desired retirement age, and appeared to have been considering taking a tax-free pension commencement lump sum at the start of their retirement. However, there does not appear to have been sufficient discussion regarding the amount Customer L wished to take in cash, which was highly relevant to determining the proportion of transferred funds that should be held in cash. In those circumstances, there does not appear to have been a reasonable basis for PMC's recommendation that only 2.05% of the transferred funds be held in cash, with the remaining 97.95% of funds being transferred into a SIPP.

Poor quality communications with customers

4.92. The Authority's Rules about the provision of information to customers are designed to ensure that consumers have all the necessary information to make an informed decision and are, ultimately, treated fairly.

4.93. PMC failed to comply with the Authority's Rules in 17 out of the 20 of cases reviewed by the Authority.

4.94. Across the files reviewed, objectives, priorities and recommendations were often replicated with little tailoring to the customer's circumstances.

Suitability Report Disclosure

4.95. The Suitability Report was a written record, compiled for the customer's benefit, of information relating to their circumstances and of PMC's Personal Recommendation and the reasons supporting it. At a minimum, PMC was required to set out in the Suitability Report to the customer the following:

(1) The customer's demands and needs;

(2) Why PMC had concluded that the Pension Transfer was suitable for the customer, having regard to the information provided by the customer; and

(3) An explanation of any possible disadvantages of the transaction for the customer.

4.96. In 17 out of 20 files reviewed by the Authority, the Suitability Report was not written in a way that was clear, fair and not misleading. For example:

(1) In purporting to explain why a recommendation to transfer out of a Defined Benefit Pension Scheme was suitable, generic standardised reasons were listed, that were not tailored to the customer, and were better described as features of the Proposed Arrangement rather than reasons for, or an analysis of, suitability. Statements such as *"you will release a higher tax free lump sum"* and *"you gain full control of the funds"* did not explain why these features of the Proposed Arrangement, as opposed to the features of the Ceding Arrangement, best met the customer's income needs in retirement.

(2) Similarly, where disadvantages of transferring out of the Defined Benefit Pension Scheme were listed, the analysis was not sufficiently tailored to the individual customer, but instead included generic warnings such as the loss of guaranteed benefits or the fact the adviser fee reduced the sum invested.

(3) The Suitability Reports included errors such as citing the wrong percentage investment; calculating the Critical Yield to the wrong age (resulting in a lower figure); stating the wrong Critical Yield; and referring to taking benefits "early" at age 60 when the Normal Retirement Date was age 60.

(4) Mistakes were made that suggested that wording had been inappropriately lifted from other Suitability Reports. These statements were not simply numerical or typographical errors, they were critical to communicating the reasons for recommending the Pension Transfer. However, the statements in the Suitability Reports were poorly expressed, such that they may have been difficult for the customer to understand.

(5) Contradictory, misleading and confusing statements appeared in Suitability Reports. In the case of Customer L, statements were made which suggested an unachievable Critical Yield and that the customer would be *"better off remaining"* with BSPS. However, these statements were followed by a statement that the Critical Yield is *"less meaningful"* for the customer, with the recommendation then being to transfer out of the Defined Benefit Pension Scheme.

(6) In the case of Customer B, PMC initially advised the customer to remain in their Defined Benefit Pension Scheme. However, a few weeks later PMC made a contradictory recommendation to the customer to transfer out of the DBPS. The second recommendation was made even though PMC had asked the customer to confirm their decision in writing, should they wish to proceed with a Pension Transfer despite PMC's initial advice that the customer remain in the DBPS. Statements and projections in the Suitability Report also assumed that the total value of the DBPS would be transferred into the Proposed Arrangement and failed to account for the fact that the customer was planning to take the maximum tax-free pension commencement lump sum on retirement, thereby reducing the amount to be invested in the Proposed Arrangement.

(7) Suitability Reports contained confusing wording regarding matching the customer's attitude to risk to the Proposed Arrangement. One customer who was a member of two different Defined Benefit Pension Schemes was advised by PMC not to transfer out of one of the two Defined Benefit Pension Schemes on the basis that a Critical Yield figure of 6.74% was too

"high". However, PMC advised the same customer to transfer out of their other Defined Benefit Pension Scheme despite the calculated Critical Yield of 9.03% being even higher.

(8) In the case of Customer J the key features illustration on file and the Suitability Report referred to a different Proposed Arrangement to the actual scheme that the bulk of the customer's Defined Benefit Pension was ultimately transferred into.

4.97. Further, two customer Suitability Reports post-dated the date Defined Benefit Pension Scheme discharge forms were submitted by PMC on behalf of the customers. This meant that these customers were not afforded the opportunity to consider the contents of the Suitability Report prepared by PMC prior to the Pension Transfer process being initiated.

Transfer Analysis Disclosure

4.98. The Transfer Value Analysis in the TVAS documents and fund illustrations did not include sufficient information to enable customers to make informed decisions regarding whether to transfer out of the Defined Benefit Pension Scheme into the Proposed Arrangement.

4.99. Frequently, the transfer analysis provided by PMC contained omissions or errors, including not taking account of tax-free cash being taken from the outset and Critical Yields being calculated to the wrong retirement date.

4.100. As part of the advice provided to customers, PMC did not take steps to ensure the customer understood the comparison between the benefits likely to be paid and options available under the Ceding Scheme and those benefits and options available under the Proposed Arrangement. This was particularly significant for inexperienced customers. In the files reviewed by the Authority there was little explanation in the Transfer Value Analysis (TVAS) or Suitability Report regarding how achievable the Critical Yield would be, given the customer's attitude to risk.

4.101. Often, the customer had a cautious attitude to risk such that the Critical Yield figures were unlikely to be reached, but this was not clearly explained to the customer. Factors affecting the Critical Yield calculations (such as reductions applied due to scheme underfunding) were not explained to the customer. Factors in the Transfer Value Analysis which did not support transfer were not explained to the customer. Sustainability assessments were absent in circumstances where they may have been particularly important, and no discussion was included of what impact a likely change in circumstances would have upon the figures. There was also an instance where the TVAS for a customer in their mid-50s showed that were they to transfer to the Proposed Arrangement, their pension could run out by the time they reached their late 70s. However, this does not appear to have been appropriately considered by PMC when providing advice.

4.102. At the time of receiving advice from PMC, Customer B was almost 50, had a dependent child with long-term care needs, was paying off a mortgage and had no significant savings. Based on the estimated transfer value, their Defined Benefit Pension was their most significant asset, and therefore critical to Customer B's quality of life in retirement. Customer B's attitude to risk was low. Their key objectives were to retire soon in order to care for their dependent child and also to leave a fund to safeguard the child's future upon their death.

4.103. Notwithstanding Customer B's clear objectives, the objectives set out in Customer B's Suitability Report were generic and did not properly reflect their personal circumstances. The Suitability Report did not explain how the transaction met Customer B's needs. The disadvantages of the transfer out of the Defined Benefit Pension Scheme that were listed were not tailored to reflect Customer B's situation, so as to put them in an informed position. Further, the Suitability Report was misleading because the Critical Yield had been calculated according to an incorrect retirement age and it was not explained that the required yield was likely to be unachievable. This was a very important risk that should have been highlighted and explained to Customer B, as they may have been left with insufficient funds during retirement.

Benefit derived by PMC

4.104. PMC earned the following gross revenue from Defined Benefit Pension Transfer advice given during the Relevant Period:

(1) Initial fees on transfer: £1,910,873.29

(2) Ongoing fees paid by customers post-transfer: £164,320.04

4.105. PMC transferred £1,013,728.21 out of the business in respect of initial advice fees for advice provided during the Relevant Period. Therefore, the financial benefit retained by PMC in respect of its Defined Benefit Pension Transfer business was £1,061,465.12.

5. FAILINGS

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

5.2. Based on the facts and matters above, the Authority finds that PMC breached Principles 3, 7 and 9.

Breach of Principle 3

5.3. PMC breached Principle 3 during the Relevant Period by failing to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems in respect of its Pension Transfer advice process. Given the importance and the possible consequences of the decision to transfer out of a Defined Benefit Pension, the ordinary customer's need for accurate and suitable advice and information is high. These failings in turn meant that information was not communicated to customers in a way which was clear, fair and not misleading. Further, it also heightened the risk of customers being provided with unsuitable advice.

5.4. In particular:

(1) PMC did not have adequate systems and controls in place to monitor and assess the quality and suitability of the Pension Transfer advice being provided to customers. During the Relevant Period, suitability determinations were only overturned via compliance checking processes in one or two cases, and the compliance checks themselves were sometimes rudimentary.

(2) PMC failed to ensure that at the fact-finding stage, advisers gathered and appropriately assessed key information that could affect the Pension Transfer advice provided to the customer. This included information regarding the customer's financial situation, investment and retirement

objectives, and risk appetite, as well as details regarding the Ceding Arrangement and the Proposed Arrangement.

(3) Despite advising approximately seven times as many customers on whether to transfer out of their Defined Benefit Pension Scheme in 2017 as it had in each of the two previous years, PMC failed to implement additional and appropriate resources to respond to the significant increase in work. As a result, steps in PMC's Pension Transfer advice process were bypassed in a manner that led to a further deterioration in the quality and suitability of advice provided to customers and exacerbated existing systems and controls issues in PMC's Pension Transfer advice processes. This included administrators and paraplanners drafting Suitability Reports without having first spoken to either the customer or the adviser; Suitability Reports being insufficiently tailored to the customer's circumstances; and in two instances PMC providing customers with Suitability Reports after discharge forms had already been signed in respect of their DBPS.

5.5. The Authority considers that these amount to serious failings, which have either resulted in, or created a significant risk of, poor customer outcomes and consumer detriment.

Breach of Principle 7

5.6. PMC breached Principle 7 during the Relevant Period by failing to ensure that it communicated with its customers in a way that was clear, fair and not misleading.

5.7. In 17 out of the 20 files reviewed by the Authority, PMC failed to communicate information to customers in a way which was clear, fair and not misleading, such that customers were not placed in an adequately informed position. In particular:

(1) In purporting to explain why a recommendation to transfer out of a Defined Benefit Pension Scheme was suitable, generic standardised reasons were listed, that were not sufficiently tailored to the customer. Suitability Reports nominally compiled for different customers were substantially identical in content.

(2) PMC's Suitability Reports included errors such as calculating the Critical Yield to the wrong age and using an incorrect Normal Retirement Date.

(3) Contradictory, misleading and confusing statements appeared in the Suitability Reports. For example, a number of Suitability Reports indicated that, based on the Critical Yield figure, customers would be better off remaining in their Defined Benefit Pension Scheme. However, PMC then proceeded to discount the significance of the Critical Yield and recommend that the customer transfer out of their Defined Benefit Pension Scheme.

5.8. Further, in several instances, PMC's transfer analysis did not include sufficient information to enable customers to make informed decisions regarding whether to transfer out of their Defined Benefit Pension Scheme. This included omissions or errors in the calculations contained in the Transfer Value Analysis, and a failure to adequately explain factors affecting Critical Yield figures and the implications of the Transfer Value Analysis.

5.9. The Authority considers that these failings were serious and widespread, and resulted in customers being placed in a position of making sometimes difficult and critical choices regarding their pension arrangements, without the benefit of accurate and suitable advice.

Breach of Principle 9

5.10. PMC breached Principle 9 by failing to take reasonable care to ensure the suitability of its advice. In particular, in a significant proportion of cases, PMC failed to:

(1) Obtain the necessary information from the customer concerning their financial situation;

(2) Properly assess, on the basis of the information obtained, or give due consideration to, whether the customer could financially bear the risks associated with the Pension Transfer;

(3) Properly assess whether the Pension Transfer that was recommended met the customer's investment objectives;

(4) Properly assess whether the customer had the necessary experience and knowledge to understand the risks involved in the Pension Transfer recommendation and failed to give due consideration to the customer's lack of knowledge and experience in that context;

(5) Undertake adequate Transfer Value Analysis to compare the benefits likely to be paid under the Ceding Arrangement with the benefits provided by the Proposed Arrangement;

(6) Adequately consider the customer's financial situation and retirement needs when assessing whether it was suitable for them to transfer out of the Defined Benefit Pension Scheme; and

(7) Challenge the stated preferences of the customer when making recommendations, without appropriately questioning or testing their rationale and motivations.

5.11. The Authority considers that as a result, a significant number of customers received unsuitable Pension Transfer advice. As a consequence, they then made the decision to proceed with a Pension Transfer when this was not in their best interests.

5.12. Having regard to the issues above, the Authority considers that it is appropriate and proportionate in all the circumstances to take disciplinary action against PMC for its breaches of Principles 3, 7 and 9 during the Relevant Period.

6. SANCTION

Financial penalty

6.1. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. In respect of conduct occurring on or after 6 March 2010, the Authority applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5A sets out the details of the five-step framework that applies in respect of financial penalties imposed on firms.

Step 1: disgorgement

6.2. Pursuant to DEPP 6.5A.1G, at Step 1 the Authority seeks to deprive a firm of the financial benefit derived directly from the breach where it is practicable to quantify this.

6.3. As set out above, PMC derived direct financial benefit from its Pension Transfer advice in the form of initial charges to Pension Transfer clients and ongoing charges levied on those clients by PMC for investment advice given after the clients had transferred out of their Defined Benefit Pension Schemes.

6.4. In the period 8 June 2015 to 7 December 2017 PMC received initial fees from Defined Benefit Pension Transfer advice of £1,910,873.29 and ongoing advice fees of £164,320.04 totalling £2,075,193.33.

6.5. PMC transferred £1,013,728.21 out of the business in respect of initial advice fees for advice provided in the period 8 June 2015 to 7 December 2017. Therefore, the financial benefit retained by PMC in respect of its Defined Benefit Pension Transfer business was £1,061,465.12.

6.6. The Authority has been advised by the liquidators for PMC that records regarding ongoing advice fees paid to PMC after the end of the Relevant Period but that originated from Defined Benefit Pension Transfer advice provided during the Relevant Period do not appear to have been retained. Any such amounts would otherwise have been included in the Authority’s calculation of the amount to be disgorged.

6.7. 75% of the sample of PMC's client files reviewed by the Authority were non-compliant with provisions in the COBS rules. In all the non-compliant files, PMC either failed to obtain the information necessary to advise, meaning that, according to COBS 9.2.6R, it should not have made a Personal Recommendation, or the advice was unsuitable. In calculating the disgorgement figure, the Authority considers it appropriate to extrapolate from that sample and to treat 75% of PMC's revenue from Pension Transfer advice as derived directly from PMC's breaches. 75% of £1,061,465.12 is £796,098.84.

6.8. The Authority has charged interest on PMC's benefit at 8% per year from the end of the Relevant Period to the date of this Notice amounting to £313,132.21.

6.9. Step 1 is therefore **£1,109,231**.

Step 2: the seriousness of the breaches

6.10. Pursuant to DEPP 6.5A.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breaches. Where the amount of revenue generated by a firm from a particular product line or business area is indicative of the harm or potential harm that its breaches may cause, that figure will be based on a percentage of the firm's revenue from the relevant products or business area.

6.11. The Authority considers that the revenue generated by PMC is indicative of the harm, or potential harm, caused by its breaches. The Authority has therefore determined a figure based on a percentage of PMC's relevant revenue. PMC's relevant revenue is the revenue derived by PMC during the period of the breaches. The period of PMC's breaches was from June 2015 to December 2017. The Authority considers PMC's relevant revenue for this period to be £2,075,193.33.

6.12. In deciding on the percentage of the relevant revenue that forms the basis of the step 2 figure, the Authority considers the seriousness of the breaches and chooses a percentage between 0% and 20%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breaches. The more serious the breaches, the higher the level. For penalties imposed on firms there are the following five levels:

Level 1 – 0%
Level 2 – 5%
Level 3 – 10%
Level 4 – 15%
Level 5 – 20%

6.13. In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the breaches, and whether the breaches were committed deliberately or recklessly.

Impact of the breaches

6.14. PMC gained a substantial, direct benefit from its breaches. Over the Relevant Period, PMC's total revenue from transfer advice in respect of Defined Benefit Pension Schemes was £2,075,193.33. The high rate of non-compliance with the rules in COBS which characterised PMC's Pension Transfer advice (75%) means that a significant proportion of the total revenue from the advice is attributable to the breaches (DEPP 6.5A.2G(6)(a)).

6.15. PMC’s breaches caused a significant risk of loss, as a whole, to consumers who transferred out of their Defined Benefit Pension Scheme as a result of its advice. PMC’s 420 Pension Transfer clients held pensions with a transfer value totalling almost £123 million. PMC’s BSPS clients transferred out CETVs with a total value of more than £84 million. PMC's breaches placed a large proportion of those clients’ funds at significantly increased risk of loss (DEPP 6.5A.2G(6)(b)).

6.16. PMC’s breaches caused a significant risk of loss to individual customers who transferred out of their Defined Benefit Pension Scheme as a result of its advice. The average CETV of PMC’s Pension Transfer clients was approximately £293,000. The average CETV of PMC’s BSPS clients was approximately £314,000. For many of PMC's clients, their Defined Benefit Pension Scheme was their most valuable asset and was their only retirement provision other than their state pension (DEPP 6.5A.2G(6)(c)).

6.17. PMC's breaches disproportionately affected BSPS members, who made up the majority of its Pension Transfer advice clients during the Relevant Period and many of whom were in a vulnerable position due to the uncertainty surrounding the future of the BSPS (DEPP 6.5A.2G(6)(d)).

Nature of the breaches

6.18. PMC's breaches were committed repeatedly over the course of more than two years, in respect of many separate instances of Pension Transfer advice (DEPP 6.5A.2G(7)(b)).

6.19. PMC's breaches of Principle 3 revealed serious and systemic weaknesses in PMC's procedures, management systems and internal controls relating to its Pension Transfer advice process (DEPP 6.5A.2G(7)(c)).

Whether the breaches were committed deliberately or recklessly

6.20. PMC's breaches were committed negligently rather than deliberately or recklessly (DEPP 6.5A.2G(12)(e)).

Level of seriousness

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

(1) PMC's breaches caused a significant risk of loss to individual consumers who transferred out of their Defined Benefit Pension Scheme as a result of its advice. (DEPP 6.5A.2G(11)(a)).

(2) PMC's breaches of Principle 3 revealed serious and systemic weaknesses in PMC's procedures, management systems and internal controls (DEPP 6.5A.2G(11)(b)).

6.22. DEPP 6.5A.2G(12) lists factors likely to be considered "level 1, 2 or 3 factors'" Of these, the Authority considers the following factor to be relevant:

(1) PMC's breaches were committed negligently (DEPP 6.5A.2G(12)(e)).

6.23. Taking all of these factors into account, the Authority considers the seriousness of the breaches to be level 4 and so the Step 2 figure is 15% of £2,075,193.33.

6.24. Step 2 is therefore £311,279.

Step 3: mitigating and aggravating factors

6.25. Pursuant to DEPP 6.5A.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the breaches.

6.26. The Authority has considered whether any of the mitigating or aggravating factors listed in DEPP 6.5A.3G, or any other such factors, apply in this case and has concluded that none applies to a material extent, such that the penalty ought to be increased or decreased.

6.27. Step 3 is therefore £311,279.

Step 4: adjustment for deterrence

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

6.29. The Authority considers that the Step 3 figure of £311,279.00 does not represent a sufficient deterrent to PMC and others in respect of committing similar breaches. The Authority has had regard to the total value of transferred funds in respect of which PMC gave Pension Transfer advice during the Relevant Period (£123 million), as well as the amount of compensation paid out by the FSCS in respect of advice given by PMC to date (£12.7 million), and the absence of information regarding ongoing fees paid to PMC after the end of the Relevant Period. The ongoing fees originated from Defined Benefit Pension Transfer advice provided by PMC during the Relevant Period. Having taken into account these factors as well as the factors set out at DEPP 6.5A.4G(1), the Authority considers that the figure arrived at after Step 3 is insufficient to deter PMC, or others, from committing similar breaches. Accordingly, in respect of an adjustment for deterrence, the Authority considers that a multiplier of four should be applied at Step 4.

6.30. Step 4 is therefore £1,245,116.

Step 5: settlement discount

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

6.32. The Authority and PMC did not reach an agreement to settle at Stage 1 and so no discount applies to the Step 4 figure.

6.33. Step 5 is therefore £1,245,116. This is to be rounded down to £1,245,100.

Penalty

6.34. The Authority hereby imposes a total financial penalty of £2,354,331 on PMC for breaches of Principles 3, 7 and 9.

Serious financial hardship

6.35. Pursuant to DEPP 6.5D.4G, the Authority will consider reducing the amount of a penalty if a firm will suffer serious financial hardship as a result of having to pay the entire penalty. In deciding whether it is appropriate to reduce the penalty, the Authority will have regard, amongst other things, to the firm's financial strength and viability.

6.36. PMC is currently in liquidation. At this early stage of the liquidation process, there may be uncertainty surrounding the recovery of assets and adjudication of creditors' claims. Therefore, the Authority has not reduced the financial penalty to £nil in this case. Instead, the financial penalty will be ranked with claims of other creditors of the firm. The Authority will then keep its claim under review in order that claims of legitimate creditors are satisfied prior to any funds realised in the liquidation being used to pay some, or all, of the financial penalty.

6.37. The financial penalty must be admitted in the liquidation of the Firm by no later than 14 days from the date of the Final Notice.

7. PROCEDURAL MATTERS

7.1. This Notice is given to PMC under and in accordance with section 390 of the Act. The following statutory rights are important.

Decision maker

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

Manner and time for payment

7.3. The financial penalty must admitted in the liquidation of the firm by no later than 14 days from the date of the Final Notice.

7.4. At this stage of the liquidation process, there may be uncertainty surrounding the recovery of assets and adjudication of creditors' claims. Therefore, the Authority has not reduced the financial penalty to £nil in this case. Instead, the financial penalty will be ranked with claims of other creditors of the firm. The Authority will then keep its claim under review in order that claims of legitimate creditors are satisfied prior to any funds realised in the liquidation being used to pay some, or all, of the financial penalty.

Publicity

7.5. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the Authority must publish such information about the matter to which this notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

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

Authority contacts

7.7. For more information concerning this matter generally, contact Kingsley Moore at the Authority (direct line: 020 7066 0401 /email: kingsley.moore2@fca.org.uk).

Nicholas Hills

Head of Department

Financial Conduct Authority, Enforcement and Market Oversight Division

ANNEX A

1. RELEVANT STATUTORY AND REGULATORY PROVISIONS

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

1.2. Section 206(1) of the Act provides:

"If the Authority considers that an authorised person has contravened a requirement imposed on him by or under this Act… it may impose on him a penalty, in respect of the contravention, of such amount as it considers appropriate."

2. RELEVANT REGULATORY PROVISIONS

Principles for Businesses

2.1. The Principles are a general statement of the fundamental obligations of firms under the regulatory system and are set out in the Authority's Handbook. They derive their authority from the Authority's rule-making powers set out in the Act. The relevant Principles are as follows.

2.2. During the Relevant Period, Principle 3 stated:

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

2.3. During the Relevant Period, Principle 7 stated:

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

2.4. During the Relevant Period, Principle 9 stated:

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

Conduct of Business Sourcebook ("COBS")

2.5. The following rules and guidance in COBS (as were in place during the Relevant Period) are relevant to assessing suitability of Pension Transfer advice given to customers.

2.6. COBS 2.1.1R states that a firm must act honestly, fairly and professionally in accordance with the best interests of its client.

2.7. COBS 4.2.1R(1) states that a firm must ensure that a communication or a financial promotion is fair, clear and not misleading.

2.8. COBS 9.2.1R states that:

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

(2) When making the personal recommendation or managing his investments, the firm must obtain the necessary information regarding the client's:

(a) knowledge and experience in the investment field relevant to the specific type of designated investment or service;

(b) financial situation; and

(c) investment objectives;

so as to enable the firm to make the recommendation, or take the decision, which is suitable for him.

2.9. COBS 9.2.2R (1) states that a firm must obtain from the client such information as is necessary for the firm to understand the essential facts about him and have a reasonable basis for believing, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended, or entered into in the course of managing:

(a) meets his investment objectives;

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

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

2.10. COBS 9.2.2R (2) states that the information regarding the investment objectives of a client must include, where relevant, information on the length of time for which he wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment.

2.11. COBS 9.2.2R(3) states that the information regarding the financial situation of a client must include, where relevant, information on the source and extent of his regular income, assets, including liquid assets, investments and real property, and regular financial commitments.

2.12. COBS 9.2.3R states that the information regarding a client's knowledge and experience in the investment field includes, to the extent appropriate to the nature of the client, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved, information on:

(1) the types of service, transaction and designated investment with which the client is familiar;

(2) the nature, volume, frequency of the client’s transactions in designated investments and the period over which they have been carried out;

(3) the level of education, profession or relevant former profession of the client.

2.13. COBS 9.2.6R states that if a firm does not obtain the necessary information to assess suitability, it must not make a personal recommendation to the client or take a decision to trade him.

2.14. COBS 9.4.1R states that a firm must provide a suitability report to a retail client if the firm makes a personal recommendation to the client and the client enters into a pension transfer, pension conversion or pension opt-out.

2.15. 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.

2.16. COBS 19.1.1R states that if an individual who is not a pension transfer specialist gives advice or a personal recommendation about a pension transfer, a pension conversion or pension opt-out on a firm’s behalf, the firm must ensure that the recommendation or advice is checked by a pension transfer specialist.

2.17. COBS 19.1.2R states that a firm must:

(1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefit pension scheme or other pension scheme with safeguarded benefits with the benefits afforded by a personal pension scheme, stakeholder pension scheme or other pension scheme with flexible benefits, before it advises a retail client to transfer out of a defined benefits pension scheme or other pension scheme with safeguarded benefits;

(2) ensure that that comparison includes enough information for the client to be able to make an informed decision;

(3) give the client a copy of the comparison, drawing the client’s attention to the factors that do and do not support the firm's advice, in good time, and in any case no later than when the key features document is provided; and

(4) take reasonable steps to ensure that the client understands the firm’s comparison and its advice.

2.18. COBS 19.1.3G explains the information that should be contained within a comparison. In particular, the comparison should:

(1) take into account all of the retail client's relevant circumstances;

(2) have regard to the benefits and options available under the ceding scheme and the effect of replacing them with the benefits and options under the proposed scheme;

(3) explain the assumptions on which it is based and the rates of return that would have to be achieved to replicate the benefits being given up;

(4) be illustrated on rates of return which take into account the likely expected returns of the assets in which the retail client's funds will be invested; and

(5) where an immediate crystallisation of benefits is sought by the retail client prior to the ceding scheme's normal retirement age, compare the benefits available from crystallisation at normal retirement age under that scheme.

2.19. COBS 19.1.6G states that when advising a client who is, or is eligible to be, a member of a Defined Benefit Pension Scheme or other scheme with safeguarded benefits whether to transfer, convert or opt-out, a firm should start by assuming that a transfer, conversion or opt-out will not be suitable. A firm should only consider a transfer, conversion or opt out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the client's best interests.

2.20. COBS 19.1.7G states that when a firm advises a retail client on a pension transfer, pension conversion or pension opt-out, it should consider the client's attitude to risk including, where relevant, in relation to the rate of investment growth that would have to be achieved to replicate the benefits being given up.

DEPP

2.21. Chapter 6 of DEPP, which forms part of the Authority’s Handbook, sets out the Authority’s statement of policy with respect to the imposition and amount of financial penalties under the Act.

The Enforcement Guide

2.22. The Enforcement Guide sets out the Authority’s approach to exercising its main enforcement powers under the Act.

2.23. Chapter 7 of the Enforcement Guide sets out the Authority's approach to exercising its power to impose a financial a penalty.