
FINAL NOTICE

To: **Mr Paul Steel**

Reference
Number: **PXS00170**

Date: **26 June 2023**

1. ACTION

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

- (1) imposes on Mr Steel a financial penalty of £3,694,400 pursuant to section 66 of the Act; and
- (2) makes an order prohibiting Mr Steel from performing any function in relation to any regulated activity carried on by an authorised person, exempt person, or exempt professional firm, pursuant to section 56 of the Act.

1.2 Mr Steel agreed to resolve this matter and qualified for a 30% (stage 1) discount on part of the penalty under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £3,884,400 on Mr Steel.

1.3 However, the Authority has agreed not to enforce the financial penalty provided that Mr Steel pays £850,000 to the Authority, for the purpose of onward payment to the Financial Services Compensation Scheme (the "FSCS"). The source of these funds will be the remaining monies due to be paid to Mr Steel pursuant to an Asset Purchase Deed by which he sold the business of PMNEL.

2. SUMMARY OF REASONS

- 2.1. Mr Steel held a number of senior management roles in EMF and PMNEL, small financial advisory firms that he co-owned with Ms Jacqueline Foster. He was also a pension transfer specialist at EMF. Mr Steel was a director of both firms and was responsible for compliance oversight, holding the CF10 and then SMF16 functions.
- 2.2. Between 2015 and 2018, EMF provided defined benefit pension transfer advice to over 480 clients. In 2019, the Authority reviewed a sample of 21 of EMF's files and identified several instances where unsuitable or non-compliant advice had been given. Some of the advice reviewed and found to be unsuitable or non-compliant by the Authority was given by Mr Steel.
- 2.3. Between March and May 2018, EMF transferred its client base to PMNEL, which was also owned and run by Mr Steel and Ms Foster. In June 2018, Mr Steel procured a valuation of the goodwill attaching to the client base of EMF which gave a valuation of £75,000. An Asset Purchase Agreement was signed dated 24 July 2018 and PMNEL paid EMF £80,000 for the assets purchased. EMF was subsequently placed into members' voluntary liquidation in October 2019 and creditors' voluntary liquidation in June 2020.
- 2.4. Mr Steel knew that the valuation was based on unreal assumptions and did not reflect the real value of the business. Mr Steel states that he relied upon legal and accounting advice in procuring the valuation.
- 2.5. In January 2020, Mr Steel commenced negotiations with Firm A, an unconnected firm, for the sale of the goodwill and assets of PMNEL.
- 2.6. In February 2020, Mr Steel procured a valuation of the goodwill and assets of PMNEL which gave a valuation of £20,000. This was despite the fact that by this time Firm A had already offered to pay more than £3,000,000 for the business. Again, Mr Steel knew that the valuation was unreal and did not reflect the real value of the business. Mr Steel states that he relied upon legal and accounting advice in procuring the valuation.
- 2.7. By an Asset Purchase Agreement dated 14 February 2020, PMNEL sold, or purported to sell, its goodwill and assets to Mr Steel for £20,000. Mr Steel did not inform the Authority of this transaction.
- 2.8. By an Asset Purchase Deed dated 1 July 2020, Mr Steel sold the goodwill and

assets to Firm A for £3,016,000, to be paid over a period of 5 years. PMNEL was then placed into Members' Voluntary Liquidation.

- 2.9. As a result of these transactions EMF's assets were separated from its potential liabilities and the clients who had suffered loss as a result of receiving unsuitable pension transfer advice were left with recourse to an insolvent company with no assets.
- 2.10. During his interaction with the Authority in relation to the Authority's queries and investigation into the above circumstances, Mr Steel failed to reveal significant details that would have allowed the Authority to have a clear understanding of the situation and take steps to prevent any potential harm to be caused to clients.
- 2.11. The Authority therefore considers that Mr Steel:
- (a) acted without due skill, care and diligence when providing pension transfer advice and overseeing the provision of such advice that was in breach of relevant regulatory requirements;
 - (b) acted without integrity when he arranged for EMF's assets to be separated from its liabilities while procuring a significant financial benefit for himself and Ms Foster;
 - (c) acted without integrity when he failed to be open and cooperative with the Authority.
- 2.12. As a result, the Authority hereby:
- (a) imposes a financial penalty of £3,694,400 on Mr Steel; and
 - (b) makes an order prohibiting Mr Steel from performing any function in relation to any regulated activity carried on by an authorised person, exempt person, or exempt professional firm.
- 2.13. However, Mr Steel has agreed to pay the Authority £850,000 for onwards payment to the FSCS, to contribute towards the redress paid and payable to customers of EMF who received poor pension transfer advice. When the Authority learnt about the sale of the client book to Firm A, it commenced proceedings in the High Court of England and Wales and obtained a freezing order over the assets of Mr Steel and Ms Foster. Some of the income from the client book sale was used by Mr Steel and Ms Foster for legal costs in this litigation as permitted by the freezing order. The £850,000 that Mr Steel has agreed to pay represent substantially all of his

remaining assets available to meet a penalty or judgment. Had the litigation continued, most if not all of these assets would have been used to fund the litigation and as a result would not have been available for redress notwithstanding the outcome of the litigation.

3. DEFINITIONS

The definitions below are used in this Notice:

“the Act” means the Financial Services and Markets Act 2000;

“the 2015 Act” means the Pension Schemes Act 2015;

“the July 2018 Agreement” means the Asset Purchase Agreement between EMF and PMNEL dated 24 July 2018 by which the arrangement to transfer the assets and business of EMF to PMNEL was formalised;

“APER” means the Statements of Principle and Code of Practice for Approved Persons, part of the Handbook;

“the Authority” means the Financial Conduct Authority;

“the Authority’s Rules” means the Authority’s Conduct of Business Sourcebook (COBS) (as applicable during the Relevant Period);

“COBS” means the Conduct of Business Sourcebook, part of the Handbook;

“Defined Benefit Pension Scheme” or “DBPS” means an occupational pension scheme as defined by Article 3(1) of the Financial Services and Markets Act (Regulated Activities) Order 2001, namely where the amount paid to the beneficiary is based on how many years the beneficiary has been employed and the salary the beneficiary earned during that employment (rather than the value of their investments);

“Defined Contribution Pension Scheme” or “Defined Contribution Pension” means a pension where money is paid by an employee or employer into an investment by a pension provider. These investments can also be referred to as a “personal pension”;

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

“EG” means the Authority’s Enforcement Guide;

“Firm A” means an advisory firm unconnected to EMF and PMNEL which bought PMNEL’s client book – previously sold to Mr Steel – from Mr Steel;

“FSCS” means the Financial Services Compensation Scheme;

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

“Pension Transfer” has the meaning given in the Handbook and includes the transfer of deferred benefits from an occupational pension scheme (with safeguarded benefits, such as a Defined Benefit Pension Scheme) to a personal pension scheme;

“Pension Transfer Specialist” has the meaning given in the Handbook and includes an individual appointed by a firm to check the suitability of, amongst other things, a Pension Transfer, who has passed the required examinations as specified in the Training and Competence Sourcebook, part of the Handbook;

“the Relevant Period” means 1 April 2015 to 11 March 2020;

“Statements of Principle” mean the Authority’s Statements of Principle and Code of Practice for Approved Persons;

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

“VREQ” means Voluntary Requirement. Where a firm is not meeting minimum standards or has for example inadequate systems and controls the Authority may invite the firm to sign a voluntary requirement not to accept new business until the identified issue(s) have been resolved. This is to prevent any potential or further harm to the client or the market.

4. FACTS AND MATTERS

Pensions

- 4.1. Pensions are a traditional and tax-efficient way of saving money for retirement. The benefits someone obtains from their pension, particularly under a Defined Benefit Pension Scheme (“DBPS”), can have a significant impact on their quality of life during retirement and, in some circumstances, can affect when an individual is able to retire. A DBPS is particularly valuable because it offers a secure, guaranteed income for life to members, which typically increases each year in line with inflation.

- 4.2. It is possible to “transfer out” of a DBPS. This involves the scheme member giving up the guaranteed benefits associated with membership in exchange for a transfer value, which is typically then invested in a Defined Contribution pension. Unlike a Defined Benefit Pension, a Defined Contribution pension does not provide a guaranteed income for its members but sets the payments that are required to be paid into the fund to provide a pension benefit, and is itself highly dependent on the performance of the underlying investment. Given the valuable benefits offered by DBPSs, the Authority considers that a firm should only recommend a transfer if it can clearly demonstrate that a transfer is in the client’s best interests.
- 4.3. Pursuant to section 48 of the 2015 Act, where the value of the assets in a DBPS exceeds £30,000, pension providers must ensure members take “appropriate independent advice” before allowing a transfer to proceed. Pension Transfer Specialists are suitably qualified individuals with permission to advise on such Pension Transfers in accordance with the Authority’s rules.
- 4.4. Clients who engage advisers and authorised firms to provide them with advice in relation to their pensions place significant trust in them. It is therefore of paramount importance that advisers understand their clients’ needs and account for all the relevant individual circumstances and how this might affect the advice provided when advising on the suitability of any Pension Transfer. Where advisers fail to do this, it exposes clients to a significant risk of harm.

Background

- 4.5. Estate Matters Financial Limited (“EMF”) is a company which was incorporated in England and Wales on 6 August 2007. It entered into members’ voluntary liquidation on 14 October 2019, and creditors’ voluntary liquidation on 12 June 2020.
- 4.6. EMF traded as ‘Pension Matters’. Mr Steel was the equal shareholder of EMF with Ms Foster, each holding 50% of the total shareholding.
- 4.7. From 6 November 2007 EMF was authorised by the Authority to carry on various regulated activities including advising on pension transfers, advising on investments (excluding pension transfers) and arranging (bringing about) deals in investments.
- 4.8. EMF was a small, independent financial planning firm which provided advice on pensions and investments directly to individuals.

- 4.9. Mr Steel was appointed as the sole director of EMF on 6 August 2007 and remains the sole director. Ms Foster was appointed as the Company Secretary on 6 August 2007 and resigned from that position on 31 August 2016.
- 4.10. During the period when EMF was authorised to conduct regulated activities, Mr Steel was the only individual approved by the Authority to perform the CF1 (Director) and CF10 (Compliance Oversight) controlled functions at EMF. Between 1 April 2015 and 28 April 2017, Mr Steel was the only adviser approved to perform the CF30 (Customer) function and EMF's only Pension Transfer Specialist. From April 2017 a second adviser and Pension Transfer Specialist was approved to perform the CF30 (Customer) role.
- 4.11. Between 1 April 2015 and 31 December 2018, EMF provided pension transfer advice to 484 clients. 483 clients followed the advice provided and transferred out of their DB pension schemes into Defined Contribution pension schemes, and one further client transferred despite advice not to transfer out. The underlying value of the pensions transferred for the 484 clients was in the region of £140 million.

PMNEL

- 4.12. Pension Matters (North East) Ltd ("PMNEL") is a company which was incorporated in England and Wales on 19 December 2014 and had the same registered office address as EMF. It entered into members' voluntary liquidation on 14 July 2020 and was dissolved on 23 September 2022.
- 4.13. In December 2016 Mr Steel and Ms Foster became the majority shareholders (holding 42% each) of PMNEL and by 2019, they were equal shareholders of the entire business.
- 4.14. Mr Steel was the sole director of PMNEL from 19 December 2014 until 11 March 2020 when he resigned and Ms Foster became the sole director. Ms Foster also held the position of Company Secretary between 19 December 2014 and 31 August 2016, and from 6 April 2019.
- 4.15. PMNEL was an appointed representative of EMF from 19 January 2016 to 19 July 2017 and became directly authorised by the Authority on 1 August 2017, having permission (among other things) to advise on investments, arrange (bring about) deals in investments and make arrangements with a view to transactions in investments.
- 4.16. The personnel who carried out relevant regulated activities at PMNEL were the

same as those for EMF.

- 4.17. Since the coming into force of the Senior Managers and Certification Regime on 9 December 2019, Mr Steel has been approved by the Authority to perform the same controlled functions at EMF corresponding to those he performed under the former regime, now known as SMF3 (Executive Director) and SMF16 (Compliance Oversight) senior manager functions.

Events from 2017

- 4.18. On 1 November 2017, EMF's insurance broker offered EMF three quotations for professional indemnity insurance ("PII") for the renewal due with effect from 6 November 2017, namely:
- (a) cover which excluded DB pension transfer advice for a premium of £20,720;
 - (b) cover which included DB pension transfer advice with a 'sub limit of £500,000 Aggregate' for a premium of £112,000; and
 - (c) cover which included DB pension transfer advice with a 'sub limit of £750,000 Aggregate' for a premium of £168,000.
- 4.19. EMF renewed its PII cover for the lower premium which excluded DB pension transfer advice from 6 November 2017. Cover was provided on a claims made basis. As a result, EMF held no insurance cover for any claims that might thereafter be made in relation to any of the advice provided in relation to DB pension transfers.
- 4.20. Between February 2018 and no later than June 2018 the business and assets of EMF were said to have been transferred from EMF to PMNEL (according to written resolutions of Mr Steel as sole director of EMF dated 24 July 2018), though in fact EMF continued to provide pension transfer advice until around 31 December 2018. The arrangement to transfer the business and assets of EMF was subsequently purportedly documented by the July 2018 Agreement. In the July 2018 Agreement the 'Business' sold was defined as the independent financial advice business carried on by EMF, and the main asset transferred was EMF's client book. The July 2018 Agreement provided that:
- (a) The consideration payable by PMNEL for the purchase of the Business and Assets was £80,000 which had been paid on 20 July 2018;
 - (b) PMNEL would not be a successor practice of EMF and would assume no

liability for actions of EMF including in relation to any financial advice given by EMF to clients prior to the transfer date of 30 June 2018; and

(c) From 30 June 2018 EMF allowed PMNEL to assume conduct of the business.

4.21. The consideration stipulated in the July 2018 Agreement was calculated by reference to a valuation prepared by a firm of accountants based on information and instructions received from EMF and its solicitors ("June 2018 Valuation"). The June 2018 Valuation recorded the following:

'[Mr Steel] believes there could be scope for client challenges. The company was refused insurance cover for Defined Benefit Pension transfers at the date of its PI renewal in November 2017. Whilst there are no claims to date the company has been unable to find a provider for PI cover. PS believes both his own and the company name could be quickly tainted which could severely impact on the future commercial operation.'

4.22. By letter dated 14 February 2018, Mr Steel wrote to EMF's clients to inform them that they were being moved *'into our sister company [PMNEL] for it to act purely as a customer service operation. Please be reassured that this will have nothing but a positive effect on your service from Pension Matters. We will continue to offer the full range of financial planning services and your relationship with us will be unchanged and just in case you are wondering there is no cost to you – the level of fees remains completely unchanged, so there is absolutely no financial detriment to you whatsoever. ...should you receive a letter saying you have changed Financial Advisers ... **please do not be alarmed; this is simply a transfer between our 2 Companies, everything else remains exactly as it is today.** We believe the restructure will provide us with the resources to secure and develop our business for the long-term benefits of all our clients'*.

4.23. Mr Steel was well aware that this statement was untrue as the transfer and the subsequent closing down of EMF deprived its clients of recourse for any loss suffered as a result of receiving unsuitable pension transfer advice.

4.24. In September 2018 EMF applied to the Authority to cancel its Part 4A permission. In the application EMF informed the Authority that the business of EMF had been transferred to PMNEL on 1 February 2018. In response to the question *'Is the firm aware of any current or potential liabilities now or in the future in respect of its regulated business?'* EMF gave the answer *'No'*.

4.25. In January 2020, Mr Steel commenced negotiations with a firm ('Firm A'), an

unconnected financial advisory firm, for the sale of PMNEL's client book (i.e. the client book which had been sold, or purportedly sold, by EMF to PMNEL for £80,000).

4.26. Following the initial informal discussion, at a meeting on 16 January 2020, Mr Steel met Firm A's representative on 29 January 2020 and discussed the idea of an initial offer of three times the ongoing adviser charges, with a payment term to be finalised.

4.27. By email from Mr Steel to Firm A dated 1 February 2020 Mr Steel set out his understanding of the discussions on 29 January 2020 as follows: *'If it were 'Deal Day' today and our previous 12 month trail income is £1,058,587 the price for the purchase of the Pension Matters client bank would be fixed at £3,175,761 (£1,058,587 x 3).'*

4.28. A document sent by Mr Steel to Firm A on 7 February 2020 set out the current state of the negotiations for the sale of the client book, namely that: *'1 March 2020 will be the 'strike date', on that day PMNEL will calculate the total amount of ongoing fees paid over the preceding 12 months and this will be the basis of the calculation of the payment for the Goodwill Paul Steel (The Vendor) purchased from PMNEL... Goodwill will be defined ...as Client Bank 611, referring to the 611 clients that will be transferred to [Firm A], these clients are owned personally by Paul Steel and currently serviced by PMNEL....*

The purchase price will be 3 x the value of 12 months ongoing adviser fees (OAF) at the strike date (subject to the 1 July adjustment) to be payable over 5 years.

The Vendor (Paul Steel) will receive 50% of all ongoing adviser fees paid to [Firm A] in respect of Client Bank 611 on the final working day of each month, commencing April 2020, paid to a Bank Account nominated by the Vendor. [Firm A] will pay a balancing payment on the final working day of April 2021 to ensure the amount paid to the Vendor during the previous 12 month period is equivalent to at least 20% of the purchase price. This exercise will be repeated for 5 years so that the purchase price is paid in full by 30 April 2025.'

4.29. The '1 July adjustment' was intended to adjust the final amount payable according to how many clients in fact transferred to Firm A.

4.30. Further, on 7 February 2020 Mr Steel sent Firm A a draft Asset Purchase Agreement which recorded a base price of £3,214,470, to be adjusted according to the number of clients who transferred to Firm A and payable in monthly

instalments over a 60 month period with an annual balancing payment (the "Firm A offer terms").

- 4.31. By an Asset Purchase Agreement dated 14 February 2020, and notwithstanding the state of negotiations with Firm A, Mr Steel purported to purchase 'the Business (comprising the Assets)' of PMNEL as a going concern for a purchase price of £20,000.
- 4.32. Taking into account the Firm A offer terms that were negotiated by the time the assets of PMNEL were purchased by Mr Steel, the purported purchase of the client book by Mr Steel was known by Mr Steel to be at a gross undervalue.
- 4.33. On 11 March 2020 Mr Steel resigned as a director of PMNEL but decided not to inform the Authority of that fact. On the same date Ms Foster was appointed as a director of PMNEL.
- 4.34. By letter dated 14 March 2020 Mr Steel informed clients, as Managing Director of PMNEL, that '*we are entering into an alliance with [Firm A]...we will continue to offer the full range of financial planning services without interruption and your relationship with [my colleagues] or myself will continue*'. Similarly to Mr Steel's representation to EMF's clients on the occasion of selling EMF's client book to PMNEL, as set out in paragraph 4.22 above, this was plainly untrue.
- 4.35. By an Asset Purchase Deed dated 1 July 2020, the terms of which had been agreed by no later than 27 March 2020, on which date Firm A's representative stated in an email that he was 'happy to sign and not date the contracts', Mr Steel purportedly sold the 'business of providing independent financial advice and carried on by Mr Steel under the authorisation of PMNEL', namely the client book which had been sold by EMF to PMNEL and by PMNEL to Mr Steel, to Firm A for a base price of £3,214,470. The Final Purchase Price was set out in the Addendum (also dated 1 July 2020) to the Asset Purchase Deed and, following adjustment for clients added and deducted, was £3,016,015 to be paid monthly over a period of 5 years, the annual payment (paid in 12 monthly instalments) being £603,203.
- 4.36. The client book which was purportedly transferred by Mr Steel to Firm A had 669 clients on the list. Of those, 215 were clients who had received DB pension transfer advice from EMF.
- 4.37. The purpose and the result of the sales of EMF's client book first from EMF to PMNEL and subsequently from PMNEL to Mr Steel was to separate the value of the client book from any potential liability arising to EMF as a result of giving

unsuitable pension transfer advice to its clients and thereby allowing Mr Steel to retain the full profit of EMF's training and leave behind any liability. As a result of the sales and EMF's subsequent liquidation, these liabilities will have to be covered by FSCS. As at 18 May 2023, the FSCS has paid out £1,752,125.71 in relation to claims valued at £4,536,319.40 to clients to whom EMF has provided unsuitable pension transfer advice.

- 4.38. When the Authority learnt about the sale of the client book to Firm A, it commenced proceedings in the High Court of England and Wales and obtained a freezing order over the assets of Mr Steel and Ms Foster. Some of the income from the client book sale was used by Mr Steel and Ms Foster for legal costs in this litigation as permitted by the freezing order. The £850,000 that Mr Steel has agreed to pay represent substantially all of his remaining assets available to meet a penalty or judgment. Had the litigation continued, most if not all of these assets would have been used to fund the litigation and as a result would not have been available for redress notwithstanding the outcome of the litigation.

The Authority's Investigation and DB Pension Transfers

- 4.39. On 12 November 2018, as part of the Authority's review of advice given by firms on DB pension schemes, a pension transfer data request was sent by the Authority to EMF (the "DB4 pension transfer data request") to which EMF responded on 30 November 2018.
- 4.40. On 9 May 2019 the Authority's Supervision Division ("Supervision") informed EMF by email that following EMF's response to the DB4 pension transfer data request, a supervisory visit would be conducted on 19 June 2019. Supervision requested a copy of EMF's new business register in order to select and obtain two client files for review.
- 4.41. On 19 June 2019 Supervision conducted the visit to EMF with the purpose of undertaking an assessment of the firm's DB pension transfer advice process and its related systems and controls.
- 4.42. During the visit Supervision formed the view that there was a significant potential risk arising from the advisory work conducted and asked EMF to:
- (a) apply to remove DB pension transfer permissions from its, and PMNEL's, Part 4A permission; and
 - (b) agree to an asset restriction in order to retain its current assets.

- 4.43. In response, and on the same day (19 June 2019), Mr Steel:
- (a) submitted a voluntary variation of permission ('VVOP') application to remove all activities relating to pension transfers from both EMF and PMNEL's Part 4A permission; and
 - (b) informed Supervision by email that: *'Effective from 19.06.2019 Estate Matters (Financial) Ltd will not dispose of, deal with, or diminish the value of any of its [sic] assets (whether in the UK or elsewhere).'*
- 4.44. On 25 June 2019 Supervision asked Mr Steel to formally apply for the imposition of a requirement under section 55L of the Act for the purpose of formalising EMF's undertaking not to dispose of, deal with or diminish the value of its assets. Mr Steel did not do so or otherwise formalise the undertaking.
- 4.45. In September 2019 the Authority carried out a review of six client files which had been selected randomly from the 484 clients who had received DB pension transfer advice from EMF between 1 April 2015 and 31 December 2018.
- 4.46. Due to concerns arising from the advice provided by EMF in the six client files reviewed in September 2019, on 21 October 2019 Supervision requested an additional 14 client files also randomly selected from the population of 484 clients who had received DB pension transfer advice from EMF.
- 4.47. Following the analysis of information provided by EMF to Supervision, a number of serious concerns were identified about the suitability of EMF's DB pension transfer advice, including widespread information collection failings and disclosure failings and it was considered that there was a high potential risk of harm for the 484 customers who EMF had advised between 1 April 2015 and 31 December 2018. A large proportion of the advice found to have been non-compliant with the relevant rules had been given by Mr Steel personally. As a result, on 30 December 2019 the Authority appointed investigators to conduct an investigation into the activities of EMF and Mr Steel.
- 4.48. As part of the Authority's investigation, a scoping call between the Authority's Enforcement case team and Mr Steel, was held on 14 August 2020. The note of the call confirms that Mr Steel (identified in the notes as 'PS') provided the following information to the Authority, represented by the individual identified in the note as 'RT':

'RT asked if [Firm A] paid for the client bank, PS said that there was no

arrangement between [PMNEL] and [Firm A] to pay anything, clients were all sent client agreements to sign, the vast majority signed and sent back.

RT asked if PS was paid, PS said that there is going to be some payment to him, hopefully, but he did not yet know exactly how much, there is a rough agreement that he would be paid an ongoing percentage of the fee income, the last contact he had with Firm A confirmed that 560 clients had signed up.'

- 4.49. On 1 November 2020, in response to a request for information of Firm A, Firm A informed the Authority of the Asset Purchase Deed dated 1 July 2020 and that the client book (originally of EMF) had been purchased by Firm A from Mr Steel for a price of £3,016,015 to be paid over a period of 5 years and that Firm A were paying Mr Steel £50,000 each month pursuant to that agreement.

5. FAILINGS

- 5.1. The regulatory provisions relevant to this Notice are referred to in Annex A.
- 5.2. By reason of the facts and matters set out above, Mr Steel breached Statement of Principles 1, 2 and 4 and Individual Conduct Rules 1 and 3 (insofar as the breaches were committed after 9 December 2019 when the senior managers and certification regime came into force).

Statement of Principle 1 and Individual Conduct Rule 1

- 5.3. The Authority considers that Mr Steel failed to comply with Statement of Principle 1 and Individual Conduct Rule 1 during the Relevant Period in that he acted without honesty and integrity when he arranged for EMF's client book to be sold to PMNEL and then subsequently to himself at a gross undervalue. These transactions had the purpose and effect of removing assets from EMF to the prejudice of those of EMF's clients who had received poor Pension Transfer advice, and to the personal gain of Mr Steel and Ms Foster.
- 5.4. Mr Steel also lacked integrity when he told EMF's clients that the moving of EMF's business from EMF to PMNEL and from PMNEL to Firm A was in their best interests and would not cause them financial damage. This was plainly untrue.

Statement of Principle 2

- 5.5. The Authority considers that Mr Steel failed to comply with Statement of Principle 2 when he acted without due skill, care and diligence in providing pension transfer advice to EMF's clients in a way that contravened the Authority's rules and thereby

caused a significant risk of harm to these clients.

Statement of Principle 4 and Individual Conduct Rule 3

5.6. The Authority considers that Mr Steel failed to comply with Statement of Principle 4 and Individual Conduct Rule 3 when he failed to be open and cooperative with the Authority.

5.7. As set out in paragraph 4.21 above, the basis for the June 2018 valuation valuing EMF's client book at £80,000 was the contention of Mr Steel that as a result of possible client claims EMF's commercial operation may become problematic. Despite this, in the application to cancel EMF's Part 4A permission dated 4 September 2018 which was signed by Mr Steel, in response to the question:

'Is the firm aware of any current or potential liabilities now or in the future in respect of its regulated business?'

The answer given is 'No'.

5.8. Those two statements are flatly inconsistent.

5.9. On 1 July 2020 Mr Steel signed an agreement with Firm A whereby he sold PMNEL's client book for the sum of £3,016,015 which was to be paid to him at a rate of £50,000 a month; £100,533.82 was paid by Firm A into an account held by Mr Steel on 1 July 2020 and £50,266.91 was paid on 28 July 2020.

5.10. Despite this, on 14 August 2020 during the scoping call with the Authority's Enforcement Case Team, there was the following exchange between 'RT' for the Authority and Mr Steel ('PS'):

'RT asked if [Firm A] paid for the client bank, PS said that there was no arrangement between [PMNEL] and [Firm A] to pay anything, clients were all sent client agreements to sign, the vast majority signed and sent back.'

RT asked if PS was paid, PS said that there is going to be some payment to him, hopefully, but he did not yet know exactly how much, there is a rough agreement that he would be paid an ongoing percentage of the fee income, the last contact he had with [Firm A] confirmed that 560 clients had signed up.'

5.11. Mr Steel clearly failed to be open and cooperative during this scoping call when he did not reveal his agreement with Firm A.

6. SANCTION

Financial Penalty

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

Step 1: Disgorgement

- 6.1. Pursuant to DEPP 6.5B.1G, at Step 1 the Authority seeks to deprive an individual of the financial benefit derived directly from the breach where it is practicable to quantify this.
- 6.2. Mr Steel and Ms Foster directly derived financial benefit of the breaches described above. Were it not for the breaches, Firm A would not have agreed to pay £3,016,000 for PMNEL's client book directly to Mr Steel's bank account. As such the Authority considers that the totality of the consideration to be paid by Firm A to Mr Steel falls to be disgorged.
- 6.3. The Authority charges interest on these benefits at 8% per annum. The interest accrued to the date of this Notice is £234,987.
- 6.4. Step 1 is therefore £3,250,987.

Step 2: The Seriousness of the Breach

- 6.5. Pursuant to DEPP 6.5B.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. That figure is based on a percentage of the individual's relevant income. The individual's relevant income is the gross amount of all benefits received by the individual from the employment in connection with which the breach occurred, and for the period of the breach.
- 6.6. The period of Mr Steel's breaches of Statements of Principle 1, 2 and 4 and Individual Conduct Rules 1 and 3 was from 1 April 2015 to 11 March 2020. The Authority considers Mr Steel's relevant income for this period to be £1,583,749.
- 6.7. In deciding on the percentage of the relevant income that forms the basis of the step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 40%. This range is divided into five fixed levels

which represent, on a sliding scale, the seriousness of the breach; the more serious the breach, the higher the level. For penalties imposed on individuals in non-market abuse cases there are the following five levels:

Level 1 – 0%

Level 2 – 10%

Level 3 – 20%

Level 4 – 30%

Level 5 – 40%

- 6.8. In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly.

Impact of the Breach

- 6.9. By separating EMF's assets from its liabilities while procuring a significant financial benefit to himself and Ms Foster, Mr Steel caused significant risk of harm to those customers who had received unsuitable pension transfer advice and suffered a loss as a result of that. These clients were left without any recourse other than applying for compensation to the FSCS. (DEPP 6.5B.2G(8)(a))

Nature of the breach

- 6.10. Mr Steel failed to act with integrity because he acted dishonestly when arranging for EMF's assets to be transferred while the liabilities were left behind and thereby procured a significant financial benefit to himself and Ms Foster (6.5B.2G(9)(e)).

Level of seriousness

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

- (a) Mr Steel's breaches caused a significant risk of loss to individual consumers, investors or other market users (DEPP 6.5B.2G(12)(a));
- (b) Mr Steel failed to act with integrity (DEPP 6.5B.2G(12)(d)); and
- (c) Mr Steel committed the breach deliberately (DEPP 6.5B.2G(12)(e)).

- 6.12. DEPP 6.5B.2G(13) lists factors likely to be considered 'level 1, 2 or 3 factors'. The Authority considers that none of these apply.
- 6.13. Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 5 and so the Step 2 figure is 40% of £1,583,749.
- 6.14. Step 2 is therefore £633,499.60, plus £3,250,987= £3,884,486.60.

Step 3: Mitigating and Aggravating Factors

- 6.15. Pursuant to DEPP 6.5B.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the breach.
- 6.16. The Authority has considered whether any of the mitigating or aggravating factors listed in DEPP 6.5B.3G, or any other such factors, apply in this case and has concluded that none applies to a material extent, such that the penalty ought to be increased or decreased.
- 6.17. Step 3 is therefore £3,884,486.60.

Step 4: Adjustment for Deterrence

- 6.18. Pursuant to DEPP 6.5B.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the individual who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.
- 6.19. The Authority considers that the Step 3 figure of £3,884,486.60 represents a sufficient deterrent to Mr Steel and others, and so has not increased the penalty at Step 4.
- 6.20. Step 4 is therefore £3,884,486.60.

Step 5: Settlement Discount

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

disgorgement of any benefit calculated at Step 1.

6.22. The Authority and Mr Steel reached agreement and so a 30% discount applies to the Step 4 figure.

6.23. Step 5 is therefore £3,694,400 (rounded down to the nearest £100).

Financial Penalty

6.24. The Authority therefore imposes a total financial penalty of £3,694,400 on Mr Steel for breaching Statements of Principle 1, 2 and 4 and Individual Conduct Rules 1 and 3.

Prohibition Order

6.25. The Authority has had regard to the guidance in Chapter 9 of EG in considering whether to impose a prohibition order on Mr Steel. The Authority has the power to prohibit individuals under section 56 of the Act.

6.26. The Authority considers that it is appropriate and proportionate in all the circumstances to prohibit Mr Steel from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm, on the grounds that his conduct during the Relevant Period demonstrates a dishonest lack of integrity.

7. PROCEDURAL MATTERS

7.1. This Notice is given to Mr Steel in accordance with section 390 of the Act.

7.2. The following statutory rights are important.

Decision Maker

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

Manner and time for payment

7.4. The financial penalty must be paid in full by Mr Steel to the Authority no later than 12 July 2023.

7.5. However, as stated at paragraph 1.3 of this Notice, the Authority has agreed not to enforce the financial penalty provided that Mr Steel pays £850,000 to the

Authority, for the purpose of onward payment to the Financial Services Compensation Scheme (the "FSCS"). The source of these funds will be the remaining monies due to be paid to Mr Steel pursuant to an Asset Purchase Deed by which he sold the business of PMNEL.

- 7.6. If Mr Steel fails to pay in accordance with his agreement with the Authority, the Authority may recover the full outstanding amount of the financial penalty as a debt owed by Mr Steel to the Authority.

Publicity

- 7.7. 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 Mr Steel or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
- 7.8. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Authority contact

- 7.9. For more information concerning this matter generally, contact Kingsley Moore (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

RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. RELEVANT STATUTORY PROVISIONS

- 1.1. The Authority's statutory objectives, set out in section 1B(3) of the Act, include the operational objective of securing an appropriate degree of protection for consumers (section 1C).
- 1.2. Section 56 of the Act provides that the Authority may make an order prohibiting an individual from performing a specified function, any function falling within a specified description or any function, if it appears to the Authority that that individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, exempt person or a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities.
- 1.3. Section 66 of the Act provides that the Authority may take action against a person if it appears to the Authority that he is guilty of misconduct and the Authority is satisfied that it is appropriate in all the circumstances to take action against him. A person is guilty of misconduct if, while an approved person, he has failed to comply with a statement of principle issued under section 64 of the Act, or has been knowingly concerned in a contravention by a relevant authorised person of a relevant requirement imposed on that authorised person.

2. RELEVANT REGULATORY PROVISIONS

Statements of Principle and Code of Practice for Approval Persons

- 2.1. The Authority's Statements of Principle and Code of Practice for Approved Persons ("APER") have been issued under section 64 of the Act.
- 2.2. During the Relevant Period, Statement of Principle 1 stated:

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

2.3. During the Relevant Period, Statement of Principle 2 stated:

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

2.4. Statement of Principle 4 stated:

"An approved person must deal with the FCA, the PRA and other regulators in an open and cooperative way and must disclose appropriately any information of which the FCA or the PRA would reasonably expect notice."

2.5. The Code of Practice for Approved Persons sets out descriptions of conduct which, in the opinion of the Authority, do not comply with a Statement of Principle. It also sets out factors which, in the Authority's opinion, are to be taken into account in determining whether an approved person's conduct complies with a Statement of Principle.

Code of Conduct (COCON)

2.6. From 9 December 2019, the rules of the Handbook's Code of Conduct were applicable to Mr Steel's conduct.

2.7. Rule 1 set out in COCON 2.1.1 R stated:

"You must act with integrity."

2.8. Rule 3 set out in COCON 2.1.1R stated:

"You must be open and cooperative with the FCA, the PRA and other regulators."

Conduct of Business sourcebook

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

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

2.11. 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.

2.12. 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.

2.13. 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, his assets, including liquid assets, investments and real property, and his regular financial commitments.

2.14. COBS 9.2.6R states:

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

2.15. 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, stakeholder pension scheme or other pension scheme with flexible benefits, before it advises a retail client to transfer out of a Defined Benefit 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 information decision;
- (3) gives 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) takes reasonable steps to ensure that the client understands the firm's comparison and its advice.

2.16. 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.

The Fit and Proper Test for Approved Persons

2.17. The part of the Authority's Handbook entitled "The Fit and Proper Test for Approved Persons" ("FIT") sets out the criteria that the Authority will consider when assessing

the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an approved person.

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

The Enforcement Guide

- 2.19. The Enforcement Guide ("EG") sets out the Authority's approach to exercising its main enforcement powers under the 2000 Act.
- 2.20. Chapter 7 of the Enforcement Guide sets out the Authority's approach to exercising its power to impose a financial a penalty.

The Authority's policy for exercising its power to make a prohibition order

- 2.21. The Authority's policy in relation to prohibition orders is set out in Chapter 9.
- 2.22. EG 9.1 states that the Authority may exercise this power where it considers that, to achieve any of its regulatory objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities or to restrict the functions which he may perform.

DEPP

- 2.23. Chapter 6 of DEPP sets out the Authority's statement of policy with respect to the imposition and amount of financial penalties under the Act.