

Dame Meg Hillier MP
Chair - Public Accounts Committee
House of Commons
London
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Our Ref: C221124E

Dear Dame Meg Hillier,

RE: Public Accounts Committee – Investigation into the British Steel Pension Scheme

We are writing to you collectively six months on from the Committee's report on the British Steel Pension Scheme. Thank you also for your letter to the FCA sent on 21 December 2022. The FCA's response is included within this letter.

Given the focus of the Committee's report, our response centres on redress in the defined benefit (DB) pension transfer market.

This letter sets out the numerous actions that the different organisations have taken to ensure that consumers who have received unsuitable DB transfer advice receive redress, and the actions we are taking to help firms give better advice and to mitigate risks to consumers in the future. We also discuss the work we are undertaking to ensure that the compensation framework continues to provide appropriate and proportionate consumer protection and ensure that costs are distributed across industry in a fair and sustainable way.

1. Pension transfer advice

Supervision of the market: The FCA's focus is on ensuring pension transfer advice can help consumers make the right choice. Where the FCA has found poor or unsuitable advice, it has taken action against firms and sought to ensure consumers receive the redress they are due. The FCA's review of 55 firms it considered high-risk (and who gave transfer advice prior to early 2019) found an unsuitability rate of 17%. This was not a review of the wider DB transfer market. Firms with unsuitable advice have been tasked to review their previous advice and calculate redress where unsuitable advice is found.¹

¹ The 17% figure is not a representative sample of the wider DB transfer market (it is instead based on a cohort of 55 firms the FCA considered to be high risk) and relates to historic advice given largely before stricter rules came in 2018 and 2020 (see section below entitled 'FCA Policy changes and their impact').

Following the FCA's work highlighting and tackling poor advice over a number of years, the number of firms authorised to offer DB transfer advice has fallen from just over 3,000 in January 2019 to just over 1,000 today and nearly £30m in redress has been paid by firms to consumers.

In relation to the British Steel Pension Scheme (BSPS), the FCA's review of over 300 files has found 46% of the advice to be unsuitable. Due to the widespread nature of this poor advice, the FCA decided it had sufficient evidence to meet the strict legal test to launch a redress scheme for former BSPS members, under s404 of the Financial Services and Markets Act. It is anticipated that this scheme will provide an additional £49m to 1,100 former BSPS members.

The FCA's response to unsuitable advice in the wider DB transfer market since 2015 has focused on using data and assessments to identify advisory firms that are putting consumers at risk of harm through poor advice on DB transfers. It has also conducted past business reviews (PBRs), initially prioritising firms with the highest levels of unsuitability and most significant volumes of transfers. Eight PBRs have completed and 24 remain ongoing. The FCA expects the remaining redress to be paid over the coming months with completion of all PBRs by the end of 2023.

Many of the firms involved in DB transfer advice are relatively small and the cost of PBRs and redress liabilities from DB transfers have meant that some firms have not been able to complete the review work or pay redress. To date, 25 firms have entered insolvency processes. In these cases, the FCA has taken action to notify affected consumers that they may have received unsuitable advice and how they can complain or make a claim to the Financial Services Compensation Scheme (FSCS).

On monitoring, since 2018 the FCA has been collecting extensive DB pension transfer data from advisory firms across the market, including smaller advice firms. A specific regulatory return was introduced in April 2021. These data enable the FCA to proactively monitor trends, identify higher-risk firms and take focused supervisory action. The FCA has also acted on intelligence shared from the Pensions Regulator (tPR), the Money and Pensions Service (MaPS) and whistleblowers, which has enabled it to raise cases against firms and intervene when necessary.

More recently, the FCA has developed its data capability by rolling out Single View of Firm and Single View of Portfolio dashboards across the organisation. These provide staff with key data on every firm regulated by the FCA and include key risk indicators to detect emerging issues. This supports the FCA's supervision of firms, including smaller advice firms, by helping staff to identify issues earlier and take assertive action to prevent harm.

FCA policy changes and their impact: As a result of the unsuitable advice it found from 2017-2020, the FCA changed its Handbook rules and guidance. This included providing advisers with a framework to better enable them to give good quality advice and banning contingent charging. The FCA has also issued further guidance which identifies good and poor practice, helping firms identify any weaknesses in their existing advice processes, and has published its Defined Benefit Advice Assessment Tool, to enable firms to identify where poor advice may have caused harm.² The FCA has sought feedback from industry on the guidance, which indicated firms found it helpful in understanding what the FCA expects of them when they give DB transfer advice.

Review of redress calculation methodology for non-compliant pension transfer advice: The FCA has completed a comprehensive review of how firms are expected to calculate how much redress should be paid to consumers to put them back in the position they would have been in if they had remained in their DB scheme. The review was informed by a team of pension actuaries at Deloitte Total Reward and Benefits Ltd and by an opinion from Michael Furness KC³ on how the current and proposed approach compared with the way a court would award damages for non-compliant DB pension transfer advice. The FCA published its consultation paper on the

² 'FCA publishes Defined Benefit Advice Assessment Tool'

³ <https://www.wilberforce.co.uk/people/michael-furness-kc/>

proposals resulting from this review on 2 August 2022 and the final rules and guidance in a Policy Statement on 28 November 2022.⁴

While some changes have been made, the approach broadly follows that which has been used since the Pensions Review in the mid-1990s. The aim of redress payments is to ensure those who transferred out of their pension following poor advice receive a retirement income similar to what they would have received from their original DB scheme.

The methodology works out how much money a consumer should have in their DC pension today so that when they retire, they can buy an annuity that provides a guaranteed income similar to what they would have received from their DB scheme. As a result, the redress methodology uses a range of economic, demographic and other assumptions to estimate the present-day value of the retirement benefits the consumer would have received if they had not transferred. This value is then compared with the current value of the consumer's DC arrangement attributable to the original transfer value (i.e. excluding any other pensions and contributions) at the same date. Any shortfall between the DC and DB values is the amount of redress due.

This has been consolidated into new rules and guidance in the FCA Handbook. This will further increase consumer protection by improving understanding of the approach, providing a direct route for assertive supervision or enforcement action should misconduct be identified in relevant redress exercises.

2. The BSPS redress scheme

The FCA final rules: As you note in your letter, in November 2022 the FCA published final rules for a redress scheme for former members of the BSPS who received unsuitable advice to transfer out. Investigations found that almost half of the advice given to members was unsuitable. An exceptionally high level compared with other cases. Redress aims to put consumers back into the financial position they would have been in had they remained in the BSPS, replicating their guaranteed retirement income.

The rules require firms to assess any advice they gave to BSPS members to transfer out and to pay redress if the advice was unsuitable and caused the consumer a loss. Alongside this, the FCA published a consultation on extending the temporary asset retention rules.⁵ These rules require certain personal adviser firms that gave BSPS members advice on transferring out to retain assets. This will increase the likelihood they have sufficient funds to meet redress liabilities if they have provided unsuitable advice to scheme members.

Legal challenge: In December 2022 the FCA received a legal challenge to its decision to implement a redress scheme from a law firm ('FS Legal') representing a group of firms (British Steel Advisory Group - 'BSAG') that provided advice to BSPS members.⁶ The FCA is confident that its decision is appropriate and will vigorously defend it. Unfortunately, the legal challenge could potentially delay steelworkers receiving the money they are owed. The FCA will let former BSPS members and advisers know if the current scheme timings change.

Timeframe: Subject to the outcome of the challenge, the scheme will start on 28 February 2023, allowing firms time to prepare for implementation by that date. Firms must write to all BSPS consumers within and outside the scope of the scheme by 28 March 2023. Firms must consider the cases of all eligible consumers who have not opted out of the scheme and contact consumers with the outcome of the review by 28 September 2023. If the advice was unsuitable and caused a financial loss, firms must make a redress offer by either 28 December 2023 where the consumer requests a lump sum, or 28 February 2024 where the consumer requests payment into their pension. If the consumer accepts the redress offer, firms must pay redress within 28

⁴ 'PS22/13: Calculating redress for non-compliant pension transfer advice'

⁵ FCA publication: [CP22/22: Proposed extended asset retention requirement for firms under the British Steel Pension Scheme consumer redress scheme](#)

⁶ <https://www.moneymarketing.co.uk/news/fca-will-defend-bsps-redress-scheme-if-called-on/>

days. Most consumers who received unsuitable advice should receive redress by 28 February 2024.

If a firm concludes that the advice was suitable then there is a referral process for the consumer to take their case to the Financial Ombudsman Service (FOS) for independent review. This includes decisions made by a firm about scope of the redress scheme or payment of redress. If firms are unable to pay their redress liabilities and exit the market, eligible consumers will be referred to the Financial Services Compensation Scheme (FSCS).

Represented consumers: We note the comments that the Committee raises about consumers represented by Claims Management Companies (CMCs) or solicitors in its report. This will be an opt-out scheme, which means that firms will be required to review in scope cases unless the consumer informs the firm that they do not wish to participate. Firms are required by FCA rules to inform consumers that they do not need to use a CMC or solicitor in this process and if they do, they will be charged for doing so.

Whilst it is important to ensure that the redress system and the scheme is accessible for consumers, we recognise that there will always be some that wish to be represented by third parties. This may be by family and friends or by professional representatives. We work with professional representatives, in a similar way to financial businesses, to ensure that they understand what is expected of them. If for any reason standards are not met, the FOS and FSCS ensure that information is passed to the relevant regulator which may be the FCA or the Solicitors Regulation Authority.

Update on FCA BSPS enforcement cases: The FCA currently has circa 30 ongoing investigations into firms and individuals relating wholly or partly to BSPS advice. On 2 December 2022, the FCA fined Pembrokehire Mortgage Centre Ltd £2,354,331 for unsuitable advice to consumers to transfer out of the BSPS and other DB pension schemes.⁷

Two further enforcement matters relating to BSPS are in the public domain and are currently being litigated (a High Court case against Paul Steel and Jacqueline Foster⁸ and an Upper Tribunal case concerning Geoffrey Armin of Retirement and Pension Planning Services Limited (in liquidation⁹)). The other enforcement investigations remain at an advanced stage and seven of them have either entered an initial settlement period or are being considered by the Regulatory Decisions Committee.

3. A coordinated approach

Collaboration: The FCA, FOS and FSCS share information and insights about trends or common problems that could inform future work, and to proactively monitor the market. The FOS provides independent dispute resolution and shares information that it deems appropriate if concerns arise about a particular firm or its complaints handling. In such cases, concerns about firms are then passed to the relevant FCA supervisory team to consider appropriate action.

The FCA and FSCS also take a joint approach to tackling suspected phoenixing. The classic form of phoenixing is where firms seek to evade regulatory liabilities by winding up the existing firm and then applying for a new authorisation. We also see 'life-boating' where firms apply for authorisation for a second firm, ostensibly to do slightly different activities, but then transfer their clients and assets to the new firm before seeking to cancel the existing firm thus avoiding its associated liabilities.

The FCA, FOS and FSCS all share intelligence to help each other identify and take action against such firms and culpable individuals. In 2022, challenge and additional scrutiny from the FCA's

⁷ ['FCA fines Pembrokehire Mortgage Centre Ltd £2.4m for serious failings in relation to the British Steel Pension Scheme'](#)

⁸ ['FCA launches High Court proceedings against Paul Steel and Jacqueline Foster'](#)

⁹ ['FCA publishes Decision Notice against financial adviser for pension transfer advice failings'](#)

Authorisation division resulted in 15 new firms connected to previous DB transfer advice provision withdrawing their applications. The FCA was also clear in a recent 'Dear CEO' letter to Adviser and Intermediary firms that applicants (both firms and individuals) with past conduct concerns (including advising on DB pension transfers) should expect significant additional scrutiny and challenge.¹⁰ Working with information provided by the FOS and FSCS as well as other sources, firms will need to satisfy the FCA that they have made adequate provision for historic or contingent liabilities. The FCA uses a range of tools including restricting the firms' activities, to mitigate the risks in this area and will refuse applications where risks cannot be mitigated.

FSCS and the compensation framework: In the FCA's previous response to the Committee, it explained that the current FSCS funding model includes mechanisms to manage risk and ensure that there is sufficient funding to compensate customers of failed financial services firms who are entitled to receive compensation. FSCS produces regular forecasts of their funding requirements based on firms that have recently failed as well as firms that are expected to fail in the future. Financial services firms are then required to pay an annual levy, relative to their size, and the regulated activities that the firm undertakes, which contributes to the cost of compensation for firm failures and FSCS's management expenses within their levy funding class. This means that, in general, the levy paid by firms is used to cover the cost of compensating failures within their sector.

If compensation costs in a particular FCA funding class exceed the levy threshold for that class in any given year, the additional costs are covered by the other FCA classes through the retail pool. All FCA funding classes may be required to contribute to the retail pool in any given year, if compensation costs in the class are not expected to reach the respective levy threshold. In highly exceptional circumstances where all FCA classes breach their thresholds and the retail pool is maxed out, FSCS can apply for funding from the National Loans Fund.

FSCS also has a statutory responsibility to recover monies from the firms it has declared in default and responsible third parties, where it is cost effective to do so. Between 2015/16 and 2021/22 FSCS recovered approximately £296m from the estates of failed firms, which was used to offset the levy or returned to customers whose losses were above FSCS's compensation limits. FSCS's most recent levy forecast was published as part of Outlook November 2022 on 24 November.¹¹ FSCS confirmed that the levy for 2023/24 is expected to be £478m, with the final amount to be confirmed in spring 2023.

FCA and the compensation framework: The FCA has been actively considering the compensation limits for FSCS, and recently published a Feedback Statement.¹² This paper sets out how the FCA is already taking forward its strategy to tackle the underlying causes of compensation liabilities, as well as its plans moving forward to ensure that compensation limits for consumers are balanced with the effect of compensation costs on the market.

The FCA will be considering whether changing the compensation limits would be proportionate as part of the next phase of its review of the compensation framework. This will include consideration of whether it would be appropriate to increase compensation limits for certain pension claims. The FCA expects to consult on any proposed changes that arise from the next phase during 2023/24 with a view to confirming any changes by the end of that financial year. Any changes to compensation limits would apply to claims against firms declared in default by FSCS from the date that the rule change is made (and would not apply retrospectively to firms already in default).

To reduce the ongoing burden of the FSCS bill on the broader adviser population and regulated firms more widely, the FCA is also continuing its work to review the prudential regime for non-

¹⁰ <https://www.fca.org.uk/publication/correspondence/portfolio-strategy-letter-for-financial-advisers-and-intermediaries-2022.pdf>

¹¹ 'FSCS Outlook November 2022'

¹² 'FS22/5: Compensation Framework Review'

MIFID investment advisers. This work aims to ensure firms regulated by the FCA, including smaller advice firms, that create redress liabilities are better able to pay them. The FCA plan to set out further details later this year. The FCA also uses its Single View of Firms to identify those firms at risk of failure and will proactively intervene to ensure that these firms do not act in a way that is contrary to consumer or wider market interests.

Financial Ombudsman Service wait times: FOS has already reduced the number of unallocated cases (arising from a range of factors including increased case volumes as a result of the pandemic) from 90,000 in December 2021 to 21,000 today (excluding circa 12,000 cases subject to matters beyond its reasonable control e.g. pending litigation).

More information on FOS's activity to reduce the time taken to serve customers has been included in the FOS Plans and Budget which was published on 16 December.¹³ It has established a specific directorate dedicated to Pensions and Investments, and recruited specialist investigators and ombudsmen in recognition of the number of cases being received. It has also planned on the basis of a range of scenarios to ensure that these customers receive resolution as quickly as possible. Thanks to these changes, there is currently no wait time for allocation of BSPS cases.

I hope that this is helpful.

Yours sincerely,



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¹³ FOS '[Strategic plans and budget](#)'