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Financial Conduct Authority
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By email: CP22-6-Chapter-6@fca.org.uk

Dear Sir/Madam,

Financial Services Consumer Panel response to the FCA's consultation on consumer redress scheme for unsuitable advice to transfer out of the British Steel Pension Scheme (BSPS)

The Panel welcomes the opportunity to respond to this consultation on the proposed consumer redress scheme for unsuitable advice to transfer out of the BSPS.

The Panel is supportive of the high-level proposal for redress calculation and strongly believes the FCA should adopt the stance and develop the processes around the s.404 scheme so that the default decision is that BSPS members were wrongly advised and should be redressed, unless, through the s.404 scheme, the firm can prove otherwise. Therefore, where the firm has material information gaps, the process to redress the BSPS member should continue automatically (assuming poor advice has been given) rather than relying on the member to move their own case to the FOS.

The Panel would however make the additional points as follows:

1. Where any determination is made about the route a consumer may have taken had suitable advice been given, the Panel would propose the redress calculation assumes consumer decisions would have been made that maximises the redress calculation, not minimises it, only unless the firm has irrefutable evidence to assume otherwise
2. The Panel believe that in instances where consumers suffered further harm due to receiving unsuitable advice (for example, not being able to afford mortgage payments and therefore losing their house), that these instances should be taken into account as they have been caused by the outcome of the unsuitable advice.
3. For many BSPS members, the redress payment may be a large sum, potentially the largest lump sum they have received – it is therefore vital that the FCA ensures that suitable, appropriate, accessible, and free advice is given to the scheme members to help them understand the options available to them, and how best to handle this.
4. The Panel would prefer an approach where a firm must automatically pay redress to the customer as opposed to the customer applying for the money to be sent.

Please find response to questions in Annex 1 below.

Yours faithfully

Helen Charlton

Chair, Financial Services Consumer Panel

Annex 1 - Consultation Question

Q1: Do you agree with our assessment that unsuitable advice to BSPS customers was widespread in the period we looked at?

Based on the FCA's own review results and the conversations that the Panel has had regarding the BSPS, we agree with the assessment that a significant proportion of advice given to BSPS customers was unsuitable, and that this is widespread across the firms that gave advice.

Furthermore, the Panel believe that even if the FCA's estimates of unsuitable advice is overstated, there is enough actual evidence of unsuitable advice to warrant and support the approach to review all cases where advice was given to transfer out of the BSPS scheme.

Q2: Do you agree with our view that BSPS members who received unsuitable advice are likely to have suffered loss?

The Panel agrees that many BSPS members that received unsuitable advice are likely to have (or will) suffered financial loss as a direct consequence of the advice given.

The impact of this loss is further exacerbated by the fact that for many BSPS members their BSPS pension benefits were the only future source of retirement income (other than the state pension) that they had available to them and reemployment (and therefore further income or additional pension benefit accrual) was unlikely.

Q3: Do you agree that the legal test for making a consumer redress scheme under s.404 of FSMA has been met?

The Panel believes that the legal test for making a consumer redress scheme under s.404 of FSMA has been met.

Q4: Do you have any comments on the other ways we considered to ensure that consumers who have suffered financial loss as a result of unsuitable advice receive redress?

The Panel does NOT support the other ways considered to enable BSPS members to receive redress.

The panel has several concerns about any process that requires a consumer to make decisions to remain in the process, as

- 1) Some BSPS members that should be included in the scheme may not realise they have been given unsuitable advice
- 2) Some BSPS members may not want to go through the emotional journey of realising they have taken unsuitable advice and lost money and therefore may not opt into a process – especially as some BSPS members may still feel embarrassment about what has happened
- 3) There is a possibility (as has already been observed in relation to the BSPS scheme) that some members may be suspicious of communications and therefore may not reply, and
- 4) It is likely that some BSPS members that were wrongly advised (and have suffered harm) may be vulnerable clients, whose best interests will be met by the FCA

adopting the proposed s.404 with opt out approach (acting in the interests of these clients).

Q5: Do you agree with the estimates and assumptions that we have made about costs, benefits, scale of reach, and consumer response rates for each alternative option we considered?

The Panel believes the estimates and assumptions, and the methodology used to get to these, in the cost benefit analysis appear reasonable, but does not have data or evidence to prove, or disprove these.

Q6: Are there any other alternative options that we should consider?

No.

Q7: Do you agree that the scheme should cover advice given between 26 May 2016 and 29 March 2018 provided the further file review evidence shows that the legal test is met?

Yes.

Q8: Do you agree that, if the legal tests for the earlier period are not met, the scheme should cover advice given between 1 March 2017 and 29 March 2018?

Whilst the Panel understands the reason for this possible approach our concern is that the BSPS members given advice between 26 May 2016 and 1 March 2017 may have missed the window to complain by the time they learn (if this is the case) that they are out with the dates for inclusion in the S.404 scheme.

The Panel recognises and appreciates the work the FCA has already conducted to inform these members that they may want to raise complaints before the 6-year window expires and we would encourage the FCA to continue to work with Trade Unions, money advice services and the like to ensure BSPS members fully understand this issue so that they can take appropriate steps. Furthermore, we would expect firms, and the FCA, to be considerate, open-minded and err on the side of the BSPS member in considering when the 3-year limit started, especially where this might enable a BSPS member excluded from the s.404 scheme to still raise a legitimate complaint.

Q9: Do you agree with the steps we propose for insistent clients?

The Panel does not agree with the steps proposed for insistent clients. There are many ways in which advice can be given to clients. The Panel has heard, and is concerned, about cases (as outlined in 5.27 of the Consultation Paper) where an advisor may state that 'their advice is not to proceed but of course if the client wants to proceed, the advisor can't stop them'.

Whilst the file may well show that the advice was negative, and the client was informed as such, it is not possible to fully understand (or create rules for) situations where clients felt they were being unofficially nudged to continue.

With the significant asymmetry in knowledge and experience between the advisor and the scheme member, the trust given to the advisor at the time and the low number of cases involved, the Panel would prefer to see an approach where the cases of insistent clients

are considered to understand, on a case by case basis, whether they were, in any way, nudged toward proceeding, by the advisor, and if so, these cases should be included in the s.404 scheme – rather than only relying on members to raise claims with the FOS themselves.

Q10: Do you have any evidence of harm caused by DB advice firms to insistent clients who transferred out of BPS?

No, however we would suggest the FCA works with BPS Scheme Members, Trade Unions and the like to better understand how insistent clients were advised and seek any evidence of members being nudged to proceed.

Q11: Do you agree that the scheme should exclude cases in the circumstances we have described above?

The Panel would expect that where a BPS member has already received (and accepted) redress (outlined in 5.19) that the 'level' of this redress is considered in comparison to what would have been received had this redress been secured through the s.404 scheme. If the redress received is less than that which would have been received through the s.404 scheme, we would expect an additional redress payment to be made to bridge this gap.

Q12: Do you agree that the BPS DBAAT is an appropriate tool for assessing whether advice to transfer out of BPS was suitable?

The Panel is unable to comment on the suitability of the tool.

The Panel is, however, uncomfortable with the approach for cases where it is decided the firm does not have the necessary information to assess suitability and after contacting the member it still decides it is unable to assess or is unclear (material information gaps). In these cases, it is highly probable (if not certain) that the advisor also did not have the relevant information to advise in the first place. The Panel would therefore propose that either a different process is developed (or the current process amended) to include these cases in the s.404 scheme or that these cases are automatically referred to the FOS rather than relying on the members to do so. (We make this proposal noting that the FCA itself accepts that BPS members may not exercise their right to complain – see 5.56)

The Panel strongly believes the FCA should adopt the stance and develop the processes around the s.404 scheme so that the default decision is that BPS members were wrongly advised and should be redressed, unless, through the s.404 scheme, the firm can prove otherwise. Therefore, where the firm has material information gaps, the process to redress the BPS member should continue automatically (assuming poor advice has been given) rather than relying on the member to move their own case to the FOS.

Q13: Do you agree that the examples of failures we've identified in the BPS DBAAT instructions are indications of a failure to comply with suitability requirements?

Yes.

Q14: Do you agree with the proposed steps for firms to take under the scheme?

It is important to the Panel that BSPS scheme members are given multiple opportunities to engage with the firm and/or supply information before their case is marked as not progressing.

For example, in Figure 4, we would expect the firm to make multiple attempts to contact the BSPS member to request missing information, over a period of time, using various channels of communication before deciding they don't have the information to proceed. We note this is covered in the proposed rules but do not think the wording goes far enough in driving firms to make all efforts to contact members.

We would also expect the FCA to monitor the metric relating to these decisions and challenge firms as appropriate.

Q15: Do you agree with the proposed deadlines in the draft rules for firms completing the steps of the scheme?

Yes. The Panel feels the FCA needs to balance getting firms to act quickly (as some BSPS members have endured the impact of poor advice for long enough) with allowing members time to consider any communications and find documentation etc as required.

We would encourage the FCA not to allow these time scales to slip and stress to firms that these are the time 'backstops' and encourage them to work quicker.

Q16: Do you agree that we should require firms in the scheme to pass consumer details to the FCA so we can take steps to facilitate referrals to the Financial Ombudsman Service for all cases that are assessed as suitable?

Yes. The Panel believes this is an important control check to ensure that when the transfer advice that was given is deemed to have been suitable it is audited as such.

If the FCA observes, through its collection of metrics, that a significant proportion of cases from an individual firm, where that firm found the advice to be suitable, are found by the FOS referral to be incorrect (therefore the advice was unsuitable) the Panel would expect the FCA to act quickly to interject into the firm's behaviour and performance in relation to the Redress Scheme, including, but not limited to, using its powers under s.166 of FSMA to appoint a skilled person to oversee and re-run the redress exercise.

Q17: Do you agree that the proposed scheme will provide a proportionate level of independence and oversight?

The Panel partly agrees but remains concerned that in certain outcomes the BSPS member will have the burden of appealing/complaining through the FOS. We would encourage the FCA to have cases that 'stop' in the process referred automatically to the FOS.

The Panel would also stress again its view that the scheme should approach cases on the basis that BSPS members were wrongly advised, with firms needing to prove otherwise. This will ensure that BSPS members that fall out of the process are deemed to have been given poor, unsuitable, advice and can therefore seek redress.

Q18: Do you agree with the proposed implementation period?

The Panel would prefer to see a shorter implementation period. There are significant time periods during the process for firms to act and, bearing in mind the time passed since the potential of a s.404 redress scheme was outlined we would encourage the FCA to set a shorter, 1 month, implementation period.

Q19: Do you have any comments on the high-level proposals for redress calculations?

This response has already been submitted.

Q20: Do you agree with our estimates of the costs and benefits of our proposed scheme?

No response.