

Financial Services Consumer Panel

AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

Telephone: 020 7066 9346

Email: enquiries@fs-cp.org.uk

Financial Conduct Authority
12 Endeavour Square
London
E20 1JN

23 December 2022

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

Dear Sir/Madam,

Financial Services Consumer Panel response to the FCA's consultation on proposed extended asset retention requirement for firms under the British Steel Pension Scheme consumer redress scheme

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

The Panel is supportive of the proposed extension of the rules to ensure that consumers have the best chance of receiving the full amount of any redress required.

Where a firm has given advice to any BPS member, the Panel believes it should complete a Financial Resilient Assessment (FRA) to indicate if it can meet its contingent liabilities and, if required, should be subject to the asset retention requirements.

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 have any comments on the duration of the proposed extended rules?

The Panel is supportive of the proposed extension of the rules to ensure that consumers have the best chance of receiving the full amount of any redress required.

Q2: Do you have any comments on the types of firms that are in scope of the proposed extended rules?

The Panel welcomes the change in the scope of the retention measures, reducing the exclusion based on the number of advice cases from 5 to 3. However, the Panel would question this exclusion. Where a firm has given advice to any BSPS member, even just one, the Panel believes it should complete a Financial Resilient Assessment (FRA) to indicate if it can meet its contingent liabilities and, if required, should be subject to the asset retention requirements. Whilst we appreciate the FCA's aim to be proportionate we remain concerned that BSPS members may miss out on the redress to which they are entitled if they took advice from a firm that hasn't been mandated to retain assets, having been covered by an exclusion from the requirement due to only having advised one or two clients. We would propose that this exclusion is not in the interests of consumers, nor is it fair to exclude a claimant from the protection afforded by the rules simply by virtue of number of BSPS scheme cases a firm has handled.

We would also ask the FCA to re-consider how BSPS Members can be protected by the retention rules where they took advice from a firm that is a 'natural person'. Consumers expect a degree of protection and, if appropriate, access to redress when taking, and paying for, advice. The FCA cannot expect a consumer to understand whether this type of protection is provided/achievable based on the nature of the firm (sole trader, LLP, Ltd Company, etc.) nor should similar consumers, taking similar advice and suffering similar harms be treated differently by the retention scheme due to company structure differences.

Additionally, we would ask the FCA to publish a table listing the total number of firms that gave advice to BSPS Members and then also detailing the number of these firms discounted by each of the exclusions in para 4.8, with the associated count of BSPS members excluded.

Q3: Do you have any comments on the proposed Financial Resilience Assessment and the notification process?

The Panel query whether the reduction in the FRA calculated liability of the firm due to Professional Indemnity Insurance (PII) cover should be applied in full or whether a discount factor should be applied to reflect the risk that the PII provider may not cover all claims by the firm (a similar outcome was observed with regard to business interruption insurance during Covid, which was then challenged successfully in the High Court by the FCA).

Additionally, the Panel assumes that clause 5.38 would mean that those firms newly covered by the rules, having advised three or four transactions, will need to comply with the extended asset restriction rules until they have completed their first FRA, and then proceed on the basis of this.

Q4: Do you have any comments on the proposed extended asset restriction rules?

The Panel has no comments on the proposed extended asset retention rules.

Q5: Do you have any general comments about the overall proposals for the extended asset retention rules set out in this consultation paper?

The Panel welcomes the proactive approach of the FCA in extending the asset retention rules to ensure BSPS members receive all redress to which they are entitled.

Q6: Do you have any comments on our cost benefit analysis?

The Panel has no comments on the FCA's cost benefit analysis.