

Consumer redress scheme for unsuitable advice to transfer out of the British Steel Pension Scheme

Consultation Paper

CP22/6***

March 2022

How to respond

We are asking for comments on Question 19 in Chapter 6 by **12 May 2022**.

Please send your comments on Q19 to CP22-6-Chapter-6@fca.org.uk

We are asking for comments on the other questions in this Consultation Paper (CP) by **30 June 2022**.

You can send your comments on the other questions to us using the form on our website [here](#)

Or in writing to:

Consumer and Retail Policy
Financial Conduct Authority
12 Endeavour Square
London E20 1JN

If you need to submit your response in an alternative format due to accessibility reasons, please contact us at: queries-CP22-6@fca.org.uk



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1 Summary

Why we are consulting

- 1.1** Many members of the British Steel Pension Scheme (BSPS) transferred out of it after being given unsuitable advice and have suffered financial loss as a result. We have reviewed files from a sample of the firms who recommended transfers out of BSPS and our view is that this unsuitable advice was widespread.
- 1.2** We have looked at the available options for providing redress to these consumers. We propose to implement a consumer redress scheme. This will require firms who advised BSPS members to transfer to review the advice they gave, identify if it was unsuitable, and calculate and pay redress to consumers where required.
- 1.3** BSPS is a highly exceptional case. Our evidence, discussed in more detail in Chapter 3, suggests 46% of transfers were unsuitable. This suggests much higher levels of poor advice compared with that we have seen in higher-risk firms in non-BSPS pension transfer cases (17%). As set out in Chapters 2 and 3 and in an independent review and Work and Pensions Select Committee report this case involves unique factors we have not seen elsewhere in the market. These unique circumstances resulted in around 8,000 BSPS members transferring out of a defined benefit (DB) pension and into a defined contribution (DC) scheme, such as a personal pension.
- 1.4** We estimate the proposed scheme will mean that 1,400 BSPS members receive £71.2m in total redress. That is £56.1m more than if we simply continued with our current supervisory and enforcement work to ensure that BSPS members who received unsuitable advice receive any redress they might be owed. Our cost benefit analysis (CBA) in Annex 2 explains the net benefits of implementing a scheme compared with simply carrying on with existing supervisory and enforcement activities. We estimate that the scheme will apply to 343 firms. This consultation paper sets out our proposals for firms to review their advice and compensate consumers if the unsuitable advice caused them financial loss. It also explains proposals for safeguards, independent checks, and monitoring to ensure that firms comply with the scheme's rules and consumers can have confidence in its outcome.
- 1.5** We are currently reviewing FCA guidance for firms on how to calculate redress for unsuitable DB pension transfers. In Chapter 6 we discuss how firms will have to calculate redress under the proposed scheme. We will consult on detailed rules for redress calculations in July 2022 when we consult on revisions to the pension transfer redress guidance. We will also explain in our July consultation paper how we expect revisions to the guidance to change the CBA. We are also looking into the possibility of developing a calculator for firms to use when calculating redress under the proposed BSPS scheme.

- 1.6** We are working closely with the Financial Services Compensation Scheme (FSCS) and the Financial Ombudsman Service to make sure that all steelworkers who were given unsuitable advice can get redress and are treated sensitively and consistently between the 3 organisations. Under the redress scheme an estimated 4,000 consumers, around 50 to 52% of the total number of consumers who transferred out of BSPS in the relevant period, will be eligible to have their advice reviewed without needing to make a complaint or opt in. The scheme will not cover:
- People who have already accepted redress in full and final settlement following a complaint or past business review (PBR).
 - Customers of firms who have appointed a skilled person to carry out a PBR and who have been told that they can go to the Financial Ombudsman Service.
 - People who have already submitted a complaint to the Financial Ombudsman Service about unsuitable advice to transfer out of BSPS during the relevant period before the scheme starts. Around 800 have already done so but some of these people have been referred to FSCS.
 - People who were given advice outside the relevant period.
- 1.7** For people who were advised by a firm that is insolvent or no longer exists (around 2,100), FSCS, rather than the firm who gave the advice, will assess claims. If a scheme is implemented, FSCS will assess claims and calculate redress in line with the scheme rules and will pay compensation up to the limit of £85,000 per person (or £50,000 where firms failed before 1 April 2019). FSCS has already received 1,300 claims and paid £37.3m in compensation.
- 1.8** There is a glossary of the terms we use in this consultation at Annex 5.

Who this applies to

- 1.9** This CP is likely to interest:
- regulated firms who provided BSPS members with advice to transfer during the relevant period or advised the member in connection with the pension transfer or arranged the transfer and their insurers
 - industry groups / trade bodies
 - individual consumers, particularly BSPS members who transferred their pension, and their representatives
 - consumer groups
 - insurers who provide professional indemnity insurance (PII) for financial advisers involved in pension transfers

What to do if you are a British Steel Pension Scheme member who transferred your pension

If you are worried that you were given unsuitable advice you can make a complaint now rather than waiting for the outcome of the consultation. If you're not satisfied with the firm's response to you, you can refer your complaint to the Financial Ombudsman Service for an independent decision. There is more information about [how to make a complaint](#) on our website and an [advice checker](#) that you can use to check if you were given unsuitable advice.

If the adviser has gone out of business and the firm has been declared in default you should contact the Financial Services Compensation Scheme.

You do not need to use a claims management company (CMC) or solicitor if you want to make a complaint now or if your case is considered under the proposed scheme. If you do decide to use a CMC, you should carefully consider how much they will charge you and whether you are willing to have that money deducted from your compensation.

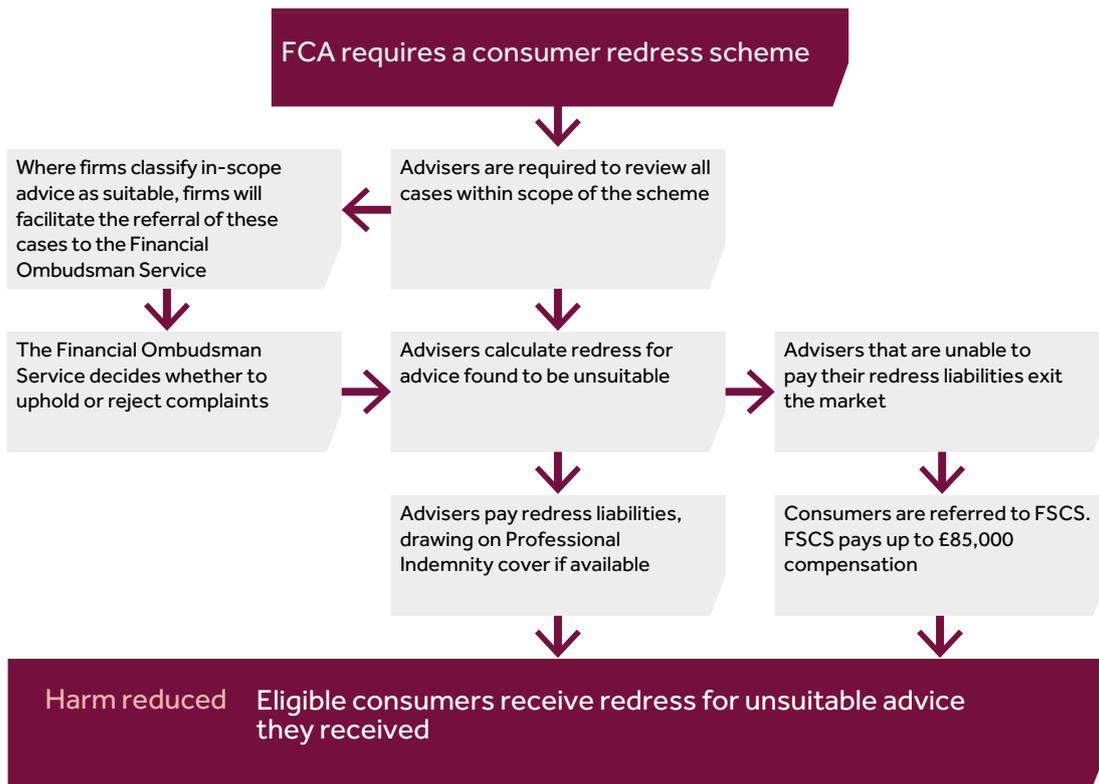
What we want to change

- 1.10** The proposed redress scheme is intended, as far as practically possible, to put BSPS members who suffered a loss because of unsuitable advice to transfer back in the position they would have been in if the advice had been suitable and complied with our requirements. Depending on the results of our analysis of further evidence, we propose that the scheme will cover consumers who received advice between 26 May 2016 to 29 March 2018 to transfer out of BSPS. 26 May 2016 is when the Department for Work and Pensions (DWP) launched a consultation on BSPS and 29 March 2018 is when BSPS entered Pension Protection Fund (PPF) assessment and was closed to transfers. During this time BSPS members went through a set of unique events, which caused harms to those who transferred their pension. We discuss this further in Chapter 5, where we also ask for views on our proposal.
- 1.11** All BSPS members who were given advice during the relevant period will be covered by the scheme unless they have already had redress for that advice, referred the matter to the Financial Ombudsman Service or had their advice considered under a PBR involving a skilled person. If a firm subject to the scheme fails, or cannot meet its liabilities, FSCS will assess the claims of the firm's customers using the methodology set out in the scheme rules. BSPS members who are covered by the scheme will not need to do anything to be included in the scheme, but we are proposing that they can opt out of it if they want to. FSCS is considering whether it can also assess claims on an opt-out basis, to be consistent with the scheme. This would mean that consumers who were advised by firms that fail during the course of the redress scheme would not need to make a claim to have their case considered by FSCS.
- 1.12** The proposed scheme will require firms who gave the advice to assess whether the advice was suitable, tell consumers the outcomes of their assessments and pay redress to consumers if the unsuitable advice caused the consumers a financial loss. Where firms decide that the advice they gave was suitable, they will be required to take steps to facilitate the referral of cases to the Financial Ombudsman Service for an independent review.
- 1.13** See Chapter 5 for more detail on the proposed scheme and Appendix 1 for the proposed scheme rules.

Outcome we are seeking

- 1.14** The proposed scheme will advance our objective to secure an appropriate degree of protection for consumers by ensuring that consumers who were given unsuitable advice and suffered harm get redress. Figure 1 shows how our proposed scheme intends to achieve this.

Figure 1: Causal chain setting out how we expect a s. 404 scheme to reduce harm



- 1.15** So that the scheme achieves this outcome we aim to:

- ensure firms review all advice given in the relevant period to determine whether it was unsuitable and caused loss
- ensure that where unsuitable advice caused loss, BSPS members receive redress
- ensure firms implement the scheme effectively and that it delivers cost-effective, efficient and consistent results to consumers
- avoid unnecessary complexity so that firms and consumers understand the scheme, what it means for them and any action they may be required to take
- work closely with the Financial Ombudsman Service and FSCS to ensure outcomes for consumers are fair and consistent
- monitor the impact that implementing a BSPS scheme has on the wider pension transfer market and consumer access to advice.

Measuring success

- 1.16** We propose firms meet detailed reporting requirements so we can monitor progress and firms' compliance with the scheme.

1.17 We estimate that, together with the work we are already doing on redress for BSPS customers, the proposed scheme will achieve the following outcomes:

- 35% (1,400) of in-scope BSPS consumers in the relevant period receive redress.
- In total, firms pay redress of £31.2m and FSCS pays redress of £20.6m. We expect £19.4m to be paid by professional indemnity (PI) insurers.
- 89% of firms in the scheme are able to complete the scheme without becoming insolvent.
- 90% of cases in the scheme are completed by firms within time periods set out in the rules, which include deadlines for assessing suitability and paying redress.

Next steps

1.18 The consultation will close on 30 June 2022, except for Question 19 in Chapter 6 where we are asking for responses by 12 May 2022. If we decide to implement a scheme, we will aim to publish a policy statement, including final rules, in the autumn or winter.

1.19 We will consult on detailed rules setting out how firms must calculate redress under the proposed scheme in July 2022 when we consult on revisions to the pension transfer redress guidance. We will also explain in the July consultation paper how we expect revisions to the pension transfer redress guidance to change the CBA.

Timeline

1.20 Key steps for our proposals are as follows.

- consultation opens: 31 March 2022
- consultation for Question 19 closes: 12 May 2022
- consultation for all other questions closes: 30 June 2022
- consultation on rules for firms to calculate redress and revised DB pension transfer redress guidance opens: July 2022
- FCA publishes policy statement, including final rules for scheme: autumn/winter 2022

1.21 If we introduce a scheme, we expect it will come into force in early 2023. We expect that the vast majority of members who are eligible would receive compensation later in 2023 or in early 2024.

2 The wider context

2.1 In this Chapter we set out the wider context of the proposals. We describe the background to BSPS pension transfers, the factors that make that period unique, the relevance to our objectives, and the wider effects of the consultation including equality and diversity implications.

BSPS and DB pensions

2.2 BSPS was a DB pension scheme sponsored by Tata Steel UK Ltd ('Tata Steel'). DB schemes provide scheme members with a safeguarded inflation proof income for life. The FCA and The Pensions Regulator (TPR) believe that it is in most people's best interests to keep their defined benefit pension. DB pensions are very valuable as they offer consumers guaranteed, inflation-proofed lifetime income for them and their spouse in retirement. They also protect members from the longevity and investment risks that members of DC schemes face.

2.3 Deferred members of DB pension schemes who are more than 1 year away from their normal pension age (65 in the case of BSPS) have the right to request a cash-equivalent transfer value (CETV) of their DB entitlements. Then, within 3 months of that quote, they can transfer that amount into a DC pension – a 'DB transfer'. To protect DB scheme members, in April 2015 the Government introduced a compulsory requirement for those looking to give up their valuable DB benefits to get advice before they transfer if the transfer value they are offered is more than £30,000.

2.4 Most consumers will be best advised to keep their DB pensions and other safeguarded benefits. DC pensions offer readier access to cash than a DB pension and may enable members to leave larger bequests to family members. But DB pensions offer valuable, index-linked benefits at minimal risk. The key risks from transferring from a DB to a DC scheme include:

- losing the guaranteed lifetime income from the DB scheme
- losing inflationary protections offered by the DB scheme
- transferring the investment risk from the scheme (and sponsoring employer) to the member
- the risk of running out of money in retirement and having to rely on state pension
- the cost of paying a DC scheme and investment managers to manage the pension and the investments in it, which is taken from the pension pot

BSPS – Timeline of key events

30 March 2016	Tata Steel announced it was examining options for restructuring the business calling into question the future of BSPS.
26 May 2016	DWP launched a consultation on BSPS. The consultation was intended to run until 23 June 2016 but DWP said it continued to receive responses throughout 2016 and 2017. The Government response to the consultation was published on 19 March 2018.
26 May 2016	The trustees wrote to all (approximately 122,000) BSPS members about the Government's consultation on potential changes to the scheme, enclosing a Q&A document to explain the difference between PPF and BSPS benefits. The letter forecasted cuts in pensions of at least 10% for some 58,000 members if BSPS went into the PPF. The letters explained if BSPS was kept out, it would provide better outcomes for the vast majority of members. However, the letter also said that proposals could change as a result of the consultation or be withdrawn altogether.
Late 2016 – early 2017	On 7 December 2016, Tata Steel announced that it would be carrying out a consultation with BSPS members on a proposal to terminate accrual of benefits under BSPS and offer a DC scheme instead. It carried out a number of 'roadshows' for active members of BSPS about closing the scheme for future benefit accrual.
27 January 2017	Members were sent a letter reassuring them that the trustees were working to achieve the best possible outcome for members.
31 March 2017	BSPS became closed to future accrual.
1 April 2017	Trustees amended how the cash-equivalent transfer value (CETV) was calculated, resulting in most members seeing an increase in their CETV by comparison to before 1 April 2017.
16 May 2017	TPR and PPF agreed in principle to the terms of a Regulated Apportionment Agreement (RAA) which is an arrangement allowing a financially troubled employer to detach itself from its liabilities regarding a DB pension scheme. An announcement was made to members about the options available.
June 2017	Trade unions wrote to their members about the risks of transferring out of the scheme, highlighting the issue of financial advisers with 'questionable motives' and stressing the need for caution before taking a decision to transfer out.
11 August 2017	TPR announced initial approval of the RAA for BSPS.
August 2017	Members were told that if the re-structure was approved, they would have a choice to: 1) move to the new BSPS (BSPS2), 2) move into the PPF with the old scheme, or 3) transfer to a different pension arrangement. Members not making a choice would remain in the old scheme by default.
11 September 2017	Terms of the re-structure were confirmed enabling trustees to start to talk to the members in detail.

9-11 October 2017	The consultation began and member packs were sent out between 9 and 11 October 2017. The period that ran from this date until late December 2017 was called the 'Time to Choose' period and was the subject of the ' <u>Independent review of communications and support given to BSPS members</u> ' carried out by Caroline Rookes.
December 2017	The deadline for members to make a decision was 11 December 2017. As of 1 December 2017 about 30,000 members had not yet made a decision so the deadline was extended to 22 December 2017. Members wanting to transfer to a personal pension needed to obtain a transfer value by this date.
16 February 2018	The trustees' stated deadline for receiving transfer applications.
19 March 2018	The Government published its response to the DWP consultation on BSPS.
29 March 2018	BSPS entered PPF assessment and was closed to transfers.

Uncertainty for members

- 2.5** In March 2016, Tata Steel announced that it was considering plans to restructure the business. In May 2016, DWP took the highly unusual step of publishing a consultation paper on what the restructure would mean for BSPS members and to 'increase its chance of a sustainable future'. In this consultation, DWP said that 'the exceptionality of the situation means that we need to think seriously about all possible options'. Tata Steel and the trustees began communicating with members following the publication of the consultation, raising questions for BSPS members about their pensions. The letters explained that if BSPS was kept out of the PPF, it would provide better outcomes for the vast majority of members. However, the letter also said that proposals could change as a result of the consultation or be withdrawn altogether. This was a high-profile consultation with significant parliamentary and media interest. It considered a number of complex options and didn't clearly favour any option. As a result, from 26 May 2016 there was a long and unique period of uncertainty and concern for BSPS members about their pensions.
- 2.6** Following the consultation closure in June 2016, negotiations continued between the employer, trustees, the Government, TPR, and PPF for over a year. Further concern was created by a separate consultation in January 2017 with members to close the scheme to accruals. The scheme was closed to accruals on 31 March 2017.
- 2.7** In May 2017, agreed changes to the pensions scheme were announced and the PPF reached commercial terms on an RAA. An RAA is an arrangement which allows a financially troubled employer to detach itself from its liabilities regarding a DB pension scheme. Once a scheme is being formally assessed for entry into the PPF, DB transfers are prohibited. TPR approved this on 11 September 2017.
- 2.8** BSPS members were asked to decide on either remaining in the old BSPS, which would go into PPF assessment, or transfer to a new BSPS (BSPS2) which would continue but with some reduced benefits. This period ran from October to late December 2017 and was known as the 'Time to Choose' period. Although not an explicit choice, members

who had not begun receiving payments from their DB pension could instead choose to transfer out of the BSPS into a DC pension. To make a DB transfer before BSPS entered the PPF, members needed to submit paperwork by 16 February 2018.

- 2.9** For some members, it was not clear whether BSPS2 or the PPF was in their best interests until they received their Time to Choose packs in October 2017. The uncertainty was increased because it would not be clear until the January 2018 viability exercise whether BSPS2 would proceed, and because there was no time to give individual PPF estimates to members. BSPS members, many of whom had been largely passive pension savers, found themselves having to make major and irreversible choices about their financial futures.
- 2.10** Of 122,000 BSPS members, 44,000 were eligible for a DB transfer. About 7,700 members chose to transfer out of BSPS into a DC pension scheme.
- 2.11** Throughout the period from 26 May 2016 to 29 March 2018, BSPS members were kept informed about what was being considered for the future of BSPS. But they still faced significant uncertainty and had genuine concerns that they needed advice on.

Unique circumstances faced by BSPS members

- 2.12** The events in this timeline show that current and former steelworkers who were BSPS members had to make very important, and often complicated, decisions about their pensions by December 2017. The Work and Pensions Select Committee found that steelworkers did not get the support they needed when making those choices.
- 2.13** A review commissioned by TPR and published in January 2019 ('the Rookes Review'), found that BSPS members experienced, and were influenced by, a set of unique circumstances. This included distrust of their employer, limited information on alternative options, tight timescales to make a decision, and limited support, which allowed financial advisers to 'prey' on members in vulnerable circumstances.
- 2.14** A report by the Work and Pensions Select Committee from February 2018 noted the 'confusion and mistrust bred by the Time to Choose exercise'.
- 2.15** The specific circumstances around the Time to Choose exercise are likely to have put steelworkers in a very difficult situation. Given the limited information about the various options, many members sought advice as a way of 'taking control' of their situation, but with no clear objective of what they were trying to achieve. In other DB transfer cases, consumers are usually more active in seeking advice and have specific objectives that they want to achieve. This often leads to greater clarity and engagement with the process.
- 2.16** In this environment, it is clear a number of financial advisers and others, such as unauthorised introducers, took advantage of member confusion and concern. The Work and Pensions Select Committee said "'dubious advisers' exploited BSPS members for personal gain. They were supported in this cynical enterprise by unregulated and parasitical introducers, who were incentivised to induce as many steelworkers as possible to consider transfers."

- 2.17** Our review of firm files shows evidence that suggests that some members were in vulnerable circumstances. For example, BPS members tended to have no other assets and seemed to rely more on income from the DB scheme than members of other schemes. Some members did not have other sources of money to fund their retirement and had significantly lower financial knowledge when compared to others taking DB advice.

How it links to our objectives

Consumer protection

- 2.18** The proposed redress scheme will advance our objective to secure an appropriate degree of protection for consumers by ensuring that consumers who received unsuitable advice and suffered harm receive redress.

Competition

- 2.19** We have considered the impact that the proposed redress scheme will have on competition and we are satisfied that it promotes effective competition in the interests of consumers consistent with our competition duty under section 1B(4) of the Financial Services and Markets Act 2000 (FSMA).

Wider effects of this consultation

Impact on professional indemnity insurance and DB transfer advice

- 2.20** The use of our power under section 404 (s. 404) of FSMA to introduce a redress scheme is a significant intervention. So we have carefully considered the impact that a scheme might have on the pension transfer market and on consumers more generally. For example:
- Professional indemnity (PI) insurers further restricting or significantly raising the price of cover, potentially increasing costs for advice firms or limiting their choice of PI insurers. These costs may be passed on to consumers seeking advice, which may in turn make this advice less affordable and reduce the number of people who can afford access to advice.
 - Advice firms leaving the market and so avoiding the risk of having to pay redress. This would have implications for FSCS, ultimately increasing the levy for remaining firms in the advice market and other levy paying firms. It would also have implications for consumers, who may not get full compensation.
 - Advice firms exiting the market which may reduce the choice of advice firms for some consumers, potentially increasing prices for advice and reducing the numbers of people who can afford to access advice.

- 2.21** We considered the potential wider market implications compared with the likely market conditions if we do not go ahead with a proposed redress scheme for BPS members. We think it unlikely that our proposals would lead to wider deterioration in the PII market. We note that elements of competition in that market are already likely to be limited and any change as a result of the proposed redress scheme is likely to

be incremental. For the DB transfer advice market, we believe the risk of any material impact as a result of the proposed redress scheme is very low. We provide more detail in our CBA at Annex 2. We will undertake further work during the consultation period to better understand these factors in advance of publishing our Policy Statement.

Equality and diversity considerations

- 2.22** We have considered the equality and diversity issues that may arise from the proposals in this Consultation Paper.
- 2.23** We are required under section 149 of the Equality Act 2010 to have due regard in the exercise of our functions to the need to:
- eliminate discrimination, harassment, victimisation and other conduct prohibited by the Act
 - advance equality of opportunity between people who share a relevant protected characteristic and those who do not
 - foster good relations between people who share a relevant protected characteristic and those who do not
- 2.24** Our proposals are targeted at consumers who transferred out of BSPS into a DC scheme. We have identified existing disadvantages faced by these consumers who share a protected characteristic.
- 2.25** Younger members, or those who have recently retired, may be disadvantaged by transferring out of BSPS as they may not realise that they have suffered a loss until much later in life when it is likely that they will be time-barred from making a complaint. Our analysis of file reviews shows that many consumers under 50 were given unsuitable advice to transfer out of BSPS.
- 2.26** Adviser firms should also consider the health of the member (and whether they have a disability) as well as marital status when determining whether a DB transfer is suitable. If a consumer who is disabled or married is given unsuitable advice to transfer out of a DB scheme, they may be left with insufficient income to support themselves or their dependents in retirement.
- 2.27** Our research has shown that many consumers who transferred out of BSPS are not considering making a complaint about the advice they were given. Of the known demographics of this group of consumers, we have identified that older people above 65, disabled consumers, and consumers whose first language is not English are less likely to complain as a result of lower financial knowledge and confidence. While the majority of the affected consumers are male, white, and geographically located in South Wales and Scunthorpe, we have identified that women and ethnic minority consumers were also less likely to complain. However, pensions advice is complex so it can be difficult for many consumers to know whether their advice was suitable.

- 2.28** Our proposals will impact all consumers within scope of the scheme by making sure they have the opportunity to access redress for any financial loss suffered as a result of unsuitable advice regardless of whether they have a relevant protected characteristic or not. We believe that our proposals seek to eliminate disadvantages faced by persons who share a protected characteristic by making sure they are put in a position they should have been in had they received suitable advice.
- 2.29** If we decide to implement a scheme, we expect firms to take steps to identify and prioritise consumers that may be in vulnerable circumstances or who may need fast access to redress, for example if they are in or nearing retirement.
- 2.30** By proposing an opt-out scheme rather than an opt-in scheme or continuing with a complaints-led approach, we are minimising the steps that consumers need to take to access redress. An opt-in scheme could be disadvantageous to consumers with protected characteristics who tend to be less likely to complain.
- 2.31** There may be some points in our scheme where consumers are required to take action, for example, providing missing information to assess suitability or calculate redress. The groups of consumers identified above who are less likely to complain may not act when they should to progress their case. We aim to mitigate these risks by making sure accessible versions of communications are available.
- 2.32** We believe the positive impacts of our proposals will outweigh the negative impacts on consumers with protected characteristics. If we do not proceed with our proposals, the disadvantages on consumer groups we have identified would still be present, and to a greater degree. More consumers would have to complain to access redress. Our proposed scheme seeks to minimise the barriers as far as we can to make sure as many consumers as possible within scope of the scheme can receive appropriate redress if their advice was unsuitable.
- 2.33** Overall, we do not consider that the proposals negatively impact any of the groups with protected characteristics under the Equality Act 2010 materially. We believe our proposals can help promote equality of opportunity and good relations between groups. But we will continue to consider the equality and diversity implications of the proposals during the consultation period and will revisit them when making the final rules. In the meantime, we welcome views on our equality and diversity considerations in response to this consultation.

3 Evidence of consumer harm

- 3.1** In this Chapter we briefly explain the standards that applied to firms which provided pension transfer advice to BSPS consumers in the relevant period. We summarise the results of the file reviews that we have carried out, and we estimate the possible losses to consumers as a result of receiving unsuitable advice.

Standards for DB pension transfer advice

- 3.2** Firms who provide DB transfer advice must comply with the rules in the FCA Handbook. The rules set out various requirements for both the giving of advice and firm conduct generally.
- 3.3** During the relevant period for the proposed redress scheme (26 May 2016 to 29 March 2018), firms were required to comply with COBS 9.2.1R(1) and COBS 19.1 when they made a personal recommendation about a pension transfer. These sections of our Conduct of Business Sourcebook in our Handbook require firms to take reasonable steps to ensure that a recommendation to transfer (or to remain in a DB scheme) is suitable for the client. Advice is 'suitable' if the personal recommendation complies with COBS 9.2.1R(1). Advice is 'unsuitable' if the personal recommendation does not comply with COBS 9.2.1R(1).
- 3.4** COBS 9.2.1R(2) specifies that to make a suitable recommendation, a firm must get the necessary information about the client's: (a) knowledge and experience in the investment field relevant to the type of investment, (b) financial situation, and (c) investment objectives. COBS 9.2.2R also specifies that a firm must get such information as is necessary for it to understand the essential facts about the client, and have a reasonable base for believing, giving due consideration to the nature and extent of the service provided, that the transaction recommended: (a) meets the client's investment objectives, (b) is such that they are able financially to bear any related investment risks consistent with their investment objectives, and (c) is such that they have the necessary experience and knowledge in order to understand the risk involved in the transaction.
- 3.5** COBS 9.2.2R(2) and (3) and 9.2.3R also specify the information that the firm must collect including: the consumer's objective, including, where relevant, information on the length of time the consumer wants to hold the investment, the consumer's preferences for risk taking, the consumer's risk profile, and the purposes of the investment. The firm must also collect information about the consumer's financial situation, including, where relevant, the consumer's regular income, assets, and financial commitments.
- 3.6** COBS 19.1 sets out requirements for firms about preparing and providing a transfer analysis. A transfer analysis compares the benefits likely to be paid under a DB 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. It also makes further rules about suitability.

- 3.7** Since the relevant period for the proposed BSPS redress scheme, we have strengthened our requirements on firms who give DB transfer advice, and given additional guidance to help firms understand how we expect them to comply with our rules. To be considered suitable, advice that was given to BSPS members during the relevant period must meet the standards that were in place at the time the advice was given.

Consumers in vulnerable circumstances

- 3.8** A client in vulnerable circumstances is at greater risk of not being in a position to understand the potential implications and risks of a pension transfer. There is also a greater risk that they could be pressured into a decision that may not be suitable for them. We expect advisers and pension transfer specialists to take steps to accurately identify clients in vulnerable circumstances and to take appropriate action to reduce the risks of a poor outcome.
- 3.9** As noted in the report from Grant Thornton which is published on our website: 'In the case of members of BSPS during the Time to Choose exercise, we would consider a [pension transfer specialist] should have taken into account the additional stress and uncertainty which this may have caused. Many of the members of the scheme had been employed with British Steel/Tata for most or all of their working life and would therefore be significantly reliant on the benefits they had accrued within the scheme. Due to the significant media coverage of the scheme's financial difficulties, as well as the uncertainty regarding whether BSPS2 would proceed, members may have been more likely to wish to proceed with a transfer without fully understanding the implications of this, rather than accept the perceived risk, however unlikely, of losing their retirement benefits. Members may have felt distrustful of the scheme and its future, which may have influenced their own views on the merits of transferring out their CETV. We would expect a [pension transfer specialist] to recognise this but to consider the facts of the member's situation and options dispassionately. Although such members may not have met the above mentioned criteria for vulnerable clients, we consider that nonetheless a reasonable [pension transfer specialist] should have taken these factors into consideration and been cognisant of the additional pressures which members may have felt to protect their scheme benefits.'

Unsuitable advice given to BSPS members

- 3.10** To assess the extent of unsuitable advice, we reviewed files from firms who advised BSPS members between 1 March 2017 and 31 March 2018 - the period before and during the Time to Choose period. We looked to see whether this advice complied with the rules in place at the time.

Review of advice

- 3.11** We appointed external file reviewers to assess whether:
- the recommendation to transfer was suitable in each case
 - the firm's recommendation was likely to have caused the consumer loss

3.12 The external file reviewers used our Defined Benefit Advice Assessment Tool (DBAAT) which we developed to assess the suitability of advice to transfer from a DB scheme to a DC scheme. The DBAAT was designed to assess whether advice complied with our existing rules at the time of the advice. The independent file reviewers were trained to ensure that they understood the DBAAT and its instructions. We also made quality assurance checks to verify that, following the training, the reviewers were competent to complete the reviews.

3.13 We were careful to take into account what a reasonably competent pension transfer specialist should have known, given the information they should have obtained during the relevant period for the scheme, not what the firm might know now, with the benefit of hindsight. The report from Grant Thornton which we have published on our website analyses the information available to firms during the 'Time to Choose' period and sets out the steps a competent and reasonable adviser should have taken in the period when advising BSPS members.

Sample design

3.14 We asked an external statistician to advise on a sample design for the review of advice described above, taking into account information that we already held from our supervisory investigations and multi-firm review, to produce results to establish with reasonable certainty:

- the percentage of transactions that involved unsuitable advice
- whether unsuitable advice was widespread across firms

3.15 The proposed design had to use existing data we held and produce robust data for the purpose of producing evidence to help us in making our regulatory judgment, but also be proportionate in terms of the time taken and resource used.

3.16 The sample was made up of files from 2 file review exercises, taken at separate points in time from 2 groups of firms:

- The first group involved 302 file reviews, drawn from 36 firms as follows:
 - 205 were from 29 firms sampled during our fourth multi-firm review. Files were randomly drawn from firms' business registers.
 - 97 were from 7 firms under supervision investigation in 2018.
- The second group involved 63 files drawn from a stratified random sample of 53 firms from a relevant number of 295 firms in the group which we believed had provided advice in the relevant period.

3.17 The sampling process is described in detail in the statistician's report in Annex 6.

Results – prevalence of unsuitable advice

3.18 In total, there were 365 files in our sample from 89 firms. We found that:

- only 41% of recommendations were suitable
- in 14% of cases the suitability of recommendations was unclear due to a material information gap
- in 46% of cases the recommendation was unsuitable

3.19 Of the 89 firms reviewed, we found cases of unsuitable advice files in 51 of them.

Table 1: Rates of unsuitable advice among BSPS transfers before and during Time to Choose: central estimates and bounds of the 95% confidence interval.

	Central estimate	Upper bound	Lower bound
Unsuitable	46	54	37
Suitable	41	52	32
Material Information Gap	14	22	8

Note: Rates of unsuitable advice among BSPS transfers before and during Time to Choose are given as a ratio between the number of unsuitable cases and the total number of advice cases; the aggregate ratio is calculated as an average weighted by volume of BSPS cases written by individual firms. Due to rounding the central estimates do not add up to 100%.

3.20 At 46%, the proportion of advice that was unsuitable for BSPS customers is significantly higher than we have found in other FCA reviews of DB transfer advice. Separately we reviewed higher-risk firms providing non-BSPS advice. In those cases, 17% of advice was unsuitable. In cases where material information gaps meant the suitability of advice could not be assessed, we are concerned that the absence of key information in the file might indicate that the information was not gathered and so the advice was likely to have been unsuitable.

3.21 The estimate of the unsuitability rate for firms that conducted fewer than 10 transfers or with a conversion rate of under 75% is highly uncertain, as it is based on a small sample of 21 files. Whilst we estimated it at 19%, the statistical error attached to this finding does not allow us to conclude that it is significantly lower than the unsuitability rate in the rest of the population. As a result, our conclusion that failures are widespread in the population is not affected. Please see the statistician's report in Annex 6 for details.

3.22 As well as this evidence, we know that 98% of BSPS complaints about the suitability of the transfer advice considered by the Financial Ombudsman Service and 95% of FSCS cases to date have been found to be in favour of the consumer.

3.23 Having considered the unusually high level of unsuitable advice across a wide number of firms, along with other information such as uphold rates from the Financial Ombudsman Service and FSCS, we concluded that there was strong evidence that unsuitable advice was widespread among the firms advising BSPS customers in the relevant period.

Common failings from our file reviews (reasons why advice was unsuitable)

3.24 Of the cases we have reviewed and found to be unsuitable, we have identified the following common drivers of unsuitability.

- In 66% of unsuitable cases the client relied on the income from this DB scheme. In most cases, the client and their spouse (where relevant) did not have any other significant pension provision above the state pension.
- In 60% of unsuitable cases a key reason for the transfer was to maximise death benefits. However, in these cases the firm had not properly explored alternative ways of doing that, had not established that the client could bear the risk of the transfer (as the client relied on the income), or the evidence on file suggested the client was young and in good health.

- In 50% of unsuitable cases the client was under 50. This meant they were under the minimum age that they could access their pension and, as a result, many members did not have clear plans for their retirement. Some of these members were in their early 30s.
- In 46% of unsuitable cases the firm's transfer analysis did not support the decision to transfer. The critical yield (the rate of return needed from a DC scheme to replicate the benefits of their DB scheme) did not appear to be possible.
- In 40% of unsuitable cases the client did not appear to have the knowledge and experience to understand the risks of the transfer. In many of these cases, the adviser did not correct a client's misunderstanding about the options available to them or the protection provided by the PPF.

3.25 The following 2 case studies outline typical scenarios that we and the Financial Ombudsman Service have seen and summarises why the advice is unsuitable.

Case Study 1

Mr A was 47 years old and married to his partner who was 45 years old. He had 2 financially-dependent children under 12. Mr A held deferred benefits in BSPS and approached an advice firm about transferring his BSPS DB pension during the British Steel Time to Choose exercise. He was offered a cash equivalent transfer value of £380,000. At the normal retirement date (NRD) of age 65, the old BSPS scheme was due to pay either £25,000 as an income, or £16,500 as an income and £110,000 as a lump sum if full pension commencement lump sum (PCLS) was taken.

Mr A had worked for British Steel for 25 years and joined the pension scheme in 1992. He had a protected retirement age of 50 within the scheme. His current income was £30,000 gross per year. He owned his own property, with a capital repayment mortgage with affordable monthly repayments that would end when he reached 55 years old. Mr A and his wife had a small amount of savings in cash individual savings accounts that acted as an emergency fund as well as personal accounts for everyday spending. He was expected to receive a full state pension and his wife would receive a limited state pension. The total combined state pension at retirement was due to be £12,000 per year. The firm recorded that he had no previous investment experience and a limited understanding of investments.

Mr A was concerned that the pension scheme may have to enter the PPF and that his benefits would be greatly reduced. He wanted to retire at age 55, with a net income of £20,000 and to be able to enjoy financial security in retirement. He did not have the need for a large lump sum. At age 55 the old BSPS scheme would pay a yearly income of £13,500 (assuming no lump sum was taken). The transfer analysis report showed that the PPF would pay a yearly income of £12,000 at age 55.

The firm assessed Mr A as having a cautious attitude to investment risk (3 out of 10 on a risk profiling tool) and noted that Mr A would like most of his pension to be protected as much as possible. He preferred guarantees, though suggested he was willing to take some risk to secure a better return.

Based on Mr A's concerns with the scheme security and the potential for it entering the PPF, the prospect for greater returns in a DC arrangement and the fact that the client couldn't meet their income needs at age 55 from BPS2 or the PPF, the firm recommended that Mr A should transfer out of BPS2. They recommended he should transfer to a self-invested personal pension and invest in a portfolio of managed funds.

The advice was unsuitable for the following reasons.

- This pension was the client's only private pension provision, on top of the state pension. Mr A and his wife relied on this pension to meet their income needs in retirement.
- While the client couldn't meet their income needs by retiring early from the PPF or BPS2 at age 55, trying to do so by transferring to a DC scheme put the pension at high risk of running out during his lifetime. He would need to draw £20,000 net from the DC pension for at least 12 years, until the state pension started being paid. This placed significant risk that the pension would be fully used up within their lifetime. This risk was higher than the client was willing and able to take.
- Early retirement was still available in both BPS2 and the PPF. It would have been possible to delay retirement later than age 55, but before the scheme NRD (age 65) and meet the client's income needs. For example, they could commute some income for PCLS and use this lump sum to 'bridge' until the state pension. Taking this approach would have meant the client was at no risk of running out of money in retirement.
- The client had low knowledge and experience. They were unlikely to be able to understand the significant risk of transferring to a DC pension arrangement and retiring at age 55. The firm did not appropriately challenge the client's concerns around the PPF. For example, it was not made clear that the PPF still provides security of income in retirement.
- By transferring out, the client was under an additional burden to manage the pension and make investment and withdrawal decisions throughout their retirement. If the client engaged an adviser for support, this would come at a cost which would reduce the value of their pension over time.

Source: FCA file reviews

Case Study 2 (Case Study from a Financial Ombudsman Service final decision)

Mr H approached an advice firm as he was concerned about his BPS2 pension. Lots of his colleagues were transferring out of the scheme and he was worried his pension would end up in the PPF. Transfer values were also higher than they had been before (Mr H's transfer value had increased significantly within a few months) and members generally felt there was a risk these values would go down again at some point.

Mr H also said he was worried that he would lose the flexibility to retire early once BPS2 had moved to the PPF. So it's quite possible that Mr H approached the firm leaning towards the decision to transfer. However, it was the firm's obligation to give Mr H an objective picture and recommend what was in his best interest.

Mr H was particularly concerned about BSPS moving to the PPF. He was worried he could lose some of his pension. However, the figures showed that even if this happened, Mr H was still likely to be better off not transferring. There was no evidence to show that this was properly explained to him. Instead, the suitability report talked about the threat of the PPF, and the potential loss of benefits which the firm said were important factors in the decision to transfer. It appeared that the firm didn't provide Mr H with an objective picture about the PPF and what this might mean for him specifically.

In their final response letter to Mr H's complaint, the firm acknowledged he had been concerned about losing the flexibility to retire early in the PPF. However, there was no evidence that the firm had actually explained to him that early retirement was still possible in the PPF and so his concerns in this regard weren't justified. Overall, the firm didn't do much to alleviate Mr H's concerns and fears, but used them as a reason to help rationalise a transfer.

Source: Financial Ombudsman Service, [financial-ombudsman.org.uk/decision/DRN-3102248.pdf](https://www.financial-ombudsman.org.uk/decision/DRN-3102248.pdf) (PDF)

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

Losses suffered by consumers who received unsuitable advice

3.26 Consumers should be able to expect that when they take financial advice, firms will take reasonable steps to ensure that the advice is suitable for them. Unsuitable pension transfer advice can have a significant impact on consumers. When they transfer out of a DB pension scheme, consumers lose the security of a guaranteed income which typically increases broadly in line with inflation. They may also lose other valuable pension benefits for their spouse and any dependents. They then bear the risk that their pension investments might not perform well enough to give them the income they need for the rest of their life. They also become responsible for paying charges which might not be obvious to them but which, for many, will be one of their largest monthly expenses.

3.27 As we have shown, unsuitable advice to BSPS members before and during Time to Choose was widespread. This caused substantial losses to consumers. Using data from FSCS, based on claims that FSCS have considered to date, we estimate that 94% of consumers who received unsuitable advice suffered losses. Using data from our survey of firms we estimate the average amount lost per consumer to be about £60,000. We describe how we produced this estimate in the CBA at Annex 2.

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

4 Options for addressing the harm

4.1 In this Chapter we discuss the legal tests that have to be met before we can implement a consumer redress scheme. We also explain the alternative options that we have considered to deliver redress given the evidence that we have of consumer harm.

The s. 404 power and the test to be met

4.2 Where the conditions in s. 404 of FSMA are met, we have the power to make a consumer redress scheme which requires firms to review their advice and, where relevant, to pay redress to consumers.

4.3 In summary, the conditions in s. 404 are that:

- 1.** it appears to us that there has been a widespread or regular failure by firms to comply with requirements applicable to carrying on an activity (here, providing advice to transfer out of the BSPS)
- 2.** it appears to us that, as a result, consumers have suffered (or may suffer) a loss which a court would remedy
- 3.** we consider that such a scheme is desirable for the purpose of securing redress, having regard to other ways in which consumers may obtain redress

4.4 We consider that these conditions are met and so the legal test for making a s. 404 scheme is met. We set out our reasons below.

Widespread failure

4.5 In our view, the proportion of unsuitable advice across the firms we sampled provides strong evidence that there has been a widespread failure by firms to comply with the requirement in COBS 9.2.1R(1) to take reasonable steps to ensure that advice to BSPS members to transfer is suitable. As well as this evidence, we have had regard to complaints and claims to the Financial Ombudsman Service and FSCS, a significant number of which have been resolved in favour of the consumer. See Chapter 3 for more detail.

Actionable loss

4.6 Our file reviews also provide strong evidence that consumers who received unsuitable advice have, as a result of that advice, suffered (or may suffer) actionable loss. During our file reviews we assessed 'causation' and found that in the vast majority of cases the firm's advice was the effective cause of the consumer's decision to transfer.

4.7 Our legal analysis is that where a consumer received advice to transfer their BSPS benefits to a DC scheme, and that advice was unsuitable (non-compliant with COBS 9.2.1R(1)), then the consumer should, in principle, be entitled to recover the full amount of the loss from that transfer from the adviser. This is regardless of the actions of other parties, such as introducers, or delays in providing information about a consumer's options leading up to Time to Choose.

- 4.8** We have used data from firms and FSCS to estimate loss to consumers from unsuitable advice to transfer out of BPS in the relevant period. The data from our survey of firms suggests the average loss is about £60,000 per consumer.

Desirability

- 4.9** We consider it desirable to make rules to secure redress for consumers who were unsuitably advised to transfer their BPS benefits to a DC scheme. In particular, we consider that the proposed scheme, as set out in Chapter 5, will deliver a greater total amount of redress to a greater number of consumers than the other available options.
- 4.10** We believe that, compared with a s. 404 redress scheme, the alternative options (even when combined) would mean that a significant number of BPS consumers would not receive compensation they were owed. This is a group of consumers who are unlikely to proactively make a complaint, some of whom have vulnerable characteristics and need help to identify whether the advice they were given was unsuitable. The alternative to collective action is firm-by-firm action. In our experience, supervisory action in this market on a firm-by-firm basis is resource-intensive and does not produce timely outcomes for consumers. So we concluded that a redress scheme under s. 404 is desirable.
- 4.11** We also consider that the proposed scheme is consistent with our general duties and is best suited to delivering against our consumer protection objective. We have had regard to the burdens on firms under our proposed scheme and we consider that these are proportionate to the benefits from it.
- 4.12** We discuss the alternative options we considered in more detail below. Further details of the likely costs and benefits of the options are in the CBA at Annex 2.

Alternative options for obtaining consumer redress

- 4.13** We have considered several alternative options to ensure that consumers receive redress. These include continuing with our current supervisory and enforcement work but doing nothing extra, greater supervisory action, an enhanced engagement strategy, and an opt-in s. 404 consumer redress scheme.
- 4.14** Table 2 contains our central estimates of the expected scale of reach, costs incurred and benefits of our proposed redress scheme alongside our current work with firms who advised BPS members, as well as alternative options under consideration. For advice firms the costs shown here are administrative costs only. The cost of paying redress is a transfer to consumers and is not shown here.

Table 2: Summary of costs under different intervention options

Category	Measure	Option 1: current supervisory and enforcement approach	Our proposal: s. 404 with opt-out	Option 2: Enhanced supervision (including current supervisory approach)	Option 3: Enhanced communica- tions	Option 4: s. 404 with opt-in
Scale	Number of consumers in scope	1,100	4,000	2,300	4,000	4,000
	Number of consumers who receive redress	300	1,400	600	100	1,200
Costs	Firms (compliance)*	£2.0m	£11.1m	£4.1m	£0.6m	£10.0m
	FSCS	£6.3m	£20.6m	£14.7m	£1.8m	£17.7m
	PI insurers	£4.2m	£19.4m	£5.3m	£1.7m	£17.1m
	FCA	£0.0m	£3.2m	£0.7m	£0.4m	£2.0m
Benefits	Total redress paid to consumers	£15.1m	£71.2m	£30.8m	£6.3m	£63.3m
	Benefits less administrative costs of the scheme**	£13.2m	£56.9m	£26.0m	£5.3m	£51.3m

Note: FCA costs are presented as midpoints of our estimated range for clarity.

* Firms' costs include case fees paid by firms to help cover the administrative costs of the Financial Ombudsman Service. For more on the costs of the Financial Ombudsman Service see the CBA in Annex 2

** Administrative costs here are taken to be firms' compliance costs and FCA costs. We do not include FSCS administrative costs within this calculation.

4.15 We provide further detail on our assumptions and estimates for each alternative option in our CBA in Annex 2.

Option 1: Counterfactual – continue with current supervisory and enforcement work but do nothing extra

4.16 One option is to continue with our current supervisory and enforcement work on BSPS. Our current work includes working with the Financial Ombudsman Service and the FSCS to encourage consumers to make a complaint and targeted reviews of DB transfer advice firms. We consider this our counterfactual scenario. We have looked at the incremental effect of the other options against this counterfactual scenario, as well as the total number of consumers and amount of redress that would arise under each option.

4.17 Under this counterfactual option to date, we have identified 45 firms who advised about 2,500 BSPS members where a PBR is required. Of those, 17 firms have entered insolvency proceedings, 2 have completed the PBR and our work continues with the remaining 26. Consumers have been required to opt in to having their advice reviewed and a number of consumers have not opted in or responded to firms at all. This counterfactual option requires us to take individual action with each firm. It is highly complex, resource intensive and time inefficient, and has to date only seen £12.65m in redress paid out to BSPS consumers.

- 4.18** If we continue with this option only, we expect an additional 1,100 BPS consumers to have access to redress via FSCS, the Financial Ombudsman Service, or opt-in PBRs. Of the 4,000 members we estimate to be within scope of our proposed redress scheme, this means an estimated 2,900 members would need to actively decide to make a complaint to have their advice reviewed.
- 4.19** In the coming years it is likely that many of these consumers will become time-barred from making a complaint. Our complaint-handling rules require a complaint to be brought no later than 6 years from the date of the event complained of or, if later, 3 years from the date on which the consumer became aware (or ought reasonably to have become aware) that they had cause for complaint. We consider any 6-year period is likely to apply from the date the consumer was given the advice to transfer out of BPS. Any 3-year period will start from the date that the consumer knew, or should reasonably have known, that the advice they received might have been unsuitable.
- 4.20** Given the circumstances, we believe further action is required to address harm suffered by BPS consumers. Otherwise, a significant number of consumers who received unsuitable advice will not receive redress.

Option 2: Enhanced supervisory action on a firm-by-firm basis

- 4.21** This option builds upon our counterfactual position in Option 1. It would involve taking supervisory action against further firms who have not been included in our work to date. Of these, we have identified 16 firms who pose the highest risk in terms of volume of relevant BPS DB transfers. By including these firms, we would increase the estimated number of consumers who would have their advice reviewed by 1,200 to 2,300 (30% of all BPS members who transferred during the relevant period).
- 4.22** The large number of firms undertaking BPS transfers (more than 330) makes it too resource-intensive to take individual action against all firms and could create delays to consumers getting redress. This would be particularly problematic for consumers near the end of the limitation periods for making a complaint. We would instead limit our approach to those firms who have undertaken large volumes of transfers. This would mean that customers of firms who have carried out low numbers of transfers would need to proactively make a complaint to get redress. However, given that consumers do not appear to be taking action to obtain redress, we do not estimate a significant increase in numbers making complaints under this opt-in scenario.
- 4.23** Further supervisory work could include file reviews by the FCA. These would involve us reviewing representative samples of files from the additional 16 firms. Where we identify harm we could then require firms to assess the advice they gave. The advantage of this option would be to include further BPS consumers in opt-in PBRs than in Option 1. However, we estimate only an additional 300 consumers would receive redress, making only 600 consumers in total. While this is a significant improvement on the counterfactual at Option 1 it is significantly lower than the 1,400 who we estimate will receive redress under the proposed scheme. It is also likely to be more resource-intensive and time-consuming for us to review files and set up PBRs on a firm-by-firm basis than the redress scheme we are proposing. Many consumers would also risk being time-barred from making a complaint.

Option 3: Enhanced engagement strategy to encourage consumers to consider complaining

- 4.24** We have previously carried out communication and engagement work to encourage consumers to consider making a complaint. This has included mailings, local events, and communication through partners to raise awareness, and providing tools such as our advice checker to make it easier to complain.
- 4.25** We could build on this with further communications activity. This would be cheaper to do compared with implementing a redress scheme. Consumers who have engaged with our communications and attended our events to date have said they were useful and helped them to decide their next steps. But, despite previous engagement like this (including a letter we sent in June 2020 to all 7,700 members who transferred out which aimed to help them understand whether they may have received unsuitable advice and how to make a complaint or claim) a significant majority of consumers have not made a complaint. Our survey of members carried out in January 2021 suggested 56% of former BSPS members were not planning to complain, while only 20% were considering complaining. While we have seen an increase in complaints following our most recent events, including town hall style meetings and one-to-one drop-ins held in Scunthorpe and Swansea from September to December 2021, total complaints to the Financial Ombudsman Service remain relatively low. About 800 BSPS members (11% of members who we estimate were advised to transfer and did so) have complained to the Financial Ombudsman Service about their advice despite communications and support to encourage complaints. Some of these have been referred to FSCS. Many of the consumers who complained to the Financial Ombudsman Service have been represented by claims management companies.
- 4.26** We know from research with former BSPS members that there are significant barriers to complaining. These include lower financial resilience when compared with other DB scheme member groups and lower financial knowledge and experience. This means that members can find it hard to understand if they were given unsuitable advice and may feel awkward complaining to their adviser if a personal relationship exists. Given our evidence that BSPS consumers appear less likely to complain under an enhanced communications approach a significant number of consumers would not get the redress they are owed.
- 4.27** There is also a risk that firms will not handle complaints appropriately, consumer harm will continue as a result, and we would need to use significant supervisory resource to manage this risk.
- 4.28** We have used a central assumption that 10% of consumers complain about their DB advice and 99% of consumers accept the redress offer and provide their bank details where advice is found to be unsuitable (for further details see Annex 3 on Consumer response rate estimates).

Option 4: An opt-in s. 404 consumer redress scheme

- 4.29** This option is to establish a s. 404 scheme similar to the one we are proposing, but with a requirement for consumers to opt in to the scheme before firms will be required to carry out the scheme steps for them. This means that consumers who otherwise qualified for the scheme would not have the advice they received assessed for suitability unless they took action to join the scheme.

4.30 Fewer consumers in the scheme means that this option would be considerably less costly to firms and to us compared to a full consumer redress scheme. Despite potential savings on administrative costs compared with an opt-out s. 404 scheme, this option means fewer BSPS consumers receive redress for losses suffered. Our estimates show that the opt-in scheme will pay redress to 1,200 consumers compared with 1,400 consumers under an opt-out scheme. This means that 14% of consumers who would receive redress under the proposed scheme would miss out if we implemented an opt-in scheme instead. There is also a risk that, under an opt-in scheme, some firms may try to actively dissuade or otherwise influence consumers who are considering opting into the scheme. Consumers who do not opt in to the scheme might then be time-barred from making a complaint at a later date.

- Q3:** Do you agree 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?
- 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?
- Q6:** Are there any other alternative options that we should consider?

5 Proposals for the consumer redress scheme

- 5.1** In this Chapter we describe the redress scheme that we are proposing to implement. The draft rules for the proposed scheme are at Appendix 1 of this CP.
- 5.2** In summary, we are proposing a redress scheme under s. 404 of FSMA. The scheme will require firms who gave advice to certain BPS customers to transfer their safeguarded benefits to a DC scheme to assess whether the advice was suitable, and to pay appropriate redress where the advice was not suitable.
- 5.3** The scheme is intended to address the harm set out in Chapter 3 by ensuring that BPS members who received unsuitable advice can receive redress, to put them back in the position they would have been in if the advice had been suitable and complied with our rules (or as close as possible to that position). To achieve this, we aim to:
- ensure that the scheme is effectively implemented and that it delivers efficient and consistent results to consumers, incorporating learning from the [Swift review](#) (a review of the redress scheme that was set up for customers who were mis-sold interest rate hedging products)
 - avoid unnecessary complexity so that firms and consumers understand the scheme, what it means for them and any action they may be required to take
 - work closely with the Financial Ombudsman Service and FSCS on the detailed design of the scheme to ensure that consumers receive fair and consistent outcomes
- 5.4** Before publishing this CP, we discussed high-level proposals for the design with steelworkers and their representatives, trade associations, the Financial Ombudsman Service, FSCS, Financial Services Consumer Panel, Financial Services Practitioner Panel, and the Smaller Business Practitioner Panel. We are actively seeking the views of all stakeholders as part of this consultation process, whether or not they have already spoken to us.
- 5.5** Steelworkers generally supported our proposals but raised concerns about firms 'marking their own homework' by assessing their own advice. They believe that firms will be incentivised to assess the advice as suitable, even if it is not. Steelworkers wanted as many people as possible to be included in the scheme and raised concerns that, currently, people might be getting inconsistent outcomes or redress amounts. Trade bodies were concerned about redress schemes being used more widely for DB transfer cases, the impact on FSCS, and how this work links to our separate review of the redress calculation methodology for pension transfer cases generally. Stakeholders also asked about the risk that firms would wrongly say that they advised consumers not to transfer but consumers had insisted on doing so.
- 5.6** We have taken on board early feedback from stakeholders in formulating our proposals. In line with CONRED 1.3.12G we sought Queen's Counsel's opinion on whether the failures we propose to address with the scheme would be recognised as failures by a court or tribunal. Counsel's opinion is at Annex 7. In the following section we discuss our proposals for the scope of the scheme, the steps for firms to take under the scheme, and our proposed arrangements for reporting, oversight, and implementing the scheme.

Scope of the redress scheme

Who is covered by the scheme

BSPS members who transferred out after being advised to do so

- 5.7** We propose that the scheme will apply to personal recommendations given by firms to BSPS members to transfer out of BSPS. The advice must have been given in the relevant period.
- 5.8** Some cases are in the process of being considered by a firm, either as part of a PBR initiated by us, or because the consumer has made a complaint to the firm. We propose that these cases are included in the scheme except for cases being dealt with under PBRs involving skilled persons. (See the section below on 'Who will not be covered by the scheme'.)
- 5.9** If BSPS members are concerned that they received unsuitable advice, they can make a complaint now rather than wait for the outcome of the consultation. Consumers who do this should note that if they are not satisfied with the firm's response to their complaint, or if they don't receive a response within 8 weeks, they can refer their complaint to the Financial Ombudsman Service for an independent decision for free. If the Financial Ombudsman Service finds that the firm has given unsuitable advice that caused the consumer a loss, it can decide that the firm must pay redress. The firms will be bound by that decision if the consumer accepts it. There is more information on our website about [how to make a complaint](#). If the adviser has gone out of business or the firm has been declared in default, consumers should contact FSCS.
- 5.10** There are time limits for making complaints which are set out in our rules. A complaint to the Financial Ombudsman Service must generally be made no later than 6 months after the firm provided a response to the complaint. The complaint must also be made no later than 6 years after the event that the complaint relates to took place or (if later) 3 years after the consumer became aware (or should reasonably have become aware) of the reason for the complaint. Firms will be required to carry out the scheme steps for customers in scope of the scheme even if the usual limitation period for complaints would expire after the scheme comes into force. The 'clock will stop' on the limitation period at the time the scheme rules come into force. This means consumers won't be time-barred while firms are carrying out the steps of the scheme and won't be prevented from going to the Financial Ombudsman Service if they are concerned that the firm has not met the scheme's rules.
- 5.11** Later in this Chapter we discuss how redress is provided for consumers who might have received unsuitable advice but who are outside the scope of the scheme.

BSPS members who transferred out after being advised to do so by firms that have failed

- 5.12** If the firm that provided advice no longer exists, there is no responsible firm to carry out the scheme steps and pay redress. If consumers were given advice from a firm that has since failed, their cases will fall to FSCS to consider. Where possible, FSCS will take the initiative to proactively consider claims for consumers of firms that fail during the course of the scheme. For these claims FSCS will calculate redress in line with the scheme rules and, where appropriate, pay redress up to the relevant limit. Where FSCS

can do this, it will put customers of firms that fail during the scheme on a similar footing to customers whose cases are considered by firms under the redress scheme. That is, both groups of customers will have their cases dealt with on an opt-out basis.

5.13 Decisions already made by FSCS will not be re-visited under the scheme.

The relevant period

5.14 We propose that the scheme will cover advice given between 26 May 2016 and 29 March 2018 provided that evidence from further file reviews shows that the legal test for a s. 404 redress scheme is met for the full period.

5.15 26 May 2016 was when DWP launched its consultation on BPS. 29 March 2018 was when the Time to Choose transfer window closed. As explained in Chapter 3, the uncertainty and concern from May 2016 onwards led to a significant increase in transfers. It was from May 2016 that BPS members would have been aware that they might no longer be able to expect the retirement benefits that they had been able to expect under BPS. Before 31 March 2016, data from the BPS accounts indicates that the average number of transfers from BPS was 131 per year. In 2016/17, there were around 500 transfers, while 2017/18 saw 7,700 transfers. In March 2017 BPS became closed to future accruals. Our data shows widespread unsuitable advice in 46% of cases between March 2017 and March 2018. Given our analysis of the period beginning May 2016, we consider it reasonable to believe that the widespread or regular test for a section 404 redress scheme will be met across the whole period from 26 May 2016 to 29 March 2018. But we will gather further file review evidence about this. Should the evidence show that the legal test is met, we propose to apply the scheme from 26 May 2016.

5.16 Some consumers' complaints, particularly those who received their advice in 2016, might become time-barred before the redress scheme comes into force because the limitation period during which consumers can submit a complaint will have passed. Our complaint-handling rules in DISP require a complaint to be brought no later than 6 years from the date of the event or 3 years from the date the consumer became aware (or should reasonably have become aware) of the reason to complain (whichever is later). Any 6-year period is likely to have begun on the date the consumer was given the advice to transfer out of BPS. For consumers advised in 2016 this means the 6-year period is likely to have ended by the time the proposed scheme comes into force. The 3-year period will begin on the date that the consumer knew, or should reasonably have known, that the advice they received might have been unsuitable. Consumers whose complaints might be time-barred should make a complaint to avoid missing out.

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?

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?

Who will not be covered by the scheme

5.17 Some BSPS consumers will not be included in the proposed scheme.

5.18 Consumers will be excluded from the scheme if they:

- have already received redress
- have referred their complaint to the Financial Ombudsman Service
- have received a final outcome from a suitability assessment on their case through a specified PBR
- are an 'insistent client'
- received advice outside the relevant period

Consumers who have received redress

5.19 Consumers who have already received redress in full and final settlement of claims about unsuitable advice during the relevant period will not be covered by the scheme. This is because the harm they suffered has already been put right.

Complaints that have been referred to the Financial Ombudsman Service

5.20 Consumers who have referred complaints to the Financial Ombudsman Service about unsuitable advice during the relevant period will also be excluded from the scheme. Because these cases are already being considered by an independent complaint resolution service with the power to make decisions that are binding on firms, there is no need for them to be taken through the steps of the scheme.

Cases that have been resolved under a specified PBR

5.21 Some consumers' cases are in the process of being considered by a firm, either as part of a PBR initiated by us, or because the consumer has made a complaint to the firm. We propose that these cases are included in the scheme.

5.22 However, where a firm has fully completed a case review under an FCA-initiated PBR involving skilled persons, and has communicated that result to the consumer with Financial Ombudsman Service referral rights, we propose that the case will be excluded from the scheme. In those cases, the skilled person has provided an independent review of the firm's assessment, at the firm's expense. Although the skilled person's review was not binding on firms, we consider it appropriate to exclude these cases from the scheme.

Insistent clients

5.23 The proposed scheme will apply only to consumers who were advised to transfer out. It will not apply to 'insistent clients'. Insistent clients are consumers who were advised to remain in the scheme but who still decided to transfer against the firm's advice. In these cases, the firm will usually arrange the transfer for the client after giving them a warning about the risks of the pension transfer, and a clear statement that the transfer is against the firm's advice.

5.24 The number of insistent clients who transferred out of BSPS is likely to be relatively small. Data we requested in 2022 from firms likely to be in scope of the scheme showed that, among 4,632 transfers, only 154 (3.3%) were reported as insistent client cases. In our review of BSPS transfer advice files we found 38 insistent clients out of 367 cases (10.4%). These insistent client cases were concentrated in particular firms, many of which have since become insolvent and some of which are under enforcement investigation by us. In the wider market, data we collected from 2015 to 2018 showed that 5.6% of DB pension transfers were done on an insistent client basis.

- 5.25** Although we have previously had concerns about the way firms handle insistent clients generally, we do not have evidence to show that BSPS customers were wrongly designated as insistent in the cases we looked at. So it is not clear that the statutory test for a s. 404 scheme is met for BSPS customers who were designated as insistent clients. We welcome evidence on this point.
- 5.26** To ensure that consumers who are treated by firms as insistent clients are protected, we propose that firms will carry out the following steps:
- check that clients designated as insistent have been correctly categorised
 - inform these clients that they are excluded from the scheme because they were advised to remain in BSPS and were only helped to transfer because they were 'insistent'
 - inform these clients of their right to complain to the Financial Ombudsman Service within six months if they do not agree that they were 'insistent'
 - report to us any files they have reviewed and how many customers were 'insistent'
- 5.27** Consumers will be able to refer complaints to the Financial Ombudsman Service if they do not agree that they were 'insistent', or if there was a misrepresentation. For example, the firm advised them not to transfer but encouraged them to ignore the advice. If the Financial Ombudsman Service finds that the firm did not act correctly, it will have the power to decide that the firm must pay redress.

Advice that was given outside the relevant period

- 5.28** Some BSPS members might have received transfer advice outside the relevant period that is covered by the proposed scheme. That advice is not included in the scope of the scheme. Customers who received advice outside the relevant period can make complaints in the usual way if they think the advice they were given might have been unsuitable.

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

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

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

Steps for firms to take under the scheme

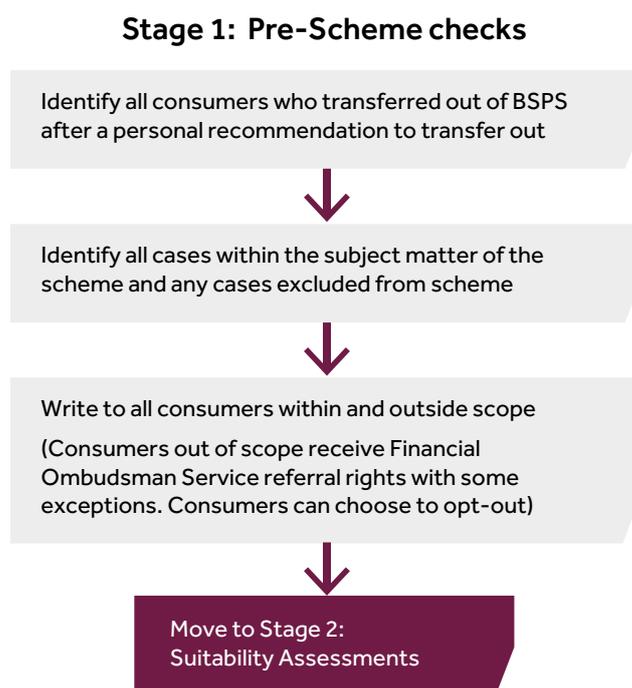
- 5.29** The steps that the proposed scheme will require firms to take can be grouped into 3 main phases:
- 1.** pre-scheme checks
 - 2.** suitability assessments
 - 3.** assessment outcomes
- 5.30** To ensure consumers receive outcomes from the scheme in a reasonable timeframe, we are proposing deadlines by which firms must complete the steps in that phase. If firms have reason to believe they will be unable to complete a phase by the deadline

they can consider applying for a waiver. We welcome feedback on whether the deadlines we are proposing in our draft rules at Appendix 1 are reasonable. We discuss the steps required in each phase below.

Pre-scheme checks

5.31 Figure 2 shows a summary of the steps we propose firms must take in the pre-scheme checks phase of the scheme.

Figure 2: Steps for firms to take under the pre-scheme checks phase of the scheme



5.32 Before assessing the suitability of their advice, we propose a requirement that firms carry out the following pre-scheme checks:

- identify all customers who transferred out of BSPS after receiving a personal recommendation in the relevant period to do so
- identify all cases within the subject matter of the scheme and all BSPS transfer advice cases that are excluded from the scheme

5.33 Firms will be required to report the results of these checks to us.

5.34 After completing the checks, firms will be required to write to all BSPS members identified as being either in or out of the scope of the scheme. For consumers who are out of scope, firms will need to tell consumers why they are out of scope and that they can complain to the Financial Ombudsman Service within 6 months if they disagree that they are out of scope. Firms' communications with customers who are out of scope will be required to communicate the relevant time-bars so that consumers will know if they are likely to run out of time to make a complaint. Customers who are in scope will be given the option to opt out of the scheme. Consumers who opt out can still decide to make a complaint to the firm at a later date if the time limits for making a complaint have not expired. To help ensure information is presented in a way that is in consumers' best interests we will provide template letters for firms to send under this step.

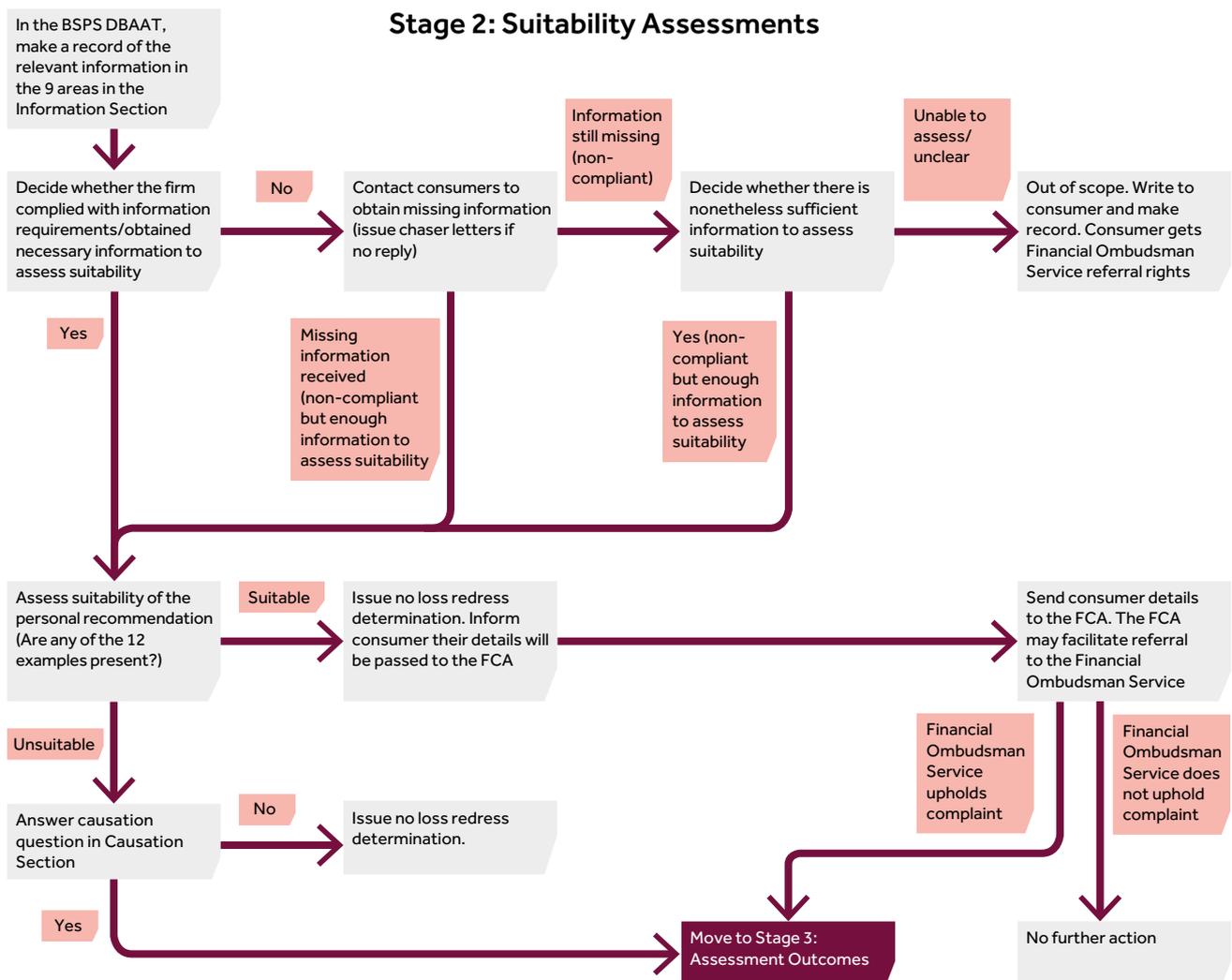
5.35 The reporting we receive from firms will help us identify if firms are incorrectly designating customers as out-of-scope.

5.36 As we highlighted in our Dear CEO letter in December 2021 and March 2022, firms which advised BSPS customers should also ensure they can meet the costs of carrying out a review of their BSPS advice, if we implement a redress scheme. We set out our expectations that firms who advised BSPS customers should not dispose of, withdraw, transfer, deal with or diminish their assets and any funds they hold except in the ordinary course of business. Before making any payments, firms should consider their solvency, taking account of any redress or potential redress it may have to make, and the costs of dealing with this. If necessary, we expect firms to seek the advice of an insolvency professional.

Suitability assessments

5.37 Figure 3 shows a summary of the steps we propose firms must take in the suitability assessments phase of the scheme.

Figure 3: Steps for firms to take under the suitability assessments checks phase of the scheme



5.38 We have created an assessment template and instructions ('the BSPS DBAAT') specifically for the scheme, which we propose that firms will be required to use. The

BSPS DBAAT includes proposed steps to minimise the number of cases that cannot be assessed due to material information gaps.

The BSPS Defined Benefit Advice Assessment Tool (BSPS DBAAT)

- 5.39** The BSPS DBAAT for the proposed scheme is based on the general DBAAT which we have published on our website to help understand how the FCA assesses cases of DB pension transfer advice.
- 5.40** Like the general DBAAT, the BSPS DBAAT for the proposed redress scheme sets out the key factors for firms to consider when checking whether the advice complies with suitability requirements in force at the time. It is a Microsoft Excel template spreadsheet for firms to fill out for each individual scheme case and a set of instructions explaining how to do that, and how to take into account the key considerations for each part of the template.
- 5.41** The instructions require the assessor to be familiar with the risks of a pension transfer from BSPS and to answer questions in the template with reference to the available evidence. We have published an annex to the instructions which outlines the general features of DB schemes, the risks associated with DB transfers, a comparison of the key benefits available in BSPS2 and the PPF, and a timeline of the key announcements relevant to the BSPS situation. The annex also provides guidance on what information was available and when. The information section of the BSPS DBAAT requires firms to check whether the required information was gathered to inform the transfer advice.
- 5.42** The suitability section requires the firm to review the available evidence and information in the information section. It also requires firms to consider a list of examples that are indicators that advice is likely to have been unsuitable. The firm must conclude, taking into account all of the available evidence and the presence of any examples indicating unsuitable advice, whether it complied with the suitability requirements. The firm must also comment on whether or not it complied with the suitability requirements, with reference to the example or examples that support their conclusion. The examples that the firm must consider are:
- 1.** The consumer is, or will be, reliant on income from the comparator scheme.
 - 2.** The aim of the transfer is to pass the value of the pension to beneficiaries on the member's death, but the firm has not demonstrated that the consumer can bear the risk of the transfer that would be needed to achieve this objective.
 - 3.** The aim of the transfer is to access income-related benefits flexibly, but the firm has not demonstrated that the consumer can bear the risk of the transfer that would be needed to achieve this objective.
 - 4.** The aim of the transfer is to maximise PCLS, but the firm has not demonstrated that the consumer can bear the risk of the transfer that would be needed to achieve this objective.
 - 5.** An aim of the transfer is to preserve or protect the value of the consumer's pension benefits but the comparator scheme(s) benefits would meet the consumer's needs.
 - 6.** The consumer wants to retire early but can meet their objective(s) in the comparator scheme(s).
 - 7.** The consumer wants or prefers guaranteed income or returns.
 - 8.** The consumer does not have the necessary attitude to risk.
 - 9.** The firm's transfer analysis does not support a recommendation to transfer.
 - 10.** The firm did not have a reasonable basis for believing that the consumer had the necessary knowledge and experience to understand the risks involved in transferring their DB scheme.

11. The consumer is under 50 and cannot bear the risks of transfer.
12. The recommendation to transfer is unsuitable for the consumer's investment objectives or for their financial situation for some other reason.

5.43 If the assessor concludes that the firm's advice failed to comply with the suitability requirements, then the causation section of the BSPS DBAAT must be completed. The causation section records the assessment of whether the advice was the effective cause of the consumer's decision to transfer and has (or may have) caused loss.

5.44 The draft BSPS DBAAT can be read in full as part of the draft scheme rules in Appendix 1.

Material information gaps

5.45 When assessing the suitability of their advice, assessors sometimes find that they do not have sufficient information to determine whether it was suitable or not. This usually happens because the firm did not get the necessary information to advise in the first place (so they did not comply with COBS 9.2.1R(2)). We refer to this lack of information as a material information gap. Where there are information gaps, firms should stop their assessment and take the steps outlined in the BSPS DBAAT and scheme rules to gather the information or resolve the 'gap'. We also propose that firms will need to consider whether the material information gaps indicate that the firm has failed to take reasonable steps to make sure that the advice is suitable.

5.46 In the unlikely event that the assessor cannot make a decision about the suitability of advice because of a material information gap, the firm will be required to tell the consumer that they are no longer able to progress the case as a scheme case. Firms will be required to report how many cases they are unable to progress and why. We will consider whether the 'gap' demonstrates that the firm has failed to take reasonable steps to get the necessary information (which puts consumers at a heightened risk of unsuitable advice) or keep appropriate records. We will take appropriate supervisory and enforcement action against these firms. Consumers will be given Financial Ombudsman Service referral rights for these cases too. We propose that where a firm does not have sufficient information to be able to calculate redress, a similar process will apply.

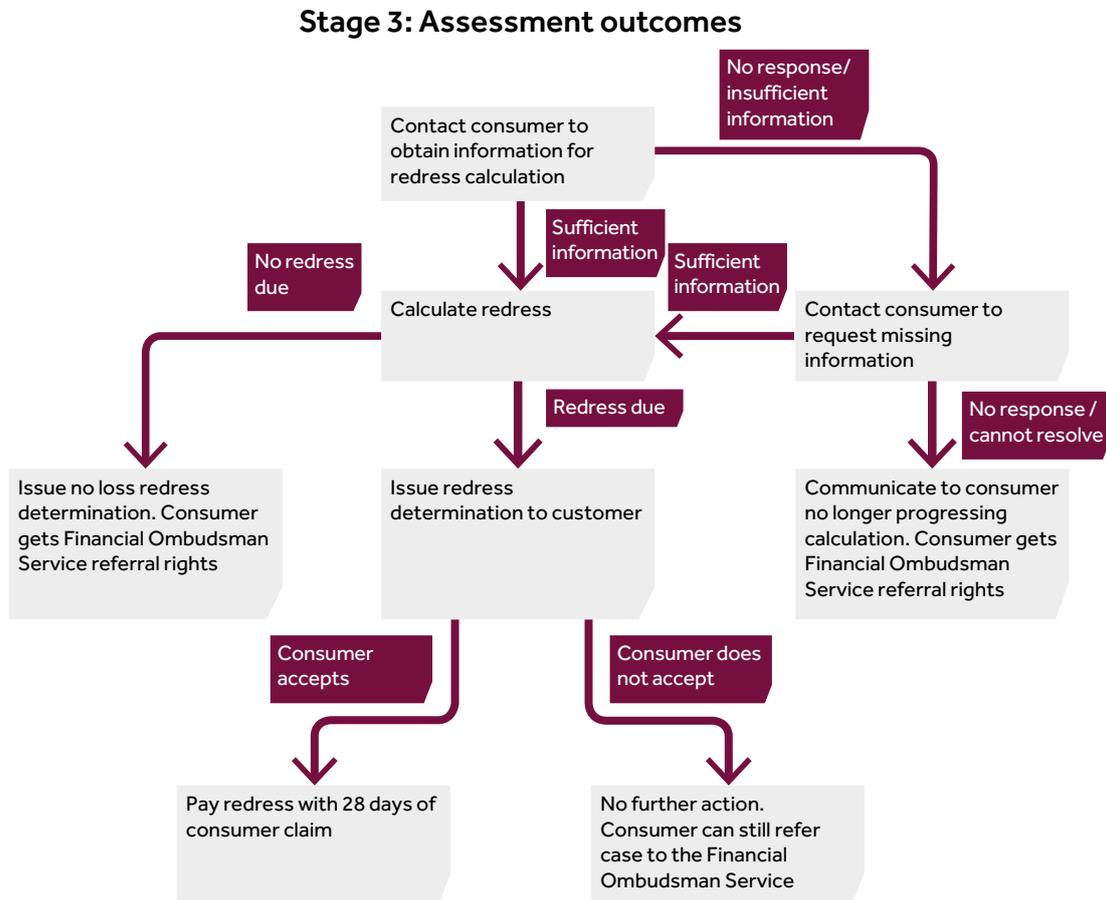
Q12: Do you agree that the BSPS DBAAT is an appropriate tool for assessing whether advice to transfer out of BSPS was suitable?

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

Assessment outcomes

5.47 Figure 4 shows a summary of the steps we propose firms must take in the assessment outcomes phase of the scheme.

Figure 4: Steps for firms to take under the assessment outcomes phase of the scheme



5.48 In cases where firms find the advice to transfer out of BSPS is unsuitable and answered 'yes' in the causation section (that the advice was or may have been the effective cause of loss), they will be required to calculate and pay redress.

5.49 Chapter 6 discusses our plans for how we might require firms to calculate redress under the scheme. We are seeking initial views on that now and we will consult on detailed rules for redress calculations in July.

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

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

Reporting requirements

5.50 As part of the scheme, we propose detailed reporting requirements for firms. Firms will be required to give us certain information at each stage of the scheme. The information will help us to supervise how the scheme is being carried out.

5.51 The information we propose to require includes:

- the number of advice files from the relevant period
- the number of files to be assessed under the scheme steps
- the number of files to be excluded from the scheme steps and reasons why
- progress reports on each case
- outputs from the firm assessments using the BSPS DBAAT

Independence and oversight

5.52 We aim to strike a balance between having firms 'mark their own homework' and imposing unnecessary extra cost on firms and on ourselves, which could reduce available funds to pay redress to consumers, cause firms to become insolvent, and increase the burden on other firms via the FSCS levy.

5.53 As part of meeting our threshold conditions for ongoing authorisation we expect that all authorised firms will be capable of carrying out the scheme steps competently and honestly. However, in the context of the widespread failure to meet standards which has already caused substantial consumer harm to BSPS consumers, we propose to build into the scheme measures for close scrutiny of firms' actions under the scheme. These measures include:

- attestations
- facilitating referral of 'suitable' cases to the Financial Ombudsman Service
- the right to complain
- FCA supervision and enforcement

Attestations

5.54 To help ensure firms carry out scheme steps accurately and in good faith, we propose that the scheme will require attestations from senior individuals confirming that the steps have been carried out in compliance with the scheme rules. An individual who is senior enough to be held personally responsible under our Senior Managers and Certification Regime will be required to make the attestation. We will look to take appropriate enforcement action where there is evidence that firms have not complied with the rules.

Facilitating referral of 'suitable' cases to the Financial Ombudsman Service

5.55 Our supervision and enforcement work with firms has shown that some firms have assessed advice as suitable when it is unsuitable. So we propose to build into the scheme an oversight mechanism to make sure those cases that are assessed as suitable are checked. Doing this would also meet the fundamental principle of ensuring a degree of independent oversight so we see the right consistent outcomes for consumers.

- 5.56** In principle, a consumer who has had a case assessed as suitable has the right to refer it to the Financial Ombudsman Service who would then decide whether the firm had applied the rules of the redress scheme correctly. This would provide independent oversight. However, we know that BPS consumers are unlikely to exercise their right to complain and risk dropping out of the process. We estimate that 7,300 BPS members transferred out after receiving advice during the relevant period to transfer. About 800 (11%) of them have complained to the Financial Ombudsman Service about their advice after communications and support to encourage complaints. We want to make sure that consumers who might not otherwise refer their case to the Financial Ombudsman Service are helped to do so, and that the process for consumers is as straightforward as possible.
- 5.57** For cases assessed as suitable, we propose that firms will be required to inform consumers that they will pass their details to the FCA unless consumers indicate that they do not want their details passed on. These details will include the consumer's name, contact details and the outcome of the firm's assessment. We may then decide to contact consumers to ask them if they would like the Financial Ombudsman Service to review the firm's decision. If consumers do not want their details to be passed on to us or the Financial Ombudsman Service in this way it will be up to the consumer to contact the Financial Ombudsman Service directly if they are dissatisfied with the firm's assessment and they would like the Financial Ombudsman Service to review it. In our CBA at Annex 2 we have modelled the most extreme scenario where the Financial Ombudsman Service has the maximum number of cases referred to them.
- 5.58** We are working closely with the Financial Ombudsman Service to ensure that all relevant data protection laws are complied with, as well as to consider and attempt to mitigate the operational impacts and risks of our proposals on the Financial Ombudsman Service. The Financial Ombudsman Service has told us that it may require additional funding to resource these complaints. We are considering how to make sure that referral happens only where firms have a reasonable prospect of meeting their liabilities. This will also create a smoother customer journey by making sure cases are sent to FSCS earlier. We are also putting in place measures, such as an attestation requirement, to make sure firms are incentivised to get suitability assessments right to reduce the number of cases that are referred to the Financial Ombudsman Service.
- 5.59** We considered several alternatives to facilitating referrals to the Financial Ombudsman Service. These included relying on consumers to exercise their Ombudsman referral rights without us facilitating this in the way proposed, appointing a 'competent person' under the scheme, or using the powers in section 166 of FSMA to appoint a skilled person. We propose facilitating the referral of cases to the Financial Ombudsman Service in the way proposed above primarily because it counteracts the high levels of consumer inertia. It also makes use of the Financial Ombudsman Service's binding powers which can be more readily and effectively exercised for consumers than any powers that a competent person or skilled person could have under the scheme. Facilitating referrals also avoid the risk that firms would be required to pay for 2 separate reviews, one by the skilled or competent person and then another by the Financial Ombudsman Service.

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?

Right to complain

5.60 The section above sets out the process for cases that are assessed as suitable. There are also other scenarios where a consumer might be unhappy with a firm's actions and decisions under the scheme. For example, a consumer might disagree with a firm's decision that the consumer is outside the scope of the scheme, or that the consumer was an insistent client.

5.61 In these cases, consumers will have the right to complain to the firm and to the Financial Ombudsman Service in the usual way. Firms' communications with consumers will be required to signpost to the Financial Ombudsman Service. If the Financial Ombudsman Service decides that the firm's decision to exclude a consumer from the scheme was wrong, the Ombudsman may consider whether the firm should pay the consumer redress for unsuitable advice.

FCA supervision and enforcement

5.62 We will carry out proportionate and risk-based oversight of the running of the scheme. We will require firms under the scheme to provide regular data, including how it is progressing with the scheme. We will use this data, along with data and intelligence shared by our regulatory partners to focus our supervisory work and inform spot checks to monitor firms' compliance with the scheme rules. We will also focus on individual accountability, requiring a relevant senior manager at each firm to attest that the scheme rules have been followed correctly.

5.63 Where firms do not abide by the rules of the scheme, we will take enforcement action. We will consider what is appropriate on a case-by-case basis.

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

Implementation

5.64 We propose that the rules of the scheme will come into effect 3 months after they are made. This will give firms time to prepare and to ensure that they have the necessary resource to carry out the steps of the scheme when the rules come into effect.

Q18: Do you agree with the proposed implementation period?

6 Calculating redress – discussion questions

- 6.1** In this Chapter, we set out our high-level proposals for how we expect firms to calculate redress where the advice was unsuitable. We are currently reviewing our guidance for firms on how to calculate redress for unsuitable DB pension transfers. In July 2022, when we consult on revisions to the pensions transfer redress guidance, we will consult on detailed rules for how firms should calculate redress under the proposed scheme for BSPS customers. We will explain in the July 2022 CP how we expect revisions to the guidance to change the CBA we have presented in this CP. We are also looking at the possibility of developing a calculator for firms to use when calculating redress.

Calculating and paying redress

- 6.2** In cases where the advice to transfer out of BSPS was unsuitable, and this advice caused the consumer to transfer, the firm must assess whether the consumer suffered a loss and, if so, whether the consumer is due redress. In making that determination, the firm will be required to assess the consumer's financial position after the transfer, and the position the consumer would have been in if the advice had been suitable and compliant. The difference will be the redress that the consumer is owed.
- 6.3** In September 2021, we announced that we were starting a periodic review of FG17/9, 'Guidance for firms on how to calculate redress for unsuitable defined benefit pension transfers'. We intend to use the revised redress guidance as a basis for rules for consumers who were misadvised to transfer out of BSPS. This means that the detailed rules for calculating redress are not included in Appendix 1 but will be consulted on alongside our guidance consultation for DB transfer redress, later this year. The CBA in Annex 2 estimates the total amount of redress that consumers would receive under each of the options discussed in Chapter 4 based on the current redress calculation methodology and assumptions. If necessary, we will update the CBA with revised estimates when we know the impact of any changes to the DB transfer redress guidance which we intend to consult on in July. Because any changes to the redress guidance will apply to each of the intervention options we considered, we do not expect such changes to affect our proposed decision to proceed with an opt-out s. 404 redress scheme.
- 6.4** For the purpose of this CP, we are assuming that, following the periodic review, firms in the redress scheme will be required to make redress payments to consumers in the same way as we set out in our current redress guidance. In other words, the redress should be paid in the form of a lump sum to the customer, given the practical limitations of alternatives, such as augmenting the customer's transferred pension. This approach enables immediate settlement for consumers and unlike some alternative approaches, such as requiring a firm to buy an annuity for a consumer, it does not rely on firms being in business at the date of retirement.
- 6.5** We recognise that there are unique circumstances in the case of BSPS that need to be considered as part of redress calculations. For example, the redress calculation generally requires firms to estimate the value of benefits a member would have received if the member had not received unsuitable advice and had remained in their

DB scheme. However, with respect to transferring out of BSPS members could have made an active choice to move to a new BSPS scheme or remain in the old BSPS and move into PPF assessment. If they did not make a choice, they would have been defaulted to the PPF assessment option. When calculating redress, it will be necessary to consider which scheme a member may have ended up in, if they had been given suitable advice in line with our redress rules and guidance.

- 6.6** To help firms to carry out redress calculations, we are considering whether it is possible to develop a calculator. A calculator could require users to input relevant information about the transfer which would be used to determine how much the consumer has lost between the date of transfer and the date of assessment. The resulting figure would be the redress that the firm will be required to pay the consumer to put right the harm caused by the unsuitable advice.
- 6.7** The rules for the s. 404 scheme will set out how we expect firms to proceed with the calculation. That could include, for example, by outsourcing the calculation in its entirety to a suitably qualified and experienced actuarial firm.
- 6.8** We will consult on detailed rules for loss assessment and redress in July 2022, alongside our Guidance Consultation on pension transfer redress. In the meantime we have provided in Appendix 1 of this CP draft rules that follow the high-level approach that redress should be paid in the form of a lump sum to the customer. We welcome views on this high-level approach, to inform the more detailed consultation in July. We ask you to provide your response to Q19 by **12 May 2022**.

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

Annex 1

Questions in this paper

- Q1:** Do you agree with our assessment that unsuitable advice to BPS customers was widespread in the period we looked at?
- Q2:** Do you agree with our view that BPS members who received unsuitable advice are likely to have suffered loss?
- Q3:** Do you agree 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?
- 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?
- Q6:** Are there any other alternative options that we should consider?
- 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?
- 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?
- Q9:** Do you agree with the steps we propose for insistent clients?
- Q10:** Do you have any evidence of harm caused by DB advice firms to insistent clients who transferred out of BPS?
- Q11:** Do you agree that the scheme should exclude cases in the circumstances we have described above?
- Q12:** Do you agree that the BPS DBAAT is an appropriate tool for assessing whether advice to transfer out of BPS was suitable?

- Q13:** Do you agree that the examples of failures we've identified in the BSPS DBAAT instructions are indications of a failure to comply with suitability requirements?
- Q14:** Do you agree with the proposed steps for firms to take under the scheme?
- Q15:** Do you agree with the proposed deadlines in the draft rules for firms completing the steps of the scheme?
- 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?
- Q17:** Do you agree that the proposed scheme will provide a proportionate level of independence and oversight?
- Q18:** Do you agree with the proposed implementation period?
- Q19:** Do you have any comments on the high-level proposals for redress calculations?
- Q20:** Do you agree with our estimates of the costs and benefits of our proposed scheme?

Annex 2

Cost benefit analysis

Summary

1. This Annex sets out our assessment of the costs and benefits of the proposed section 404 (s. 404) redress scheme for unsuitable pension transfer advice for British Steel Pension Scheme (BSPS) members.
2. The main benefit of our proposals is the payment of redress to BSPS members who received unsuitable advice. We estimate total redress to consumers under our s. 404 proposal to be £71.2m under our central scenario. Since some redress would be paid under current supervisory and enforcement approach to BSPS, we estimate the incremental amount of redress relative to the counterfactual to be £54.4m. Redress represents a transfer to BSPS members who received unsuitable pension transfer advice from the firms that provided that advice, to the extent to they remain in business. Our estimates are based on the current redress methodology and a number of assumptions. We will update our estimates when we consult on detailed changes to the redress methodology. We have conducted a range of sensitivity analysis to assess the impact of changing some of the key assumptions in our modelling of the impact of the s. 404 scheme. Changing these assumptions, although altering the amount of redress that would be paid to consumers, does not alter our decision to proceed with a s. 404 scheme over the other alternatives.
3. Our s. 404 proposal could lead to other wider benefits from improved market confidence, particularly in the advice market. Although these effects are not practicably quantifiable and we do not consider them to be significant factors in influencing the choice of option, if realised they would serve to make the case for implementing our s. 404 proposal stronger.
4. The redress costs of the scheme will be paid by advice firms and their professional indemnity (PI) insurers. Redress will only be directly payable by firms whose past advice on BSPS transfers harmed consumers.
5. As a result of the scheme, some advice firms may be unable to cover their liabilities and may leave the market. Any such market exit is a direct result of providing unsuitable advice to BSPS members and now putting consumers back in the financial position they would have been in if the advice they received had been suitable and compliant. In cases where advice firms become insolvent, outstanding liabilities will be passed to the Financial Services Compensation Scheme (FSCS), representing a cost to wider industry of an estimated £20.6m, or £14.3m relative to the counterfactual.
6. In addition to redress payments that firms will need to pay to BSPS members who are found to have been given unsuitable advice, we estimate that advice firms will incur around £9.1m in compliance costs to review their historical BSPS transfers, and to deal with possible complaints and challenges regarding their assessment. Those firms that have given unsuitable advice will incur an estimated additional £1.4m to calculate and administer the redress due.

7. Our proposal will lead to administrative costs for the FCA, the Financial Ombudsman Service, and FSCS. We estimate that the FCA will incur costs of around £3.2m, the Financial Ombudsman Service will incur costs of £0.4m, without taking into account fees from firms, and FSCS will incur administrative costs of £0.6m, which will be recovered from firms via the FSCS levy.
8. We have considered the potential wider market implications of our s. 404 proposal relative to the counterfactual. Our proposal could make professional indemnity insurance (PII) harder to obtain for firms that have previously advised BSPS consumers. However, we consider it unlikely that our proposal would lead to wider deterioration in the PII market. We believe the risk that competition in the market for DB transfer advice will be materially affected by our proposal is very low. We will undertake further work during the consultation period to better understand these factors in advance of the Policy Statement.

Introduction

9. FSMA, as amended by the Financial Services Act 2012, requires us to publish a cost benefit analysis (CBA) of our proposed rules. Specifically, section 138I requires us to publish a CBA of proposed rules, defined as 'an analysis of the costs, together with an analysis of the benefits that will arise if the proposed rules are made'.
10. This analysis presents estimates of the significant impacts of our proposal. We provide monetary values for the impacts where we believe it is reasonably practicable to do so. For others, we provide estimates of outcomes in other dimensions. Our proposals are based on carefully weighing up these multiple dimensions and reaching a judgement about the appropriate level of consumer protection, taking into account all the other impacts we foresee.
11. This CBA is structured as follows:
 - problem and rationale for intervention
 - estimation approach
 - summary of costs and benefits
 - costs
 - benefits

Problem and rationale for intervention

12. A large proportion of BSPS members received unsuitable or inappropriate advice recommending they transfer out of their defined benefit (DB) pension. Because the advice was inconsistent with these members' preferences or circumstances, it placed BSPS members at risk of financial harm, causing them to lose a guaranteed stream of income. The rationale for a s. 404 scheme, as well as the alternatives under consideration, is for members who suffered financial harm to receive appropriate redress.

13. We present our estimates of this harm on a per-consumer basis later in this CBA. Overall, under our central scenario we estimate that around 1,800 consumers in scope of this proposal experienced an average financial loss of around £60,000, implying a total harm of around £110m.

Drivers of harm

14. The pensions and investments markets are subject to asymmetries of information between providers and consumers. Financial advisers typically help pension holders overcome this information asymmetry by advising on investment choices that are in the best interests of their clients, as interpreted at the time. However, conflicts of interest can arise when the financial interest of advisers and their clients are not aligned. If not appropriately managed, this 'principal-agent' problem can lead to unsuitable advice whereby some advisers use their information advantage to steer consumers towards investment choices that explicitly favour their own remuneration, without the consumer realising. This risk can be especially high in pension transfers, where advisers can earn substantial one-off and ongoing fees from advising clients to leave their DB scheme. FCA rules in the Conduct of Business Sourcebook, including our 2020 policy changes on contingent charging, aim to mitigate these conflicts of interest.
15. Behavioural factors may reinforce the risk of harmful impacts of asymmetric information and the principal-agent problem. Our CBA for CP19/25 on DB transfer contingent charging set out potential behavioural biases that may affect consumers' preferences and beliefs in this market. These include the risk of present bias, which can lead consumers to overlook the benefits of a DB pension income stream in favour of a more appealing lump sum in the short term. Consumers may also overestimate the value of flexibility attributed to defined contribution (DC) schemes, without thinking through all the attendant consequences. Consumers can also be prone to underestimating life expectancy and, as a result, underestimating the value of lifetime income streams. A financial adviser acting on behalf of a consumer should help mitigate the effect of these behavioural factors from affecting decision-making, but there is a risk these factors can be exploited by noncompliant advisers seeking to maximise fees.
16. While affected members of BSPS can pursue retrospective compensation for unsuitable advice, relatively few have done so to date. The benefits of DB pensions are such that, once exited, it is not possible to 'undo' the effects of unsuitable advice. BSPS members that suspect they received unsuitable advice to transfer out of their DB pension scheme can therefore complain independently to their firm, the Financial Ombudsman Service or, if their firm is no longer in business, FSCS. Our current estimate is that roughly only around 10% of BSPS consumers that received advice have complained. This inertia could reflect a lack of information; members may be unaware they received unsuitable advice, especially if its effects only appear over time (DB transfers often lead to a short-term gain at the expense of long-term financial security). Some consumers may still be unaware of their eligibility to complain. Even if members are fully informed, other factors could prevent some consumers from seeking compensation they are owed, for instance inertia or if consumers overestimate the costs of acting.
17. The specific circumstances of the restructuring of BSPS (see Chapter 2) are likely to have accentuated these market failures, as evidenced by the high estimated rates of unsuitable pension transfer advice. The uncertainty surrounding the BSPS

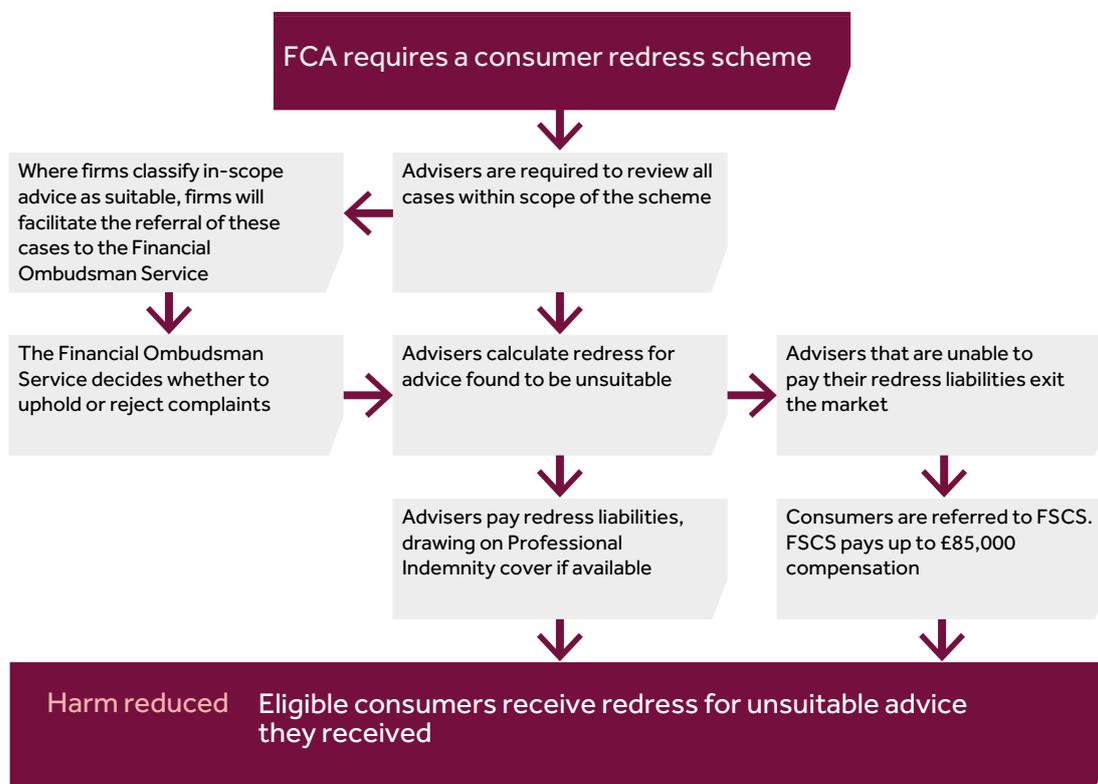
restructuring may have made the DB scheme on offer appear uncertain and added to the information asymmetries that consumers faced relative to their adviser. In particular, members may not have been aware that the Pension Protection Fund (PPF) existed as a safety net to replace most of the BSPS scheme benefits if British Steel had become insolvent. A general lack of trust in their employer and the DB pension scheme on offer could have affected members' approach to their pension options. In addition, the 'Time to Choose' period meant the scheme's members had to make a decision in a limited period of time; the impact of time pressure in this case is unknown, but it could potentially have affected members' preferences and beliefs.

Our proposal

- 18.** Chapter 5 of this CP sets out our proposed intervention. In summary we are proposing using our s. 404 power to require firms to establish and carry out a consumer redress scheme for BSPS members. Firms would be required to identify all consumers in scope of the scheme, review the advice given to consumers (who haven't opted out of the redress scheme), and where the advice was found to be unsuitable, calculate and pay any redress owed to the consumer. Depending on whether evidence shows the relevant legal test is met, our proposal concerns either consumers who received advice between 26 May 2016 to 29 March 2018 to transfer out of BSPS, or those advised between 1 March 2017 and 29 March 2018. Given the small difference in eligible case numbers between these 2 time periods, the distinction has little impact on the CBA, as outlined in our discussion of sensitivity analysis.
- 19.** Our intervention seeks to address the harm BSPS consumers faced from unsuitable advice. The proposed redress methodology would put consumers back in the financial position they would have been in if the advice they received had been suitable and compliant, based on actuarial calculations. The proposed s. 404 redress scheme acknowledges the specific circumstances surrounding the BSPS restructuring and the high levels of unsuitability members faced. The opt-out element of the s. 404 redress scheme is designed to reflect the relatively low levels of take-up of compensation to date.

20. Figure 1 sets out how we expect the proposal to work.

Figure 1: Causal chain setting out how we expect a s. 404 scheme to reduce harm



Counterfactual and alternative options

21. Our CBA estimates are expressed relative to a counterfactual that would arise if we did not pursue the proposed s. 404 redress scheme.

22. We consider the most realistic counterfactual to be our current supervisory and enforcement approach to BSPS. Our Past Business Review (PBR) and enforcement work has targeted higher-risk DB transfer advice firms and has reached around 2,500 eligible BSPS members. The counterfactual is that the currently planned reviews are completed but are not extended, covering around 1,150 further transfers. We do not make any allowance for independent Financial Ombudsman Service complaints that would arise from BSPS members under the counterfactual since these are very uncertain and may have been affected by our announcement of this consultation. It should be emphasised this counterfactual is materially different from a 'do nothing' scenario; if we continued our supervisory approach some consumers would receive redress from their advisers.

23. The alternative options being considered in the consultation (over and above the counterfactual described above) are set out in Chapter 4 of this CP. In summary they are:

- An extension of the current supervisory approach to bring the next tranche of firms deemed to be higher risk in terms of volume of relevant BSPS DB transfers into scope of a PBR. Supervisory work would include FCA-run file reviews and, where harm is identified, potentially opt-in PBRs.
- An enhanced communication strategy to encourage eligible BSPS members to complain. This would be targeted at consumers rather than firms, with the aim

of engaging consumers to complain. It could include writing to consumers to encourage them to complain, communicating through partners, and in-person outreach events.

- A s. 404 redress scheme covering all firms that arranged BSPS transfers but with a requirement that consumers opt in to the scheme. Consumers otherwise in scope of the scheme would not have the advice they received assessed for suitability unless they took action to join the scheme.

- 24.** The different consultation options would all result in redress being offered to consumers. (In our estimates we present the total number of consumers that would get redress under each option, and then the incremental effect of each option over the counterfactual.) They differ according to the estimated scale of that redress and the scale of undertaking by firms and other parties.

Estimation approach

- 25.** Our cost and benefit estimates are derived from our modelling of the outcomes of eligible BSPS file reviews. The model is calibrated using existing evidence and, where there is more uncertainty, assumptions that reflect a range of possible scenarios.

Overview of our model

- 26.** Our model for the opt-out s. 404 proposal can be summarised as follows:
- The model starts with the estimated number of transfers in scope. Firms in scope will incur a cost to review the suitability of each transfer, in some cases with the input of a skilled person.
 - We apply the estimated market average unsuitability rate to derive the number of transfers found to be suitable and unsuitable. For transfers assessed as suitable, consumers will have the right to complain to the Financial Ombudsman Service. For transfers assessed as unsuitable, firms will calculate the redress owed to the consumer, and if necessary, contact the consumer for more information.
 - We estimate the average redress amount using past data on BSPS DB transfers.
 - We assume different response rates of consumers to: opt out of the scheme, to provide additional information where required, and to claim the compensation offered to them.
 - We then, for each firm individually, calculate the estimated redress bill using each firm's volume of BSPS transfers which qualify for redress. We compare that redress bill with the firm's financial position and the conditions of their PII. This allows us to identify if a firm can pay their redress bill, or whether the liability is likely to lead them to become insolvent.
 - We assume residual redress liabilities among firms that become insolvent will be passed to FSCS. FSCS will award compensation up to the £85,000 investment intermediation awards limit. The liabilities will be reflected in FSCS levies, which are a cost to wider industry.
- 27.** Our model to estimate the costs and benefits of the alternative consultation options works in a very similar way. The most important differences between the options are the number of transfers in scope and the estimated rates of consumer action. Our model does not include any allowance for wider effects of our proposal on the advice market or the market for PII, but we consider those separately in the CBA.

Data

- 28.** We use data from a range of sources in our modelling of costs and benefits:
- A data request to financial advice firms. In January and February 2022, we issued a data request to 2,593 firms who held DB transfer permissions between March 2016 and March 2018. The survey included questions on whether the firm had advised BSPS members, the volumes of consumers advised or not advised to transfer, total transfer values, complaints and redress paid to date, and additional details on PII policies. We also added evidence we held from existing data we had collected from some firms as part of our ongoing interactions with firms. As of 16 February 2022 (the date at which we cut the data for inclusion in the CBA), the overall response rate was 91.8% once firms that are in liquidation or administration are removed. Since this date we have continued to follow-up with firms that did not respond.
 - The Financial Ombudsman Service. We use data on complaints made to the Financial Ombudsman Service regarding BSPS DB transfers for both the Time to Choose and earlier time periods. The data includes the Financial Ombudsman Service outcome for complaints that have been resolved.
 - Our previous supervisory and enforcement work, including PBRs of advice given to BSPS members.
 - FCA regulatory returns. We use regulatory returns RMA-D on regulatory capital and financial resources.
 - Data on FSCS cases, which inform one of our scenarios for the financial loss experienced by consumers.
- 29.** In addition, to inform our understanding of the wider implications of our proposal, we undertook 2 additional pieces of analysis. Firstly, we held structured interviews with insurers active in providing PII for DB transfer advice. The interviews explored current provision, exemptions, and pricing, and explored potential reactions to hypothetical outcomes of our s. 404 consultation on the future pricing, coverage, and availability of PII. Secondly, we commissioned Frontier Economics, a consultancy, to review our model and its implications, and to explore work for understanding the supply and demand effects on the financial advice market. The findings for both of these strands of work are summarised in sections below.

Assumptions

- 30.** The sub-sections below set out the key features of our model and some of the key assumptions that underpin our cost and benefit estimates. We have conducted a number of sensitivity analyses on key assumptions in our analysis. These are presented in paragraph 65 below.
- 31.** *Number of qualifying transfers*
In total we estimate 7,700 BSPS DB pension transfers proceeded during Time to Choose.
- 32.** To derive the number of transfers eligible for a redress scheme, we adjust this figure as outlined in Table 2. We conclude that around 4,000 BSPS transfers, made by around 340 firms, are within scope.

Table 2: Estimated number of cases within scope of our proposals

Population	Estimated number	Comments
Number of arranged transfers	7,700	
<i>Of which</i> advised	7,300	We assume a non-advised rate of 5% based on supervisory information
<i>Of which</i> were clients of firms who are insolvent or no longer exist	2,100	In these cases FSCS will assess claims in accordance with the rules of the redress scheme.
<i>Of which</i> has or is being reviewed as part of our supervisory PBRs	300	The proposal is to exclude this category from the scheme.
<i>Of which</i> other cases out-of-scope	500	For example, we exclude claims where the consumers of out-of-scope firms have complained about the suitability of their transfer to the Financial Ombudsman Service and the case has not been passed to FSCS.
The number of arranged transfers by firms that are in-scope of s. 404	4,400	
<i>Of which</i> consumers have complained about the suitability of their transfer to the Financial Ombudsman Service	300	The proposal is to exclude this category from the scheme.
<i>Of which</i> 'insistent' (clients that were advised to remain in the scheme by their adviser but asked their adviser to arrange a transfer)	100	The proposal is to exclude this category from the scheme.
The total number of transfers in-scope of s. 404	4,000	

Note: Numbers are rounded to the nearest 100.

33. For the alternative option of an opt-in s. 404 redress scheme, the number of transfers in scope is the same as for our opt-out s. 404 proposal, around 4,000. However, we assume that the consumer response rate for the opt-in proposal will be lower, meaning advisers will assess the suitability of fewer transfers in practice (see section below on response rates). We estimate that the suitability of 1,150 transfers would be assessed under the counterfactual, our current supervisory approach. For the option to extend our counterfactual supervisory approach, we estimate that an additional 1,300 transfers would be in scope. These reflect the transfers in the firms in scope of our supervisory reviews. The number of consumers that actually receive redress under each option will differ according to the response rates. This is set out in the sections below.

Transfer value

34. We estimate the average transfer value for BSPS transfers is £374,000 based on information from our survey of advice firms.

File review

35. The s. 404 requires each firm to review all cases where they advised a BSPS member to transfer out of their DB scheme, and where the client transferred. Any consumer that opted out of the s. 404 redress scheme would be excluded at this stage (see sub-section on 'Consumer response').

36. We assume each file review will cost £1,000. This figure is based on our evidence to date of costs charged by consultants to review the contents of each case, analyse them as necessary, and record information in the appropriate manner. We have not made any adjustments to account for possible increases (eg economies of scale) or decreases (eg scarcity of external contractors) in the costs of each file review.

Unsuitability rate

37. Our sampling framework devised by an external statistician, and the subsequent file reviews undertaken by a third party, found that 46% of advice to transfer given to BSPS members was unsuitable based on evidence in firms' file records. The 95% confidence interval was 37% to 54%. In a further 14% of files reviewed, it was unclear if advice was suitable, for instance due to missing information. We assume firms will resolve these cases by either contacting the consumer (see assumption in sub-section below) or by using the Financial Ombudsman Service.
38. Our own analysis indicates that where cases with missing information were reviewed, we concluded the advice was unsuitable in around 50% of cases, within the confidence interval from sampled cases. It therefore appears that a very similar suitability rate is applicable to both cases with and without information gaps.
39. Taking into account this evidence, our central estimate for the unsuitability rate of BSPS transfers is 46%, and we apply sensitivity analysis that assumes a lower bound of 37% and an upper bound of 54%. This range allows for the possibility that half of the material information gap cases are also unsuitable. As discussed in paragraph 65, our unsuitability rate sensitivity scenarios change our estimates of the overall impact of the redress scheme by around 10% to 15% compared to the central 46% assumption.

Calculating redress

40. Firms are also required to cover the costs of calculating redress for cases where advice was found to be unsuitable. Based on our current supervisory PBRs, we estimated that the cost of each redress calculation is £1,000. This is additional to the costs of file review.

Redress amount

41. There are 2 methods available to estimate average financial losses incurred by consumers as a result of unsuitable advice, which represents the average redress that consumers would be owed. The first is to use information from our survey of advice firms. The second is to use data from cases that FSCS has resolved.
42. From our survey of advice firms, we estimate the average pension transfer value for BSPS members is around £374,000. Based on a sample of 132 cases where either the firm themselves or the Financial Ombudsman Service has found the advice to be unsuitable, the average financial loss per unsuitable transfer is estimated to be about £60,000, representing around 16% of the average transfer value.
43. By contrast data provided by FSCS implies a larger pre-abatement financial loss per unsuitable transfer of about £82,000. Assuming the same average pension transfer value as our survey, this would represent an average financial loss of 22%.
44. We use the 16% financial loss figure in our model for our central estimate, and use the 22% figure within our sensitivity analysis. We believe the discrepancy between the 2 figures may be driven by differences in the cases that are assessed by FSCS. Cases processed by FSCS concern firms that have already become insolvent. Therefore,

estimated financial losses could be higher for FSCS cases if they represent those where pension transfer advice was systematically more unsuitable (eg where an adviser recommended pension transfers to be placed into illiquid assets). By using data from our survey of advice firms, we are assuming that data has been reported accurately. We believe using a range is the most prudent approach, especially because the average financial loss has a material impact on our redress estimates. The 22% sensitivity increases our estimate of redress by around 35% compared to the central scenario (see paragraph 65).

45. We do not account for inflation explicitly in the CBA. Average redress figures already account for inflation and discount rates in the calculation of past redress cases. Past redress calculations would have used inflation assumptions and discount rates appropriate at the time each calculation was undertaken, so the average redress amounts represent a range of assumptions. In the same way, future average redress amounts will reflect a range of future assumptions that are appropriate at the time each calculation is undertaken. Our model does not make additional assumptions around the timeframe of the payouts or the level of economic assumptions at different times. In reality some future average payouts may be higher or lower than past average payouts but the calculation methodology ensures that all customers receive a payout that is appropriate at the time it is calculated. We recognise that future redress figures may be affected by changing economic circumstances. One way we have allowed for this is by considering a sensitivity for higher redress payouts.

Fraction of transfers where consumer experienced no loss

46. FSCS data suggests that 94% of BSPS members who received unsuitable DB transfer advice suffered losses. The remaining 6% received unsuitable advice that did not in the end financially harm the consumer. By contrast, a report by PwC for the FCA indicates the percentage of no-loss transfers for BSPS members was higher at 15%.
47. We believe this discrepancy is related to the differences discussed in the sub-section above. We therefore use a figure of 6% in our model, with 15% used in our sensitivity analysis. The 15% scenario reduces our estimate of redress by just under 10% compared to the 6% assumption (see paragraph 65).

Financial Ombudsman Service complaints

48. Consumers may complain independently to the Financial Ombudsman Service if their file review concludes they received suitable advice. Using rates observed from BSPS cases reviewed to date by the Financial Ombudsman Service, we assume that 10% of such members are likely to complain to the Financial Ombudsman Service during the operation of the scheme, and the Financial Ombudsman Service will uphold 60% of these. The expected 60% uphold rate is an assumption we have made based on the available data from the Financial Ombudsman Service. Although the Financial Ombudsman Service cases which focus on suitability indicate a higher uphold rate, these cases were initiated by consumers who decided to proactively complain rather than come from a larger pool of consumers who will be encouraged to complain under the redress scheme.
49. For every case that is referred to the Financial Ombudsman Service, we assume advisers will incur a case fee (currently £750) and, based on our evidence to date, a further £500 in compliance costs relating to the case.

Consumer response

- 50.** We have drawn from previous FCA experience, as well as behavioural science literature, to estimate how many consumers may take part in a BSPS redress scheme. We have reviewed consumer response rates to transfer-related PBRs conducted by firms as well as Skilled Person Reports conducted by skilled persons. We have reviewed evidence of the actions of around 2,500 consumers across 15 firms. All of the exercises we have reviewed were opt-in schemes, so our estimates involve making inferences with respect to the opt-out nature of our proposal.
- 51.** Based on our review, we assume that 89% of eligible BSPS members would participate in an opt-out s. 404 consumer redress scheme. We estimate that around 11% of consumers have actively opted out of previous opt-in reviews, separate from those that have not responded.
- 52.** In total we assume that 62% of consumers who suffer a loss would receive redress. The main reason for the discrepancy between the 89% participation rate and 62% redress rate is that many cases will require some additional action on the part of consumers. We assume a relatively large fraction of cases (50%) will require consumers to provide further information before redress can be calculated and not all consumers will respond to that request. In particular, we draw a distinction between 'more engaged' consumers who would have opted-in to the s. 404 voluntarily and provided information when required, and 'less engaged' consumers that would not have done.
- 53.** Annex 3 sets out our consumer response estimates in more detail, including the evidence gathering process. Our estimated response rates used for the alternative options under consideration are presented in the sections below.
- 54.** Our assumed consumer response rate makes a large difference to our cost and benefit estimates (see paragraph 65). We have therefore undertaken sensitivity analysis around the overall 62% response rate figure under s. 404 opt-out, ranging from 40% to 70%. Changing the response rate to 70% increases estimated redress by around 10% compared to our central estimates, whereas changing the response rate to 40% reduces estimated redress by around 25%.

Claims on PII policies

- 55.** We use data from our survey of advice firms to estimate the fraction of redress that each firm may claim from their PI insurer. Excesses for PII for DB pension transfer advice vary but are typically around £25,000 per claim.
- 56.** Where we do not hold information on a firm's PII cover, we have inferred this by extrapolating over the missing observations. In addition, we reviewed 24 individual PII policies to test our assumptions on PII excesses and exclusions.
- 57.** For the reasons set out in the costs section below, we believe it is possible that PII cover for claims arising from our s. 404 could be excluded by insurers. We therefore model an additional scenario where affected firms cannot claim on their PII and therefore pay redress bills from their own resources. As set out in paragraph 65 this makes a marginal difference to our redress estimates, though it does affect the estimated distribution of the redress bill, because more falls on firms and FSCS.

Capital position and firm exit

- 58.** We assume that firms for whom redress and compliance costs exceeds their capital holdings will become insolvent and exit the market. Firm exit is a dynamic, rather than fixed, parameter based on the comparison of estimated liabilities with each firm's capital position.
- 59.** We use 2 scenarios for firms' capital position. Our central assumption is the capital holding reported in the most recent regulatory return RMA-D. Since the capital position of firms could have changed since the latest regulatory return, we also model a lower bound capital holding that represents the minimum capital requirements defined in regulation (IPRU-INV 13.1).
- 60.** Regarding the ordering of liabilities, since our model operates on a stock rather than a flow basis (see 'limitations' section below), we make some modelling simplifications. We factor in compliance costs of reviewing the files, calculating redress and dealing with Financial Ombudsman Service complaints to this calculation on a per-firm basis. We assume that firms pay their PII policy excess before any redress liabilities are due. We then assume any contributions to the redress bill by PI insurers will apply, after any excesses and exclusions are applied. We also model a sensitivity of no PII to allow for potential developments in this market (see paragraph 57). Following this, the firm is assumed to pay as much as possible of their redress liabilities from their capital reserves. If the costs and liabilities exceed their capital resources, the firm is assumed to leave the market. Any residual liability goes to FSCS for redress. We also assume that if the firm cannot meet a PII policy excess payment, the case goes to FSCS (not to the PI insurer).

FSCS

- 61.** For firms that default during the redress scheme, redress liabilities will be passed to FSCS. FSCS redress for pension transfer advice is capped at £85,000. Redress paid and fees incurred by FSCS will in turn be reflected in the FSCS levy and paid for by industry.
- 62.** FSCS administrative costs are taken to be £1,450 for the end-to-end processing of a DB transfer claim, including the redress calculation.
- 63.** We assume that, where a firm becomes insolvent, only the residual BPS liabilities of the firm will be passed to FSCS, rather than all of its liabilities.

Sensitivity analysis and ranges

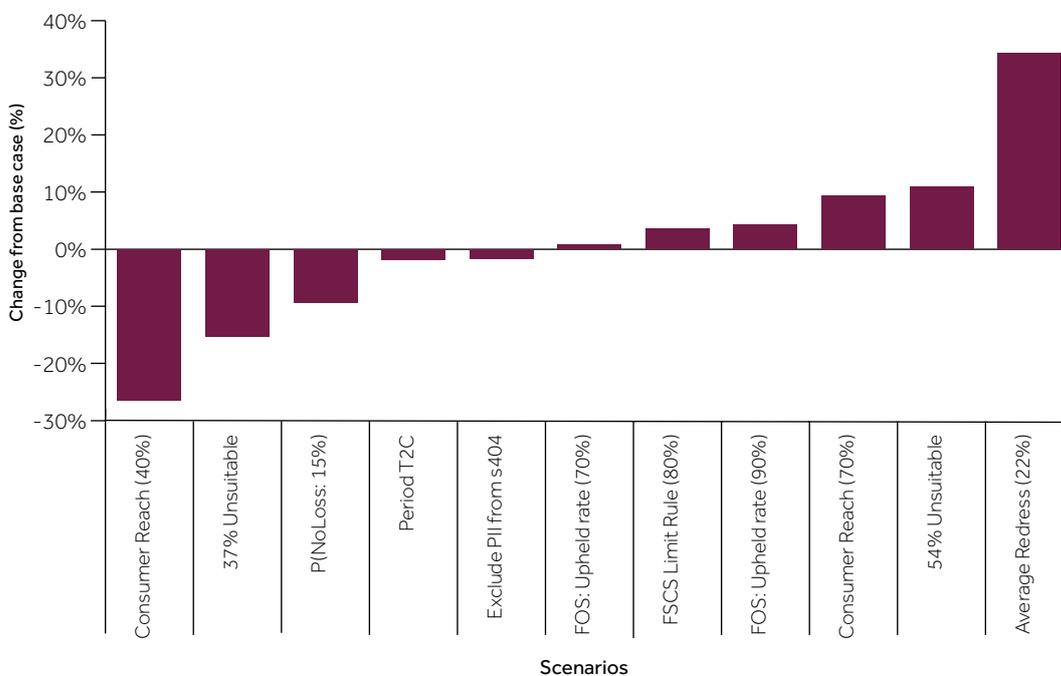
- 64.** Recognising that a number of our assumptions are uncertain, we have used ranges and sensitivity analysis. These ranges and sensitivities are summarised in Table 3. The sensitivity analysis behind our estimated consumer response rates is explained in Annex 3.

Table 3: Summary of assumptions and sensitivity analysis

Assumption	Central assumption	Lower bound	Upper bound
Consumers in scope of time period	8,000 (2016-2018 period)	7,700 (Time to Choose period)	8,000 (2016-2018 period)
Unsuitability rate	46%	37%	54%
Financial loss (used to calculated average redress value)	16%	16%	22%
% of no-loss cases	6%	15%	6%
Capital resources	RMA-D	Regulatory minimum	RMA-D
Pll cover	Firm survey	No cover	Firm survey
Overall consumer response rate (opt-out s. 404)	62%	40%	70%

65. Some of our sensitivities are more important than others. Our analysis indicates that the most important assumptions are the financial loss percentage used to calculate the average level of redress, the unsuitability rate, and the consumer response rate or reach. Varying our other assumptions has a more marginal effect on our estimates. The impact on our results of individually varying our assumptions relative to our central assumptions is shown in Figure 2.

Figure 2: Impact of our sensitivity analysis on estimated redress compared with the central assumptions



Limitations of our approach

- 66.** Our model is subject to several limitations driven by the data available to us or the need to make simplifications to model the dynamic nature of firms dealing with cases.
- 67.** One of the most important assumptions is that we apply average unsuitability rates and estimated redress amounts to all firms in our model. We assume each firm gave the same proportion of unsuitable advice to BSPS members, and the transfer value and redress amounts are the same for every consumer of that firm. In reality we expect unsuitable advice to transfer out of the DB scheme varied among firms. In addition, our model assumes transfer value is unrelated to the share of transfer value lost as a result of unsuitable advice, where in reality these could be related. As a result, we expect our model will miss some distributional effects, especially the distribution of industry costs. Our use of averages could potentially affect our benefit estimates if consumers with higher transfer values suffered larger relative losses from unsuitable advice, or if the fraction of consumers that receive redress from FSCS rather than their advice firm varies, because FSCS compensation is limited at £85,000.
- 68.** While we use the latest regulatory returns data available to us, these are necessarily backward looking. We have used data on firms' capital position and PII cover available as of February 2022. This should reflect reporting periods up to December 2021, but the nature of reporting cycles means the data can be potentially up to a year out of date. Our estimates therefore do not capture any subsequent changes in the capital position of advisers.
- 69.** Another limitation of our model is that it operates on a static stock basis, rather than considering the flow of cases each firm will face. This is particularly relevant for considering the financial viability of firms and their ability to pay redress to consumers. The time period over which a firm must pay redress will affect its solvency – payments that are staggered over time are therefore different to a single lump sum. However, the exact dynamic timing of responses to our proposal is uncertain and we do not have sufficient information to model flows, so we assume a lump sum. We also note that some firms facing redress liabilities may have the ability to raise further capital over and above what they currently hold, though overall we consider this relatively unlikely, so we have not allowed for this in our model. Our approach means we assume firms are less able to spread the liabilities over time than they may be in reality, which potentially over-estimates the impact on FSCS. On the other hand, however, firms may choose to exit sooner than we estimate, meaning that redress paid out would be less than the level of current assets. This would result in more cases going to FSCS sooner and with larger unmet liabilities, thus underestimating the impact on FSCS.
- 70.** Our assumptions on consumer response rates are an important driver of our assumptions of the costs and benefits of the consultation options but are subject to a wide degree of uncertainty. Consumer response rates are highly context specific and the external validity of the evidence we have reviewed from previous PBRs may or may not be relevant to a s. 404 scheme given its specific circumstances. Response rates may also vary according to the levels of compensation a consumer could receive – consumers with smaller pots could be less incentivised to respond. Consumer response rates are also partly endogenous – they depend on factors that are within control of the FCA, such as the wording of communications or the intensity of supervision and enforcement activities. To account for these behaviours, we have applied sensitivity analysis to consumer response assumptions.

- 71.** The secondary impacts of our proposals on the wider pension transfer advice and PII markets do not feature within our model. These factors are inherently uncertain and are often the result of dynamic interplay between supply and demand in the respective markets. We judge it is not reasonably practicable to model these factors, but we have assessed them qualitatively in the sections below.
- 72.** Overall, we believe these limitations reflect a proportionate approach to estimating costs and benefits given information constraints. During the consultation period we will consider whether there is additional analysis we can undertake to provide updated estimates in the Policy Statement.

Summary of costs and benefits

- 73.** Table 4 summarises our estimates of the quantified costs of the s. 404 redress scheme proposal. These figures are expressed relative to our counterfactual, our current supervisory and enforcement approach to BSPS and therefore are different from the total amounts of, for example, redress consumers would receive. We set out our estimated impact under our s. 404 opt-out proposal, the counterfactual and the alternative options in absolute terms in Table 7.

Table 4: Summary of costs and benefits for the s.404 proposal relative to the counterfactual

Category	One-off or Ongoing	Benefits	Costs
Consumers	One-off	£56.1m	–
Firms*	One-off	–	£9.0m <i>(excluding redress payments)</i>
PI insurers	One-off		£15.2m
FSCS	One-off	–	£14.3m
FCA (midpoint)	One-off	–	£3.2m
Total	One-off	£56.1m	£41.8m

* Note these costs include the Financial Ombudsman Service fees paid by firms to cover Financial Ombudsman Service administrative costs. Costs may not sum to total due to rounding.

- 74.** As explained in the 'Redress liabilities' section below, Table 4 does not present redress paid by advice firms as a cost. We do, however, present the part of the redress bill estimated to be paid by insurers and FSCS as costs. We believe this is a conservative approach, but we welcome feedback on this approach.

Costs

75. Our cost estimates are summarised in Table 5 below.

Table 5: Summary of costs for the s. 404 proposal (central assumptions)

	Category	Cost	s. 404	Counterfactual – current supervisory and enforcement approach	Difference
Firms	Advice firms in scope	Familiarisation and legal review	£0.6m	0	£0.6m
		Training	£0.3m	0	£0.3m
		Other compliance costs	£3.8m	0	£3.8m
		File reviews	£4.0m	£1.1m	£2.9m
		Cost of calculating redress	£1.4m	£0.3m	£1.1m
		Financial Ombudsman Service fees and other costs relating to complaints	£0.4m	£0.1m	£0.3m
		Cost of redress payments	See 'Redress liabilities' text	See 'Redress liabilities' text	See 'Redress liabilities' text
Other firms	FSCS redress pay-out recovered through levies	£20.6m	£6.3m	£14.3m	
		FSCS administrative costs recovered through levies	£0.6m	£0.2m	£0.4m
	PI insurers	Claims	£19.4m	£4.2m	£15.2m
Regulators	FCA	Case review (midpoint)	£3.2m	0 (Assumed to be BAU)	£3.2m
	Financial Ombudsman Service	Administrative costs	£0.4m	£0.1m	£0.3m
Total			£44.2m	£10.8m	£33.4m

Note: The Financial Ombudsman Service estimates of administrative costs do not adjust for any recuperation of Financial Ombudsman Service costs from firms that might take place. As such we do not include Financial Ombudsman Service administrative costs in the total as these costs are part of firms' costs relating to complaints.

Cost to firms

Compliance costs

Familiarisation and gap analysis

76. We expect firms will incur costs to familiarise themselves with our proposed rules, including legal review of our rules on pre-scheme checks and insistent clients. We draw on standardised assumptions to estimate these for all of the estimated 343 advice firms in scope of our proposal, comprising an estimated 3 large firms, 24 medium-sized firms and 316 small firms. Taking into account the length of this CP and the legal instrument, we estimate these costs to be around £0.6m.

Training

77. To comply with our proposal's rules on assessing the suitability of advice set out in the Defined Benefit Advice Assessment Tool (DBAAT) we expect firms will incur costs to train their staff. We estimate that large, medium and small firms will respectively train 10, 5 and 1 staff member. Using our standardised assumptions, we estimate training costs of £0.31m.

Other compliance costs

78. We estimate additional compliance costs to account for the elements of our proposal regarding data reporting and monitoring, and attestations.
79. We estimate these costs will collectively require firms to incur the time of staff and/or consultants. Assuming a 'minor' project according to our standardised assumptions, we apply total staff days of 540, 280 and 6 respectively for large, medium and small firms to derive an industry-wide cost estimate of £3.8m.

Cost of file reviews

80. Under our proposal, we estimate firms would have to review 4,000 transfers. Multiplying the estimated cost of reviewing a transfer of £1,000 by the estimated number of transfers implies costs of around £4m under our proposal.
81. Under the counterfactual supervisory and enforcement approach, we estimate these costs would be around £1.1m.

Costs of calculating redress

82. Firms are required to cover the costs of calculating redress for cases where advice was found to be unsuitable (providing they have sufficient information from the consumer).
83. Of the 4,000 transfers that we estimate will be reviewed by firms under our proposal, we estimate that about 1,400 consumers will be in a position to receive redress under our central scenario. Firms will incur £1,000 in costs per case, resulting in total costs of £1.4m. Under our counterfactual scenario, we estimate costs would be around £0.3m.
84. As a simplifying assumption, we have estimated compliance costs for the other options under consideration on a pro rata basis. These costs are included within the estimates for the counterfactual in Table 5.

Financial Ombudsman Service fees for firms and compliance costs related to the complaints

- 85.** Of the 4,000 transfers that we estimate will be reviewed by firms under our proposal, we estimate in the model using firm-specific data that around 350 consumers will complain to the Financial Ombudsman Service under our central scenario. Firms will incur at least £1,250 in fees and compliance costs per complaint (noting that the Financial Ombudsman Service's case fee is currently £750 but could, subject to consultation, increase). Of these, we estimate 60% of cases will be upheld and sent back to firms for redress calculations. This implies costs for firms of around £0.4m. Under the counterfactual, we estimate these costs would be around £0.1m.
- 86.** As part of our sensitivity analysis, we have attempted to estimate the maximum possible compliance costs to firms associated with facilitated referrals to the Financial Ombudsman Service. These maximum costs would arise if, following firms' review, all 4,000 transfers were passed to the Financial Ombudsman Service for review. Under this scenario, the overall compliance costs to firms would be up to £5m. (See also paragraph 95.) This is not reflected in our model or in our central estimates. Moreover, the likely level of these costs is uncertain at this stage as the details on the process is still under consideration.

Redress liabilities

- 87.** We do not consider that redress paid by advice firms should be recorded as a cost of our proposal. Any redress costs payable by firms that are found to have given unsuitable advice to BSPS members would represent harm inflicted on consumers from past non-compliance with our rules. If we considered such payments a cost, it is unlikely any redress mechanism would be able to generate benefits in excess of its costs without consideration of wider benefits (for example, confidence in the financial system) brought about by redress schemes. By contrast we do count compliance tasks as costs, since some of these would be incurred by both compliant and non-compliant firms. This assumption is likely to mean we overestimate some elements of costs.
- 88.** However, we do present redress liabilities of our proposal that are passed on to other parties, including insurers and other firms, as costs. We recognise that if all advice firms that had given unsuitable advice had 100% insurance coverage then effectively all redress would be presented as a cost under this approach. We therefore welcome views on this point.
- 89.** Of the estimated redress liabilities of our proposal of £71.2m, we estimate in our central scenario that £19.4m could be met by PI insurers based on latest regulatory returns. Under the counterfactual our estimate for total redress is £16.7m, of which £4.6m would be met by PI insurers. We further discuss possible developments in the PII market below.

Firm failure and FSCS costs

- 90.** We estimate that around 40 firms, approximately 10% of firms, that provided pension transfers to BSPS members, and are in scope of the scheme, will become insolvent under our redress scheme proposal. These firms provided approximately 50% of BSPS DB transfers among firms that are still active. However, our estimates of market failure relative to the size of the wider DB transfer advice market are much lower. We estimate that these firms who are expected to fail as result of the introduction of the scheme represents approximately 2% of all firms who have arranged DB transfers, and over 1% of the total number of DB transfers.

91. Under the counterfactual of our current supervisory approach, we estimate that less than 2% of firms that provided pension transfer to BSPS members during the in-scope time period and that are still active will become insolvent and exit the market.
92. Firm exit would result in redress liabilities being passed to FSCS. As a result of firm exit, under our proposal we estimate that £20.6m (of the total redress cost) will be paid by FSCS under our central scenario, excluding FSCS administrative costs, which are around £0.6m. This compares to an estimated £6.3m and roughly £0.2m under the counterfactual.
93. Where we estimate firms will leave the market, it will be as a direct result of them providing unsuitable advice to BSPS members. Redress costs are the principal determinant of whether a firm will exit or not. Redress will only be payable by firms whose past advice harmed consumers. We expect that small and medium sized advice firms, with lower capital resources are more likely to exit the market as a result of our proposal. Large, multi-product financial firms are underrepresented in the BSPS transfer advice market and tend to be better capitalised.

Costs to the Financial Ombudsman Service

94. As set out in paragraph 85, we estimate that around 350 consumers are likely to complain to the Financial Ombudsman Service under our central scenario. This is likely to result in around £0.4m costs to the Financial Ombudsman Service to handle the complaints. These estimates do not adjust for any recuperation of Financial Ombudsman Service costs from firms that might take place, eg through a Financial Ombudsman Service fee.
95. As part of our sensitivity analysis, and set out in paragraph 86, we have attempted to estimate the maximum possible cost to the Financial Ombudsman Service. We have assumed that following firms' review all transfers will be passed to the Financial Ombudsman Service under the facilitated referral, ie all 4,000 cases would be referred to the Financial Ombudsman Service. Under this scenario, the overall cost to the Financial Ombudsman Service will be up to £5m. This is not reflected in our model or in our central estimates. These costs are uncertain at this stage as the details on the process and the level of Financial Ombudsman Service fees firms will have to pay are under consideration.

Costs to the FCA

96. For our s. 404 proposal we estimate that direct costs to the FCA will be between £2.8m and £3.6m. These costs include reporting and firm monitoring, resources to collate and analyse data, and follow-up work. We assume costs to the FCA of the counterfactual supervisory and enforcement work are already allocated and therefore are incorporated into business as usual.

Wider impacts

97. We have carefully considered the potential impact of a BSPS s. 404 redress scheme on the wider pension transfer and advice markets, drawing on the interviews we held with insurers and the economic consultancy work we commissioned. This section summarises our analysis.

Professional indemnity insurance

- 98.** PII for DB transfer advice typically works on a 'claims made' basis whereby insurers will provide cover for claims arising during the policy's duration. Contracts are typically 12 months, with renewal dates spread over the course of the year. Firms that hold PII pay an annual premium, while policies will typically apply a per-claim excess specific to DB transfer advice, and various limits and exclusions can also apply. The PII market for DB transfer advice consists of a relatively small number of rated and regulated insurers and consortiums. Some insurers are willing to take on new clients, but some restrict DB transfer advice to existing clients. Competition in the market may therefore be relatively limited under both the status quo and our counterfactual. We will continue to explore any potential impacts of our proposal on competition and would welcome views on this topic.
- 99.** At a high level, the impact of our proposals on prices and conditions of PII for DB transfer advice depends on the impact on the likelihood of claims arising and potential magnitude of these claims. We have considered PII for BSPS related claims and non-BSPS related claims.

PII for BSPS-related claims

- 100.** Our redress scheme proposal will increase the likelihood of advice firms that advised BSPS members claiming against their PII policies relative to the counterfactual. Our proposals are unlikely to affect the average magnitude of claims on PI insurers unless the claims arising from our s. 404 differ systematically in scale to past claims. The potential for this increased risk is difficult to estimate. While our model for this CBA makes the simplifying assumption that the unsuitability rate will be the same for all BSPS firms, in reality the unsuitability rate for insured firms may be lower. For example, insurers have told us that they are unlikely to provide cover at any price for certain higher-risk firms that have undertaken large numbers of BSPS transfers or faced higher complaints to date.
- 101.** Overall, as a result of the increased probability of claims we consider it likely that PII cover for historical BSPS transfers will become harder to obtain relative to the counterfactual. Absent exit from the market, PII providers may respond to a higher risk of claims in a number of ways, for example by repricing, increasing excesses, widening exclusions, or removing pension transfer cover either for BSPS or more widely. Our understanding from interviews with insurers is that the greater impact of a s. 404 scheme could be through exclusions of cover for BSPS. (We are aware that some insurers may already exclude claims arising from s. 404 redress schemes.) Given the relatively small number of insurers, and the fact that not all of them accept new clients, advice firms could face difficulty obtaining cover for historical BSPS transfer advice.
- 102.** If all insurers reacted in the same way, our proposal could lead to an exclusion of BSPS transfers by all PII providers. Consequently, our proposal may cause large firms to need to raise capital to compensate for exclusions in their PII cover, while smaller firms for whom this is less feasible may be forced to leave the market. While a scenario of no PII cover for BSPS pension transfers is factored into our sensitivity analysis (see paragraph 57), because the unsuitability rate will in reality vary by firm, we expect some firms with historical BSPS transfers will face additional costs to those set out in our model if PII coverage becomes unobtainable while others will face lower costs. We consider that it is not reasonably practicable to estimate these costs.

- 103.** We have considered the possibility that the market may adapt to our s. 404 proposal, thereby avoiding a full closure of PII for BSPS-related claims. If insurers can draw on the information they hold on clients, they may be able to differentiate factors affecting the probability of claims between firms, meaning the risks of full closure would be mitigated. However, there are already incentives for advice firms to signal low probability of claims to their insurer, and we understand that identifying firm-specific risks in this way is difficult for insurers since several factors influencing the probability of claims are considered unpredictable. It is also possible that, as firms typically purchase PII and DB transfer PII from the same insurer, some insurers will continue offering BSPS cover in a limited form in order to avoid damaging their other revenue streams. This could especially be the case where a firm has dealt with very few historical BSPS cases. It is very difficult to judge the likelihood of this sort of market adaptation or the full consequences on the market.
- 104.** Ultimately, the costs for firms of insuring or holding sufficient capital for historical BSPS DB transfer advice will reflect the risks that advice caused harm to consumers.
- PII for non-BSPS related claims***
- 105.** The impact of our proposals on the likelihood of claims arising for non-BSPS DB transfer advice is unknown but there are reasons to believe it may be limited.
- 106.** One possible transmission mechanism would be that a consumer redress scheme would contribute to wider awareness of potential concerns over DB pension transfers, leading to increased compensation claims from non-BSPS consumers.
- 107.** A second theory is that the use of our s. 404 powers could lead to market expectations of further FCA intervention in the DB transfer market in the future (notwithstanding that Chapter 1 of this CP sets out our position that the BSPS was a special case and discusses the threshold tests for a s. 404).
- 108.** While the impact of either of these factors is not possible to quantify, we note that the incremental effects relative to the status quo, and our counterfactual appear to be limited. Market expectations have likely already adjusted to our previous communications on DB transfer advice to BSPS members, and the nature of 12-month PII contracts means that insurers have multiple opportunities to react to regulatory approaches as they arise. And while media coverage of our proposal could stimulate some non-BSPS consumers to claim compensation, we would typically expect such response rates to be very low (as we do for our enhanced engagement option in this CP) and the incremental effect of media coverage to be relatively limited compared with the counterfactual.
- 109.** Our proposal could alter sentiment among insurers. Even if the underlying risk remains unchanged, the role of insurance cycles could mean our proposal contributes to a wider hardening of market and reduced appetite. This could result in higher premiums, increased excesses, and greater exclusions in the wider market for PII for DB transfer advice. Establishing causality for sentiment is very difficult but we do not consider a s. 404 redress scheme limited to BSPS members sufficient to cause widespread deterioration in market conditions. However, it is not reasonably practicable to quantify any incremental effects of our proposal on sentiment. We welcome views from respondents on this point.
- 110.** Given our conclusions, we do not expect our proposal will lead to any new competition concerns in the wider PII market for DB transfer advice.

- 111.** Finally, we do not believe our proposals create any financial viability implications for PI insurers. Our estimated liabilities for insurers are estimated at £19.4m, which compares equity of the relevant firms' UK subsidiaries at the end of 2020 of over £8.5bn, with capital resources of the parent corporate groups estimated at £285bn. Firms may have also taken on some reinsurance that may protect them from any liabilities.

Advice market

- 112.** We have identified 2 principal, related ways our proposal could lead to wider impacts in the market for DB pension transfer advice in addition to those that would arise under the counterfactual. Firstly, as a consequence of firms exiting the market because their redress liabilities exceed their capital, as estimated in our model. As paragraph 90 sets out, we estimate that under our proposal around 2% of firms that currently offer DB transfer advice, representing over 1.1% of DB to DC transfers, will leave the market under our central scenario. These firms all provided unsuitable DB transfer advice to at least one BSPS member. Secondly, via a knock-on effect of the price, conditions, and availability of PII (see section above), firms that advised BSPS transfers could face higher price or excesses for their PII cover. If insurers introduced or extended BSPS exclusions in PII for DB transfers, as in our scenario of no PII cover (see paragraph 60), then market exit could extend to 3% relative to the counterfactual.
- 113.** These estimates represent a small reduction in the supply of financial advice, both for DB transfers and the other services that those advisers provide. All other things being equal, this could lead to short-term increases in the price of financial advice for consumers and a reduction in the quantity of advice demanded. Given the small number of firms estimated to exit, and given that a significant number of advice firms have low exposure to BSPS customers, this effect is likely to be small. The extent to which prices and volumes would change, and how much price increases would be passed on to consumers, depends on a number of factors, including:
- The responsiveness of firms to changes in the price of PII.
 - The responsiveness of consumers to changes in the price of pension transfer advice. Since financial advice is mandatory for DB transfers, demand for that type of advice may be relatively unresponsive. The responsiveness of demand for other types of financial adviser services is unknown.
 - The degree to which the advice market is segmented, either according to the types of consumers that firms serve, or geographically.
 - The cost base of firms, and the relative size of PII premiums as a share of the variable costs of advising on a pension transfer.
 - The amount of spare capacity in the market.
- 114.** We note that the introduction of our contingent charging rules in October 2020 are likely to bring or to have already brought down the volume of consumers advised to transfer out of their DB scheme. By reducing conflicts of interest, our rules should also have reduced the fraction of advice that is unsuitable. Therefore, we would expect the market size, and potentially the number of firms, to decrease under the counterfactual.
- 115.** We have also considered the impact on the wider advice market, ie firms with DB advice permissions who did not advise BSPS members. The number of these firms that would continue operating is not affected directly by our proposal. Any impact on advice provision among this population would have to be indirect via the price and conditions of PII, or an incremental reduction in firms' appetite to provide DB transfer advice following our proposed redress scheme. Future PII conditions are uncertain but for the

reasons set out in paragraph 108 we do not believe there are strong probability-driven reasons to expect a deterioration in this market as a result of our proposal, relative to existing trends under the counterfactual. Similarly, we do not believe that a redress scheme limited to BSPS members should affect appetite in the wider market.

- 116.** While we consider it very unlikely PII for non-BSPS advice firms or wider market appetite will be materially affected by our proposal, the most extreme scenario resulting from our proposal would be an effective closure of the DB transfer advice market. Under this extreme scenario, a closure might arise because advice firms could not obtain PII cover for further DB to DC transfers and would be unwilling or unable to set aside the capital to provide such advice. Consequently, consumers would lose access to future DB transfers under this scenario. Those that stood to benefit from future transfers would lose out, both in terms of the financial benefits of the transfer (including, where relevant, to their next of kin) and any additional wellbeing effects. By contrast, consumers that did not stand to benefit from transfers, either because their advice would have been unsuitable or would not have improved their financial position, would gain or be unaffected by a closure of the market.
- 117.** During the consultation period we are conducting further research to further understand the likely impacts of our proposal on the wider advice market. It is not reasonably practicable to quantify any of the effects we have outlined above as they depend on the dynamic reaction of markets. But further qualitative evidence will help us better understand the probability and impact of different scenarios.

Benefits

- 118.** The primary benefit of our s. 404 proposal is the redress that consumers would receive (Table 6).

Table 6: Summary of benefits for the s. 404 proposal

	Category	s. 404 opt-out (our proposal)	Counterfactual – current supervisory and enforcement approach	Difference
Consumers	Compensation received	£71.2m	£15.1m	£56.1m
Total		£71.2m	£15.1m	£56.1m

- 119.** The benefits above represent a transfer from firms to consumers. However, the benefits of our proposal can also be conceived of as correcting previous market failures. The redistributive aspect of compensation is consistent with our consumer protection objective to 'undo' previous harm and may be considered a benefit in and of itself.

Wider benefits

- 120.** We have considered 2 other wider benefits of our proposal.
- 121.** Requiring a redress scheme may improve consumer confidence and trust in financial advice or financial markets more broadly. Consumer confidence is likely to be most improved where the total amount of redress paid most closely matches the total loss consumers experienced, as is the case in our s. 404 proposal. However, on a national scale, the group of affected consumers is very small. So any confidence impact at the market level would require a wider group of consumers to be influenced by the decision, for instance via media coverage. It is not possible to quantify this impact of our proposal relative to the counterfactual, but the impacts would appear relatively marginal.
- 122.** Secondly, the regulatory precedent created by requiring a redress scheme could incentivise firms to provide better quality pension transfer advice in the future. However, given the significant regulatory action to date on pension transfers, planned actions on BSPS under the counterfactual, and the fact our intervention is limited to advice given to BSPS members, the incremental impact on incentives for firms in the wider market is likely to be small. Quality of advice could be affected via another route, however. While we envisage some firms will exit the market as a result of our proposals, if these exiting firms have provided poor advice in the past, it may imply higher average advice standards will prevail in the future.
- 123.** These factors are not reasonably practicable to quantify. Overall, we do not consider these wider factors to be significant factors in influencing the choice of option.

Other options

- 124.** This section presents our cost and benefit estimates for the other options under consideration.
- 125.** Our estimates of the costs and benefits for the alternative options is based on the same modelling methodology used for our proposal. However, we have assumed each option generates different consumer responses. These are set out in Annex 3.
- 126.** Table 7 contains our central estimates of the costs and benefits of the alternative options under consideration. Our enhanced supervision option is an extension of the current supervisory approach, so our presented estimates are a sum of the enhanced and current supervisory options. In isolation without the current supervisory approach, we estimate our enhanced supervision would lead to around 300 consumers receiving redress, and benefits less administrative costs of £12.9m.

Table 7: Summary of costs under different intervention options

Category	Measure	Counter-factual – current supervisory and enforcement approach	s. 404 with opt-out (our proposal)	s. 404 with opt-in	Enhanced supervision (including current supervisory approach)	Enhanced communications
Scale	Number of consumers in scope	1,100	4,000	4,000	2,300	4,000
	Number of consumers that receive redress	300	1,400	1,200	600	100
Costs - administrative	Firms (compliance)	£1.8m	£10.5m	£9.4m	£3.6m	£0.5m
	FCA	£0.0m	£3.2m	£2.0m	£0.7m	£0.4m
	FSCS (administrative)	£0.2m	£0.7m	£0.6m	£0.5m	£0.1m
Costs - redress related	FSCS (redress)	£6.3m	£20.6m	£17.7m	£14.7m	£1.8m
	PI insurers	£4.2m	£19.4m	£17.1m	£5.3m	£1.7m
Benefits	Consumers	£15.1m	£71.2m	£63.3m	£30.8m	£6.3m
Benefits less administrative costs of the scheme*		£13.2m	£56.9m	£51.3m	£26.0m	£5.3m

Note: FCA costs are presented as midpoints of our estimated range for clarity.

* Administrative costs here are taken to be firms' compliance costs, FCA costs and FSCS administrative costs.

- 127.** For all the options considered, the benefits to consumers who were provided unsuitable advice to transfer out of BSPS will be the direct transfer of redress from their advice firm, including via PII, (or other firms via FSCS, in cases where firms fail).
- 128.** Costs to the FCA for each option reflect the additional supervisory and regulatory costs. For the communications outreach options, costs to the FCA would involve the commission of enhanced communication through partners and outreach, including in-person events with other members of the regulatory family. This would be supported by consumer tracking to evaluate the effectiveness of the communications. We estimate nearly £400,000 of FCA resource cost would be required for enhanced engagement and to mitigate the risk that firms will not resolve complaints appropriately to ensure fair outcomes for consumers.

Comparison of options

- 129.** We estimate our proposal of a s. 404 redress scheme with opt-out to have the highest benefits less administrative costs of the scheme. Our estimates of benefits under central assumptions are set out in Table 7. We estimate benefits less administrative costs of £56.9m under a s. 404 redress scheme with opt-out, and of £51.3m under a redress scheme with opt-in. These 2 figures are very similar, but we note that our estimated consumer redress benefits are around £8m higher under the opt-out version. We consider the uncertainty behind our estimates will affect the 2 s. 404 options in similar ways, and therefore a preference for the higher estimated redress under an opt-out scheme is the most proportional choice. Both benefits and benefits

less administrative costs are higher under the s. 404 options than the others we have considered.

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

Annex 3

Consumer response rate estimates

1. This Annex sets out our methodology for estimating consumer response rates under the policy options considered. Consumer response rates refers to the proportion of eligible consumers who qualify for redress that will engage and take the necessary steps to seek compensation. Table 1 displays the estimated response rate with respect to a section 404 (s. 404) redress scheme with opt-in. Table 2 displays the estimated response rate and redress rate with respect to the s. 404 redress scheme with opt-out.
2. The broad approach we take to estimating consumer response rates to the s. 404 scheme with opt-in and the s. 404 scheme with opt-out is that we start with an initial estimate of the response rate. This is based on previous defined benefit pension redress exercises including past business reviews (PBRs) conducted by firms as well as skilled person reports conducted by skilled persons on behalf of firms. We then allow for further consumer attrition from the scheme at 2 additional points of contact at which consumer response is required. From this, we arrive at a final response rate of consumers that receive redress.
3. A simplifying assumption for the purposes of the cost benefit analysis (CBA) that relates to both the s. 404 scheme with opt-in and the s. 404 scheme with opt-out is that there will not be any material information gap cases during the suitability assessments. A material information gap is where advice cannot be assessed as suitable or unsuitable with the information available and so consumers must be contacted a further time to provide such information. If there are material information gap cases, this could result in additional attrition (not set out below) from both the s. 404 scheme, whether opt-in or opt-out.
4. Importantly, both tables and accompanying descriptions take as given the proportion of pension transfer advice that will be assessed as unsuitable through suitability assessments. As outlined in the CBA, for modelling purposes, we have made one initial assumption on the suitability rate which covers the whole of this process. Only where advice is found unsuitable will consumers be eligible for redress. As per the CBA, by assuming that response rates are independent of whether advice is found unsuitable, the tables can be interpreted as the proportion of consumers who were given unsuitable advice that will receive redress.

s. 404 with opt-in

Table 1: s. 404 with opt-in

		1. 'Engaged consumers' – Expected to opt-in				2. 'Disengaged consumers' – Expected non-responders	3. Expected to actively not opt-in
1	Expected action under an opt-in scheme	62%				27%	11%
2	More info requested to calculate redress	No – 50%		Yes – 50%			
3	Progression to the next stage	100%		80%			
4	Responder/ non-responder (= rows 1 x 2 x 3)	31%	0%	25%	6%		
5	Remain in s. 404 process (= sum of green cells in column from row 4)	56%					
6	Assumed response (and acceptance rate) to request for further details and offer of redress	99%					
7	Responder/ non-responder (= rows 5 x 6)	55%		1%			
Overall consumer response							
8	Overall consumer response	55%		7%		27%	11%
COLOUR KEY		Remain in s. 404 process				Exit the s. 404 process	

5. Table 1 description:

- Row 1** captures our assumption about the opt-in rates to a s. 404 opt-in scheme. We set out that we would expect to see 62% of BSPS customers opt-in to the redress scheme, 27% not respond to the invitation to opt-in, and 11% actively respond to say they will not opt-in. Under this assumption, only the 62% consumers that opt-in, which we call 'engaged', will continue in the redress process. Those that do not respond, which we call 'disengaged', or that actively respond to say they will not opt-in following this initial communication will not continue in the scheme. To inform our view of how many consumers may opt-in at this stage, we reviewed a range of previous opt-in redress exercises for consumers that may have received unsuitable advice in relation to their defined benefit (DB) pension transfer. These previous redress exercises included both PBRs conducted by firms as well as skilled person reports. In total these schemes involved 15 firms and around 2,500 consumers. Reviewing these redress schemes, we found that, of the consumers written to inviting them to opt-in to a suitability review of their advice, 62% responded by opting into the redress scheme, 27% do not respond to the invitation to opt-in, and 11% actively responded to say they will not opt-in. We considered a range of other sources of evidence when assembling these estimates. This included the s. 404 redress scheme run for Arch cru, as well as a range of other

redress exercises conducted by the FCA. We elected to focus on previous redress schemes specific to DB transfers as these are most representative of the redress scheme being considered in this instance. It is important to note that we believe that customers that are eligible for redress through this scheme are relatively inert. We acknowledge that, for this reason, consumers' responses could be lower in this cohort as compared to the previous redress exercises that we have considered here. Despite this, we still consider that previous experience of similar redress exercises is our best guide to the response rates we may see for this proposed opt-in exercise.

- **Row 2** shows the assumption that 50% of eligible consumers will have to provide more information at this stage. Following the assessment of suitability, we expect that some consumers will have to provide further information such that a calculation can be made about the amount of redress they are owed. In some instances, we expect that the relevant information to calculate redress could be collected by the relevant financial advisor from trustees of the consumer's current pension scheme. Therefore, these consumers will not have to provide any further information at this stage. We do not know the proportion of consumers this will affect; we have assumed it will be half. We have considered sensitivities in row 3, below.
- **Row 3** displays our assumption that if consumers are not contacted for further information, because enough information is already available, then trivially 100% will continue to the next stage. Otherwise, if consumers are contacted to provide further information, we assume that only 80% consumers will respond to provide that further information. This is an assumption based on the reasoning that these consumers have already demonstrated that they are willing to act by actively responding to the invitation to opt into the scheme. However, the request to provide further information may be somewhat burdensome (involving finding and sending paperwork) causing some of these consumers to drop out of the scheme. We do not have direct information from previous redress exercises on how many consumers would drop out at this stage. We therefore looked for response rates in similar situations, across our previous work and in academic literature. We consider that one close comparison is [a study](#) which conducted large field trial of US tax filers who are likely to be entitled for earned income tax credit. The authors of this study were able to isolate the effect of asking for more information. They found that asking these tax filers to complete an additional set of eligibility criteria decreased the overall claimant rate by 17%. This evidence helps motivate our estimate that 20% of 'engaged consumers' that are asked further questions at this stage may drop out, leaving only 80% of 'engaged consumers' to respond. To note, our final redress estimates are not very sensitive to this assumption: if the true response rate is 90% (10 percentage points (ppt) higher) then approximately 3ppt more consumers would respond here and 3% more total consumers would ultimately receive redress. If the true response rate is 70% (10ppt lower) then approximately 3ppt more consumers would respond here and 3% fewer total consumers would go on to receive redress.
- **Row 4** multiplies the respective sub-columns in row 1, row 2 and row 3 together to show how many consumers we expect to respond to the request for information to calculate redress. Overall, we expect a further 6% of consumers would drop out at this stage.
- **Row 5** sums up the consumers in row 4 that remain in the s. 404 process, and shows that overall based on our assumptions, 56% of consumers remain in the s. 404 process at this stage.
- **Row 6** shows our assumption that 99% of consumers will respond to a request for further information and accept the offer they are issued. This is based on the very high-level of response and acceptance at this stage in previous redress schemes,

whether PBRs or skilled person reports. Based on the scheme design, we expect that all consumers will have to respond to accept or reject the offer and if they do accept the offer, they will also have to provide details of the bank account they wish the money to be paid into.

- **Row 7** multiplies row 5 and row 6 together to show how many consumers we expect to respond and accept the offer they are issued. This shows that we expect around 1% of consumers would drop out at this stage.
- **Row 8** shows that 55% of total consumers (89% of all 'engaged consumers') would remain in the s. 404 opt-in process at this stage (as calculated in row 7). It also shows that, in total 7% total consumers (11% of 'engaged consumers') do not respond to future queries when asked (the sum of the red cells in rows 4 and 7). This is on top of the 27% of consumers that did not respond to opt in initially and the 11% of consumers that actively respond to say they will not opt in. In total therefore, we expect that 55% of consumers, deemed to have received unsuitable advice, will respond and receive redress as part of a s. 404 with opt-out scheme.

s. 404 with opt-out

Table 2. s. 404 with opt-out

		1. 'Engaged consumers' (would have opted in anyway under an opt-in scheme)				2. 'Disengaged consumers' (expected non responders under an opt-in scheme)				3. Expected to opt-out (actively do not opt-in to an opt-in scheme)
1	Expected action under an opt-in scheme	62%				27%				11%
2	More info requested to calculate redress	No – 50%	Yes – 50%	No – 50%	Yes – 50%					
3	Progression to the next stage	100%	80%	100%	0%					
4	Responder/ non-responder (= rows 1 x 2 x 3)	31%	0%	25%	6%	14%	0%	0%	13%	
5	Remain in s. 404 process (= sum of green cells in column from row 4)	56%				14%				
6	Assumed response rate to request	99%				50%				
7	Responder/ non-responder (= rows 5 x 6)	55%	1%	7%	7%					
Overall consumer response										
8	Overall consumer response	55%	7%	7%	20%	11%				
9	Overall consumer response (sum) (= sum of green cells from row 8)	62%								
COLOUR KEY		Remain in s. 404 process				Exit the s. 404 process				

6. Table 2 description:

- To date, the FCA has not set up a s. 404 scheme with opt-out. So, to inform these consumer response rates, and therefore the proportion of eligible consumers that we estimate will receive redress, we have made inferences from previous opt-in redress exercises. These redress exercises are the same PBRs conducted by firms as well as skilled person reports conducted by skilled persons, that are referred to above, in the s. 404 opt-in case.
- **Column 1**, which considers 'engaged consumers' (consumers we would expect to opt-in to an opt-in scheme) is unchanged from the s. 404 with opt-in. For the 62% of consumers that we would expect to opt in to an opt-in scheme, we assume their actions and outcomes will be the same as under an opt-in scheme. Namely, the assumptions will remain the same as under the s. 404 opt-in scheme and 55% consumers will receive redress. No further assumptions to those set out for a s. 404 opt-in scheme are required.
- **Column 3**, which considers consumers we would expect to actively respond to say they will not opt in to an opt-in scheme, is also unchanged from the s. 404 with opt-in. Explicitly, we assume that all of these consumers (11% of total consumers) will opt out of any opt-out scheme.
- **Column 2**, which considers 'disengaged consumers' (consumers we would expect not to respond to an opt-in scheme) is changed from the s. 404 with opt-in case. Some assumptions remain the same and some additional assumptions are required. The rest of this section will consider these consumers alone before returning to the overall implications of pursuing a s. 404 opt-out scheme.
- **Row 1** demonstrates the fundamental difference between an s. 404 opt-in redress scheme and an s. 404 opt-out redress scheme. Namely, that 'disengaged consumers' remain in the s. 404 process and have their advice reviewed automatically without having to opt in. Under the assumptions already set out, all 27% of consumers that are 'disengaged', as well as all 62% of consumers that are 'engaged', will have their advice reviewed. Thus, 89% of consumers will have their advice reviewed.
- **Row 2** is also unchanged, featuring the assumption that 50% of eligible consumers will have to provide more information at this stage.
- **Row 3** again displays our assumption that if consumers are not contacted for further information, then trivially 100% will continue to the next stage. For 'engaged consumers', we expect 80% will respond, as in Table 1. A new assumption sets out that for those 'disengaged consumers' who are required to provide additional information to calculate redress, we expect that none (0%) will respond. This assumption is based on the fact that, given we would not expect these consumers to take the relatively easy step to opt in to an opt-in scheme, we do not think they would make the relatively more burdensome step to find and provide relevant additional information to allow redress to be calculated. Some consumers may of course seek to do so as they may become more engaged once they have received the letters from the scheme but we take a conservative approach here. To note, our final redress estimate is not very sensitive to this assumption: for every 10ppt of consumers that do become engaged this would amount to an extra 1.3ppt continuing to the next stage of the redress process. Given we expect that, once consumers become engaged a very high proportion (99%) will claim redress if eligible, for every 10ppt of consumers that do become engaged this would amount to an extra 1.3% of total consumers claiming redress.

- **Row 4** again multiplies the respective sub-columns in row 1, row 2 and row 3 together to show how many consumers we expect to respond to the request for information to calculate redress. Overall, we expect 13% of consumers to drop out at this stage based on being 'disengaged consumers' (and so would not respond to being contacted for further information).
- **Row 5** sums up the consumers in row 4 that remain in the s. 404 process. 14% of consumers would remain in the s. 404 opt-out process at this stage who would not otherwise have in an opt-in scheme, based on our assumptions.
- **Row 6** shows the assumption that 50% of 'disengaged consumers' would respond to claim redress. We do not have direct information from previous redress exercises on how many consumers would drop out at this stage. We therefore looked for response rates in similar situations, across our previous work and in academic literature. We consider that the closest comparison is academic literature on take up of pre-approved and near costless re-financing (re-mortgaging) offers. In one study, research on the home affordable refinance program in America, found that offering pre-approved and costless home re-mortgaging to consumers is associated with an overall re-mortgaging rate of 40%. This 40% re-mortgaging rate is for an average annual saving of \$2,500. In the context of unsuitable pension transfer redress, we expect redress will be significantly higher than an annual saving of \$2,500 (as set out in the CBA). This evidence, alongside the higher expected payout due to redress, helps motivate the assumption that 50% of 'disengaged consumers' will respond here. We also consider that this assumption falls within the bounds of what we might expect conceptually. We think that the response rate will be non-zero because these 'disengaged consumers' are now presented with an offer which may amount to a substantiable sum of money with no great burden to claim that compensation. Equally however, we think the response rate is likely to be less than 99% (as in the case of those expected to opt-in to an opt-in scheme) for reasons including: inert consumers may reach this stage without taking any action and continue to take no action, some consumers do not open their letters or take calls, despite best efforts firms may have the wrong address on file, and despite re-assurance some consumers may still consider the communication a fraud. To note, our final redress estimate is not very sensitive to this assumption: if the true response rate is 60% (10ppt higher) then approximately 1ppt more consumers would respond here and 1% more total consumers would ultimately receive redress. If the true response rate is 40% (10ppt lower) then approximately 1ppt more consumers would respond here and 1% fewer total consumers would go on to receive redress.
- **Row 7** again multiplies row 5 and row 6 together to show how many consumers we expect to respond and accept the offer they are issued. This shows that we expect a further 7% of consumers would drop out at this stage.
- **Row 8** shows that column 1 and column 3 are unchanged from the s. 404 with opt-in case. However, column 2 has changed. Row 8, column 2, shows that 7% total consumers (26% of 'disengaged consumers') would remain in the s. 404 opt-out process at this stage. Row 8, column 2 also shows that 20% of total consumers (74% of 'disengaged consumers') do still ultimately drop out as part of an opt-out scheme. In total therefore, we expect that 62% of consumers, deemed to have received unsuitable advice, will respond and receive redress as part of a s. 404 with opt-out scheme.

Counterfactual – continue with current supervisory and enforcement work but do nothing extra

7. The counterfactual option is to continue with the current supervisory and enforcement approach to BSPS but do nothing extra. Our PBR and enforcement work has targeted higher risk DB transfer advice firms and as a result has already reached a considerable number of eligible BSPS members. The counterfactual is that these currently planned reviews are completed but are not extended.
8. We expect that these reviews will primarily be conducted on an opt-in basis. Therefore, following the assumptions set out above in the s. 404 with opt-in section, we assume that the overall consumer response rate to these reviews will be 55%.

Enhanced supervisory action on a firm-by-firm basis

9. The enhanced supervisory option would be an extension of the current supervisory approach to bring the next tranche of firms deemed to be higher risk in terms of volume of relevant BSPS DB transfers into scope of a PBR. Supervisory work would include FCA-run file reviews and, where harm is identified, potentially opt-in past business reviews.
10. We expect that these reviews will primarily be conducted on an opt-in basis. Therefore, following the assumptions set out above in the s. 404 with opt-in section, we assume that the overall response rate would be 55%.

Enhanced engagement strategy only

11. The enhanced engagement strategy would be targeted at consumers rather than firms, with the aim of engaging consumers to complain. As set out in the Consultation Paper, this could include writing to consumers to encourage them to complain, communicating through partners, and in-person outreach events.
12. As set out in the Consultation Paper, despite communications and support to encourage complaints, to date we estimate that no more than 500 BSPS members (7% of members who were advised to transfer and did so) have complained about their advice. Coupled with evidence of increased consumer complaints following 3 BSPS events run by the FCA, the Financial Ombudsman Service and the Financial Services Compensation Scheme in 2021, we estimate that a further 3% BSPS consumers might make a complaint as a result of an enhanced engagement strategy.

Annex 4

Compatibility statement

Compliance with legal requirements

1. This Annex records the FCA's compliance with a number of legal requirements applicable to the proposals in this consultation, including an explanation of the FCA's reasons for concluding that our proposals in this consultation are compatible with certain requirements under the Financial Services and Markets Act 2000 (FSMA).
2. When consulting on new rules, the FCA is required by section 138I(2)(d) FSMA to include an explanation of why it believes making the proposed rules is (a) compatible with its general duty, under s. 1B(1) FSMA, so far as reasonably possible, to act in a way which is compatible with its strategic objective and advances one or more of its operational objectives, and (b) its general duty under s. 1B(5)(a) FSMA to have regard to the regulatory principles in s. 3B FSMA. The FCA is also required by s. 138K(2) FSMA to state its opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
3. This Annex also sets out the FCA's view of how the proposed rules are compatible with the duty on the FCA to discharge its general functions (which include rule-making) in a way which promotes effective competition in the interests of consumers (s. 1B(4)). This duty applies in so far as promoting competition is compatible with advancing the FCA's consumer protection and/or integrity objectives.
4. In addition, this Annex explains how we have considered the recommendations made by the Treasury under s. 1JA FSMA about aspects of the economic policy of Her Majesty's Government to which we should have regard in connection with our general duties.
5. This Annex includes our assessment of the equality and diversity implications of these proposals.
6. Under the Legislative and Regulatory Reform Act 2006 (LRRRA) the FCA is subject to requirements to have regard to a number of high-level 'Principles' in the exercise of some of our regulatory functions and to have regard to a 'Regulators' Code' when determining general policies and principles and giving general guidance (but not when exercising other legislative functions like making rules). This Annex sets out how we have complied with requirements under the LRRRA.

The FCA's objectives and regulatory principles: Compatibility statement

7. The proposals set out in this consultation are primarily intended to advance the FCA's operational objective of consumer protection.
8. Our consumer protection objective is to secure an appropriate degree of protection for consumers. In considering this, we are required to have regard to the matters listed in FSMA s.1C(2)(a)-(h). When consumers transfer out of a DB scheme, they lose the security of a guaranteed income and bear the risk that their pension investments might not perform well enough to give them the income they need for the rest of their life. The unique circumstances of the BSPS meant that members, often passive savers, found themselves having to make complex, major, and irreversible choices about their financial futures. This has led to some financial advisers providing advice that was not fit for purpose nor providing the level of care that should be appropriate having regard to the degree of risk involved in relation to transferring out of a DB scheme. We have recognised the general principle that consumers should take responsibility for their decisions. However, given that legislation requires that members must take regulated advice before transferring out of a DB scheme (where the value of the benefits given up exceeds £30,000), and the level of unsuitable advice we have reviewed, we believe that some consumers were influenced to make a decision to transfer out which was not in their best interests. Our proposals have been informed by information that we have received from the Financial Ombudsman Service.
9. We consider these proposals are compatible with the FCA's strategic objective of ensuring that the relevant markets function well because they aim to ensure that consumers who received unsuitable advice to transfer out of the BSPS receive any compensation they are owed. Given the need to remedy the harm to this group of consumers, we consider that the circumstances make it appropriate to implement a consumer redress scheme. For the purposes of the FCA's strategic objective, 'relevant markets' are defined by s. 1F FSMA.
10. In preparing the proposals set out in this consultation, the FCA has had regard to the regulatory principles set out in s. 3B FSMA. This is set out in the following sections.

The need to use our resources in the most efficient and economic way

11. We have considered this principle as part of our proposals to address the harm suffered by consumers who transferred out the BSPS as a result of unsuitable advice. We believe our proposals will use our resources in the most efficient and economic way compared to other options we considered as set out in Chapter 4.

The principle that a burden or restriction should be proportionate to the benefits

12. In Annex 2 we have set out our analysis of the costs and benefits of our proposals for consultation, including consideration of other options available to us. Overall, we believe that our proposals are a proportionate response to the harm that we have found.

The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term

13. Our proposals support the desirability of sustainable growth in the economy by ensuring consumers who have suffered a financial loss are able to receive redress. This additional income for consumers will support the medium and long term growth in the economy. We have considered this principle and do not believe our proposals undermine it.

The general principle that consumers should take responsibility for their decisions

14. BSPS members had a statutory right to give up their safeguarded benefits offered as part of a DB pension scheme and transfer their pension to a scheme with flexible benefits. To protect scheme members, legislation requires that members must take regulated advice where the value of the benefits given up exceeds £30,000. The FCA and TPR believe that most consumers are best advised to keep their DB pensions and other safeguarded benefits. However, our previous work has identified that around 46% of advice given to BPS members that we have reviewed was found to be unsuitable. Therefore, we are concerned that some BPS members were provided with unsuitable advice to transfer out of their DB scheme, influencing them to make a decision which was not in their best interests, leading to consumer harm which we have evidenced in Chapter 3. Given the set of unique circumstances that the BPS displayed, including employer distrust, limited information on alternative options, tight timescales to make a decision, and limited support, our proposals aim to remedy the harm that consumers suffered as a result of unsuitable advice leading to consumers' decision to transfer out of BPS.

The responsibilities of senior management

15. Relevant senior management will need to ensure that firms comply with our proposed rules, having regard to their responsibilities under the Senior Managers and Certification Regime. We have had regard to this principle and do not believe that our proposals undermine it.

The desirability of recognising differences in the nature of, and objectives of, businesses carried on by different persons including mutual societies and other kinds of business organisation

16. We have had regard to this principle and do not believe that our proposals undermine it.

The desirability of publishing information relating to persons subject to requirements imposed under FSMA, or requiring them to publish information

17. We have had regard to this principle and do not believe that our proposals undermine it.

The principle that we should exercise of our functions as transparently as possible

18. We will continue to engage with stakeholders throughout the consultation process before making final rules. We have had regard to this principle and do not believe that our proposals undermine it.

19. In formulating these proposals, the FCA has had regard to the importance of taking action intended to minimise the extent to which it is possible for a business carried on (i) by an authorised person or a recognised investment exchange; or (ii) in contravention of the general prohibition, to be used for a purpose connected with financial crime (as required by s. 1B(5)(b) FSMA). We do not consider this relevant in relation to our proposals.

Expected effect on mutual societies

20. The FCA does not expect the proposals in this paper to have a significantly different impact on mutual societies than other authorised persons subject to our proposals or present them with any more or less of a burden than other authorised persons subject to our proposals.

Compatibility with the duty to promote effective competition in the interests of consumers

21. In preparing the proposals as set out in this consultation, we have had regard to the FCA's duty to promote effective competition in the interests of consumers.
22. We considered the likely impact of our proposals on competition in the PII market for DB transfer advice and the DB transfer market itself. We considered what change was likely relative to the counterfactual which is the status quo. As explained in the CBA at Annex 2 we think it unlikely that our proposals would lead to wider deterioration in the PII market. We note that elements of competition in that market are already likely to be limited and any change as a result of the proposed redress scheme is likely to be incremental. For the DB transfer advice market, we believe the risk of any material impact as a result of the proposed redress scheme is very low. The CBA at Annex 2 provides more detail on these considerations.

Equality and diversity

23. We are required under the Equality Act 2010 in exercising our functions to 'have due regard' to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by or under the Act, advance equality of opportunity between persons who share a relevant protected characteristic and those who do not, to and foster good relations between people who share a protected characteristic and those who do not.
24. As part of this, we ensure the equality and diversity implications of any new policy proposals are considered. The outcome of our consideration in relation to these matters in this case is stated in Chapter 2 of this consultation paper.

Legislative and Regulatory Reform Act 2006 (LRRRA)

- 25.** We have had regard to the principles in the LRRRA for the parts of the proposals that consist of general policies, principles or guidance. We consider that our proposals are transparent and proportionate as set out above. We are consulting on a consumer redress scheme having taken into account feedback from stakeholders during pre-consultation engagements. Our proposals would apply in a consistent manner to all firms who gave advice to transfer out of the BSPPS and is only targeted at the BSPPS specifically where we have seen widespread harm.
- 26.** We have had regard to the Regulators' Code for the parts of the proposals that consist of general policies, principles or guidance and consider that the proposals are proportionate to the harm suffered by some consumers or risks to our statutory objectives identified.

Treasury recommendations about economic policy

- 27.** We have considered the most recent recommendations from the Treasury under s. 1JA FSMA. Our proposals are consistent with these recommendations as they aim to improve outcomes for consumers who transferred out of the BSPPS.

Annex 5

Abbreviations used in this paper

Abbreviation	Description
BAU	business as usual
BSPS	British Steel Pension Scheme
BSPS2	new British Steel Pension Scheme
CBA	cost benefit analysis
CETV	cash equivalent transfer value
CMC	claims management company
COBS	Conduct of Business Sourcebook
CONRED	Consumer Redress Schemes sourcebook
CP	consultation paper
DB	defined benefit
DBAAT	Defined Benefit Advice Assessment Tool
DISP	Dispute Resolution
DWP	Department for Work and Pensions
FCA	Financial Conduct Authority
FSCS	Financial Services Compensation Scheme
IPRU-INV	Interim Prudential sourcebook for Investment Businesses
MaPS	Money and Pensions Service
NRD	normal retirement date
PBR	past business review
PI	professional indemnity
PII	professional indemnity insurance

Abbreviation	Description
PPF	Pension Protection Fund
ppt	percentage point
RAA	Regulated Apportionment Agreement
RMA	Retail Mediation Activity
TPR	The Pensions Regulator
VAT	value added tax

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Annex 6

Statistician's report

Report on file review sampling methodology and analysis of file review data

Background

I was commissioned by the FCA to establish with reasonable certainty the percentage of transactions that involved unsuitable advice to transfer from BSPS, and to establish with reasonable certainty whether unsuitable advice was widespread across firms. I was also asked to provide independent analysis of the results of the file review process and commentary from a statistical perspective.

My advice on sample design was provided in two stages (1) during the FCA's fourth multi-firm review of DB transfer advice in 'higher risk firms' and (2) during the FCA's further investigations of advice given to BSPS members to establish a market-wide picture of the quality of advice given to BSPS members. The higher risk firms are labelled Group 1 in the text below. The firms included in the further investigations are labelled Group 2. The analysis of the results combines the data from these two groups.

The relevant 'population' for the review is transfers that took place between 1 March 2017 and 31 March 2018, which is the period before and during the Time to Choose period. The FCA estimate that around 7,700 members transferred out of their BSPS pension during that period with around 7,315 having received advice. The exact number of firms giving advice is not known but is believed to be between 385 and 502.

The population of firms divides into three groups. Groups 1 and 2 are as described above (36 firms and 3,285 transfers in Group 1, and 295 firms and 3,234 transfers in Group 2). There is a third group ('Group 3') made up of an estimated 55 to 172 firms who were responsible for around 1,000 transfers. There is no available list of Group 3 firms, so Group 3 firms and their transfers were not included in the file review exercise.

Summary

The analysis presented in this paper is based on a review of 365 files drawn from 89 firms. This is made up of 302 files from 36 Group 1 ('higher risk') firms, and 63 files drawn from a total of 53 Group 2 firms. All of these 365 files were reviewed, and the advice given judged to be either suitable, unsuitable, or not compliant - unclear.

'Grossing'¹ the findings from the sample up to the total population of firms and transfers in Groups 1 and 2 gives an estimate of the percentage of all transfers that involved unsuitable advice.

The key findings from the analysis are:

- **Across the sample of 365 files, 145 were found to have involved unsuitable advice (117 of the 302 files from Group 1, and 28 of the 63 files from Group 2).**
- **Grossing the sample to the total of 6,519 Group 1 and 2 transfers suggests that 46% of the transfers involved unsuitable advice (39% for the 3,285 Group 1 transfers, and 52% for the**

¹ Details on how the grossing was done are included in the Appendix.

3,234 Group 2 transfers). The 95% confidence interval around the 46% is (39%, 52%). Informally and in summary, the confidence interval represents a 'plausible range' for the underlying percentage of 'unsuitable advice'. That is, the sample provides strong evidence that the underlying rate is at least 39% and it is less than 52%. The evidence points to 46% as the best point estimate.

- The analysis included checks on whether the percentage of unsuitable files differed by: the total number of transfers dealt with by the firm; the estimated conversion rate for the firm; whether or not there is ongoing 'past business review' work in respect of the firm; and by the date of advice. The percentage unsuitable was found to be broadly the same across all the sub-groups with two exceptions:
 - Firms with under 10 transfers were found to have a lower estimated rate of unsuitability, at 19% (95% confidence interval 4% to 55%). The sample size of files for this group is however small, so there is material uncertainty around this finding;
 - The files where advice was given in January to March 2018 have a lower estimated rate of unsuitability, at 25% (95% confidence interval 12% to 45%) compared with 51% for the files from March 2017 to Dec 2017.
- The number of files reviewed per firm was very small, especially for Group 2 where just one file was reviewed for the majority of firms in the sample. Nevertheless, at least one transfer involving unsuitable advice was found for 51 of the 89 firms in the sample (26 of the 36 Group 1 firms, and 25 of the 53 Group 2 firms). This strongly suggests the problem of unsuitable advice is widely distributed across firms.

The statistics presented in this report are strictly valid only for the transfers in the Group 1 and 2 firms. The approximate 1,000 transfers from an estimated further 55 to 172 firms (Group 3) are not covered. If the behaviour of the Group 3 firms is similar to that of the Group 1 or 2 firms, the results presented here can be used to draw inference to the whole population of over 7,000 transfers. But any assumption of 'similar behaviour' cannot be tested using the data available. However, it is the view of the FCA that the Group 3 firms are very unlikely to be systematically different in their behaviours to the Group 2 firms but that they may, on average, have tended to deal with relatively small numbers of transfers. If so, the percentage of unsuitable files for Group 3 is likely to be similar to the percentage for the firms in Groups 1 and 2 with the lowest number of transfers.

The data

The analysis presented in this report is based on a review of 302 files from 36 Group 1 firms and a random sample of 63 files from across 53 Group 2 firms. The sampling procedures differed for the two groups, the details being given in the technical appendix. The approach taken for each Group is summarised below.

Group 1

Group 1 consists of firms sampled during the FCA's project work on the BSPS in November 2017 to March 2018 and fourth multi-firm review of firms active in the DB transfers market, which covered those firms most active in the DB transfer market from April 2015 to September 2018. Some of the files reviewed by the FCA included advice given to members of the British Steel Pension Scheme.

In total, 205 of the 302 files selected from Group 1, from across 29 of the 36 firms, were selected as part of the fourth multi-firm review, with these files being drawn at random from the firms' business

register. The remaining 97 files were not drawn at random but appear to be reasonably representative so have been included in the analysis reported here².

Group 2

The Group 2 data consists of a stratified random sample of 63 files from firms who gave DB transfer advice to BSPS members from 1 March 2017 to 30 September 2018. The 63 files between them came from 53 firms.

For 44 of the firms just one file was selected; for eight firms two files were selected, and for one firm, three files were selected. Efforts were taken to ensure the sample of 63 files covered reasonable numbers from firms with the smallest numbers of transfers, and from firms with different conversion rates.

File level analyses

Overall estimates of unsuitability, and by Group 1 and 2

Across the total sample of 365 files, 145 were found to have involved unsuitable advice (117 of the 302 files from Group 1, and 28 of the 63 files from Group 2). A further 83 were found to be non-compliant-unclear, leaving just 137 'suitable'.

Grossing the sample to the total of 6,519 Group 1 and 2 transfers suggests that 46% of the transfers involved unsuitable advice (39% for the 3,285 Group 1 transfers, and 52% for the 3,234 Group 2 transfers). The 95% confidence interval around the 46% is (39%, 52%). In terms of the total number of transfers involving unsuitable advice, this equates to 2,693 from a total of 6,519. The details are shown in Table 1.

Table 1: Pension transfer suitability overall, and by groups 1 and 2

		Grossed data			Sample size (files/firms)
		Grossed number of transfers	%	95% CI (%)	
All					365/89
	Suitable	2,660	41	(35,47)	
	Unsuitable	2,963	46	(39,52)	
	Not compliant/Unclear	896	14	(10,18)	
	Total	6,519			

² A sensitivity check, based just on the randomly selected files, suggests that if the non-random cases were excluded the percentage unsuitable for Group 1 would increase from 39% to 45%. That is, the non-random cases were somewhat biased towards 'suitable'. Including the non-random cases is therefore conservative. I judged it preferable to include non-random cases, so that all 36 firms were represented in the analysis, rather than exclude seven firms without random cases.

Group 1					302/36
	Suitable	1,329	41	(37,44)	
	Unsuitable	1,294	39	(35,45)	
	Not compliant/Unclear	662	20	(17,24)	
	Total	3,285			
Group 2					63/53
	Suitable	1,331	41	(30,54)	
	Unsuitable	1,669	52	(40,63)	
	Not compliant/Unclear	234	7	(3,17)	
	Total	3,234			

Estimates of unsuitability by the number of transfers per firm

To test, firstly whether unsuitable advice occurred across the market, and secondly whether there was a relationship between the rate of unsuitability and the number of transfers a firm advised on, the sample data was divided by the number of transfers per firm, using the following splits:

- 70 or more transfers
- 10-69 transfers
- Under 10 transfers.

For firms with 10 or more transfers, the percentage unsuitable is similar for the two size groups, at around 50%. However, for the firms in the 'up to 10' group, the sample data suggests that the rate of unsuitability is lower, at just 19%. This is based on a small sample though (just 21 files), and on a formal statistical test there is no clear-cut evidence that in the 'up to 10' group the unsuitability rate is genuinely lower. The observed difference may simply be due to chance although that result is reasonably unlikely³.

Table 2: Pension transfer suitability by number of transfers per firm

		Grossed data			Sample size (files/firms)
		Grossed number of transfers	%	95% CI (%)	
Firms with 70 or more transfers					249/28
	Suitable	1,509	38	(33,43)	
	Unsuitable	1,833	46	(41,52)	
	Not compliant/Unclear	641	16	(13,21)	
	Total	3,983			
Firms with 10 to 69 transfers					95/40

³ The p-value from the test of difference between the unsuitability rates for the above 10 and below 10 groups is 0.06. This means that using the standard 0.05 significance level we cannot reject the null hypothesis that the rates are equal.

	Suitable	782	40	(26,55)	
	Unsuitable	1,025	52	(37,67)	
	Not compliant/Unclear	174	9	(3,21)	
	Total	1,981			
Firms with up to 10 transfers					21/21
	Suitable	368	66	(35,88)	
	Unsuitable	106	19	(4,55)	
	Not compliant/Unclear	82	15	(4,45)	
	Total	556			

Estimates of unsuitability by the date of the advice

Dividing the sample data into four groups, based on the date of advice given, allows for a simple test of whether there were trends in the percentage of unsuitable files over time. For the whole of 2017 there is no evidence of a trend. However, the rate for 2018 is lower at 25% (with 95% confidence interval of 12% to 45%)⁴.

Table 3: Pension transfer suitability by date of advice given

		Grossed data			Sample size (files/firms)
		Grossed number of transfers	%	95% CI	
March 2017 - June 2017					14/9
	Suitable	56	27	(9,57)	
	Unsuitable	98	47	(23,73)	
	Not compliant/Unclear	55	26	(10,53)	
	Total	209			
Jul 2017-Sep 2017					70/24
	Suitable	369	34	(22,49)	
	Unsuitable	485	45	(31,60)	
	Not compliant/Unclear	221	21	(12,34)	
	Total	1,075			
Oct 2017 - Dec 2017					192/68
	Suitable	1,276	33	(25,42)	

⁴ This difference reaches significance on a formal statistical test

	Unsuitable	2,065	53	(45,62)	
	Not compliant/Unclear	529	14	(9,20)	
	Total	3,870			
Jan 2018-Mar 2018					41/28
	Suitable	670	68	(49,83)	
	Unsuitable	249	25	(12,45)	
	Not compliant/Unclear	62	6	(3,13)	
	Total	981			

Estimates of unsuitability by the conversion rate and whether there is ongoing past business review work

Additional analyses, looking at whether the unsuitability rate varied by the firm level conversion rate or whether there is ongoing past business review work, did not identify any strong evidence of difference in either respect.

Firm level analyses

The sample was not designed to generate estimates of the degree of unsuitability for individual firms. For many of the firms in the sample, especially those in Group 2, just one file was selected for review. Essentially, a large sample of firms were 'dipped in to' to establish the overall prevalence of unsuitability across the market, but these dips do not allow for the number of firms that have high levels of unsuitability to be established.

Nevertheless, the distribution of the collected data does suggest that unsuitability is widespread across firms, with the possible exception of firms with just a small number of transfers⁵. Across the 89 firms in the sample, the 'dip' found at least one unsuitable file for 51 (57%) of these firms (26 of the 36 Group 1 firms, and 25 of the 53 Group 2 firms).

⁵ For the 21 firms in the sample with under 10 transfers, an unsuitable file was selected for five of them. This is consistent with the finding discussed earlier that these firms seem to have a slightly lower overall percentage unsuitable.

Technical appendix

Sampling of files

Sampling of files from Group 1 firms

Overall, 302 files were selected from the 36 firms in Group 1. The number selected per firm varied from just one to 22, around an average of eight.

Of the 302 files, 205 were selected within firms 'at random'. The remaining 97 were non-random. Of the 36 firms, 29 had at least some random sample. For the remaining seven all sampling was non-random. The analysis reported on here includes both the random and non-random samples, although a sensitivity analysis was conducted to ensure the non-random files did not lead to bias. This analysis suggested that if the non-random cases were excluded the percentage unsuitable for Group 1 would increase from 39% to 45%. That is, the non-random cases seemed to be somewhat biased towards 'suitable'. Including the non-random cases is therefore conservative and leads to a lower percentage unsuitable. How to deal with the non-random cases is a judgement call. On balance it seemed preferable to include non-random cases, so that all 36 firms were included in the analysis to ensure full coverage, rather than exclude seven firms without random cases and gross up the data from the other Group 1 firms to cover them.

Sampling of files from Group 2 firms

The Group 2 sample comprises 63 files drawn from a stratified random sample of 53 firms (from a Group 2 'population' of 295 firms). In drawing the sample, the population of 295 firms was divided into strata (i.e. groups) based on

- (a) their numbers of transfers (1; 2; 3-4; 5-9; 10-19; 20-29; 30-49; 50-69; 70-99; 100-150; plus two firms with more than 150 transfers that were each assigned to individual strata); and
- (b) the estimated conversion rates (Under 50%; 50% to just under 75%; 75% and above; unknown conversion rate).

This division gives 37 strata in total, some of the 'size by conversion rate' combinations being unpopulated.

A small random sample of firms was selected within each of the 37 populated strata, typically just one or two, to a total of 53 firms. Within each selected firm a pre-specified number of files was selected, again at random. For 44 of the firms just one file was selected; for eight of the larger firms two files were selected, and for one firm (the firm that had conducted the most transfers in the Group 2 population and represented almost 8% of all transfers in Group 2), three files were selected.

The sampling fraction for files was set slightly higher than average within the strata covering firms with under 10 transfers or a conversion rate of under 75%. This was to ensure a sample of at least 20 files in these two sub-divisions of the Group 1 population, sufficient to allow for a test of whether unsuitability rates varied by number of transfers or conversion rate.

Grossing the data

The raw sample data from Groups 1 and 2 does not automatically represent the population of transfers. Firstly, the sample from Group 1 is proportionately too large relative to Group 2. And secondly, the Group 2 sample has, as described above, some inbuilt over-sampling to ensure a sufficient sample size in smaller firms and firms with conversion rates of below 75%. To address this, the data has been weighted. To apply weights is a statistical means of re-adjusting or re-balancing a sample, so as to be reflective of the population from which the sample was drawn.

The weights are calculated as the inverse of the probability of selection per file. Files with a low probability of selection are given a large weight; files with a high probability of selection are given a smaller weight. The probability of selection is calculated as the probability of selection for the firm multiplied by the probability of selection for a file within the firm. So, for example, if a firm in Group 2 had a one in 20 chance of selection, and one file was selected from a total of 10 for that firm, the probability of selection for the file would be $0.05 \times 0.1 = 0.005$. The weight is then $1/0.005 = 200$. Note that for Group 1 firms, their probability of selection equals one, so only the probability of selection within those firms is relevant.

The weights can be thought of as 'grossing weights'. That is, once applied they give grossed estimates of the number of transfers in the Group 1 and 2 population that are unsuitable⁷.

The calculation of confidence intervals

The confidence intervals presented in this report have all been calculated in the complex samples module of IBM SPSS Statistics Version 26.

The calculation takes into account the nesting of the samples of files within a sample of firms, the grossing weights, and the Group 2 stratification.

⁶ This approach, although technically correct, led to very large weights for two Group 2 files. In the first case, one large firm was not included in the sample and the other firm from the same stratum was calculated to have a large weight to compensate. For the second case, the number of transfers identified at the sampling stage was much larger than in the original files, so the probability of selection within this firm was particularly low. These large, outlier, weights lead to these two files having too much leverage on the results, so their weights have been trimmed (by a factor of about two).

⁷ The inverse probability weights after trimming give a grossed total for Group 2 of 3,036. The weights have been scaled by a factor of $3,234/3,036$ to give a grossed total of 3,234, this being the FCA's best estimate of the total number of transfers for Group 2.

Annex 7

QC opinion

SECTION 404 SCHEME FOR BRITISH STEEL PENSION SCHEME MEMBERS

OPINION

1. I am asked to advise the Financial Conduct Authority (“FCA”) on proposals for a redress scheme under section 404 of the Financial Services and Markets Act 2000 (“FSMA”) for former British Steel Pension Scheme (“BSPS”) members (“the Proposed Scheme”). The Proposed Scheme would seek to provide redress to those members of the BSPS who were advised to transfer out of their defined benefit pension schemes between 26 May 2016 and 29 March 2018. In particular, I am asked to advise whether the failures proposed to be addressed by the Proposed Scheme are those that a court or tribunal would find to constitute failures to comply with a requirement.
2. In preparing this Opinion, I have taken into account in particular the following materials which have been prepared by the FCA and which I have reviewed in draft:
 - (a) Instructions which accompany and explain a template Excel spreadsheet (the BSPS Defined Benefit Advice Assessment Tool which will be annexed to the proposed scheme rules) that firms subject to the Proposed Scheme will need to complete (“the Draft Instructions”);
 - (b) An Annex to those Draft Instructions which sets out (i) features, benefits and risks of a pension transfer, (ii) a comparison of benefits provided by the successor pension scheme to BSPS (“BSPS 2”) and the Pension Protection Fund (“PPF”), and (iii) a list of the information that was available to firms during the relevant period (“the Draft Annex”).
 - (c) A report by a statistician Dr Susan Purdon on the sampling methodology used by the FCA for its review of BSPS files and analysing the file review data (“the Statistical Report”).
 - (d) A report prepared by Grant Thornton dated 18 March 2022 which analyses the information available to pension transfer specialists/advisers and BSPS members

during the “Time to Choose” period, and which sets out the steps a competent and reasonable pension transfer specialist should have taken, in this period, when advising BSPS members and identifies any changes that occurred during that period (“the Grant Thornton Report”).

Legal Background

3. Section 404(1) sets out three conditions which must be satisfied before the FCA can exercise its power to set up a scheme:

“(1) This section applies if—

- (a) it appears to the FCA that there may have been a widespread or regular failure by relevant firms to comply with requirements applicable to the carrying on by them of any activity;
- (b) it appears to it that, as a result, consumers have suffered (or may suffer) loss or damage in respect of which, if they brought legal proceedings, a remedy or relief would be available in the proceedings; and
- (c) it considers that it is desirable to make rules for the purpose of securing that redress is made to the consumers in respect of the failure (having regard to other ways in which consumers may obtain redress).”

4. If the s. 404(1) conditions are satisfied, the FCA can make rules requiring firms or categories of firms to establish and operate a consumer redress scheme (s. 404(3)). The FCA has published general guidance on the procedure it will adopt before implementing consumer redress schemes in the Consumer Redress Schemes sourcebook part of the FCA Handbook (“CONRED”).
5. Under a consumer redress scheme, a firm will be required to take a number of prescribed steps. It is not necessary to detail all of the steps in this Opinion, but broadly, the firm will have to investigate whether it has failed to comply with relevant regulatory requirements (s. 404(5)). The FCA can specify the activities in question and provide examples of acts and omissions which constitute regulatory failures (s. 404A(1)(a) and (b)). Importantly, however, the examples must be such that a court or tribunal would hold them to be failures to comply with relevant requirements (s. 404A(2)). That is why CONRED 1.3.12G provides that the FCA will seek the Opinion of leading counsel on the issue of whether the failure identified would be recognised as a failure by a court or tribunal. This Opinion constitutes that advice to the FCA.¹
6. The steps which a firm would have to take fall into three broad stages. First, the FCA can specify the matters to be taken into account, or the steps to be taken, to assess

¹ I note that the FCA also has the option of seeking a court declaration to clarify the law (CONRED 1.3.13G). I do not at present see any reason why the FCA needs to take that step here.

evidence as to a failure (s. 404A(1)(a), (b), (c)(i)). The matters to be taken into account have to be matters which would be taken into account by a court or a tribunal for that purpose (s. 404A(3)).

7. Second, the firm must determine whether the failure has caused or may cause loss to consumers (s. 404(6)). Again, the FCA can specify the matters to be taken into account, or the steps to be taken, in order to determine whether the failure has caused or may cause loss or damage (s. 404A(1)(c)(ii)). As above, the matters to be taken into account when assessing evidence have to be matters which would be taken into account by a court or a tribunal for that purpose (s. 404A(3)).
8. Third, the firm must determine and make redress if the failure and the loss are established (s. 404(7)). The FCA can specify the kinds of redress that are to be made and the way in which redress is to be determined in specified types of cases (s. 404A(1)(d)). However, the FCA must exercise its powers to secure that the only kinds of redress to be made are those which are “just” in relation to each particular description of case. This requires considering the nature and extent of the losses in question (s. 404A(4)-(5)). “Redress” is defined to include interest, and it can also extend to a remedy or relief which could not be awarded in legal proceedings (s. 404F(1)(b)).
9. Accordingly, the statutory regime for consumer redress schemes permits the FCA to specify the duty, the breach and the loss for the regulatory failure. However, the failure needs to be one that would be recognised by a court or tribunal, and taking account of matters that would be taken into account by such a body. That is the principal issue addressed below.

Factual Background

BSPS

10. The BSPS was established in 1990 after the privatisation of British Steel. It was a defined benefit (“DB”) scheme, so that each member’s retirement income was a prescribed amount calculated by reference to their years of service and final salary. DB schemes can be contrasted with “defined contribution” (“DC”) schemes, where income is not guaranteed but variable depending on matters such as the underlying investments of the fund, and the options available to members at the point they start to take benefits.

The BSPS was one of the largest DB schemes in the UK, with about 130,000 members and nearly £14 billion in assets.²

11. In 2007, Tata Steel UK Limited (“Tata”) became the owner of British Steel and the sponsor of the BSPS. Following a period of economic downturn, in March 2016, Tata announced that it was considering selling the business, with consequent effects on BSPS.³ The BSPS was in deficit by about £2.5 billion at this time. This announcement engaged responses from many different stakeholders and public bodies. In particular, on 26 May 2016 the Department for Work and Pensions launched a consultation on the BSPS. From this point onwards, Tata and the BSPS Trustees began communicating with members about what might happen.⁴ In March 2017, the BSPS became closed to future accrual, following an agreement between Tata and union representatives.⁵

The RAA and Time to Choose

12. More than a year after Tata’s announcement, in September 2017, there was formal approval of a Regulated Apportionment Arrangement (“RAA”) for BSPS.⁶ Under the RAA, Tata would no longer be liable for the debts of BSPS. However, it was required: (1) to pay £550 million and an equity stake into the old BSPS; and (2) to establish a new pension scheme which came to be known as BSPS 2.⁷ The old BSPS entered a period of assessment by the PPF.⁸

² Government Consultation dated May 2016 [32], available [online](#). These figures are from December 2015.

³ This background is set out in the Work and Pensions Select Committee Report dated 9 February 2018 (“Select Committee Report”) [6], [8] available [online](#).

⁴ Tata conducted its own roadshows in 2016 and 2017: Independent Report by Caroline Rookes dated January 2019, p. 18, available [online \(“the Rookes Report”\)](#).

⁵ Select Committee Report [8].

⁶ An RAA effectively allows an employer to reduce its liability to a pension fund. It is made pursuant to Reg. 7A of the Occupational Pension Schemes (Employer Debt) Regulations 2005. The most important condition for an RAA is that the employer’s insolvency (and the scheme entering the PPF) appears reasonably likely within the coming 12 months: Reg. 7A(1)(a). An RAA requires approval from the Pensions Regulator and the Pension Protection Fund: Reg. 7A(b). Key commercial terms of the BSPS RAA were agreed in principle in May 2017, and it was cleared by the Pension Regulator in August 2017.

⁷ Setting up BSPS was not a legal requirement of the RAA, but the Pensions Regulator had asked Tata to submit details of the proposed scheme as part of its approval: see Regulatory Intervention Report in respect of the BSPS dated February 2018, p. 2, available [online](#).

⁸ The PPF is the pension fund of last resort, established under Part 2 of the Pensions Act 2004. If a scheme is transferred to the PPF, compensation is paid out of the fund to members for their lifetime, with the PPF effectively operating as a single pension scheme. The PPF is funded by levies, the assets of funds it takes over and returns on investments.

13. For members, the practical effect of the RAA was that they were given a choice between: (1) moving to the new BSPS 2, or (2) staying with the old BSPS and moving into the PPF. The choice was presented to all BSPS members in the form of the “Time to Choose” campaign. Time to Choose was announced on the BSPS website in September 2017, and began officially in October 2017 when Option Packs were sent out to members. Members were required to decide by December 2017.⁹ If no response was received, then Option 2 (staying with the old BSPS and moving into the PPF) was selected for the member by default.
14. This was not a straightforward choice. To assist members, Option Packs were sent out to each individual, roadshows took place across the UK, and phone hotlines and the BSPS Time to Choose website were set up. In addition to the official material produced by a communications agency called Quietroom on behalf of the Trustees, members received information from many different sources over an extended period of time.¹⁰
15. Despite the volume of information available, it is now widely recognised that the support provided to members during this period was insufficient to help them understand the choice they faced. Steelworkers gave evidence to this effect to a Work and Pensions Select Committee on BSPS in December 2017.¹¹ The Select Committee Report was completed in February 2018, and among other things it included a recommendation for an independent review of the information and support given to BSPS members at the time.¹²
16. The independent review was conducted by Caroline Rookes, who published the Rookes Report in January 2019.¹³ The Rookes Report found that members “who had never previously thought much about pensions were now faced with making a very significant decision on a very complex issue to a very tight deadline”. There was “an atmosphere of mistrust and misinformation” and members “were experiencing problems in getting

⁹ See <https://www.bspensionschoose.com/> and an archived version from 20 December 2017 [here](#).

¹⁰ There were numerous FAQs and press releases about next steps on the BSPS website during this period (which have been preserved in a document by the BSPS). There were also letters from the Trustee, trade unions and public bodies (including the FCA in December 2017). See further the Rookes Report discussed below.

¹¹ Written evidence from British Steel Pension Members Group (PFC0096), available [online](#). It includes personal statements with references to “hours of lost sleep for all members struggling to make a decision on their options without the benefit of a crystal ball.”

¹² Select Committee Report “Conclusions and Recommendations” [3], available [online](#). The Select Committee also made various recommendations to the FCA to intervene in this area.

¹³ Available [online](#).

the guidance they wanted”.¹⁴ This was compounded by a number of additional factors such as the geographical concentration of members, making them vulnerable to unscrupulous advisers.¹⁵

DB Transfer

17. Although there were two primary options in Time to Choose (moving to BSPS 2 or staying with the old BSPS and going into the PPF), there was also a third option for members with more than one year until reaching pensionable age. The third option was for a member to trade their DB entitlements for a lump sum, known as a cash equivalent transfer value (“CETV”), to invest in a DC pension scheme. This possibility is known as a “DB transfer”.¹⁶
18. As it transpired, large numbers of members requested CETVs and 7700 transferred out of the BSPS. Below is an estimated breakdown of members and their choices:

Choice	Members
Move to BSPS 2	83,000
Stay with the old BSPS	39,000 ¹⁷
DB transfer	7,700
Total	129,700

19. Not all BSPS members had the option to transfer out. For example, it would not have been available to a pensioner already in receipt of payments from the scheme, or to a member who was due to start receiving pension benefits in the next 12 months or less . In total, 44,000 were eligible for a DB transfer and 7,700 of those members went ahead.¹⁸ Under applicable pensions regulations, members with benefits worth over

¹⁴ Rookes Report p. 19.

¹⁵ Rookes Report p. 19.

¹⁶ A DB transfer is provided for under Part IVZA of the Pension Schemes Act 1993, as amended by the Pension Schemes Act 2015.

¹⁷ Of these, a large proportion may have defaulted into the old BSPS (run by the PPF) simply because they did not respond to the Time to Choose campaign: Select Committee Report [29]. The BPS 2 Report and Financial Statements for the period ended 31 March 2018 records that 97,000 members completed and returned an option form, and only 14% of those (around 13,500) opted for the old BPS: 2018 Report, p. 2, available [online](#).

¹⁸ Rookes Report p. 8. The remaining members who were eligible for a DB transfer were roughly equally split between BPS 2 and the old BPS (and therefore the PPF). See the BPS 2 Report and Financial Statements for the period ended 31 March 2018 which record that 18,853 deferred pensioners were transferred over from the old BPS: 2018 Report, p. 7, available [online](#).

£30,000 were required to obtain advice from an independent adviser regulated by the FCA before a DB transfer.¹⁹ For the BSPS, this meant that about 95% of the 7,700 would have been legally required to take advice before taking a transfer.

The Proposed Scheme

20. The basis for the Proposed Scheme is the FCA's concern that large numbers of BSPS members were wrongly advised to take a DB transfer. The firms involved in BSPS transfers were (and many still are) regulated by the FCA,²⁰ which means they were required to take reasonable steps to ensure that advice given to clients was suitable under applicable FCA rules and guidance.²¹
21. The view of the FCA and other regulators is that DB transfers are generally not suitable for most DB scheme members. This is because taking a transfer instead of a secure and indexed retirement income is not usually in a person's best interests.²² In addition, it is (i) a financially complex and irreversible choice, the long-term effects of which are not immediately obvious, and (ii) in many cases firms are incentivised by fee structures to encourage consumers to take them.
22. The FCA's guidance in the Conduct of Business Sourcebook ("COBS"), in which is part of the FCA Handbook, expects firms to start from a position that a transfer is unsuitable unless demonstrated otherwise (COBS 19.1.6G).²³ The FCA has developed a tool for the assessment of suitability of DB transfers in particular, known as the Defined Benefit

¹⁹ Section 48 of the Pension Schemes Act 2015 and Reg. 5 of the Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015 (with the latter imposing the £30,000 threshold).

²⁰ Advising on pensions transfers is a regulated activity under Art. 53E of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001. In broad terms, Art. 53E(1) provides that advising a person on the merits of converting safeguarded benefits into flexible benefits or making a transfer payment with a view to acquiring flexible benefits is a regulated activity. This regulated activity was introduced in April 2015.

²¹ The obligation to assess suitability is embedded in the FCA Handbook including in Principle 9 and COBS 9 and 19.1.

²² Select Committee Report [41].

²³ There have been several iterations of this guidance, though the differences are not material for present purposes. The most recent is COBS 19.1.6G(2)-(3) which has been in place since 1 October 2018. Before that, the same assumption was contained in a simpler version of COBS 19.1.6G, which was in place from 8 June 2015. This Opinion takes account of the version in force at the relevant time.

Advice Assessment Tool (“DBAAT”).²⁴ The template and Draft Instructions for the Proposed Scheme are a modified and BPS-specific version of the DBAAT.

Analysis

23. Against this background, I turn to consider whether the failures proposed to be addressed by the Proposed Scheme are those that a court or tribunal would find to constitute failures to comply with a requirement. I further consider whether the FCA has a reasonable and properly evidenced basis for believing that there is a widespread or regular failure, and that it caused or may cause loss to consumers, so as to permit establishment of the Proposed Scheme.

The Regulatory Failure

24. The regulatory failure which could trigger the Proposed Scheme is defined non-exhaustively in s. 404F (emphasis added):

“(3) References in [ss. 404 to 404B] to the failure by a relevant firm to comply with a requirement applicable to the carrying on by it of any activity include anything done, or omitted to be done, by it in carrying on the activity—

- (a) which is in breach of a duty or other obligation, prohibition or restriction; or
- (b) which otherwise gives rise to the availability of a remedy or relief in legal proceedings.

(4) It does not matter whether—

- (a) the duty or other obligation, prohibition or restriction, or
- (b) the remedy or relief,

arises as a result of any provision made by or under this or any other Act, a rule of law or otherwise.”

25. Accordingly, the regulatory obligation with which the Proposed Scheme is concerned can be: (a) a duty or other obligation under law, or (b) remedy or relief in legal proceedings. This clearly includes legislative obligations as well as common law obligations under tort, for example a firm’s duty of care in negligence.²⁵ FCA rules are also sufficient for a regulatory failure if they are enforceable by private actions.²⁶

²⁴ The DBAAT is in the form of a spreadsheet template of questions to answer, and is available [online](#).

²⁵ Jackson & Powell, *Professional Liability* (8th ed) [15-035]. See also CONRED 1.3.7G.

²⁶ Section 138D establishes a private action for damages in respect of rules made by the FCA, but the FCA is able to exclude certain rules from such actions under s. 138D(3) (i.e. “turn off” the ability to bring a private action). The rules under consideration in COBS are examples of rules which are privately enforceable.

26. The applicable FCA rules are those which were in force at the relevant time (May 2016 – March 2018), because the breach cannot be identified retrospectively.²⁷ The relevant candidates for a breach of rules include:²⁸
- (1) COBS 2.1.1R, which provides that firms must act honestly, fairly and professionally in accordance with a client's best interests.
 - (2) COBS 9.2.1R, which provides that firms must: (1) take reasonable steps to ensure the suitability of any personal recommendations for its client, and (2) obtain the necessary information regarding the client's knowledge and experience, financial situation and investment objectives, so as to enable them to make the recommendation which is suitable for the client.
 - (3) COBS 9.2.2R and COBS 9.2.3R, which set out in detail the information which must be obtained in order to have a reasonable basis for a belief that the investment is suitable.
 - (4) COBS 9.2.6R, which provides that firms cannot make personal recommendations if they do not obtain the necessary information.
27. There are also specific rules and guidance about DB transfers, which are of particular relevance to the Proposed Scheme. They include the following:²⁹
- (5) COBS 19.1.2R, which provides that the firm must compare the benefits likely to be paid under the DB scheme with the alternative pension. This involves various steps, including giving the client a copy of the comparison and taking reasonable steps to ensure that the client understands the comparison and the advice. Specific rules also address the assumptions which the comparison must use: COBS 19.1.4R.
 - (6) COBS 19.1.6G (a form of guidance only), which provides that a firm should start by assuming that a transfer will not be suitable and that a firm should only then consider a transfer to be suitable if it can clearly demonstrate that the transfer is in the client's best interests.

²⁷ CONRED 1.3.15G.

²⁸ These were all rules in force at the relevant time, going back to May 2016.

²⁹ These were all rules in force at the relevant time.

28. Turning to the common law, generally a firm will owe a duty at common law to act with the skill and care of a reasonably competent firm. This duty will arise under the tort of negligence, or as an implied term of any contract between the firm and the client. Given the width of the obligation under the COBS rules in relation to suitability, in my view the general common law duty does not in this context add materially to the regulatory duties. In any event, the COBS rules provide strong evidence of the standard of care to be expected of a reasonable firm.³⁰

The Draft Instructions and the Proposed Scheme

29. The methodology for assessing suitability has been standardised, and is contained in the Draft Instructions (supported by the Annex). This requires firms to gather material information and to address a series of examples using that information. Completing the process will enable a firm to address the overarching question of whether the advice was suitable for that particular individual and their circumstances.
30. I have considered the Draft Instructions and Draft Annex in detail. I have also particularly considered the Grant Thornton Report in this context, and the views it expresses on steps that should have been taken. In my view, the examples given of acts or omissions that are to be regarded as constituting matters that are to be taken into account in assessing whether there has been a failure (in the Draft Instructions these are described as “indicators of unsuitability”) are consistent with the approach that would be taken by a court or tribunal. They are based on the existing DBAAT, which is in turn based on the COBS rules and guidance that were in force during the relevant period. A list of the examples is included as an Annex to this Opinion, together with the main COBS rules and guidance to which they relate.
31. I note that the Proposed Scheme does not apply COBS rules retrospectively, or use hindsight to judge compliance. It is a question of fact and expert judgement as to whether reasonable steps were taken in any particular case. However, the legal standards to be applied by a court or tribunal are clearly set out in the COBS rules which were in force at the relevant time.

³⁰ See, for example, *Seymour v Ockwell* [2005] PNLR 758 at [77].

32. Accordingly, and in my opinion, the failures which would be addressed by the Proposed Scheme are those that a court or tribunal would find to constitute a failure to comply with a requirement, or as indicators of such a failure.

Widespread or Regular Failure

33. The failure must appear to the FCA to be widespread or regular. The legislation does not define these terms, nor does the FCA in their Handbook guidance (at CONRED 1.3.2G), so they have to be construed including by reference to the purpose of the legislative scheme. In my view it is helpful to separate the words “widespread” and “regular”. Furthermore, I consider that a helpful approach is to consider that “widespread” connotes intensity in terms of distribution, while “regular” connotes a repeated failure and an intensity in terms of time.³¹ It is possible that both terms would apply in a given case.
34. Focusing on the word “widespread”, I consider that there are two aspects to consider. The first is the baseline of the industry or sector (addressing the question of “widespread among what?”). The second is the intensity or prevalence of that failure across the baseline (what the FCA has described in its guidance as “the volume of failings”).³²
35. In relation to the baseline, there are some general indications in *R (BBA) v FSA*, which was a case where the British Bankers’ Association (“BBA”) had challenged the FSA’s response to the mis-selling of payment protection insurance policies (“PPI”). The FSA had introduced a package of measures which included guidance about PPI complaints in a Policy Statement. The BBA argued, among other things, that the FSA should have used s. 404 because that was the exclusive provision for dealing with widespread mis-selling.³³ Ultimately, BBA’s claim was dismissed. But as part of his consideration of the argument about s. 404, Ouseley J made passing observations about the powers to introduce a consumer redress scheme, including that Section 404 was intended to address widespread concerns across an “industry” or “a sector of business”.³⁴ Accordingly, these comments support the view that the widespread failure has to be across firms operating in a particular sector or industry, and in my view the relevant baseline here is the sector as defined by the FCA for the Proposed Scheme. In further

³¹ This is broadly in line with CONRED 1.3.2.

³² CONRED 1.3.2G.

³³ *R (British Bankers Association) v FSA* [2011] EWHC 999 (Admin) [11], [189]-[227].

³⁴ *Ibid* [197], [236], [254].

support of this, I note that in Arch Cru (the only s. 404 scheme to have operated to date) the “baseline” was the firms that had made personal recommendations to invest in particular high-risk products.³⁵

36. Turning to intensity or prevalence, the volume of failures has to be high enough for the failure to be considered widespread. Thus the failure needs to be prevalent with a degree of consistency across the baseline. In this context, I have in particular had regard to the work that the FCA has done to sample file reviews from the relevant BSPS population, and the Statistical Report prepared by Dr Purdon. In light of those results, and Dr Purdon’s conclusions, in my view there is a reasonable and properly evidenced basis for believing that the failure was widespread. The Statistical Report has focussed on the term ‘widespread’, rather than ‘regular’, as it appears to be more readily applicable to the Proposed Scheme. I have therefore done the same.

Causation

37. Under s. 404(1)(b), the loss which consumers have or may suffer needs to arise “as a result” of the widespread or regular failure. This means that the loss must be caused by the failure. In the case of regulatory failures concerning advice on an investment, the question is whether the investment would have taken place if the advice had not been given.³⁶ This case law can be applied to the analogous situation of a DB transfer. Causation would need to be considered on the facts of each case within the Proposed Scheme, but in the generality of cases the firm’s advice is likely to have been the primary motivation in a decision to transfer.
38. The legal causation issues under a s. 404 scheme are best addressed by considering whether the firm’s scope of duty covers the loss that materialised.³⁷ For example, in

³⁵ The FSA’s consultation on Arch Cru identified the proposal as applying to “firms that made a personal recommendation to consumers to invest in these funds”. See FSA Consultation Paper 12/9 dated April 2012 [1.2], available [online](#). The rules were drafted accordingly: CONRED 2.1.1R(1) provides that “The whole of this chapter applies to a firm which made a personal recommendation in relation to an Arch cru fund, after which a consumer made an investment in the Arch cru fund, and to which the suitability requirements ... applied”.

³⁶ *Saville v Central Capital Limited* [2014] EWCA Civ 337 [36]: “The test to be applied to the issue of causation in an action for breach of statutory duty is to ask whether, if the duty had not been breached, the damage would have occurred. In this case, that question involves asking whether the Savilles would have purchased the PPI policy if Central had not broken the ICOB rules.” Another illustration is *Walker v Inter-Alliance Group Plc (In Liquidation)* [2007] EWHC 1858 (Ch) where the court considered the various inputs in the consumer’s ultimate decision, but found that the advice was the efficient cause of the decision: [98]-[104].

³⁷ Charlesworth & Percy, *Negligence* (14th ed) [5-77]; *Rubenstein v HSBC* [2012] EWCA Civ 1184 [114].

Rubenstein v HSBC the claimant had been advised to invest in a fund which was subject to market fluctuations and subsequently lost his investment. The Court of Appeal concluded that, in light of the overall requirements as to suitability in COBS, the loss was recoverable despite the market fluctuation.³⁸ This was because the market fluctuation was the very risk which should have been advised about.³⁹

39. The duty under COBS on the part of relevant firms was to ensure their personal recommendation for a DB transfer was suitable. There were highly specific rules about ascertaining the client's risk profile and investment objectives.
40. Accordingly, at this stage in my view the FCA can conclude that failures within the scope of the Proposed Scheme may cause loss to consumers, so as to permit establishment of the Proposed Scheme. Causation would then be considered on a case by case basis in accordance with the steps laid down in the Draft Instructions.
41. I note that the issue of redress under the Proposed Scheme is to be addressed in detail at a later stage of the FCA's consultation. For now, the consultation will include discussion questions on redress, and detailed rules are due to be published in a July consultation paper. Accordingly, I do not include a section on redress in this Opinion.

Conclusion

42. In conclusion, and for the reasons outlined above, in my opinion the Proposed Scheme complies with the requirements of s. 404. In particular, the failures which would be addressed by the Proposed Scheme are those that a court or tribunal would find to

³⁸ *Rubenstein v HSBC* [2012] EWCA Civ 1184 [114]-[115].

³⁹ *Rubenstein v HSBC* [2012] EWCA Civ 1184 [124]. The Court thereby rejected the Bank's reliance on the so-called SAAMCO principle from *South Australia Asset Management Corp v York Montague Ltd* [1997] AC 191. SAAMCO was recently reconsidered by the Supreme Court in *Khan v Meadows* [2021] UKSC 21 and *Manchester Building Society v Grant Thornton UK LLP* [2021] UKSC 20, with the Supreme Court reiterating that the real question is the scope of the defendant's duty.

constitute a failure to comply with a requirement, or as indicators of such a failure.

JEMIMA STRATFORD QC

Brick Court Chambers

29th March 2022

ANNEX

EXAMPLES FOR ASSESSMENT OF SUITABILITY REQUIREMENTS

All of the Handbook references listed below were in force during the relevant period (1/5/16-31/3/18), save for COBS 9.2.1R(1)(a) which came into force from 3/1/18. From 1/5/16 – 2/1/18 the relevant Handbook reference for the entries which include COBS 9.2.1R(1)(a) is COBS 9.2.1R alone. For ease of identification, COBS 9.2.1R(1)(a) is marked with an asterisk* below.

Suitability Requirements	Handbook references	
Overarching requirement - to give suitable DB transfer advice	COBS 9.2.1R	
	COBS 9.2.2R	
	COBS 19.1.2R	
	COBS 19.1.6G	
	COBS 19.1.7G	
	COBS 19.1.7BG	
Example 1: The consumer is, or will be, reliant on income from the comparator scheme.	COBS 9.2.1R(1)(a)*	
	COBS 9.2.1R(1)	
	COBS 9.2.2R(1)	
	COBS 9.2.3R	
COBS 19.1.2R COBS 19.1.3G COBS 19.1.6G	Example 2: The aim of the transfer is to pass the value of the pension to beneficiaries on the member's death, but the firm has not demonstrated that the consumer can bear the risk of the transfer that would be needed to achieve this objective.	
		COBS 9.2.1R(1)(a)*
		COBS 9.2.1R(1)
COBS 9.2.2R(1)	Example 3: The aim of the transfer is to access income-related benefits flexibly but the firm has not demonstrated that the consumer can bear the risk of the transfer that would be needed to achieve this objective.	
COBS 19.1.2R		
COBS 19.1.3G COBS 19.1.6G		
COBS 9.2.1R(1)(a)*	Example 4: The aim of the transfer is to maximise PCLS, but the firm has not demonstrated that the consumer can bear the risk of the transfer that would be needed to achieve this objective.	
COBS 9.2.1R(1)		
COBS 9.2.2R(1)		
COBS 19.1.2R COBS 19.1.3G COBS 19.1.6G	COBS 9.2.1R(1)(a)*	
COBS 9.2.1R(1)	COBS 9.2.1R(1)	
COBS 9.2.2R(1)	COBS 9.2.2R(1)	

	COBS 19.1.2R
	COBS 19.1.3G
	COBS 19.1.6G
Example 5: An aim of the transfer is to preserve or protect the value of the consumer's pension benefits but the comparator scheme(s) benefits would meet the consumer's needs.	COBS 9.2.1R(1)(a)* COBS 9.2.1R(1)
	COBS 9.2.2R(1)
	COBS 19.1.2R
	COBS 19.1.3G
Example 6: The consumer wants to retire early, but can meet their objective(s) in the comparator scheme(s).	COBS 19.1.6G
	COBS 9.2.1R(1)(a)* COBS 9.2.1R(1)
	COBS 9.2.2R(1)
	COBS 19.1.2R
Example 7: The consumer wants or prefers guaranteed income or returns.	COBS 19.1.3G
	COBS 9.2.1R(1)(a)* COBS 9.2.1R(1)
Example 8: The consumer does not have the necessary attitude to risk.	COBS 9.2.2R(1)
	COBS 9.2.1R(1)(a)* COBS 9.2.1R(1)
	COBS 9.2.2R(1)(c)
	COBS 9.2.2R(2)
	COBS 19.1.7G
Example 9: The firm's transfer analysis does not support a recommendation to transfer.	COBS 19.1.7AG
	COBS 9.2.1R(1)(a)* COBS 9.2.1R(1)
	COBS 19.1.2R
	COBS 19.1.3G
	COBS 19.1.7G
	COBS 19.1.7AG
	COBS 19.1.7BG

<p>Example 10: The firm did not have a reasonable basis for believing that the consumer had the necessary knowledge and experience to understand the risks involved in transferring their DB scheme.</p>	<p>COBS 9.2.1R(1)(a)* COBS 9.2.1R(1) COBS 9.2.2R(1)(c)</p>
	<p>COBS 9.2.3R</p>
	<p>COBS 19.1.2R</p>
	<p>COBS 19.1.7AG</p>
	<p>COBS 19.1.6G</p>
<p>Example 11: The consumer is under 50 and cannot bear the risks of transfer</p>	<p>COBS 9.2.1R(1)(a)* COBS 9.2.1R(1)</p>
	<p>COBS 9.2.2R(1)(b)</p>
	<p>COBS 19.1.2R</p>
	<p>COBS 19.1.3G</p>
	<p>COBS 19.1.6G</p>
	<p>COBS 19.1.7G</p>
	<p>COBS 19.1.7AG</p>
<p>COBS 9.2.2R(1)</p>	

Appendix 1

Draft Handbook text

**BRITISH STEEL PENSION SCHEME CONSUMER REDRESS SCHEME
INSTRUMENT 2022**

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
 - (2) section 138C (Evidential provisions);
 - (3) section 137T (General supplementary powers);
 - (4) section 139A (Power of the FCA to give guidance);
 - (5) section 395(5) (The FCA’s and PRA’s procedures);
 - (6) section 404(3) (Consumer redress schemes);
 - (7) section 404A (Rules under s404: supplementary); and
 - (8) paragraph 23 (Fees) of Part 3 (Penalties and Fees) of Schedule 1ZA (the Financial Conduct Authority).
- B. The rule-making powers listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on [*date*].

Amendments to the Handbook

- D. The Fees manual (FEES) is amended in accordance with Annex A to this instrument.
- E. The Consumer Redress Schemes sourcebook (CONRED) is amended in accordance with Annex B to this instrument.

Notes

- F. In this instrument, the “notes” (indicated by “**Note:**” or “*Editor’s note:*”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- G. This instrument may be cited as the British Steel Pension Scheme Consumer Redress Scheme Instrument 2022.

By order of the Board
[*Date*]

Annex A

Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text and striking through indicates deleted text.

3 Application, Notification and Vetting Fees

...

3.2 Obligation to pay fees

...

3.2.7 R Table of application, notification and vetting fees payable to the FCA

Part 1A: Application, notification and vetting fees		
(1) Fee payer	(2) Fee payable (£) by reference to the pricing category in FEES 3 Annex 1AR.	Due date
...		
(zn) [deleted]	...	
(zo) In the case of <i>persons</i> in respect of which the <i>FCA</i> has given notice of its intention to take, or appoint a competent person to take, any steps under CONRED 2.5.12R <u>or 3.5.1R</u> , either: (i) a Firm (as defined in CONRED 2.1.1R(1) <u>or 3.1.3R</u> ; or (ii) a <i>person</i> falling within CONRED 2.1.2R(1) <u>or 3.1.5R</u> .	An amount equal to: (1) a sum determined by the number of hours, or part of an hour, taken by the <i>FCA</i> in relation to work conducted in taking steps under CONRED 2.5.12R <u>or 3.5.1R</u> recorded on the <i>FCA</i> 's systems, multiplied by the rate in <i>FEES</i> 3 Annex 9(11)R; or (2) any amount invoiced to the <i>FCA</i> by a competent person in relation to any work carried out by that competent person in connection with its appointment by the <i>FCA</i> under CONRED 2.5.12R <u>or 3.5.1R</u> .	Within 30 <i>days</i> of the date of the invoice.
...		

Annex B

Consumer Redress Schemes sourcebook (CONRED)

In this Annex, underlining indicates new text and striking through indicates deleted text.

Insert the following new chapter, CONRED 3 (British Steel Consumer Redress Scheme), after CONRED 2 (Arch cru Consumer Redress Scheme). The text is all new and is not underlined.

3 British Steel Consumer Redress Scheme

3.1 Application and subject matter of the scheme

Definitions used in this chapter

- 3.1.1 R (1) ‘BSPS’ means the Old British Steel Pension Scheme, which entered a Pension Protection Fund assessment period on 31 March 2018;
- (2) ‘BSPS2’ means the British Steel Pension Scheme in its new format, following the agreement of the Regulated Apportionment Arrangement with Tata Steel UK Limited and the Time to Choose exercise in 2017 under which the BSPS was separated from its sponsor;
- (3) ‘BSPS DBAAT’ means the British Steel Pension Scheme Defined Benefit Advice Assessment Tool in the form of an Excel spreadsheet at *CONRED 3 Annex 15R*;
- (4) ‘BSPS pension transfer’ means a *pension transfer* of the *consumer’s* BSPS pension arrangement;
- (5) ‘causation question’ is whether the *firm’s* failure to comply with the suitability requirements is the effective cause of the *consumer’s* loss;
- (6) ‘comparator scheme’ means:
- (a) (if the advice was given on or before 16 May 2017) BSPS;
- (b) (if the advice was given from 17 May 2017 to 11 October 2017) either or both of BSPS and PPF; and
- (c) (if the advice was given on or after 12 October 2017) BSPS2 and PPF;
- (7) ‘FCA DBAAT’ means the FCA Defined Benefit Advice Assessment Tool (available at <https://www.fca.org.uk/firms/defined-benefit-pension-transfers>);

- (8) ‘instructions’ means the instructions for completion of the BSPS DBAAT at *CONRED* 3 Annex 16R;
- (9) ‘material information gap’ is where there is a failure to collect the necessary information so that the *firm* cannot complete an Information Area in the Information Section of the BSPS DBAAT;
- (10) ‘pension benefits’ are the benefits available to the *consumer* in the named *defined benefit scheme(s)* and may include income and lump sum benefits, payable to either the *consumer*, their spouse or dependents, which could commence at specified times;
- (11) ‘PPF’ means the Pension Protection Fund;
- (12) ‘relevant period’ means the period commencing on 26 May 2016 and ending on 29 March 2018;
- (13) ‘scheme case’ is a case falling within the subject matter of the scheme that meets the conditions in *CONRED* 3.2.2R;
- (14) ‘scheme effective date’ means the date that the *consumer redress scheme* created by this chapter comes into force;
- (15) ‘suitability requirements’ means the requirements specified in 7.1R of *CONRED* 3 Annex 16R and are:
- (a) the requirements in *COBS* 9.2.1R(1); and
 - (b) the common law duty in contract or tort to exercise reasonable skill and care in advising the *consumer* on *pension transfers*,
- and that were in force during the relevant period and applicable to a scheme case;
- (16) ‘two-adviser model’ means an arrangement where one *firm* provides the advice on *pension transfers* (F1) and a different *firm* provides the advice on the *proposed arrangement* (F2).

- 3.1.2 R Certain words and phrases specific to *CONRED* are defined in *CONRED* Appendix 1 and the *Glossary*. All words in italics are defined in the *Glossary*.

Application to firms which gave advice about a pension transfer

- 3.1.3 R This chapter applies to a *firm* which gave advice to a *consumer* in relation to a BSPS pension transfer, after which a *consumer* made such a *pension transfer*, and to which the suitability requirements applied.
- 3.1.4 G This chapter applies:

- (1) regardless of whether the *firm* has advised a *consumer* to transfer their BSPS pension benefits to a *pension scheme* with *flexible benefits* or has advised a *consumer* against such a course of action; and
- (2) to the *firm* even if the *consumer* to whom the advice was given instructed another *firm* to arrange the BSPS pension transfer.

Application to persons who have assumed a firm's liabilities

- 3.1.5 R (1) This chapter also applies to a *person* that has assumed a liability (including a contingent one) in respect of a failure by a *firm* to whom this chapter applies.
- (2) A *person* in (1) must either:
- (a) perform the obligations the *firm* is required to perform under this chapter; or
 - (b) ensure that those obligations are performed by the *firm*, and must notify the *FCA*, at [email] by [date], as to whether that *person* or the *firm*, or both, will be performing those obligations.
- (3) References in this chapter to a *firm* are to be interpreted as referring to a *person* in (1) where the context so requires.

Wider application of certain provisions

- 3.1.6 R (1) *CONRED* 3.3.10R and *CONRED* 3.4.13R also apply to a *firm* which has carried out any of the following *regulated activities* for a *consumer* in relation to a BSPS pension transfer:
- (a) *advising on investments*; or
 - (b) *arranging (bringing about) deals in investments*; or
 - (c) *making arrangements with a view to transactions in investments*; or
 - (d) *managing investments*,
- except for a *firm* which, at the relevant time, was a *platform service provider*.
- (2) A *platform service provider* for the purposes of (1) means a *firm* that:
- (a) provided a service which involved *arranging safeguarding and administering of assets*;
 - (b) distributed *retail investment products* which were offered to *retail clients* by more than one product provider; and

- (c) did not carry on the *regulated activities* of *advising on investments* or *managing investments*.

Duration of the scheme

- 3.1.7 R The *consumer redress scheme* created by this chapter comes into force on the scheme effective date and has no end date.

Subject matter of the scheme

- 3.1.8 R The subject matter of the scheme is whether a *firm* complied with the suitability requirements in scheme cases.

- 3.1.9 R A scheme case may cease to be within the subject matter of the scheme where:

- (1) for case reviews:

- (a) *CONRED* 3.3.7R applies; and
- (b) the *firm* has taken the required steps to obtain further information from the *consumer* or from another *firm*; and
- (c) the *firm* still does not have sufficient information to determine the matters in *CONRED* 3.3.5R(1).

- (2) for redress calculations:

- (a) *CONRED* 3.4.7R applies; and
- (b) the *firm* has taken the required steps to obtain further information from the *consumer* or from another *firm*; and
- (c) the *firm* still does not have sufficient information to carry out the redress calculation; or

- (2) the *firm* is unable to contact the *consumer* (as described more fully in *CONRED* 3.6.2R).

Summary of the scheme

- 3.1.10 G *CONRED* 3 Annex 13G contains a flow diagram of the *consumer redress scheme* created by this chapter.

3.2 Consumer redress scheme: identifying scheme cases

Deadline to complete the steps in this section

- 3.2.1 R No more than 1 *month* after the scheme effective date, a *firm* must take the steps set out in this section.

First step: identify scheme cases

- 3.2.2 R The first step is to identify all scheme cases. A scheme case is a case that satisfies each of the following conditions:
- (1) the *firm* gave a *consumer* advice in relation to a BPS pension transfer during the relevant period; and
 - (2) that advice was to transfer their BPS pension benefits; and
 - (3) the suitability requirements applied to that advice; and
 - (4) the *consumer* subsequently transferred their benefits; and
 - (5) the *consumer* had not, prior to the scheme effective date, accepted an offer of redress from the *firm* or other *person* in full and final settlement of all potential claims arising out of that advice; and
 - (6) (unless the *firm* is declared *in default* after the scheme effective date) the *consumer* had not, prior to the scheme effective date, asked the *Financial Ombudsman Service* to deal with a *complaint* against the *firm* arising out of the advice in (1); and
 - (7) (unless the *firm* is declared *in default* after the scheme effective date) that advice was not reviewed in a past business review carried out by a *skilled person* where the *firm* had assessed the *consumer's* advice using a non-BPS DBAAT and notified the *consumer* of the following:
 - (a) the outcome of that review (whether in the *firm's* view the advice was suitable or not); and
 - (b) that the *consumer* is entitled to complain to the *Financial Ombudsman Service* if they disagree with the *firm's* assessment; and
 - (8) the law applicable to the obligations of the *firm* arising in connection with the advice is that of a *UK* territory (that is, England, Wales, Scotland or Northern Ireland) (see *CONRED* 3.2.4R); and
 - (9) if the applicable law in (8) is that of England, Wales or Northern Ireland:
 - (a) the advice in relation to the *consumer's* BPS pension transfer was given on or after 26 May 2016; and
 - (b) the *consumer* did not know, and could not with reasonable diligence have known, 3 years before [scheme effective date] that they had suffered loss; and
 - (10) if the applicable law in (8) is that of Scotland:

- (a) the advice in relation to the *consumer's* BPS pension transfer was given on or after 26 May 2016; and
- (b) the *consumer* did not know, and could not with reasonable diligence have known, 5 years before [scheme effective date] that they had suffered loss.

Guidance on excluded scheme cases

- 3.2.3 G (1) *CONRED* 3.2.2R(1) does not include a case where the *firm* advised the *client* not to transfer their BPS pension benefits, or to remain in the BPS, and where the *firm* or a different *firm* subsequently arranged the *pension transfer*.
- (2) A *firm* should have confirmation from the *consumer* that they did not arrange a BPS pension transfer before relying on the exclusion in *CONRED* 3.2.2(4).

Applicable law

- 3.2.4 R For the purposes of *CONRED* 3.2.1R(8), the applicable law is:
- (1) that of the *UK* territory where, in connection with the advice:
 - (a) the *consumer* has agreed to the *firm's terms of business*; and
 - (b) these include a clause providing for the application of the law of a particular *UK* territory (that is, England, Wales, Scotland or Northern Ireland); or
 - (2) (if (1) does not apply) that of the *UK* territory where the *firm* and the *consumer* both habitually reside and where the advice is given; or
 - (3) (if neither (1) nor (2) applies) that of the *UK* territory in which the *consumer* is habitually resident, provided the conditions in *CONRED* 3.2.7R(1) to (4) are satisfied; or
 - (4) (if neither (1), (2) nor (3) apply) that of the *UK* territory in which the *firm* gave the advice.

- 3.2.5 R The conditions referred to in *CONRED* 3.2.4R(3) are that:
- (1) in the *UK* territory in which the *consumer* has their habitual residence, either:
 - (a) the contract under which the advice was provided was preceded by a specific invitation addressed to the *consumer*, or by advertising, and the *consumer* took all the steps necessary to engage the *firm*; or
 - (b) the *firm* or its agent received the *consumer's* order; and

- (2) the advice was provided at least in part in that *UK* territory.

Second step: send letters to consumers

- 3.2.6 R The second step is:
- (1) for cases which are excluded from the scheme (non-scheme cases), to send to the *consumer* a *redress determination* in the form set out in *CONRED 3 Annex 1R*.
 - (2) for all scheme cases, to send to the *consumer* a letter in the form set out in *CONRED 3 Annex 2R*.

Third step: acknowledge opt-outs

- 3.2.7 R Where a *consumer* has responded to a letter sent by the *firm* in accordance with *CONRED 3.2.6R(2)* stating that they do not wish to have their case considered under this scheme, the *firm* must, within *5 business days*, send them a letter in the form set out in *CONRED 3 Annex 3R*.
- 3.2.8 R The effect of a *consumer* opt-out is that the scheme case no longer falls within the subject matter of the *consumer redress scheme* created by this chapter.
- 3.2.9 G The *firm* should handle any complaint in relation to advice about a BPS pension transfer received from a *consumer* after any opt-out in accordance with the complaint handling rules in *DISP*.

3.3 Consumer redress scheme: case review

Deadline to complete the steps in this section

- 3.3.1 R No later than *7 months* from the scheme effective date, a *firm* must take the steps set out in this section.

First step: case review

- 3.3.2 R The first step is to carry out a review (a case review) of each scheme case by either:
- (1) completing the BPS DBAAT at *CONRED 3 Annex 15R*, in accordance with the instructions set out in *CONRED 3 Annex 16R*, and accompanying it with an attestation in the form specified in the BPS DBAAT completed by an individual approved to perform the SMF16 (Compliance oversight) *FCA controlled function* for the *firm* or by an individual approved to perform another appropriate *senior management function* within the *firm*; or
 - (2) using a FCA DBAAT that was completed prior to the scheme effective date and accompanying it with an attestation in the form specified in *CONRED 3 Annex 14R* completed by an individual approved to perform the SMF16 (Compliance oversight) *FCA*

controlled function for the *firm* or by an individual approved to perform another appropriate *senior management function* within the *firm* in accordance with the instructions set out at 12.2 and 12.3 of *CONRED 3 Annex 16R*.

- 3.3.3 E Non-compliance with any of the evidential provisions set out in the instructions at *CONRED 3 Annex 16R* may be relied upon as tending to establish contravention of *CONRED 3.3.2R*.
- 3.3.4 G In complying with *CONRED 3.3.2R*, the *firm* should have regard to the guidance set out in the instructions at *CONRED 3 Annex 16R*.

Second step: cases of insufficient information

- 3.3.5 R (1) The second step applies only in respect of a scheme case where a *firm* has attempted to comply with the first step but does not have sufficient information to determine:
- (a) whether it has failed to comply with any of the suitability requirements; and/or
 - (b) the causation question.
- (2) To complete the second step, the *firm* must take the following actions:
- (a) Within 5 *business days* of determining that a scheme case falls within (1), the *firm* must:
 - (i) send a letter in the form set out in *CONRED 3 Annex 4R* to the *consumer*;
 - (ii) (in a scheme case involving a two-adviser model) send a letter requesting the information in *CONRED 3 Annex 4R* to the *firm* which provided the advice on the *proposed arrangement* (F2); and
 - (iii) (in all other cases) send a letter requesting the information in *CONRED 3 Annex 4R* to any other *firm* that was involved in the BPS pension transfer.
 - (b) If no reply is received by the *firm* within 4 weeks of a letter in (a) being sent, the *firm* must:
 - (i) within 5 *business days* of the 4 weeks expiring, send a further letter to the *consumer* in the form set out in *CONRED 3 Annex 5R*;
 - (ii) within 5 *business days* of the 4 weeks expiring, send a further letter to the *firms* in (a)(ii) and (iii) requesting the necessary information; and

- (iii) take all reasonable steps to contact the *consumer* by other means.
 - (c) If a reply is received from the *consumer* or the *firms* specified in (a) but the information it contains is insufficient to determine the matters in (1), the *firm* should take all reasonable steps to obtain further information from the *consumer* or, where applicable, any other *firm* in (a).
- 3.3.6 R A *firm* which, having carried out the second step, has acquired sufficient information to determine all of the matters in *CONRED* 3.3.5R(1) must then complete the first step (case review) in accordance with *CONRED* 3.3.2R.
- 3.3.7 R Where a *firm* has carried out the second step in relation to a scheme case but still does not have sufficient information to determine all of the outstanding matters, the *firm* may determine that the scheme case no longer falls within the subject matter of the *consumer redress scheme* created by this chapter.
- 3.3.8 R Where *CONRED* 3.3.7R applies and the *firm* determines that the scheme case no longer falls within the subject matter of this *consumer redress scheme*, the *firm* must promptly send the *consumer* a letter in the form set out in *CONRED* 3 Annex 6R.
- 3.3.9 G Where the *firm* has not received, within the timeframes in *CONRED* 3.3.5R, a response from the *consumer* to the letters required by *CONRED* 3.3.5R(2), the *firm* should handle any complaint received from the *consumer* after this date in relation to advice about a BPS pension transfer in accordance with the complaint handling rules in *DISP*.

Obligation on firms connected with transfer advice

- 3.3.10 R A *firm* receiving a request for information pursuant to *CONRED* 3.3.5R(2) must take reasonable steps to locate and provide the information requested within any reasonable time periods requested and in any case no later than [4 weeks] after receiving the request.

Obligation to notify FCA of any failures to elicit response

- 3.3.11 R A *firm* that has sent a further letter to another *firm* in accordance with *CONRED* 3.3.5R(2)(b)(ii) or (iii) and has not received a response to that letter within four weeks must notify the *FCA* of this failure at [email]. .

Guidance on taking reasonable steps to ascertain missing information

- 3.3.12 G For the purposes of *CONRED* 3.3.5R, ‘reasonable steps’ might include:
- (1) checking public sources of information, but without incurring excessive cost; and

- (2) attempting to contact the *consumer* by telephone (at a reasonable hour when the *consumer* is likely to be available to receive the call) or by email.

General guidance on second step

- 3.3.13 G Scheme cases to which the second step (*CONRED* 3.3.5R) applies are likely to be exceptional, having regard to the record-keeping requirements applicable to *authorised persons* under *FCA rules* (notably *COBS* 9.5, which requires *firms* to retain records relating to the suitability of *pension transfers* indefinitely and record keeping requirements in *SYSC*).
- 3.3.14 G (1) A *firm* should not refuse to consider a scheme case if there is sufficient information to conclude that it was likely that the advice was unsuitable (but there was insufficient information to conclude that the advice was suitable).
- (2) A *firm* that has sufficient information to assess suitability should not refuse to answer the causation question unless there are reasonable grounds for requiring further information from the *consumer* to identify what they would have done if the advice was compliant.

Third step: case review letters to consumers

- 3.3.15 R (1) Where the *firm* concludes that the advice provided to the *consumer* was unsuitable and the *consumer's* loss was caused by the *firm's* failure to comply with any of the suitability requirements (so it has answered 'yes' to the causation question in the *BSPS DBAAT* or *FCA DBAAT*), it must:
- (a) send the *consumer* a letter in the form set out in *CONRED* 3 Annex 7R; and
 - (b) send the *consumer* a request for information in the form set out in *CONRED* 3 Annex 9R.
- (2) Where the *firm* concludes that the advice provided to the *consumer* was unsuitable but the *consumer's* loss was not caused by the *firm's* failure to comply with any of the suitability requirements (so it has answered 'no' to the causation question in the *BSPS DBAAT* or *FCA DBAAT*), the *firm* must send the *consumer* a *redress determination* in the form set out in *CONRED* 3 Annex 8AR.
- (3) Where the *firm* concludes that the advice provided to the *consumer* was suitable, the *firm* must:
- (a) send the *consumer* a *redress determination* in the form set out in *CONRED* 3 Annex 8R; and
 - (b) take the steps in *CONRED* 3.3.16R to notify the *FCA*.

Suitable redress determinations: notification to the *FCA*

- 3.3.16 R (1) Where a *firm* concludes that its advice to the *consumer* was suitable, the *firm* must notify the *FCA* of the following information:
- (a) the outcome of the *firm's redress determination*; and
 - (b) the *consumer's* name, address, telephone number(s), and email address, where available.
- (2) A *firm* must comply with the requirement in (1) to notify the *FCA* no sooner than the [14th] *day* after which the *redress determination* was sent to the *consumer* but not later than [21] *days* after the *redress determination* was sent.
- (3) The requirement in (1) does not apply if the *consumer* has informed the *firm* in writing that they do not wish their details to be passed to the *FCA*.

3.4 Consumer redress scheme: calculating and paying redress

Deadline to complete the steps in this section

- 3.4.1 R No later than [10 *months*] from the scheme effective date, a *firm* must take the steps set out in this section where it has determined that the advice provided to the *consumer* was unsuitable and the *consumer's* loss was caused by the *firm's* failure to comply with any of the suitability requirements.

First step: calculate redress and send redress determination

- 3.4.2 R The first step is to calculate the amount of redress owed to a *consumer* in accordance with the *rules* set out in *CONRED 3 Annex 16R* and to send the *consumer* a *redress determination* in the form of the letter set out in *CONRED 3 Annex 12R*;
- 3.4.3 R A *firm* must pay the redress determined to be payable to a *consumer*, calculated in accordance with the requirements in the instructions at *CONRED 3 Annex 16R*:
- (1) within 28 *days* of receiving a claim from the *consumer* for the redress determined to be payable, following the issue of the *redress determination*; and
 - (2) in accordance with the instructions set out by the *consumer* in his response to the *redress determination* in which they make their claim,

but a *firm* need not pay redress where the *consumer* did not send a claim for it within 6 *months* of the date of the letter in *CONRED 3.4.2R*, unless the *consumer's* failure to comply with that time limit was as a result of

exceptional circumstances, except where the *consumer* refers a *complaint* in respect of the *redress determination* to the *Financial Ombudsman Service* within the time limits provided in *DISP 2.8.2R* (or *DISP 2.8.2R(3)* applies).

- 3.4.4 G (1) An example of exceptional circumstances in *CONRED 3.4.3R* might be where the *consumer* has been or is incapacitated.
- (2) In considering whether circumstances are exceptional, *firms* may wish to have regard to the guidance on exceptional circumstances justifying the extension of the time limits, in the online technical resource titled "the six-month time limit" on the website of the *Financial Ombudsman Service*.
- 3.4.5 E Non-compliance with any of the evidential provisions set out in the instructions for the redress calculation at *CONRED 2 Annex 16R* may be relied upon as tending to establish contravention of *CONRED 3.4.2R*.
- 3.4.6 G In complying with *CONRED 3.4.2R*, *firms* should have regard to the guidance set out in the instructions at *CONRED 3 Annex 16R*.

Second step: cases of insufficient information

- 3.4.7 R The second step applies in respect of a scheme case where:
- (1) the *consumer* has not responded to a letter sent to them in accordance with *CONRED 3.3.15R(1)(b)* (*CONRED 3 Annex 9R*) within [4 weeks] of such letter being sent; and
- (2) the *firm* does not have sufficient information to carry out the redress calculation in accordance with the redress calculation rules set out in *CONRED 3 Annex 16R*.
- 3.4.8 R To complete the second step, the *firm* must take the following actions:
- (1) Within 5 *business days* of determining that a scheme case falls within *CONRED 3.4.7R*:
- (a) send a letter in the form set out in *CONRED 3 Annex 10R* to the *consumer*;
- (b) (in a scheme case involving a two-adviser model) send a letter requesting the information in *CONRED 3 Annex 10R* to the *firm* which provided the advice on the *proposed arrangement* (F2); and
- (c) (in all other cases) send a letter requesting the information in *CONRED 3 Annex 10R* to any other *firm* that was involved in the BPS pension transfer.
- (2) If a reply is received from the *consumer* or the *firms* specified in (1) but the information it contains is insufficient to determine the matters in (a), the *firm* should take all reasonable steps to obtain further

information from the *consumer* or, where applicable, any other *firm* in (1).

- 3.4.9 R A *firm* which, having carried out the second step, has sufficient information to calculate the amount of redress owed to the *consumer*, must then complete the first step in accordance with *CONRED* 3.4.2R.
- 3.4.10 R Where a *firm* has carried out the second step in relation to a scheme case and has taken reasonable steps to obtain further information from the *consumer* or any *firm* specified in *CONRED* 3.4.8(1) but still does not have sufficient information to calculate redress, the *firm* may determine that the scheme case no longer falls within the subject matter of the *consumer redress scheme* created by this chapter.
- 3.4.11 R Where the *firm* determines that the scheme case no longer falls within the scope of this scheme in accordance with *CONRED* 3.4.10R, the *firm* must promptly send the *consumer* a letter in the form set out in *CONRED* 3 Annex 11R.
- 3.4.12 G Where the *firm* has not received, within the timeframes in *CONRED* 3.4.8R, a response from the *consumer* to the letter required by *CONRED* 3.4.8R(1), the *firm* should handle any complaint received from the *consumer* after this date in relation to advice about a BPS pension transfer in accordance with the complaint handling rules in *DISP*.

Obligation on firms connected with transfer advice

- 3.4.13 R A *firm* receiving a request for information pursuant to *CONRED* 3.4.8R must take reasonable steps to locate and provide the information requested within any reasonable time periods requested and in any case no later than [4 weeks] after receiving the request.

Obligation to notify FCA of any failures to elicit response

- 3.4.14 R A *firm* that has sent a letter in accordance with *CONRED* 3.4.8R and has not received a response to that letter within 4 weeks of it being sent, it must notify the *FCA* at [email].

Guidance on taking reasonable steps to ascertain missing information

- 3.4.15 G For the purposes of *CONRED* 3.4.8R, ‘reasonable steps’ might include:
- (1) checking public sources of information, but without incurring excessive cost; and
 - (2) attempting to contact the *consumer* by telephone (at a reasonable hour when the *consumer* is likely to be available to receive the call) or by email.

Interest payable on redress

- 3.4.16 R (1) Simple interest is payable on redress from the end of the 28-day period referred to in *CONRED* 3.4.3R until the date of payment, at a rate of 8% per annum.
- (2) After the expiry of the 28 day period in *CONRED* 3.4.3R(1), the redress, including interest, may be recovered as a debt due to the *consumer* and, in particular, may:
- (a) if a county court so orders in England and Wales, be recovered by execution issued from the county court (or otherwise) as if it were payable under an order of that court; or
 - (b) be enforced in Northern Ireland as a money judgment under the Judgments Enforcement (Northern Ireland) Order 1981; or
 - (c) be enforced in Scotland by the sheriff, as if it were a judgment or order of the sheriff and whether or not the sheriff could themselves have granted such judgment or order.

[**Note:** This *rule* is imposed by the *FCA* using the powers granted to it under section 404A(1)(m) of the *Act* to make *rules* providing for the enforcement of any redress under a *consumer redress scheme*.]

3.5 Taking steps by or on behalf of FCA

- 3.5.1 R The *FCA* may (on giving notice to the *firm*) take any of the steps at *CONRED* 3.2 to *CONRED* 3.4, instead of the *firm*, or may appoint one or more competent persons to do so on behalf of the *FCA* in the following circumstances:
- (1) if there is a material failure by the *firm* to take any of the actions required under this chapter; or
 - (2) where the *firm* informs the *FCA* that it is unable or unwilling to take any of those actions because to do so would be in breach of a condition of its professional indemnity insurance policy.
- 3.5.2 R If the *FCA* gives notice in the circumstances described in *CONRED* 3.5.1R, the *firm* must:
- (1) not carry out (or, as the case may be, continue to carry out) any of the steps to be taken by the *FCA* or the competent person, unless so directed [in writing] by the *FCA* or competent person (as applicable); and
 - (2) render all reasonable assistance to the *FCA* or competent person (but any assistance, the rendering of which would invalidate the *firm*'s professional indemnity insurance policy, is not reasonable for the purposes of this *rule*).

- 3.5.3 G A *firm* is expected to make reasonable efforts to obtain the consent of its professional indemnity insurer to take the relevant steps in relation to this redress scheme, in line with its obligations under *Principle 11* (Relations with regulators).
- 3.5.4 R If, where the *FCA* or a competent person takes any steps under *CONRED 3.5.1R*, and the *FCA* proposes to make a determination of:
- (1) whether a failure by a *firm* has caused loss to a *consumer*; or
 - (2) what the redress should be in respect of the failure,
- the *FCA* must give the *firm* a *warning notice* that specifies the proposed determination.
- 3.5.5 R (1) If the *FCA* decides to make a determination of the matters in *CONRED 3.5.4R*, the *FCA* must give the *firm* a *decision notice* specifying the determination.
- (2) If the *FCA* decides to make such a determination, the *firm* may refer the matter to the *Tribunal*.
- 3.5.6 R Part XXVI of the *Act* (including the provisions as to *final notices*) applies in respect of notices given under *CONRED 3.5.5R* and *CONRED 3.5.7R*.
- 3.5.7 G Where, instead of the *firm*, the *FCA* or, where applicable, a competent person:
- (1) communicates with a *consumer*, the *FCA* or a competent person will do so in its own name, making clear in the case of a competent person its authority from the *FCA* to do so; or
 - (2) carries out the redress calculation in *CONRED 3.4*, the *FCA* or competent person will carry out the calculation no earlier than 7 *days* after the issue of a final notice in respect of the *FCA*'s decision to make a determination of the matters in *CONRED 3.5.4R*, and will send the *firm* a copy of the *consumer*'s response to the *redress determination* letter at *CONRED 3 Annex 12R*.
- 3.5.8 G A fee is payable by the *firm* (or *person* falling within *CONRED 3.1.5R(1)*) in any case where the *FCA* exercises its powers under *CONRED 3.5.1R*: see the table at *FEES 3.2.7R*.
- 3.5.9 G The completion of steps in *CONRED 3.2* to *CONRED 3.4* by, or on behalf of, the *FCA* does not affect the ability of the *Ombudsman* to consider a *complaint*, in particular where the *firm* has not sent a *redress determination* in accordance with the time limits specified under the scheme.

3.6 Supervision and delegation of scheme process by firms

- 3.6.1 R A *firm* must ensure that the steps required by this chapter are undertaken or supervised by the *individual* appointed by the *firm* under *DISP* 1.3.7R where that *rule* applies. In any other case, those steps must be taken or supervised by a *person* of appropriate experience and seniority.
- 3.6.2 G (1) Any *firm* intending to outsource any of the obligations imposed on it under this chapter should have due regard to the *rules* and *guidance* on outsourcing which are applicable to it, notably in *SYSC*.
- (2) A *firm* which outsources any of the obligations imposed on it under this chapter in respect of communications with consumers should ensure that those communications are clear as to the identity of the *firm*.

3.7 Provisions relating to communications with consumers

- 3.7.1 R Whenever a *firm* is required by a provision of this chapter to send a letter in a form set out in an Annex, it must do so enclosing any relevant documents, following the instructions in the standard form set out in the relevant Annex, complying with any instructions in that Annex to insert, delete, select or complete text.
- 3.7.2 R All letters to *consumers* required under this chapter must be printed on the letterhead of the *firm* and dispatched by recorded delivery mail.
- (1) Where a *firm* becomes aware that the contact details it holds for a *consumer* are out of date, it must take all reasonable steps to obtain up-to-date contact details and, where appropriate, resend any letter and repeat the steps to contact the *consumer*, required by this chapter.
- (2) If, having complied with (1), a *firm* is unable to contact a *consumer*, it need not take any further action pursuant to this chapter in relation to that *consumer* unless (3) applies.
- (3) If, in reliance on (2), the *firm* has ceased taking action but subsequently becomes aware of up-to-date contact details for that *consumer*, the *firm* must, where appropriate, resend any letter and repeat the steps to contact the *consumer* required by this chapter. Each applicable deadline for those actions by the *firm* is extended according to the length of the delay incurred by the application of (2).

Provisions relating to communications with other firms

- 3.7.3 R (1) Where a *firm* becomes aware that the contact details it holds for a *firm* that it has tried to contact pursuant to *CONRED* 3.3.5R or *CONRED* 3.4.8R ('other *firm*') are out of date, it must take all reasonable steps to obtain up-to-date contact details and, where

appropriate, resend any letter and repeat the steps to contact the other *firm* as required by this chapter.

- (2) If, having complied with (1), the *firm* is unable to contact the other *firm* it is seeking to contact, it need not take any further action pursuant to this chapter in relation to that other *firm* unless (3) applies.
- (3) Where, in reliance on (2), the *firm* has ceased taking action but subsequently becomes aware of up-to-date contact details for the other *firm*, it must, where appropriate, resend any letter and repeat the steps to contact the other *firm* required by this chapter. Each applicable deadline for those actions by the *firm* is extended according to the length of the delay incurred by the application of (2).

Prohibition against influencing consumers against their interests

- 3.7.4 R A *firm* must not make any communication to a *consumer* which seeks to influence, for the benefit of the *firm*, the outcome of the steps taken in this chapter, either by seeking to influence the content of information provided by the *consumer* in response to the *firm*'s requests made under *CONRED* 3 or otherwise.

3.8 Consumer redress scheme: information requirements

Requests for information by the FCA

- 3.8.1 R In relation to any matter concerning or related to the *consumer redress scheme* created by this chapter, section 165 (FCA's power to require information: authorised persons etc) of the *Act* and any provision of Part XI (Information Gathering and Investigations) of the *Act* which relates to that section apply to any *firm* (or *person* in *CONRED* 3) which is not an *authorised person* as if it were an *authorised person*.

Ongoing reporting requirements

- 3.8.2 R
- (1) By [1 *month* after the scheme effective date], a *firm* must send the *FCA* an initial 'progress report' with the most up-to-date information held by the *firm* in the information categories in *CONRED* 3.8.3R.
 - (2) A *firm* must update the progress report every 2 weeks, with the second progress report to be received by the *FCA* no later than 14 *days* after the date the initial report was provided to the *FCA*.
 - (3) Both the initial report and each subsequent progress report must:
 - (a) contain an attestation by a *senior manager* responsible for compliance oversight of the *firm* confirming that the information provided in each of the reports is complete [and where the information reflects a determination that such a

determination has been reached in accordance with any applicable *rules*]; and

- (b) be sent to: [FCA email] [and/or in post to [FCA postal address]] [or via a specified *FCA* system [RegData or Qualtrics]].

- 3.8.3 R The progress reports required by *COBS* 3.8.2R must contain the following information about each case the *firm* has taken scheme steps for:
- (1) *consumer* identifier;
 - (2) after completing the first step set out in *CONRED* 3.3.2R (case review), whether the *consumer's* case falls within the subject matter of the scheme (yes/no);
 - (3) where the *consumer's* case does not fall within the subject matter of the scheme (so the answer to (2) is 'no'):
 - (a) the reasons for its exclusion, with reference to the relevant condition or conditions at *CONRED* 3.2.2R;
 - (b) the date the letter at *CONRED* 3 Annex 1R was sent to the *consumer*;
 - (c) whether the *consumer* has complained about their exclusion from the scheme;
 - (4) where the *consumer's* case falls within the subject matter of the scheme (so the answer to (1) is 'yes'):
 - (a) the date the letter at *CONRED* 3 Annex 2R was sent;
 - (b) whether the *consumer* receiving the letter in (a) has opted out of the scheme; and
 - (c) for those *consumers* who have opted out of the scheme, the date that the *firm* sent the opt-out acknowledgment in the form of *CONRED* 3 Annex 3R;
 - (5) whether the *firm* requires more information to assess suitability (yes/no) (so that *CONRED* 3.3.5R applies) and if 'yes':
 - (a) the date the letter at *CONRED* 3 Annex 4R was sent to the *consumer*;
 - (b) the date any request for information was sent to any other *firm* involved in the BPS pension transfer;
 - (c) the date the letter at *CONRED* 3 Annex 5R was sent to the *consumer*;

- (d) the date any further request for information was sent to any other *firm* involved in the BPS pension transfer;
 - (e) whether, as a result of *consumer* or *firm* responses, the *firm* now has sufficient information about the *consumer* to complete the case review at *CONRED* 3.3.2R (yes/no);
 - (f) if the answer to (e) is ‘no’, whether the *firm* has sent the letter at *CONRED* 3 Annex 6R.
- (6) where the *firm* has carried out the case review at *CONRED* 3.3.2R:
- (a) the date the case review was completed;
 - (b) a copy of the completed FCA or BPS DBAAT;
 - (c) whether the scheme case was rated suitable, unsuitable or non-compliant due to material information gap(s);
 - (d) for scheme cases rated as unsuitable, the result of the causation assessment;
- (7) the conclusion of the suitability assessment of the scheme case, indicating whether the assessment has concluded that the advice was suitable, unsuitable or non-compliant as a result of material information gaps;
- (8) whether a causation assessment has been undertaken and, if so, the outcome of that assessment;
- (9) a copy of the completed BPS DBAAT or FCA DBAAT (as applicable);
- (10) in a case where the *firm* has concluded that the advice was suitable:
- (a) the date the *firm* sent the letter at *CONRED* 3 Annex 8R;
 - (b) the date on which the case was referred to the *FCA*, in accordance with *CONRED* 3.3.16R;
 - (c) whether the *Financial Ombudsman Service* has considered the case and, if so, its determination;
- (11) in a case where the *firm* has concluded that the advice was unsuitable and answered ‘no’ to the causation question:
- (a) the date the *firm* sent the letter at *CONRED* 3 Annex 8AR;
 - (b) whether the *consumer* complained to the *firm* or the *Financial Ombudsman Service* about that conclusion;

- (12) in a case where the *firm* has concluded that the advice was unsuitable and answered ‘yes’ to the causation question:
- (a) the date the *firm* sent the letter at *CONRED* 3 Annex 7R;
 - (b) the date the *firm* sent the letter at *CONRED* 3 Annex 9R;
- (13) whether the *firm* requires more information to calculate redress (yes/no) (so that *CONRED* 3.4.7R applies) and if ‘yes’:
- (a) the date the letter at *CONRED* 3 Annex 10R was sent to the *consumer* and, if applicable, any other *firm* involved in the BPS pension transfer;
 - (b) the date any further request for information was sent to any other *firm* involved in the BPS pension transfer;
 - (c) whether, as a result of *consumer* or *firm* responses, the *firm* now has sufficient information to complete the redress calculation as required by *CONRED* 3.4.2R (yes/no);
 - (d) if the answer to (c) is ‘no’, whether the *firm* has sent the letter at *CONRED* 3 Annex 11R.
- (14) where the *firm* has completed the redress assessment as required by *CONRED* 3.4.2R;
- (a) the date on which the redress calculation was completed;
 - (b) the redress amount;
 - (c) the date the letter at *CONRED* 3 Annex 12R was sent to the *consumer*;
 - (d) the date on which redress was paid;
- (15) whether the *consumer* has complained about any aspect of the *consumer redress scheme* and if so:
- (a) the date such a complaint was made;
 - (b) the subject matter of the complaint with reference to the relevant scheme rules;
 - (c) whether the *firm* has upheld or rejected the complaint;
 - (d) the date on which a complaint file was closed; and
 - (e) whether the *consumer* has referred their complaint about the *firm*’s conduct under the *consumer redress scheme* to the *Financial Ombudsman Service*.

- 3.8.4 G If the *firm* is to send an encrypted email to the *FCA*, it will need to download the public PGP key from the *FCA* website and import the key into their email client software.
- 3.8.5 G The regular reporting is designed to provide the *FCA* with information about the *firm*'s progress with individual scheme cases at regular points in time.

3.9 Record-keeping requirements

- 3.9.1 R (1) A *firm* must keep the following records:
- (a) the certificate of posting for each letter sent in accordance with this chapter;
 - (b) a copy of each letter sent in accordance with this chapter;
 - (c) a record of any attempts to contact the *consumer*, any other relevant *firm*, or obtain further information, in accordance with *CONRED* 3.3.5R and *CONRED* 3.4.8R;
 - (d) a copy of the Excel Spreadsheet containing the completed BPS DBAAT or FCA DBAAT for each scheme case; and
 - (e) all information on the *consumer* file and any information received from the *consumer*.
- (2) A *firm* must keep the records required by (1) for a minimum of 5 years from the date of their creation or (for the records in (1)(e)) the date when the information was included in the *consumer* file or obtained.

3 Annex Redress determination: consumers outside subject matter of consumer 1R

Rydym yn hapus i ddarparu copi o'r llythyr hwn yn y Gymraeg ar gais. Cysylltwch gyda ni ar cymraeg@fca.org.uk ac fe wnawn anfon copi atoch.

[Firm details]

[Date]

[Customer details]

British Steel Pension Scheme – Consumer Redress Scheme ('the redress scheme')

We will not review the advice we gave you about your British Steel Pension Scheme benefits

Dear [Insert name],

We will not be reviewing the advice we gave you about your British Steel Pension Scheme (BSPS) benefits because your circumstances exclude you from the redress scheme.

If you're dissatisfied with our decision not to review your advice under the redress scheme you should contact the Financial Ombudsman Service within six months of the date of this letter.

The Financial Ombudsman Service can be contacted by telephone on 0800 023 4567 or 0300 123 9123 or by email addressed to bspsqueries@financial-ombudsman.org.uk.

The Financial Conduct Authority (FCA) has identified that many people received poor advice to transfer out of the British Steel Pension Scheme (BSPS). The FCA has set up a redress scheme which requires us to review the advice we gave to some customers to see if they could be entitled to compensation.

We are not required to review the advice we gave to you for the following reason(s):

[You previously complained about our advice to you to transfer out of BSPS. We responded to this complaint in our letter of [insert date of final response] setting out our conclusions and you accepted an offer in full and final settlement of your complaint.] OR

[You previously complained about our advice to you to transfer out of BSPS. We responded to this complaint in our letter of [insert date of final response] setting out our conclusions. You subsequently referred this complaint to the Financial Ombudsman Service.] OR

[We advised you to remain in BSPS but you transferred out against our advice. This type of transfer is known as an 'insistent client' transfer. If you disagree that you were an 'insistent client', you can contact the Financial Ombudsman Service.] OR

[The advice we gave you to transfer out of BPS has already been assessed by a Skilled Person. A Skilled Person is someone who is appointed to provide an independent view to the FCA of aspects of a firm's activities. Because of that review, we are not required to take further action regarding the advice we gave to you. You can contact the FCA, see details below, if you have any questions about this.] OR

[The redress scheme only covers advice that was given between [insert scheme dates]. We advised you on [insert date of advice], so in our view your case is not covered by the redress scheme.] OR

[For England, Wales and Northern Ireland cases:]

[The redress scheme only covers advice that was given between [insert scheme dates] (where the case is under the law of England and Wales or Northern Ireland). We advised you on [insert date of advice], so in our view your case is not covered by the redress scheme.] OR

[For Scotland cases:]

[The redress scheme does not cover cases where the customer should have reasonably become aware of a loss 5 years before [insert scope start date] (where the case is under the law of Scotland). In our view, your case is not covered by the scheme because you should have been aware of a loss on [insert date].]

What you can do next

If you are dissatisfied with our decision not to review the advice we gave you, you can contact the Financial Ombudsman Service directly (details below) within six months of the date of this letter. The Financial Ombudsman Service will decide whether we have applied the rules of the redress scheme correctly in our decision to exclude you.

We have enclosed a leaflet explaining the role of the Financial Ombudsman Service, which you can contact by telephone: 0800 023 4567 or 0300 123 9123, or by email: bspsqueries@financial-ombudsman.org.uk.

You can find out more about the BPS consumer redress scheme that firms are required to carry out at www.fca.org.uk/bsps. If you want to contact the FCA, you can call its Consumer Helpline on 0800 111 6768 or email consumer.enquiries@fca.org.uk. If you would like to call using next generation text relay, please call on (18001) 0207 066 1000.

If you have any queries about our review, you can contact us by phone or email [insert contact details]. We are available between [insert contact hours].

You should contact us directly if you have any other complaint about our services.

Yours sincerely,

<signature>

<name of adviser or customer service>

3 Annex Redress determination: consumers within scope/confirming inclusion 2R

Rydym yn hapus i ddarparu copi o'r llythyr hwn yn y Gymraeg ar gais. Cysylltwch gyda ni ar cymraeg@fca.org.uk ac fe wnawn anfon copi atoch.

[Firm details]

[Date]

[Consumer details]

British Steel Pension Scheme – Consumer Redress Scheme ('the redress scheme')

We will review the advice we gave you to transfer out of the British Steel Pension Scheme

Dear [Insert name],

You could be owed money for the advice we gave you to transfer out of the British Steel Pension Scheme (BSPS). The FCA requires all firms who advised BSPS members to transfer to participate in a consumer redress scheme.

We will review whether our advice was unsuitable and let you know the outcome by [insert day date month year]. You do not have to do anything unless we need information from you to complete our review. We will contact you if this is the case.

IF YOU DO NOT WANT US TO REVIEW THE ADVICE YOU RECEIVED, COMPLETE THE ENCLOSED FORM AND RETURN IT TO US BY [DAY DATE MONTH YEAR].

The Financial Conduct Authority (FCA) found that many people received unsuitable advice to transfer out of the British Steel Pension Scheme (BSPS). In nearly half of the cases the FCA has reviewed, the advice given to BSPS members to transfer their pension appeared to be unsuitable. Unsuitable advice is advice that was not in line with FCA requirements. We will review the advice we gave you to decide if it was unsuitable.

If our review finds that the advice we gave you was unsuitable, we will ask you for some information to help us establish if you are due compensation by calculating if our advice caused you a financial loss. If our advice did cause you a loss, we will be required to offer you compensation. The compensation will aim to put you in the position you would have been in if we had given you suitable advice. Whatever the outcome of our review, you will not need to pay anything.

You do not need to do anything unless we ask you for information to help us complete our review. We will contact you if this is the case. We will tell you the outcome of our review by [insert day date month year].

You do not need to use a claims management company (CMC) as it will not impact our review and will only cost you money if you use their services.

If you **do not** want us to review the advice we gave, please let us know by completing the enclosed form and returning it to us by [insert day date month year]. If you opt-out, you may end up with less money during your retirement than you should have had.

You can find out more about the BSPS consumer redress scheme at www.fca.org.uk/bsps. If you want to contact the FCA, you can call its Consumer Helpline on 0800 111 6768 or email consumer.enquiries@fca.org.uk. If you would like to call using next generation text relay, please call on (18001) 0207 066 1000.

If you have any queries about our review you can contact us by phone or email [insert contact details]. We are available between [insert contact hours].

Yours sincerely,

<signature>

<name of adviser or customer service>

Opting-out of the review of the advice given to you

[I/We] have enclosed two copies of this letter.

If you DO NOT want us to review our advice to transfer out of BPS:

- (1) Tick the box below on one copy of this letter; and
- (2) Send this letter to [me/us] by [date].

CONFIRMATION THAT I DO NOT WANT MY ADVICE REVIEWED

I do not want you to review the advice you gave me to transfer out of the BPS to see if I am entitled to compensation.

Please be aware that if you decide you DO NOT want us to review your advice you could lose out on compensation and may end up with less money during your retirement than you should have had.

3 Annex Redress determination: confirmation of consumer opt-out 3R

Rydym yn hapus i ddarparu copi o'r llythyr hwn yn y Gymraeg ar gais. Cysylltwch gyda ni ar cymraeg@fca.org.uk ac fe wnawn anfon copi atoch.

[Firm details]

[Date]

[Consumer details]

British Steel consumer redress scheme

We will not review the advice we gave you to transfer out of the British Steel Pension Scheme

Dear [Insert name],

You have told us that you do not want us to review the advice we gave you to transfer out of the British Steel Pension Scheme.

As a result, we will not take any further action.

IF YOU DO NOT AGREE THAT YOU OPTED OUT OF THE REVIEW, YOU SHOULD CONTACT THE FINANCIAL OMBUDSMAN SERVICE WITHIN SIX MONTHS.

The Financial Conduct Authority (FCA) has identified that many people received unsuitable advice to transfer out of the British Steel Pension Scheme (BSPS).

We wrote to you on [insert date of letter] to tell you that we would review the advice we gave you to transfer out of the BSPS. You then told us on [insert date of opt out] that you did not want us to do this review. We can confirm that we will not take any further action.

This letter does not affect your ability to complain to us or to take legal action. However, if you do not take action promptly, you may find that the time limit has passed for you to make a complaint or legal claim. Details of our usual complaints procedure are attached.

If you do not agree that you opted out of the review, you should contact the Financial Ombudsman Service within six months of the date of this letter. The Financial Ombudsman Service will decide whether we have applied the rules of the scheme correctly in our decision not to take any further action.

We have enclosed a leaflet explaining the role of the Financial Ombudsman Service, which you can contact by telephone: 0800 023 4567 or 0300 123 9123, or by email: bspsqueries@financial-ombudsman.org.uk.

You can find out more about the reviews that firms must do at www.fca.org.uk/bsps. If you want to contact the FCA, you can call its Consumer Helpline on 0800 111 6768 or email consumer.enquiries@fca.org.uk. If you would like to call using next generation text relay, please call on (18001) 0207 066 1000.

Yours sincerely,

<signature>

<name of adviser or customer service>

3 Annex Further information request (1): initial request 4R

Rydym yn hapus i ddarparu copi o'r llythyr hwn yn y Gymraeg ar gais. Cysylltwch gyda ni ar cymraeg@fca.org.uk ac fe wnawn anfon copi atoch.

[Firm details]

[Date]

[Consumer details]

British Steel consumer redress scheme

ACTION REQUIRED – We need some information to help us review the advice we gave you to transfer out of the British Steel Pension Scheme

Dear [Insert name],

We need you to give us some information so we can review the advice we gave you to transfer out of the British Steel Pension Scheme.

The information we need from you is listed [below/in the enclosed questionnaire].

Please send this information to us by [insert Day Date Month Year].

You can send this information to us by post (return envelope included) or by email: [insert firm email].

IF YOU DO NOT RESPOND, WE WILL NOT BE ABLE TO REVIEW OUR ADVICE GIVEN TO YOU AND YOU MAY END UP WITH LESS MONEY DURING YOUR RETIREMENT THAN YOU SHOULD HAVE HAD.

The Financial Conduct Authority (FCA) has identified that many people received unsuitable advice to transfer out of the British Steel Pension Scheme (BSPS).

We wrote to you on [insert date] to confirm we will review the advice we gave you. If our review finds that the advice we gave you was unsuitable and resulted in a financial loss, we will be required to calculate whether we are required to give you compensation. Compensation aims to put you in the position you would have been in had we given you suitable advice and you remained in BSPS.

Please send us this information by [insert day date month year]

We now need more information so we can review the advice we gave you to transfer out of BSPS.

[Where questionnaire not being used] Please provide us with the following information:

- **[insert information required in bold, bulleted list]**

[Where questionnaire being used] Please complete and return the enclosed questionnaire.

Please do this by [insert day date month year].

If you do not give us this information you may end up with less money during your retirement than you should have had.

You do not need to use a claims management company (CMC) and it will only cost you money if you use their services.

If you have any difficulties providing this information or any queries about our review, you can contact us by phone or by email [insert contact details]. We are available between [insert contact hours].

Yours sincerely,

<signature>

<name of adviser or customer service>

3 Annex Further information request (2): final reminder 5R

Rydym yn hapus i ddarparu copi o'r llythyr hwn yn y Gymraeg ar gais. Cysylltwch gyda ni ar cymraeg@fca.org.uk ac fe wnawn anfon copi atoch.

[Firm details]

[Date]

[Consumer details]

British Steel consumer redress scheme

FINAL REMINDER – We need some information from you to help us review the advice we gave you to transfer out of the British Steel Pension Scheme

Dear [Insert name],

We have not yet received the information we need to review the advice we gave you to transfer out of the British Steel Pension Scheme.

This information we need from you is listed below.

Please send this information to us by [Day Date Month Year].

You can send this information to us by post (return envelope included) or by email: [insert firm email].

IF YOU DO NOT RESPOND, WE WILL NOT BE ABLE TO REVIEW OUR ADVICE AND YOU MAY END UP WITH LESS MONEY DURING YOUR RETIREMENT THAN YOU SHOULD HAVE HAD.

The Financial Conduct Authority (FCA) has identified that many people received unsuitable advice to transfer out of the British Steel Pension Scheme (BSPS).

We wrote to you on [insert date] to say that we will review the advice we gave you to transfer out of BSPS to see if the advice was unsuitable. If our review finds that the advice we gave you was unsuitable and resulted in a financial loss, we will be required to give you compensation. The compensation will aim to put you in the position you would have been in if we had given you suitable advice and you remained in the BSPS. Whatever the outcome of our review, you will not have to pay anything.

Please send us this information by [day date month year].

We now need more information so we can review the advice we gave you to transfer out of BSPS.

[Where questionnaire not being used] Please provide us with the following information:

- **[insert information required in bold, bulleted list]**

[Where questionnaire being used] Please complete and return the enclosed questionnaire.

Please do this by [day date month year].

If you do not provide this information you may end up with less money in your retirement than you should have had.

You do not need to use a claims management company (CMC) and it will only cost you money if you use their services.

If you have any difficulties providing this information or any queries about our review, you can contact us by phone or by email [insert contact details]. We are available between [insert contact hours].

Yours sincerely,

<signature>

<name of adviser or customer service>

3 Annex Further information not provided 6R

Rydym yn hapus i ddarparu copi o'r llythyr hwn yn y Gymraeg ar gais. Cysylltwch gyda ni ar cymraeg@fca.org.uk ac fe wnawn anfon copi atoch.

[Firm details]

[Date]

[Consumer details]

British Steel consumer redress scheme

We are stopping our review of the advice we gave you to transfer out of the British Steel Pension Scheme

Dear [Insert name],

We are not able to complete our review of the advice we gave you to transfer out of the British Steel Pension Scheme. That is because you did not provide the information we asked for.

We wrote to you on [insert dates of initial letter and reminder letter] to tell you that we needed some information from you to help us complete this review. We also tried to contact you [insert details].

As a result, your case is no longer covered by the consumer redress scheme and we are stopping our review.

If you are unhappy with this outcome, you can contact the Financial Ombudsman Service within six months.

What you can do next

This letter does not affect your ability to complain to us or to take legal action. However, if you do not take steps promptly, you may find that you have passed the time limit to make a complaint or legal claim. If you still want us to review the advice we gave you, you should still make a complaint to us through our usual complaints procedure, which is attached.

If you are dissatisfied with our decision that we're unable to review the advice we gave you because you didn't provide the information we asked for, you can contact the Financial Ombudsman Service within six months of the date of this letter. The Financial Ombudsman Service will decide whether we have applied the rules of the consumer redress scheme correctly.

We have enclosed a leaflet explaining the role of the Financial Ombudsman Service, which you can contact by telephone: 0800 023 4567 or 0300 123 9123, or by email: bspsqueries@financial-ombudsman.org.uk.

You can find out more about the BSPS consumer redress scheme at www.fca.org.uk/bsps. If you want to contact the Financial Conduct Authority, you can call its Consumer Helpline on 0800 111 6768 or email consumer.enquiries@fca.org.uk. If you would like to call using next generation text relay, please call on (18001) 0207 066 1000.

Yours sincerely,

<signature>

<name of adviser or customer service>

3 Annex Redress determination: unsuitable advice 7R

Rydym yn hapus i ddarparu copi o'r llythyr hwn yn y Gymraeg ar gais. Cysylltwch gyda ni ar cymraeg@fca.org.uk ac fe wnawn anfon copi atoch.

[Firm details]

[Date]

[Consumer details]

British Steer consumer redress scheme

We gave you unsuitable advice to transfer out of the British Steel Pension Scheme

Dear [Insert name],

We have reviewed the advice we gave you to transfer out of the British Steel Pension Scheme. Our review has found that the advice we gave you was unsuitable.

This means that you may be entitled to compensation. But first we need to calculate whether our unsuitable advice caused you a financial loss and whether we owe you any money. We will tell you the result of our calculation by [insert date].

Why did we reach this decision?

We have found that the advice we gave you to transfer out of the British Steel Pension Scheme (BSPS) was unsuitable.

[Insert reason: summarise the information in the assessment template which led to the finding that advice was unsuitable.]

We will now take steps to calculate whether our advice caused you a financial loss and, if so, how much money we owe you. Any money we pay you will aim to put you in the position you would have been in had you received suitable advice and remained in the BSPS. Whatever the result of our calculation, you will not have to pay anything.

We will ask you for information to help us complete the calculation in a separate letter. Once we have this information, we can complete the calculation. We will tell you the outcome of the calculation by [insert date].

You do not need to use a claims management company (CMC) and it will only cost you money if you use their services.

You can find out more about the BSPS consumer redress scheme at www.fca.org.uk/bsps. If you want to contact the Financial Conduct Authority (FCA), you can call its Consumer Helpline on 0800 111 6768 or email

consumer.enquiries@fca.org.uk. If you would like to call using next generation text relay, please call on (18001) 0207 066 1000.

If you have any queries about our review you can contact us by phone or email [insert contact details]. We are available between [insert contact hours].

Yours sincerely,

<signature>

<name of adviser or customer service>

3 Annex Redress determination: suitable advice 8R

Rydym yn hapus i ddarparu copi o'r llythyr hwn yn y Gymraeg ar gais. Cysylltwch gyda ni ar cymraeg@fca.org.uk ac fe wnawn anfon copi atoch.

[Firm details]

[Date]

[Consumer details]

British Steel consumer redress scheme

We gave you suitable advice to transfer out of the British Steel Pension Scheme

Dear [Insert name],

We have reviewed the advice we gave you to transfer out of the British Steel Pension Scheme. Our review found that the advice we gave you was suitable. This means that we will not take any further steps in relation to the advice we provided to you.

Why did we reach this decision?

[Insert reason: summarise the information in the template which led to the finding that advice was suitable.]

What you can do next

If you are dissatisfied with our decision that the advice we gave you was suitable, you can ask the Financial Ombudsman Service to review the decision within six months of the date of this letter. We have enclosed a leaflet explaining the role of the Financial Ombudsman Service, which you can contact by telephone: 0800 023 4567 or 0300 123 9123, or by email: bspsqueries@financial-ombudsman.org.uk.

We will pass your details to the Financial Conduct Authority (FCA). They may contact you to see if you would like the Financial Ombudsman Service to review our decision and to help you ask the Financial Ombudsman Service to review our decision if you have not already done so. If you don't want us to pass your details to the FCA, please tell us in writing within 14 days of the date of this letter. You can write to us by letter or email at [insert details].

You can find out more about the consumer redress scheme at www.fca.org.uk/bsps. If you want to contact the FCA, you can call its Consumer Helpline on 0800 111 6768 or email consumer.enquiries@fca.org.uk. If you would like to call using next generation text relay, please call on (18001) 0207 066 1000.

Yours sincerely,

<signature>

<name of adviser or customer service>

3 Annex Redress determination: unsuitable advice, no causation 8AR

Rydym yn hapus i ddarparu copi o'r llythyr hwn yn y Gymraeg ar gais. Cysylltwch gyda ni ar cymraeg@fca.org.uk ac fe wnawn anfon copi atoch.

[Firm details]

[Date]

[Consumer details]

British Steel consumer redress scheme

We gave you unsuitable advice to transfer out of the British Steel Pension Scheme but it did not cause you any loss

Dear [Insert name],

We have reviewed the advice we gave you to transfer out of the British Steel Pension Scheme. Our review found that the advice we gave you was unsuitable. But our unsuitable advice did not cause you any loss.

This means that we will not take any further steps in relation to the advice we provided to you.

Why did we reach this decision?

[Insert reason: summarise the information in the assessment template which led to the finding that unsuitable advice did not cause any loss.]

What you can do next

If you are dissatisfied with our decision that unsuitable advice did not cause you any loss, you should contact the Financial Ombudsman Service within six months of the date on this letter. We have enclosed a leaflet explaining the role of the Financial Ombudsman Service, which you can contact by telephone: 0800 023 4567 or 0300 123 9123, or by email: bspsqueries@financial-ombudsman.org.uk.

We will pass your details to the Financial Conduct Authority (FCA) and they may contact you to see if you would like the Financial Ombudsman Service to review our decision. If you don't want us to pass your details to the FCA, please tell us in writing within 14 days of this letter. You can write to us by letter or email at [insert details].

You can find out more about the consumer redress scheme at www.fca.org.uk/bsps. If you want to contact the FCA, you can call its Consumer Helpline on 0800 111 6768 or email consumer.enquiries@fca.org.uk. If you would like to call using next generation text relay, please call on (18001) 0207 066 1000.

Yours sincerely,

<signature>

<name of adviser or customer service>

**3 Annex Redress calculation, further information: initial request
9R**

Rydym yn hapus i ddarparu copi o'r llythyr hwn yn y Gymraeg ar gais. Cysylltwch gyda ni ar cymraeg@fca.org.uk ac fe wnawn anfon copi atoch.

[Firm details]

[Date]

[Consumer details]

British Steel consumer redress scheme

ACTION REQUIRED – We need information from you to calculate whether we owe you any compensation

Dear [Insert name],

We need you to provide further information so we can calculate whether you suffered financial loss and whether we owe you any money. Please send this information to us by [insert day date month year].

You can send this information to us by post (return envelope included) or by email: [insert firm email].

IF YOU DO NOT RESPOND, WE WILL NOT CALCULATE WHETHER WE OWED YOU ANY MONEY AND YOU MAY END UP WITH LESS MONEY IN YOUR RETIREMENT THAN YOU SHOULD HAVE HAD.

We wrote to you on [insert date] to say that the advice we gave you to transfer out of the British Steel Pension Scheme (BSPS) was unsuitable. We said we would calculate whether you had suffered a financial loss, and if so, how much money we owe you. Any money we pay you will aim to put you in the position you would have been in had you received suitable advice and remained in the BSPS. Whatever the result of our calculation, you will not have to pay any money.

Please send us this information by [insert day date month year]

We now need some information from you so we can complete the calculation.

[Where questionnaire not being used] Please provide us with the following information:

- **[insert information required as a bold, bulleted list]**

[Where questionnaire being used] Please complete and return the enclosed questionnaire.

Please do this by [insert day date month year] and we will calculate how much money we may owe you.

If you do not provide this information you may end up with less money in your retirement than you should have had.

You do not need to use a claims management company (CMC) and it will only cost you money if you use their services.

If you have any difficulties providing this information or any queries about our review, you can contact us by phone or by email [insert contact details]. We are available between [insert contact hours].

You can find out more about the consumer redress scheme at www.fca.org.uk/bsps. If you want to contact the Financial Conduct Authority, you can call its Consumer Helpline on 0800 111 6768 or email consumer.enquiries@fca.org.uk. If you would like to call using next generation text relay, please call on (18001) 0207 066 1000.

Yours sincerely,

<signature>

<name of adviser or customer service>

3 Annex Redress calculation, further information: final reminder 10R

Rydym yn hapus i ddarparu copi o'r llythyr hwn yn y Gymraeg ar gais. Cysylltwch gyda ni ar cymraeg@fca.org.uk ac fe wnawn anfon copi atoch.

[Firm details]

[Date]

[Consumer details]

British Steel consumer redress scheme

FINAL REMINDER – We need some information from you to help us calculate any money we owe you due to advice we gave you to transfer out of the British Steel Pension Scheme

Dear [Insert name],

We have not yet received the information we need from you to calculate whether we owe you any money due to unsuitable advice we gave you to transfer out of the British Steel Pension Scheme.

The information we need from you is listed below.

Please send this information to us by [insert day date month year].

You can send this information to us by post (return envelope included) or by email: [insert firm email].

IF YOU DO NOT RESPOND, WE WILL NOT CALCULATE ANY MONEY YOU MAY BE OWED AND YOU MAY END UP WITH LESS MONEY OR IN YOUR RETIREMENT THAN YOU SHOULD HAVE HAD.

We wrote to you on [insert date] to say that the advice we gave you to transfer out of the British Steel Pension Scheme (BSPS) was unsuitable. We are now required to calculate whether this advice resulted in a financial loss and, if so, how much money we owe you. This would aim to put you in the position you would have been in had you received suitable advice and remained in the BSPS. Whatever the outcome of our calculation, you will not have to pay anything.

Please send us this information by [insert day date month year]

We need information so we can complete this calculation.

[Please provide us with

- **[insert information required as a bold, bulleted list]]**

OR

[Please complete and return the enclosed questionnaire.]

Please do this by [insert day date month year] and we will calculate how much money we may owe you.

If you do not provide this information you may end up with less money in your retirement than you should have had.

You do not need to use a claims management company (CMC) and it will only cost you money if you use their services.

If you have any difficulties providing this information or any queries about our review, you can contact us by phone or by email [insert contact details]. We are available between [insert contact hours].

Yours sincerely,

<signature>

<name of adviser or customer service>

3 Annex Redress calculation: information not provided 11R

Rydym yn hapus i ddarparu copi o'r llythyr hwn yn y Gymraeg ar gais. Cysylltwch gyda ni ar cymraeg@fca.org.uk ac fe wnawn anfon copi atoch.

[Firm details]

[Date]

[Consumer details]

British Steel consumer redress scheme

We are stopping our calculation of any money we may owe you due to unsuitable advice

Dear [Insert name],

We are not able to complete the calculation of any money we may owe you due to the unsuitable advice we gave you to transfer out of the British Steel Pension Scheme. That is because you did not give us the information we asked for.

If you are unhappy with this outcome, you should contact the Financial Ombudsman Service within six months.

Why we are stopping our calculation of any money we owe you due to unsuitable advice

We wrote to you on [insert dates of initial letter and reminder letter] to tell you that we needed information from you to complete this calculation. We also tried to contact you [insert details].

What you can do next

This letter does not affect your ability to complain to us or to take legal action. However, if you do not take action promptly, you might find that you have passed the time limit to make a complaint or legal claim.

If you are dissatisfied with our decision to stop our calculation of any money we may owe you, you can contact the Financial Ombudsman Service within six months of the date of this letter. The Financial Ombudsman Service will decide whether we have applied the rules of the consumer redress scheme correctly.

We have enclosed a leaflet explaining the role of the Financial Ombudsman Service, which you can contact by telephone: 0800 023 4567 or 0300 123 9123, or by email: bspsqueries@financial-ombudsman.org.uk.

If you still want us to review the advice we gave you, you should still make a complaint to us by [insert details on how to complain].

You can find out more about the consumer redress scheme at www.fca.org.uk/bsps. If you want to contact the Financial Conduct Authority, you can call its Consumer Helpline on 0800 111 6768 or email consumer.enquiries@fca.org.uk. If you would like to call using next generation text relay, please call on (18001) 0207 066 1000.

Yours sincerely,

<signature>

<name of adviser or customer service>

3 Annex Redress determination 12R

Rydym yn hapus i ddarparu copi o'r llythyr hwn yn y Gymraeg ar gais. Cysylltwch gyda ni ar cymraeg@fca.org.uk ac fe wnawn anfon copi atoch.

[Firm details]

[Date]

[Consumer details]

British Steel consumer redress scheme

ACTION REQUIRED – Compensation for unsuitable advice to transfer out of the British Steel Pension Scheme

Dear [Insert name],

We have found that you we [do/do not] owe you money for the advice we gave you to transfer out of the British Steel Pension Scheme.

***[if owed compensation]* The amount we owe you is: [£xxx]. If you want to accept this payment, you must do it by [insert day date month year]. Please [confirm/sign below/etc.] by [insert date] and we will send you the money through the method you indicated.**

***[if not owed compensation]* This is because we have carried out a calculation and found that you have not suffered any financial loss as a result of the transfer.**

If you are unhappy with this outcome, you should contact the Financial Ombudsman Service within six months.

How did we reach this decision?

[Insert how redress was calculated].

***[If owed compensation]* You must accept this payment by [insert day date month year].**

If you want to accept this payment, please [confirm/sign below/etc.] and we will send you the money through the method you indicated.

You do not have to accept this payment but if you want to, you must respond by [insert date], unless there are exceptional circumstances.

We intend to pay you within 28 days of receiving your acceptance.

If we do not pay or contact you within 28 days of receiving your acceptance, you can contact the Financial Conduct Authority (FCA) using the contact details below.

[Optional wording] If you accept this payment, it will be in full and final settlement of all claims against [me/us/name of firm which provided the advice] arising out of the advice given by [me/us/it] to you to invest in the above-named fund.

[All letters] If you are unhappy with this outcome, you can contact the Financial Ombudsman Service within six months of the date of this letter.

We have enclosed a leaflet explaining the role of the Financial Ombudsman Service, which you can contact by telephone: 0800 023 4567 or 0300 123 9123, or by email: bspsqueries@financial-ombudsman.org.uk.

You can find out more about the consumer redress scheme at www.fca.org.uk/bsps. If you want to contact the FCA, you can call its Consumer Helpline on 0800 111 6768 or email consumer.enquiries@fca.org.uk. If you would like to call using next generation text relay, please call on (18001) 0207 066 1000.

Yours sincerely,

<signature>

<name of adviser or customer service>

Method of payment

[I/We] have enclosed two copies of this letter.

If you want to receive payment:

- 1) Tick the box next to your preferred payment method on one copy of the letter;
- 2) Complete any required fields;
- 3) Sign and print your name; and
- 4) Send the completed letter to [me/us] by [date].

CONFIRMATION OF PAYMENT METHOD

I would like to receive payment:

By cheque

By payment into bank account

Sort code: _____

Account number: _____

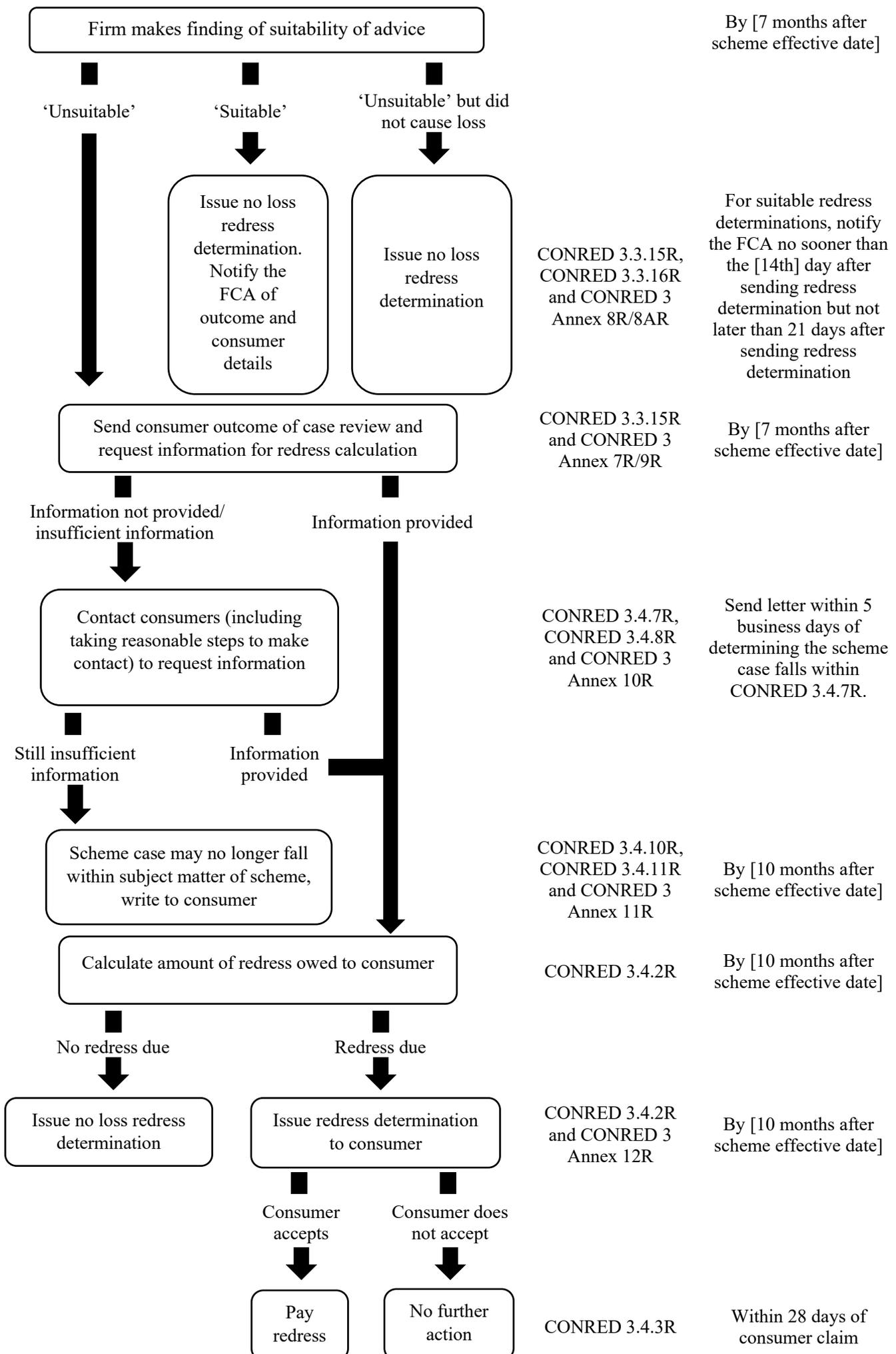
Print name: _____

Signed: _____

**3 Annex Summary of scheme flow diagram [CONRED 3.1.9R]
13G**

Summary of redress scheme steps

What to do	CONRED Ref.	When to do it
<div style="border: 1px solid black; border-radius: 10px; padding: 10px; width: fit-content; margin: 0 auto;"> Identify all consumers who made a BPS pension transfer after the firm gave advice in relation to BPS. </div>	CONRED 3.1.3R	By [1 month after scheme effective date]
<div style="text-align: center;">↓</div> <div style="border: 1px solid black; border-radius: 10px; padding: 10px; width: fit-content; margin: 0 auto;"> Identify all cases which fall within the subject matter of the scheme (scheme cases) and excluded scheme cases </div>	CONRED 3.2.2R	By [1 month after scheme effective date]
<div style="text-align: center;">↓</div> <div style="border: 1px solid black; border-radius: 10px; padding: 10px; width: fit-content; margin: 0 auto;"> Write to all consumers within and outside scope. </div>	CONRED 3.2.6R and CONRED 3 Annex 1R/2R	By [1 month after scheme effective date]
<div style="text-align: center;">↓</div> <div style="border: 1px solid black; border-radius: 10px; padding: 10px; width: fit-content; margin: 0 auto;"> Acknowledge any consumer opt-outs </div>	CONRED 3.2.7R and CONRED 3 Annex 3R	Within 5 working days of consumer response
<div style="text-align: center;">↓</div> <div style="border: 1px solid black; border-radius: 10px; padding: 10px; width: fit-content; margin: 0 auto;"> Complete case reviews for all non-opted-out scheme cases using the BPS DBAAT, or an FCA DBAAT completed prior to the scheme. These must be accompanied by an attestation by the compliance senior manager. </div>	CONRED 3.3.2R	By [7 months after scheme effective date]
<div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 30%;"> <p style="text-align: center;">Material information gap</p> <div style="border: 1px solid black; border-radius: 10px; padding: 10px; width: fit-content; margin: 0 auto;"> Contact consumers (including issuing chaser letter and taking reasonable steps to make contact) and, if sufficient information received, complete case review </div> <p style="text-align: center;">Material information gap</p> <div style="border: 1px solid black; border-radius: 10px; padding: 10px; width: fit-content; margin: 0 auto;"> Scheme case may no longer fall within subject matter of scheme, write to consumer </div> </div> <div style="width: 35%; text-align: center;"> <p>Sufficient information</p> <div style="border: 1px solid black; border-radius: 10px; padding: 10px; width: fit-content; margin: 0 auto;"> Send first letter within 5 business days of determining the scheme case falls within CONRED 3.3.5R(1). Wait four weeks for reply If no reply, send second letter within 5 business days of the four weeks expiring </div> </div> <div style="width: 30%; text-align: center;"> <p>Material information gap but can still assess suitability</p> </div> </div>	<div style="margin-top: 10px;"> CONRED 3.3.5R, CONRED 3.3.6R and CONRED 3 Annex 4R/5R </div>	
<div style="text-align: center;"> <p>Information provided</p> </div>	<div style="margin-top: 10px;"> CONRED 3.3.7R, CONRED 3.3.8R and CONRED 3 Annex 6R </div>	<div style="margin-top: 10px;"> By [7 months after scheme effective date] </div>



3 Annex Form of Attestation for use of FCA DBAAT 14R

I [name] of [firm] attest on [date] that:

(1)	I have read the BSPS Consumer Redress Scheme <i>rules</i> in <i>CONRED 3</i> and in particular the BSPS DBAAT instructions at <i>CONRED 3 Annex 16R</i> ;
(2)	I am approved to perform the SMF16 (Compliance oversight) <i>FCA controlled function</i> for the <i>firm</i> or [another appropriate <i>senior management function</i>] within the <i>firm</i> ;
(3)	I have reviewed the completed FCA DBAAT in light of the <i>rules</i> for the BSPS DBAAT referred to in (1);
(4)	where applicable, the completed FCA DBAAT has been amended as a consequence of applying the rules referred to in (1);
(5)	where the FCA DBAAT information section rating was ‘non-compliant – unclear’ or ‘non-compliant – proceed to suitability assessment’, the <i>firm</i> has taken the steps in <i>CONRED 3.3.5R</i> and has assessed the case in accordance with the <i>rules</i> , <i>evidential provisions</i> and <i>guidance</i> in <i>CONRED 3.3.6R</i> to <i>CONRED 3.3.14E</i> (or took equivalent steps previously); and
(6)	in my view, the <i>firm</i> would have come to the same conclusion (that the advice was suitable/unsuitable (as applicable)) if it had used the BSPS DBAAT.

Signed:

3 Annex **BSPS DBAAT**
15R

BSPS DBAAT

Information assessment

Case details

Review details

Reviewer	
Date of review	

QA Completed?	
QA Specialist (Name)	
Date of QA review	
Causation QA required?	
QA Causation (Name)	
Date of causation review	

Full advice details

Date of advice	
Date of last KYC at time of advice	
Recommendation	
Did the client transfer?	
Firm recommended proposed arrangement?	
Was the client treated as insistent?	
Initial advice charge basis	
Initial advice charge (£)	
Initial advice charge (%)	
Ongoing advice charge (£)	
Ongoing advice charge (%)	
Additional comments	

Firm details

Firm / Network name		
FRN		FCA Register
AR (if different)		
Advice Status		

Adviser details

Adviser name		
Adviser reference (IRN)		FCA Register
Was the adviser a PTS?		
(If no above), name of PTS		

Client referrals

Client referred from third party firm?		
Third party is regulated/unregulated?		
Third party firm name		
Third party firm FRN		FCA Register
Third party adviser name		
Third party adviser reference (IRN)		

Client contact details (most recent available)

Last known telephone number	
Last known address	

Has the firm obtained the necessary information to provide advice?

	Reviewer	QA
1 Has the firm obtained the essential facts about the consumer?		

Was the advice on a single or joint life basis?	
---	--

Surname		
First name		Y
Date of birth (Age at time of earliest advice)		
Marital status		
Employment status		
Current tax rate		

Surname		
First name		Y
Date of birth (Age at time of advice)		
Marital status		
Employment status		
Current tax rate		

UK Resident		UK Resident	
Health status		Health status	
Notes on health (if not good)		Notes on health (if not good)	
Notes on any dependents		Notes on any dependents	
Is the client considered vulnerable?		Is the client considered vulnerable?	
Notes on vulnerability		Notes on vulnerability	
Additional comments			

	Reviewer	QA
2	Has the firm obtained the necessary information regarding the consumer's objectives?	

Has the adviser prioritised objectives?

	Objective	Amount wanted (where relevant)	Date needed (where relevant)
Priority 1 objective			
Priority 2 objective			
Priority 3 objective			
Priority 4 objective			
Priority 5 objective			

Additional comments

	Reviewer	QA
3	Has the firm obtained the necessary information regarding the consumer's preferences regarding risk taking and their risk profile?	

Firm's description of client's attitude to investment risk (tolerance).	
Firm's description of the client's attitude to the risks associated with a pension transfer, including the loss of safeguarded benefits;	
Did the firm use a tool to help assess?	
Name of tool	
Additional comments	

Firm's description of client's ability to take investment risk (capacity).	
Firm's description of the client's capacity for loss of safeguarded benefits;	
Did the firm use a tool to help assess?	
Name of tool	

Additional comments	
---------------------	--

	Reviewer	QA
4 Has the firm obtained the necessary information regarding the consumer's knowledge & experience?		

The types of service, transaction and investments with which the consumer is familiar.	
The nature, volume and frequency of the consumer's transactions in investments and the period over which they have been carried out.	
The level of education, profession or relevant former profession of the consumer.	
Additional comments	

	Reviewer	QA
5 Has the firm obtained the necessary information regarding the consumer's estimated expenditure?		

Has the adviser captured detail on the client's expenditure plans in retirement?	
--	--

Current regular expenditure	
Captured monthly or annually?	
Basic cost of living (p.m)	
Lifestyle expenditure (p.m)	
TOTAL non-discretionary expenditure (p.m)	£0.00
Discretionary / savings (p.m)	
Basic cost of living (p.a)	
Lifestyle expenditure (p.a)	
TOTAL non-discretionary expenditure (p.a)	£0.00
Discretionary / savings (p.a)	
Additional comments	

Retirement regular expenditure	
Captured monthly or annually?	
Basic cost of living (p.m)	
Lifestyle expenditure (p.m)	
TOTAL non-discretionary expenditure (p.m)	£0.00
Discretionary / savings (p.m)	
Basic cost of living (p.a)	
Lifestyle expenditure (p.a)	
TOTAL non-discretionary expenditure (p.a)	£0.00
Discretionary / savings (p.a)	

Additional comments	
---------------------	--

	Reviewer	QA
6 Has the firm obtained the necessary information regarding the consumer's financial situation?		

Current income (client)	
Salary (p.a)	

Current income (spouse/partner)	
Salary (p.a)	

Investment/dividend/property income (p.a)		Investment/dividend/property income (p.a)	
Pensions income (p.a)		Pensions income (p.a)	
Other income (p.a)		Other income (p.a)	
TOTAL	£0.00	TOTAL	£0.00
Additional comments			

Income sources in retirement excluding this pension (client)

Forecast state pension (p.a)	
State pension date	
State pension forecast or inferred?	
Secured pension income (p.a.)	
TOTAL	£0.00
Additional comments	

Income sources in retirement (spouse/partner)

Forecast state pension (p.a)	
State pension date	
State pension forecast or inferred?	
Secured pension income (p.a.)	
TOTAL	£0.00
Additional comments	

Gross income from non-pension assets (p.a)		Gross income from non-pension assets (p.a)	
Additional comments			

Other assets

Other DC pensions (TV)	
Investments (FV)	
Cash assets	
Property (ex main residence)	
Predicted future inheritance	
Other assets	
Additional comments	

Other assets (spouse/partner)

Other DC pensions (TV)	
Investments (FV)	
Cash assets	
Property (ex main residence)	
Predicted future inheritance	
Other assets	
Additional comments	

Liabilities

Outstanding mortgage		Y
Date of final payment (client age)		
Type of mortgage		
Other secured debt		
Unsecured debts		
Will this pension be used to repay any of this debt?		
Additional comments		

		Reviewer	QA
7	Has the firm obtained the necessary information about the consumer's pension benefits?		

Number of periods of service

Number of periods of service advised on?	
(where multiple periods of service) Did the adviser recommend all periods were transferred?	
Additional comments	

Membership information

BSPS statement of benefits obtained?	
Time to Choose pack obtained?	
Time to Choose election?	
Date of CETV	
Cash equivalent transfer value	
Date joined the scheme	
Date left scheme (Service Years/Months)	
Scheme retirement date (NRD)	
Scheme minimum retirement age.	
Did the client opt out of the scheme in advance of it's closure on 31 March 2017?	
Date of opt-out	

Additional comments	
---------------------	--

	Reviewer	QA
8 Has the firm obtained the necessary information regarding the proposed arrangement?		

Proposed arrangement

Proposed arrangement product type	
Proposed arrangement provider name	
Is a DIM recommended?	
Name of DIM	
Is a platform recommended	
Name of platform	
Total initial cost of solution (£)	
Total ongoing cost of solution (%)	
Additional comments	

Have NMPI/UCIS been recommended?	
Name of provider of NMPI/UCIS	
Name of NMPI/UCIS investment	
Is the client a self-investor?	
Additional comments	

	Reviewer	QA
9 Has the firm carried out the transfer analysis?		

Client's preferred retirement age

Client's preferred retirement age (Years)	
---	--

Comparator scheme(s)

Comparator scheme(s)	
----------------------	--

Comparison of benefits		Original BSPS	BSPS 2	PPF
Benefits at scheme NRD	Pension (no commutation) p.a.			
	Pension (full commutation) p.a.			
	PCLS			
Benefits at preferred retirement age	Pension (no commutation) p.a.			
	Pension (full commutation) p.a.			
	PCLS			

Comparison of critical yield	Original BSPS	BSPS 2	PPF
CY to NRD (Joint)			
CY to NRD (Single)			
Which basis is more relevant?			
CY to preferred retirement date (Joint)			
CY to preferred retirement date (Single)			
Which basis is more relevant?			

Commentary on any other comparison of benefits	
--	--

Additional comments	
---------------------	--

Summary of information obtained

Case summary	
--------------	--

Tool rating on whether firm has obtained necessary information



Assessor's rating on whether firm has obtained necessary information



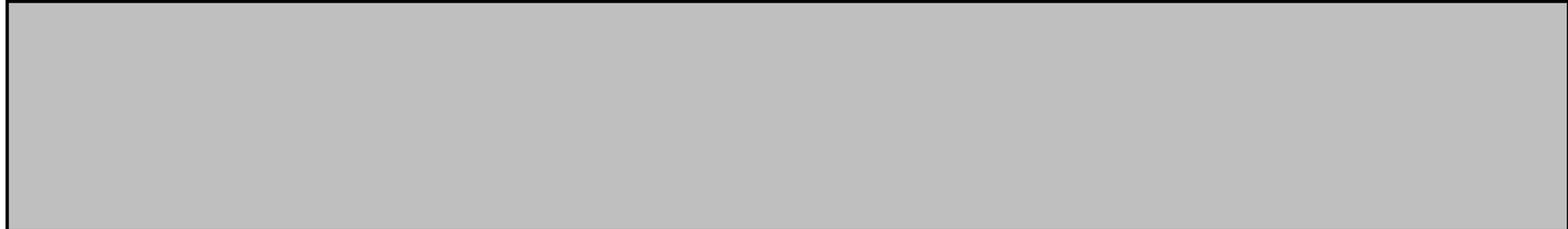
Assessor's rationale/evidence for information collection rating (include reference to specific rule breaches).



QA rating on whether firm has obtained necessary information



QA summary of changes made and feedback to the file assessor



SUITABILITY ASSESSMENT - PENSION TRANSFER

Examples of unsuitability

No.	Example	Reviewer	QA
1	The client is, or will be, reliant on income from the comparator scheme.		
2	The aim of the transfer is to pass the value of the pension to beneficiaries on the member's death, but the firm has not demonstrated that the consumer can bear the risk of the transfer that would be needed to achieve this objective.		
3	The aim of the transfer is to access income-related benefits flexibly but the firm has not demonstrated that the consumer can bear the risk of the transfer that would be needed to achieve this objective.		
4	The aim of the transfer is to maximise PCLS but the firm has not demonstrated that the consumer can bear the risk of the transfer that would be needed to achieve this objective.		
5	An aim of the transfer is to preserve or protect the value of the consumer's pension benefits but the comparator scheme(s) benefits would meet the consumer's needs.		
6	The consumer wants to retire early but can meet their objective(s) in the comparator scheme(s).		
7	The consumer wants or prefers guaranteed income or returns.		
8	The consumer does not have the necessary attitude to risk.		
9	The firm's transfer analysis does not support a recommendation to transfer.		
10	The firm did not have a reasonable basis for believing that the consumer had the necessary knowledge and experience to understand the risks involved in transferring their DB scheme.		
11	The consumer is under 50.		
12	The recommendation to transfer is unsuitable for the consumer's investment objectives or for their financial situation for some other reason.		
	Please state the reason(s):		

Suggested suitability rating based upon examples



Assessor's suitability rating



Assessor's rationale and evidence for suitability rating

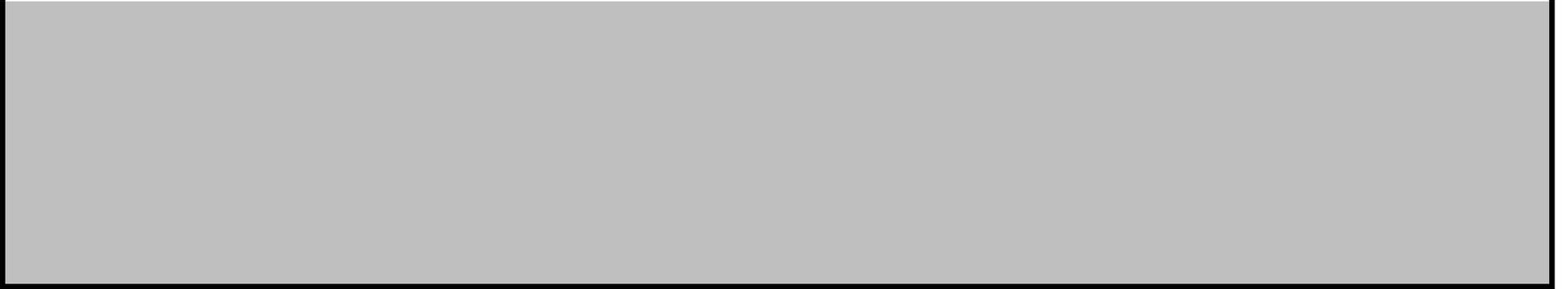


QA suitability rating



QA summary of changes made and feedback to the file assessor





CAUSATION ASSESSMENT

Non compliant conduct: Suitability - Pension transfer

Is it more likely than not that the firm's conduct caused the client to take one of the following actions:		Reviewer	QA
1	Transfer to a pension scheme with flexible benefits.		

Causation outcome	
-------------------	--

Assessor's rationale/evidence for causation rating

QA summary of changes made and feedback to the assessor.

ATTESTATION

Statement:

As the Senior Manager responsible for the compliance oversight of the Firm, I confirm the following:

- 1. I have read the BSPS Consumer Redress Scheme rules and the BSPS DBAAT instructions;**
- 2. The BSPS DBAAT has been completed in accordance with the rules and instructions referred to in (1);**
- 3. That the information recorded in the BSPS DBAAT is factually accurate and based on contemporaneous records; and**
- 4. Where the BSPS DBAAT information section rating was 'non-compliant – unclear' or 'non-compliant – proceed to suitability assessment' the firm has taken the steps in CONRED 3.3.5R and has assessed the case in accordance with the rules, evidential provisions and guidance in CONRED 3.3.7R to 3.3.14E.**

Attestation:

Do you attest to the statement outlined above?	
Name of Senior Manager attesting:	
Date of attestation:	

3 **BSPS DBAAT Instructions**

Annex 16R

1 **Introduction**

Limitation on use

- 1.1 G The suitability assessment toolkit reproduced at *CONRED 3* Annex 14R (referred to in these instructions as the ‘BSPS DBAAT’) and instructions in this Annex are to be used only for the purpose of complying with the requirements under *CONRED 3* to assess *pension transfer* advice provided to BSPS members during the relevant period. They should not be used for any other purpose.

- 1.2 G Nothing in *CONRED 3* affects how the *FCA* DBAAT operates.

Definitions

- 1.3 R In this section we use the following definitions:

- (1) ‘assessor’ means the person filling in the BSPS DBAAT, either at the *firm* or on behalf of the *firm*;
- (2) ‘available evidence’ means the information collected by the *firm* and held on the *consumer* file or information received from a *consumer*;
- (3) ‘BSPS’ has the meaning in *CONRED 3.1.1R(1)*;
- (4) ‘BSPS2’ has the meaning in *CONRED 3.1.1R(2)*;
- (5) ‘BSPS DBAAT’ has the meaning in *CONRED 3.1.1R(3)*;
- (6) ‘Causation Section’ is the tab on the BSPS DBAAT Excel Spreadsheet that records whether the *firm*’s failure to comply with the suitability requirements is the effective cause of the *consumer*’s loss;
- (7) ‘comparator scheme’ means:
 - (a) (if the advice was given on or before 16 May 2017) BSPS;
 - (b) (if the advice was given from 17 May 2017 to 11 October 2017) either or both of BSPS and PPF; and
 - (c) (if the advice was given on or after 12 October 2017) BSPS2 and PPF;
- (8) ‘FCA DBAAT’ has the meaning in *CONRED 3.1.1R(7)*;
- (9) ‘information requirements’ are the requirements in force during the relevant period and are:

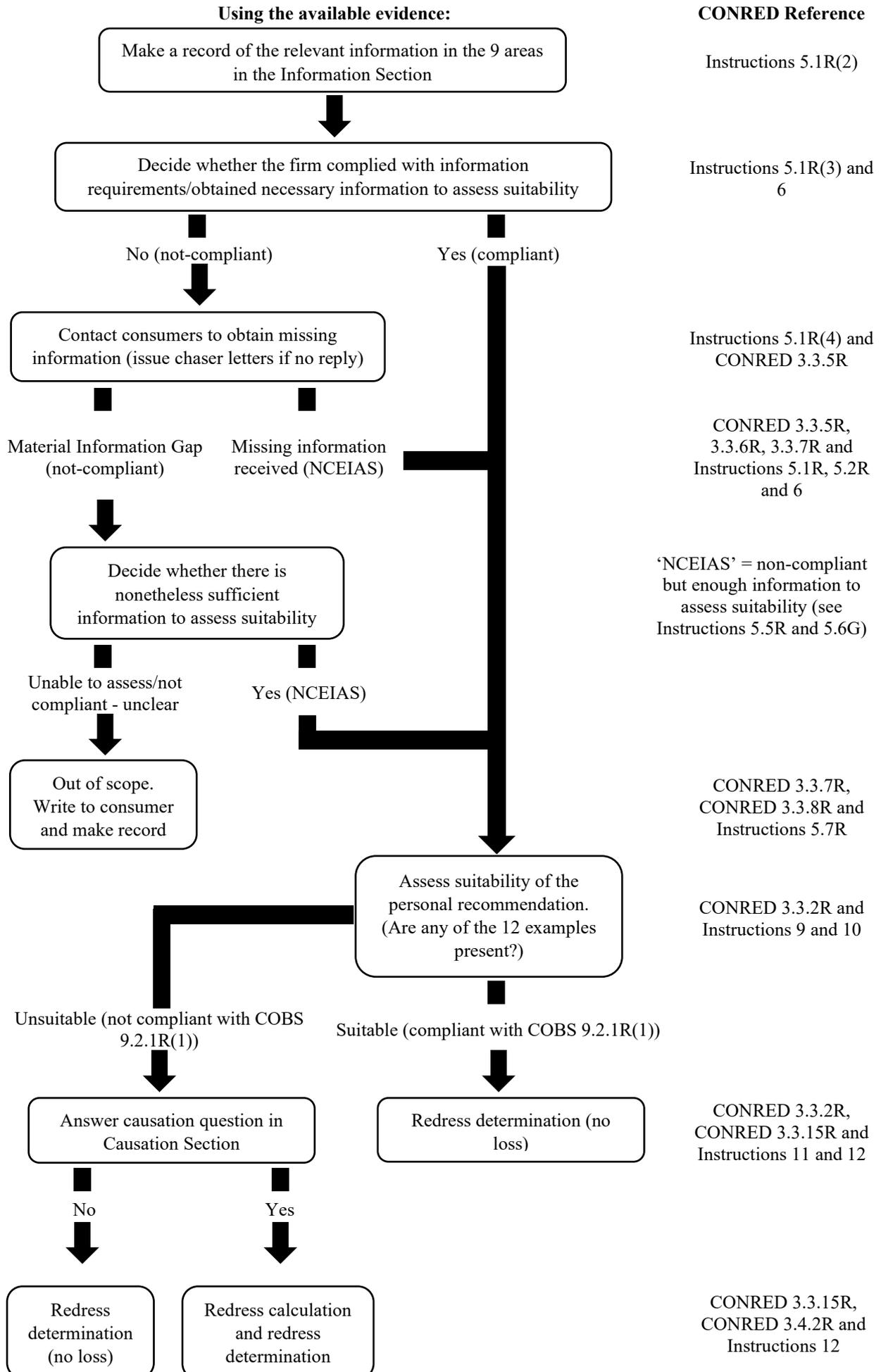
- (a) *COBS* 9.2.1R(2);
 - (b) *COBS* 9.2.2R;
 - (c) *COBS* 9.2.3R;
 - (d) *COBS* 9.2.6R; and
 - (e) *COBS* 19.1.2R;
- (10) ‘instructions’ means this Annex;
- (11) ‘Information Section’ is the tab on the BSPS DBAAT Excel Spreadsheet that collects information about the *firm’s* compliance with the information requirements that is relevant to the assessment of suitability;
- (12) ‘material information gap’ has the meaning in *CONRED* 3.1.1R(9);
- (13) ‘NRD’ is the normal retirement date in the comparator scheme;
- (14) ‘pension benefits’ has the meaning in *CONRED* 3.1.1R(10);
- (15) ‘PPF’ means the Pension Protection Fund;
- (16) ‘relevant period’ is defined at *CONRED* 3.1.1R(12);
- (17) ‘scheme case’ is defined at *CONRED* 3.1.1(13);
- (18) ‘suitability requirements’ are the requirements in force during the relevant period specified at *CONRED* 3 Annex 16R 7.1R and are:
- (a) *COBS* 9.2.1R(1); and
 - (b) the common law duty in contract or tort to exercise reasonable skill and care in advising the *consumer* on *pension transfers*;
- and that were in force during the relevant period and applicable to a scheme case;
- (19) ‘Suitability Section’ is the tab on the BSPS DBAAT Excel Spreadsheet that records the assessment of the *firm’s* compliance with the suitability requirements;
- (20) ‘transfer value’ is the cash equivalent transfer value or CETV;
- (21) ‘transfer value analysis’ is the analysis a *firm* was required to carry out during the relevant period, in accordance with the requirements at *COBS* 19.1.2R; and
- (22) ‘two-adviser model’ has the meaning in *CONRED* 3.1.1R(16).

2 Using the BSPS DBAAT

- 2.1 G The BSPS DBAAT contains factors for an assessor to take into account to determine whether there has been a failure to comply with the suitability requirements in a scheme case. The instructions are addressed to the assessor carrying out the review.
- 2.2 R The BSPS DBAAT is a Microsoft Excel workbook divided into 5 ‘sections’, using worksheet tabs, which must be completed in full except where indicated in these instructions.
- 2.3 R Before completing the BSPS DBAAT, an assessor must familiarise themselves with the features, benefits and risks of a *pension transfer* from BPS, including the features, benefits and risks in general of a *pension transfer* that a reasonably competent *firm* should have identified, as illustrated in *CONRED 3* Annex 17G at Table 1.
- 2.4 R The assessor must answer the questions in the BPS DBAAT and complete the assessment by reference to the available evidence, and where specified the information available to advisers during the relevant period listed in *CONRED 3* Annex 17G at Tables 2 and 3.
- 2.5 R All answers should be based on information obtained up until the date the *firm* gave the advice or arranged the *pension transfer*, unless otherwise stated.
- 2.6 G The BPS DBAAT uses colours to indicate whether fields have been completed. Blue indicates fields still to complete. Grey indicates fields that may not have to be completed, depending on the answer to a question.
- 2.7 G The diagram at 2.8G explains the scheme steps in diagrammatic form, with reference to the relevant sections of the instructions and *CONRED 3* rules.
- 2.8 G The steps to complete a BPS DBAAT are set out below.

Steps to complete a BPS DBAAT

Note this diagram should be considered alongside other scheme diagrams



3 Use of FCA DBAAT

- 3.1 G If *CONRED* 3.3.2R(2) applies and the *firm* uses a non-BSPS DBAAT to complete the first step under *CONRED* 3.3.2R it should have regard to the differences between the BSPS and non-BSPS DBAAT and refer to relevant sections of the instructions to identify whether their non-BSPS DBAAT or assessment requires amendment. The material changes include:
- (1) In the Information Section:
 - (a) Information Area 4 is not present in the BSPS DBAAT and the remaining Information Areas have been renumbered;
 - (b) Information Area 7 in the BSPS DBAAT on the comparator scheme (area 8 in the non-BSPS DBAAT) has been significantly revised;
 - (c) Information Area 9 in the BSPS DBAAT on the transfer analysis (area 10 in non-BSPS DBAT) has been significantly revised.
 - (2) In the Suitability Section:
 - (a) new Example 11 has been inserted in the BSPS DBAAT;
 - (b) Example 11 from the non-BSPS DBAAT becomes Example 12;
 - (c) Example 12 from the non-BSPS DBAAT has been removed.
 - (3) The Suitability Pension Transfer, Disclosure and Insistent Client Sections have been removed.

4 General instructions

- 4.1 R An assessor must complete a separate BSPS DBAAT for each *consumer* and:
- (1) if the *consumer* has more than one period of service in the BSPS, complete a separate BSPS DBAAT for each period of service;
 - (2) if the *consumer* received connected *advice on pension transfers* from a non-BSPS *ceding arrangement* within 6 months of the BSPS advice, have regard to how the connected advice factors into the advice to transfer the *consumer's* BSPS scheme.
- 4.2 G For the purpose of 4.1, *advice on a pension transfer* from a non-BSPS *ceding arrangement* is likely to be connected with advice to transfer from BSPS if the advice on the other scheme is integral to the *consumer's* decision to transfer from the BSPS.
- 4.3 R Where the *consumer* is married or has a partner, complete the BSPS DBAAT on a joint life basis unless the *consumer* has instructed the *firm* to advise on a

single life basis and their spouse or partner has confirmed that they have sufficient retirement provision of their own.

- 4.4 R Where it is necessary to use multiple BSPS DBAATs:
- (1) use the first BSPS DBAAT for the *ceding arrangement* offering the largest transfer value;
 - (2) label the completed BSPS DBAATs with the *consumer's* name and the number in sequence order that the BSPS DBAATs were completed;
 - (3) re-use the relevant information from the first BSPS DBAAT in any connected BSPS DBAATs and ensure that the following sections are completed using the available evidence about the *consumer* and the *ceding arrangement* the BSPS DBAAT relates to:
 - (a) case details;
 - (b) Information Area 1 – ‘has the *firm* obtained the essential facts about the *consumer*?’;
 - (c) Information Area 8 – ‘has the *firm* obtained the necessary information regarding the *ceding arrangement*?’;
 - (d) Information Area 9 – ‘has the *firm* obtained necessary information regarding the *proposed arrangement*?’; and
 - (e) Information Area 10 – ‘has the *firm* carried out the transfer analysis?’; and
 - (4) clearly cross refer between the BSPS DBAATs.

5 Information Section

- 5.1 R An assessor must take these 5 actions to complete the Information Section:
- (1) Enter ‘case details’ of the file review and assessor alongside details of the *firm*, adviser and *pension transfer specialist* (as recorded on the *Financial Services Register*) and the charging basis for the advice. Enter the contact details for the *consumer*.
 - (2) Record the relevant information from the available evidence under each of the 9 Information Areas, following the instructions under each area heading.
 - (3) For each Information Area, decide whether the *firm* has complied with the information requirements and obtained the necessary information to assess suitability and answer ‘yes’ or ‘no’ to each ‘area question’.
 - (4) Depending on the answers to questions in Information Areas 1-9, the BSPS DBAAT will give the *firm's* information collection 1 of 3 indicative ratings. To complete this action, refer to the instructions at

CONRED 3 Annex 16R from 5.3R to 5.7R and select from the drop-down list one of the following ‘assessor’ ratings:

- (a) ‘Compliant – proceed to suitability section’ – the *firm* has complied with the information requirements and collected the necessary information to assess suitability. Proceed to the Suitability Section of the BSPS DBAAT.
 - (b) ‘Non-compliant – Material Information Gap’ – the *firm* has not complied with the information requirements and so it is not possible to assess suitability. Complete action (5) before finalising this rating.
 - (c) ‘Non-compliant - proceed to suitability assessment’ – the *firm* has not complied with the information requirements and has taken the steps at *CONRED* 3.3.5R but there is sufficient information to conclude that the advice was likely to be unsuitable. Proceed to the Suitability Section of the BSPS DBAAT.
- (5) If 4(b) applies, follow the steps in *CONRED* 3.3.5R to obtain the missing information, then carry out action 5.1(4) again and finalise the assessor rating.
- (6) Explain, with reference to the *consumer* file, the reasons for the rating and any actions taken to obtain missing information.

5.2 G The overall assessment part of the Information Section has 2 boxes:

- (1) Tool rating: the BSPS DBAAT’s indicative rating of whether the *firm* has obtained the ‘necessary information’ to make a *personal recommendation* based on the answers to information area questions 1-9 in the Information Section.
- (2) Assessor rating: this is the assessor’s own informed assessment in the round of whether the *firm* has obtained the necessary information to make a *personal recommendation*. The assessor can come to a different rating.

5.3 R To complete the overall assessment of whether the *firm* has collected the necessary information at 5.1(4), take the following steps. Using the available evidence and with reference to the information requirements:

- (1) review the information recorded and the ratings in each Information Area of the BSPS DBAAT;
- (2) answer ‘yes’ or ‘no’ depending on whether the *firm* has complied with the information requirements;
- (3) insert commentary on whether or not the *firm* has complied with the information requirements.

- 5.4 E If the answer to all of the information area questions 1-9 is ‘yes’, select ‘compliant – proceed to suitability section’ and proceed to the Suitability Section.
- 5.5 R If one or more of the answers to the information area questions 1-9 is ‘no’, decide, with reference to the information requirements, whether there is nonetheless sufficient information to assess the suitability of the recommendation and:
- (1) if there is sufficient information, select ‘non-compliant however enough information to assess suitability’ and make a record of the reasons for the assessment in accordance with *CONRED* 3 Anne 16R 6.6R; or
 - (2) if there is not sufficient information, select ‘not compliant - material information gap’ and take the second step at *CONRED* 3.3.5R to obtain the missing information then proceed to 5.1(3).
- 5.6 G There may be sufficient information to assess the suitability of the advice in circumstances where the *firm* has been unable to obtain the necessary information in one or more Information Area. For example:
- (1) where the *consumer* was in *serious financial difficulty* and had a proven urgent need for the transferred funds and the *firm* was unable to obtain the necessary information in Information Area 1, 3, 4 or 5. The types of circumstances in which a *consumer* is likely to be able to show they are experiencing *serious financial difficulty* include where continuing to pay domestic bills and credit commitments is a heavy burden on the *consumer* and the *consumer* has missed payments for any credit commitments and/or any domestic bills in any three or more of the last *six months*;
 - (2) where the *consumer* was in ill health, with death expected imminently, and wanted to transfer in order to pass the value of their pension benefits to beneficiaries and the *firm* was unable to obtain the necessary information in Information Area 3, 4, 5, or 6.
- 5.7 R If, after taking the steps at *CONRED* 3.3.5R, and having regard to the guidance in *CONRED* 3.3.13G to 3.3.14G, the conclusion is that the *firm* has not obtained the necessary information and it is not possible to assess the suitability of the transfer, record:
- (1) a brief summary of the missing information and its significance to the suitability assessment (for example, ‘the *firm* has not recorded any *consumer* objectives and so it cannot form a view on whether the transfer meets the *consumer*’s investment objectives’); and
 - (2) that the *firm* has not complied with the information requirements but it is not possible to assess whether the *firm* has complied with the suitability requirements; and

- (3) where the failure relates to the transfer analysis, that the *firm* has not carried out the required transfer analysis in accordance with *COBS* 19.1.2R.

6 Instructions for Information Areas

- 6.1 G This section sets out how to assess whether the *firm* has collected the necessary information across 9 Information Areas to make a *personal recommendation*. It is also to be used to determine whether the assessor has sufficient information to assess suitability.

Information Area 1: has the firm obtained the essential facts about the consumer?

- 6.2 R Refer to the available evidence and take the following steps:
- (1) Select 'yes' or 'no' depending on whether the *firm* has obtained the essential facts about the *consumer*.
 - (2) Enter the information about the *consumer* and (if relevant) their spouse or partner from the available evidence.
 - (3) Record any information inferred from the available evidence in the comment box.
- 6.3 R Complete the BSPS DBAAT as follows:
- (1) Where advice is on a joint life basis, complete the essential information for the *consumer* and their partner.
 - (2) If the *consumer's* tax rate is not recorded, it can be inferred from the *consumer's* salary at the date of the advice.
 - (3) Record in the additional comments box whether the *consumer* intends to transfer the pension to a Qualifying Recognised Overseas Pension Scheme. Record the relevant currency and overseas tax rates.
 - (4) Where health status is not recorded, absent any evidence suggesting otherwise, infer that the *consumer* is in good health.
 - (5) Record details about any dependants and the *consumer's* responsibility for them.
 - (6) Include details about whether the *consumer* had characteristics of vulnerability. This means someone who, due to their personal circumstances, is especially susceptible to detriment.

Information Area 2: has the firm obtained the necessary information regarding the consumer's objectives?

- 6.4 R Take the following steps to complete this area. Using the available evidence, identify the information recorded on the *consumer's* objectives and:

- (1) if no objectives have been recorded, answer ‘no’ to this question; or
- (2) if objectives are recorded, answer ‘yes’; and
- (3) complete the BSPS DBAAT by recording the *consumer’s* objectives, using the same wording and ranking or prioritisation as the *firm* and include any observations in the additional comments box.

6.5 G For each objective identified, the BSPS DBAAT will indicate fields where further information can be recorded, in the right-hand columns, relating to:

- (1) the amount wanted (to achieve the objective); and
- (2) the date the amount is needed.

Information Area 3: has the firm obtained the necessary information regarding the consumer’s preferences regarding risk taking and their risk profile?

6.6 R Take the following steps to complete this area. Using the available evidence:

- (1) select ‘yes’ or ‘no’ depending on whether the *firm* has obtained the necessary information about the *consumer’s* preferences regarding risk taking and their risk profile;
- (2) record in the boxes provided the *firm’s* description of the *consumer’s*:
 - (a) attitude to investment risk;
 - (b) attitude to the risks associated with a *pension transfer*, including the loss of *safeguarded benefits*;
 - (c) capacity for loss (in general); and
 - (d) capacity for loss of *safeguarded benefits*;
- (3) select ‘yes’ or ‘no’ depending on whether the *firm* used a tool for any of the above assessments. If the *firm* used a tool record the name of that tool in the ‘name of tool’ box;
- (4) record in the ‘comments’ box any additional comments or observations on the *firm’s* approach to obtaining this information.

6.7 G ‘Capacity for loss’ refers to the *consumer’s* ability to absorb falls in the value of their investment. If any loss of capital would have a materially detrimental effect on their standard of living, this should be taken into account in assessing the risk that they are able to take.

6.8 G *COBS* 9.2.2R(2) requires a *firm* to obtain, where relevant, information about the *consumer’s* (a) preferences regarding risk taking and (b) risk profile. *COBS* 19.1.7G and *COBS* 19.1.7AG contain guidance to which a *firm* giving

pension transfer advice should have had regard when identifying the *consumer's* risk preferences and risk profile.

- 6.9 G A *firm* advising a *consumer* during the relevant period should have obtained sufficient information to enable it to consider the *consumer's* attitude to the investment risks specific to a *pension transfer*, including:
- (1) the rate of growth that would have to be achieved to replicate scheme benefits in the *proposed arrangement* (COBS 19.1.7G and COBS 19.1.7AG);
 - (2) the extent to which benefits may fall short of replicating those in the *defined benefits pension scheme* or other scheme with *safeguarded benefits* (COBS 19.1.7AG(1));
 - (3) the uncertainty of the level of benefit that can be obtained from the purchase of a future *pension annuity* and the investment risk to which the retail *consumer* is exposed until a *pension annuity* is purchased with the proceeds of the proposed *personal pension scheme* or *stakeholder pension scheme* (COBS 19.1.7AG(2));
 - (4) the potential lack of availability of *pension annuity* types (for instance, *pension annuity* increases linked to different indices) to replicate the benefits being given up in the *defined benefits pension scheme* as set out in COBS 19.1.7AG(1)); and
 - (5) the risks relevant to a *pension transfer* from the BSPPS to a scheme with *flexible benefits* listed at CONRED 3 Annex 17G at Table 1.

Information Area 4: has the firm obtained the necessary information regarding the *consumer's* knowledge and experience?

- 6.10 R Take the following steps to complete this area. Using the available evidence:
- (1) identify the information relevant to the *consumer's* knowledge and experience of *defined benefits pension schemes* and *pension schemes* with *flexible benefits*, including:
 - (a) the types of service, transaction and investments with which the *consumer* is familiar;
 - (b) the nature, volume and frequency of the *consumer's* transactions in *investments* and the period over which they have been carried out; and
 - (c) the level of education, profession or relevant former profession of the *consumer*;
 - (2) answer 'yes' or 'no' depending on whether the *firm* has obtained the necessary information about the *consumer's* knowledge and experience; and

- (3) record the *consumer's* knowledge and experience relevant to *pension transfers* in the 'our comments on *firm's* assessment' box.

Information Area 5: has the firm obtained the necessary information regarding the consumer's estimated expenditure?

- 6.11 R Take the following steps to complete this area. Using the available evidence:
- (1) identify the information relevant to the *consumer's* financial situation;
 - (2) answer 'yes' or 'no' depending on whether the *firm* has obtained the necessary information regarding the *consumer's* estimated expenditure;
 - (3) record relevant information under the headings 'current regular' and 'retirement regular', including the *consumer's* expenditure on:
 - (a) basic cost of living;
 - (b) lifestyle expenditure; and
 - (c) discretionary expenditure/savings;
 - (4) record any additional comments about the steps the *firm* has taken to obtain this information, including any inferences made about current or retirement regular expenditure.
- 6.12 E Answer 'yes' to the question at 6.11R(2) if the *firm* has taken reasonable steps to obtain the information under the headings 'current regular' and 'retirement regular expenditure' but there is information missing and:
- (1) the *consumer* is 5 years or less from their intended retirement age and taking account their personal circumstances, it is possible to use the current regular expenditure as a proxy for retirement regular expenditure; or
 - (2) it is possible to use the current regular expenditure, with *consumer-specific* adjustments, as a proxy for retirement regular expenditure.
- 6.13 G The BSPPS DBAAT records the necessary information about the *consumer's* estimated expenditure throughout retirement in 3 categories:
- (1) Basic cost of living: this includes all non-discretionary expenditure. For example, utility bills, council tax, food and any outstanding accommodation payments (such as mortgages and rents) or care expenses if these are ongoing.
 - (2) Lifestyle expenditure: this is expenditure to support the *consumer's* lifestyle. For example, *consumers* may wish to spend money on entertainment, holidays or home help.
 - (3) Discretionary expenditure/savings: this is expenditure which is discretionary and could easily be cut back by the *consumer* at any time.

It may include current savings into pensions or investments which may well cease upon retirement. This may also be labelled as ‘disposable income’.

- 6.14 G If the *firm* has estimated the *consumer’s* expenditure in retirement, consider whether it took reasonable steps to do so. Reasonable steps might include:
- (1) gathering the necessary information on the *consumer’s* current level of expenditure and liabilities;
 - (2) considering how the *consumer’s* personal circumstances and lifestyle (for example, living arrangements, mortgage position, provision of financial support for dependents, recreational activities, and travel) are likely to change upon retirement, and how this might affect future expenditure and liabilities;
 - (3) challenging low estimates of expenditure by using comparative figures derived from (for example) the *firm’s* experience with other *consumers* in similar situations, statistical averages, actuarial data and other reliable sources (though it is unlikely that the use of generic data would by itself satisfy the requirement to take reasonable steps);
 - (4) where a *firm* has used a cashflow modelling tool to estimate the *consumer’s* level of expenditure in retirement as part of demonstrating how reliant the *consumer* is on this income in retirement;
 - (5) challenging inconsistent information, for example, where the *consumer* suggests they have a high level of available disposable income but low levels of savings, suggesting that their lifestyle expenditure may be more than they represent.

Information Area 6: has the firm obtained the necessary information regarding the consumer’s financial situation?

- 6.15 R To complete this area, take the following steps. Using the available evidence:
- (1) identify the information relevant to the *consumer’s* financial situation;
 - (2) answer ‘yes’ or ‘no’ depending on whether the *firm* has captured the necessary information regarding the *consumer’s* financial situation; and
 - (3) record the relevant information for the *consumer* and (for joint advice) their spouse or partner under the headings:
 - (a) *consumer’s* current income;
 - (b) income sources in retirement (excluding income from the comparator scheme, which is captured in Information Area 7);
 - (c) other assets (excluding the *consumer’s* primary residence); and
 - (d) liabilities.

- 6.16 G The *consumer's* main residence should not usually be counted as an asset which can be used as an income source in retirement. The *consumer's* main residence typically provides secure accommodation throughout retirement. Where the *firm* has a reasonable basis for treating the main residence as an asset, for example because the *consumer* has a legitimate plan to downsize and the *firm* has a contemporaneous record of these plans, include the value of the main residence in the 'other assets' box.
- 6.17 G If the *consumer* file is incomplete or it is unclear whether the *firm* has collected the necessary information on the *consumer's* financial situation, it may be possible to estimate the *consumer's* income or assets from other information on the *consumer* file. For example:
- (1) if the 'other assets' section in a fact-find is blank, and there is evidence that the *consumer's* income does not exceed or marginally exceeds their expenditure, it may be reasonable to assume that the *consumer* has no other assets;
 - (2) if the 'state pension' section of the fact-find is blank:
 - (a) where there is evidence of the *consumer's* employment history on file or length of service at the scheme employer, it may be possible to estimate entitlement to a state pension;
 - (b) where a *consumer* expects to continue in employment until retirement, it is reasonable to infer, unless there is specific information to the contrary, that the *consumer* would continue to accrue state pension entitlement throughout that period;
 - (3) if details on the 'spouse's/partner's' assets are missing, it may be possible to infer information based on the spouse's circumstances. For example:
 - (a) if the spouse or partner was employed at the time of the advice, it is likely they will have some eligibility for state pension;
 - (b) if the spouse or partner was not employed, this may indicate that they have modest assets, in the absence of evidence suggesting otherwise;
 - (4) if the *consumer* or their spouse or partner held other *defined benefits* of material value, where a benefits statement was delayed, these benefits could be reasonably estimated by contemporaneous records of their salary, length of service and publicly available scheme details;
 - (5) if there is an indication that the spouse or partner has a defined contribution pension scheme or other assets but the value is not quantified, where it has already been demonstrated that the *consumer* and spouse or partner have sufficient other guaranteed pension provision to cover their expenditure in retirement, the value of this

scheme may not be necessary to assess the suitability of the recommendation to transfer.

- 6.18 G (1) If the available evidence suggests that the *consumer* has a significant amount of disposable income, but the *firm* has obtained limited or no information on them, it is more likely than not that the *firm* has not obtained the necessary information.
- (2) If the available evidence demonstrates that the *consumer* has other assets or liabilities, but the *firm* has obtained limited or no information on them, it is likely that the *firm* has not obtained the necessary information.
- 6.19 G If the *consumer* was concerned about the security of their employment with Tata Steel Ltd and the security of income over the remaining term to retirement, this should have been recorded on the *consumer* file. The *firm* should have inquired as to whether redundancy or loss of income was imminent and was likely to cause significant financial hardship.

Information Area 7: has the firm obtained the necessary information regarding the consumer's pension benefits?

- 6.20 R To complete this area, take the following steps. Using the available evidence:
- (1) (where the *firm* has advised on multiple periods of service in the BSPS) record under the heading 'number of schemes':
- (a) the number of periods of service in the BSPS advised on;
 - (b) whether the outcome was to transfer all periods of service;
- (2) record the relevant information for the *consumer's* BSPS membership including:
- (a) the statement of benefits and date obtained;
 - (b) whether the Time to Choose pack was obtained;
 - (c) what the *consumer's* Time to Choose election was (BSPS2 or PPF);
 - (d) the date of the CETV and the CETV amount;
 - (e) the dates they joined and left the BSPS; (the BSPS DBAAT will then automatically calculate the length of service);
 - (f) their retirement date (NRD) in the BSPS;
 - (g) BSPS minimum retirement age;
 - (h) whether the client opted out of the scheme in advance of its closure and the date of any opt-out;

- (i) any additional comments;
- (3) answer ‘yes’ or ‘no’ depending on whether the *firm* has captured the necessary information regarding the *consumer*’s BPS membership, Time to Choose election, and benefits; and
- (4) record any comments relevant to the *consumer*’s CETV and the comparator scheme(s) in the ‘additional comments’ box.

Information Area 8: has the firm obtained the necessary information regarding the proposed arrangement?

6.21 R To complete this area, take the following steps. Using the available evidence:

- (1) identify information about the *proposed arrangement*;
- (2) answer ‘yes’ or ‘no’ depending on whether the *firm* has captured the necessary information regarding the *proposed arrangement*;
- (3) if the *firm* has not identified a *proposed arrangement*, answer ‘no’ to this question;
- (4) record the relevant information under the headings ‘proposed arrangement’; and
- (5) in the ‘additional comments’ box, record any relevant information about product and adviser costs and charges.

Information Area 9: has the firm carried out the transfer analysis?

6.22 R To complete this area, take the following steps. For the relevant comparator scheme(s), using the available evidence and with reference to the *firm*’s transfer value analysis:

- (1) record the *consumer*’s preferred retirement age;
- (2) record the relevant comparator schemes(s);
- (3) record relevant information under the heading ‘comparison of benefits’ from the comparison carried out by the *firm* to comply with COBS 19.1.2R; and
- (4) record relevant information under the heading ‘critical yield’, including:
 - (a) the critical yield on a joint and single basis to the *consumer*’s NRD and preferred retirement date; and
 - (b) identify which critical yield is more relevant (joint or single) by selecting the critical yield which corresponds to the *consumer*’s intentions; and

- (i) if the evidence on file demonstrates that the *consumer* does not intend to take any *pension commencement lump sum*, record the critical yield for a full pension and make a note in the ‘additional comments’ box; and/or
 - (ii) if the *consumer* is single and there is nothing on file to suggest that this is likely to change, then insert the critical yield calculated on a single life basis and make a note in the ‘additional comments’ box; and
 - (c) record the critical yield to match the comparator scheme(s) at the *consumer’s* preferred retirement date; and
 - (5) record commentary on any other comparison of benefits for example on cashflow modelling or analysis of how long funds are likely to last in the *proposed arrangement*.
- 6.23 G The BPS DBAAT records the necessary information about the *consumer’s* benefits at the comparator scheme(s) and their preferred retirement date in 3 categories:
- (1) Pension (no commutation) per annum (p.a.): the income benefits the *consumer* would receive at NRD if they were to take all their benefits as income only.
 - (2) Pension (full commutation) per annum (p.a.): the (reduced) income benefits the *consumer* would receive at NRD if they chose to maximise their *pension commencement lump sum* by commuting income benefits up to the full permitted limit.
 - (3) *Pension commencement lump sum* (PCLS): the lump sum benefits the *consumer* would receive at their NRD if they chose to maximise their PCLS by commuting income benefits up to the full permitted limit.
- 6.24 G To assess whether the *firm* has carried out the transfer analysis, identify whether:
- (1) (with reference to the assumptions in *COBS* 19.1.4R to *COBS* 19.1.4BR and taking into account the dates these rules were in force) the analysis has been undertaken on the correct assumptions, including whether, if more cautious assumptions have been used, those assumptions are reasonable; and
 - (2) the analysis is consistent with product-related documents such as the *key features illustration*.

7 Suitability requirements

- 7.1 R The following requirements are specified as ‘suitability requirements’:

- (1) *COBS 9.2.1R(1)*, which requires a *firm* to take reasonable steps to ensure that a personal recommendation is suitable for its *client*; and
 - (2) the common law duty in contract or tort to exercise reasonable skill and care in advising the *consumer* on *pension transfers*.
- 7.2 G The contract between the *firm* and the *consumer* may have included a specific term providing that the *firm* would exercise reasonable skill and care in advising the *consumer* on investments. If it did not do so, such a duty is likely to have been implied into the contract.
- 7.3 G The standard of care under the *FCA rules* and the common law is that of a reasonably competent *firm* carrying on a similar business to that of the *firm* assessed.
- 7.4 G The suitability requirements arise from *FCA rules* and the common law. For the requirements specified, the standards required of the *firm* are materially similar, regardless of whether their origin is a *rule* or the common law.
- 7.5 G *COBS 9.2.1R(2)*, *COBS 9.2.2R* and *COBS 9.2.3R* indicate matters of which a *firm* must take account when assessing whether the *firm* failed to comply with the suitability requirements. In summary, these are the *consumer*'s:
- (1) investment objectives;
 - (2) financial situation;
 - (3) knowledge and experience in the *investment* field relevant to the specific type of designated *investment* or service;
- 7.6 G The starting point for *pension transfer* advice is the *guidance* in *COBS 19.1.6G* that 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.

8 Assessing scheme cases for compliance with suitability requirements

- 8.1 R (1) The 'Suitability Section' in the BSPS DBAAT and associated additional provisions in these instructions contain 'examples' which tend to show failure to comply or compliance with the suitability requirements specified at 7.1R in *CONRED 3 Annex 16*.
- (2) The examples are indicators that advice may be unsuitable, and an overall view of suitability or unsuitability must be reached taking account of all of the circumstances.
- 8.2 R For each scheme case, the assessor must:
- (1) fairly consider and give appropriate weight to all available evidence of the *firm*'s compliance or non-compliance with applicable suitability requirements; and

- (2) decide, including with reference to the examples in the BPS DBAAT, whether it is more likely than not that the *firm* complied or failed to comply with the suitability requirements.
- 8.3 R In considering the available evidence, the assessor must:
- (1) not assume that a *firm* complied with a suitability requirement solely on the basis that:
 - (a) the *consumer* signed documentation that records their understanding or agreement to matters set out in that documentation;
 - (b) the advice was given to a *consumer* who had transferred from a *defined benefit scheme* in the past;
 - (2) give more weight to evidence of the *consumer's* particular circumstances or the circumstances at the time than to general evidence of the selling practices of the *firm* or its advisers at the relevant time;
 - (3) determine that an example is present on the 'balance of probabilities' when it is more likely than not to have occurred.
- 8.4 R When assessing whether a *firm* complied with the suitability requirements, the assessor must take into account the following:
- (1) the *consumer's* investment objectives, including their willingness to bear the risks associated with transfer (transfer risk);
 - (2) the *consumer's* financial situation, including their ability, financially, to bear the risks associated with the recommended transfer consistent with their investment objectives;
 - (3) the *consumer's* ability, in the light of the following, to understand the risks associated with a *pension transfer*:
 - (a) the experience and knowledge of the *consumer* relevant to a *pension transfer*; and
 - (b) any communications received from the comparator scheme(s) regarding the *pension transfer*.
- 8.5 R When assessing the reasonableness of a *firm's* conduct, the assessor must:
- (1) assess the *firm's* conduct against what was reasonable at the time when the *firm* gave the advice; and
 - (2) have regard to the information available at various times, including the information listed at *CONRED 3 Annex 17G*; and
 - (3) conclude that the conduct of the *firm* assessed was reasonable only where that *firm* displayed the degree of skill, care and diligence that

would at that time have been exercised in the ordinary and proper course of a similar business to that of the *firm*.

- 8.6 G Where the advice is given using a two-adviser model and the advisers are employed by different *firms*:
- (1) identify which *firm* is responsible for the *pension transfer advice* and which *firm* is responsible for the investment advice;
 - (2) take into account that it will generally be reasonable for the *firm* providing *pension transfer advice* to rely on information provided to it in writing by the *firm* providing investment advice, unless it is aware or ought reasonably to be aware of any fact that would give reasonable grounds to question the accuracy of that information (*COBS 2.4.6R* and *COBS 2.4.8G*).

9 Completing the Suitability Section of the BSPS DBAAT

- 9.1 G The Suitability Section is used to record the assessment of whether the *firm* has complied with the suitability requirements.
- 9.2 R The assessor must take the following steps to complete the Suitability Section:
- (1) review the available evidence and the information recorded in the Information Section of the BSPS DBAAT;
 - (2) take the steps in Section 10 of this Annex to determine whether the available evidence shows overall that an example is present, or not;
 - (3) indicate whether any or all of examples (1) to (12) are present, or not, by selecting ‘yes’ or ‘no’;
 - (4) conclude, taking into account all of the available evidence and the presence of any examples indicating unsuitable advice, whether the *firm* complied with the suitability requirements; and
 - (5) comment on whether or not the *firm* complied with the suitability requirements, with reference to the example or examples that support their conclusion.
- 9.3 G If an example is present, this will tend to show the *firm*’s compliance or non-compliance with the suitability requirements. There may be other factors which mean that the *firm* has, despite the presence of the example, complied, or not complied, with the suitability requirements. For example:
- (1) if Example 9 is present because the transfer analysis does not support a recommendation to transfer, but the recommendation is nonetheless suitable because the *consumer* has little or no reliance on the transfer value from the comparator scheme and no requirement to replicate the amount or shape of the comparator scheme benefits;

- (2) if Example 1 is present but the recommendation is nonetheless suitable because the *consumer* is in serious ill health with a shortened life expectancy and:
 - (a) the *consumer's* objective is to transfer to preserve the value of their scheme benefits for beneficiaries; and
 - (b) the beneficiaries would be financially better off if the funds were transferred to a scheme with *flexible benefits* rather than remaining in the comparator scheme(s).

9.4 G The BPS DBAAT rating will indicate a conclusion of 'Compliant' or 'Non-Compliant' based on the answer to the example questions in the BPS DBAAT. The BPS DBAAT rating is not definitive of suitability; it is an indication of the *firm's* compliance with the suitability requirements.

10 Examples that indicate unsuitable advice

10.1 G This section contains rules, evidential provisions, and guidance for determining whether the available evidence shows overall that an example is present, or not.

Example 1: the consumer is, or will be, reliant on income from the comparator scheme

10.2 R Take the following steps to determine whether this example is present:

- (1) Review the available evidence in Information Areas 5, 6 and 7 of the Information Section.
- (2) Using the available evidence, identify the amount the *consumer* needs to meet anticipated expenses and personal outlays throughout retirement, taking into account:
 - (a) any forecast expenditure plans that the *firm* has identified with the *consumer*;
 - (b) any intention or preference for early retirement;
 - (c) any existing liabilities that the *consumer* continues to pay off (for example, their mortgage) and their plans for clearing these debts;
 - (d) whether the forecast expenditure appears reasonable in light of their current expenditure patterns and plans to pay off liabilities; and
 - (e) where the *firm* has not collected a forecast expenditure plan, an estimate (if possible) of the *consumer's* likely expenditure patterns based on the information on file.
- (3) Using the available evidence, identify the anticipated income from the comparator scheme at NRD or the *consumer's* preferred retirement

date, whichever is earlier. Where the *consumer* wishes to retire early, assess whether the *consumer* can afford to retire early or whether this will give rise to or increase the risk of the *consumer* running out of income in retirement.

- (4) Assess how the income from the comparator scheme, including inflationary increases, contributes to the *consumer*'s income needs in (2).
 - (5) Assess whether the *consumer* can produce the same or similar contribution towards their planned expenditure needs throughout retirement (using a range of possible life expectancies) as identified in (2) using the available assets, including from:
 - (a) contribution-based pension schemes, including the *proposed arrangement*, taking into account the impact of the following factors on the sustainability of these schemes throughout retirement:
 - (i) the frequency of withdrawals (ad hoc or regular payments);
 - (ii) the timing of withdrawals (monthly, yearly);
 - (iii) the amount of the withdrawals; and
 - (iv) investment performance;
 - (b) savings and investments;
 - (c) other pension schemes with *safeguarded benefits*;
 - (d) (if the *consumer* is eligible) state pension;
 - (e) (if the *consumer* is managing income on a joint basis) the spouse's/partner's other assets, pensions and entitlement to the state pension, and how this contributes to their total household income.
 - (6) Using the assessments in (4)-(5) decide (yes or no) whether:
 - (a) the *consumer* can produce the same or similar contribution towards their income needs, as identified in (2), from the *proposed arrangement*; and
 - (b) the *consumer* has the requisite capacity for loss, taking into account the impact of the factors considered at (5)(a) on the sustainability of the *proposed arrangement*.
- 10.3 E (1) If the answer to (6)(a) and (b) is 'yes', conclude that the *consumer* is not likely to be reliant on income from the comparator scheme.

- (2) If the answer to either (6)(a) or (b) is ‘no’, conclude that the *consumer* is likely to be reliant on income from the comparator scheme.
- (3) If the *firm* has not obtained the necessary information in Information Areas 5, 6 and 7 of the Information Section and so it is not possible to carry out the steps in 10.2(1) to (6), conclude that the *firm* has not demonstrated that it has a reasonable basis for believing that the *consumer* is able to bear the risk of the *pension transfer* to achieve their objective.

Example 2: the aim of the transfer is to pass the value of the pension to beneficiaries on the member’s death, but the firm has not demonstrated that the consumer can bear the risk of the transfer that would be needed to achieve this objective

- 10.4 R Refer to Information Area 2 of the Information Section:
 - (1) if the *consumer* has a priority objective to pass the value of the pension to beneficiaries on their death, take the steps in 10.5; or
 - (2) if the *consumer* does not have this priority objective answer ‘no’ to this question and proceed to Example 3.
- 10.5 R Take the following steps to determine whether this example is present:
 - (1) Review the available evidence in Information Areas 2, 5 and 6 of the Information Section.
 - (2) Refer to Tables 1 and 2 in *CONRED 3 Annex 17G* and the available evidence to identify what death benefits were likely to be available for beneficiaries on the member’s death:
 - (a) (in all cases) in the *proposed arrangement* having regard to the way the *consumer* is likely to access their pension scheme throughout retirement; and
 - (b) in the comparator scheme.
 - (3) Identify whether there was an alternative way to meet the *consumer’s* objective without giving up comparator scheme benefits, including:
 - (a) level term assurance for the required sum; or
 - (b) decreasing term assurance for an appropriate term; or
 - (c) using available death in service cover.
 - (4) Decide whether the *firm* has a reasonable basis for believing that:

- (a) the recommendation to transfer in order to pass the value of the pension to beneficiaries on the member's death meets the *consumer's* investment objectives; and
 - (b) the *consumer* is able financially to bear any transfer-related risks consistent with their investment objectives.
- 10.6 E Answer 'yes' to this question when the available evidence demonstrates that:
- (1) the *consumer* did not have the requisite capacity for loss because they were not able to forego comparator scheme benefits to achieve this objective; and/or
 - (2) a lower risk suitable alternative was available to achieve this objective; and/or
 - (3) it was likely that the *consumer* would exhaust their pension savings during their lifetime (having regard to how the *consumer* will access their pension savings and the factors listed at 10.2(5) above) and so there will be minimal death benefits available; and/or
 - (4) the *firm* has not obtained the necessary information in Information Areas 5 and 6 of the Information Section and so it is not possible to complete the assessment in 10.4 because the *firm* has not demonstrated that it has a reasonable basis for believing that the *consumer* is able to bear the risk of the *pension transfer* to achieve this objective; and/or
 - (5) the *firm* has not obtained the necessary information in area 2 of the Information Section and so it is not possible to understand the *consumer's* rationale for pursuing this objective.

Example 3: the aim of the transfer is to access income-related benefits flexibly but the firm has not demonstrated that the consumer can bear the risk of the transfer that would be needed to achieve this objective

- 10.7 R Refer to the available evidence in area 2 of the Information Section:
- (1) if the *consumer* has a priority objective to access income-related benefits flexibly or to take control of their benefits, take the steps in 10.8R; or
 - (2) if the *consumer* does not have this priority objective, answer 'no' to this question and proceed to Example 4.
- 10.8 R Take the following steps to determine whether this example is present:
- (1) Review the available evidence in Information Areas 2, 5 and 6 of the Information Section.

- (2) Identify why the *consumer* requires flexible access to or control over their income-related benefits and how the features of the *proposed arrangement* meet their objective(s).
- (3) Identify whether any alternatives are available to meet the *consumer's* objective.
- (4) Decide whether the *firm* has a reasonable basis for believing that the recommendation to transfer to access income-related benefits flexibly:
 - (a) meets the *consumer's* investment objectives; and
 - (b) the *consumer* is able financially to bear any related risks consistent with their investment objectives.

10.9 E Answer 'yes' to this question when the available evidence demonstrates that:

- (1) the *consumer* does not have the requisite capacity for loss because they were not able to forego scheme benefits to achieve this objective; and/or
- (2) there is an alternative way for the *consumer* to meet their objectives using other assets instead of transferring their BPS scheme; and/or
- (3) the *firm* has not collected the necessary information in Information Areas 5 and 6 of the Information Section and so it is not possible to complete the assessment in 10.8R because the *firm* has not demonstrated that it has a reasonable basis for believing that the *consumer* is able to bear the risk of the *pension transfer* to achieve this objective; and/or
- (4) the *firm* has not collected the necessary information in Information Area 2 of the Information Section and so it is not possible to understand the *consumer's* rationale for pursuing this objective.

10.10 G (1) The objective may be recorded as 'flexibility' or 'control' without further explanation. It is up to the *firm* to demonstrate what is meant by 'flexibility' or 'control' with reference to the *consumer's* circumstances and how the recommendation meets the *consumer's* objectives and is suitable for their financial situation. The following examples may demonstrate a need for flexibility:

- (a) if the *consumer* wishes to retire early and would like to access a higher amount of income in the short term in order to bridge an income gap until other guaranteed income commences, such as state pension;
- (b) if the *consumer* is in *serious financial difficulty* or facing financial hardship and needs to pay off or reduce debt prior to its planned redemption date, and the *pension commencement lump sum* from the comparator scheme(s) would be insufficient to

meet this objective. The types of circumstances in which a *consumer* is likely to be able to show they are experiencing *serious financial difficulty* include where continuing to pay domestic bills and credit commitments is a heavy burden on the *consumer* and the *consumer* has missed payments for any credit commitments and/or any domestic bills in any 3 or more of the last 6 calendar *months*;

- (c) the *consumer* intends to reduce their working hours or take alternative work which may produce a lower income, prior to retiring fully, and it can be demonstrated that the transfer value is of sufficient value to support this objective without the risk of running out of money in the *consumer's* lifetime.
- (2) A *consumer* may have a strong desire to transfer to obtain flexibility and control where they have real or perceived concerns regarding the financial viability in the scheme. The circumstances of the BPS restructuring may have encouraged a greater than usual proportion of members to seriously consider the option of transferring out, which may in turn have led to an increased occurrence of *consumers* expressing a strong desire to transfer. However, this does not absolve the *firm* from its responsibility to only recommend a transfer if it can demonstrate that it is suitable.

Example 4: the aim of the transfer is to maximise PCLS but the firm has not demonstrated that the consumer can bear the risk of the transfer that would be needed to achieve this objective

- 10.11 R Refer to the available evidence in Information Area 2 of the Information Section:
- (1) if the *consumer* has a priority objective(s) to maximise their *pension commencement lump sum* (PCLS), take the steps in 10.12R; or
 - (2) if the *consumer* does not have this priority objective, answer 'no' to this question and proceed to Example 5.
- 10.12 R Take the following steps to determine whether this example is present:
- (1) Refer to the available evidence in Information Areas 2, 5 and 6 of the Information Section on the *consumer's* objectives and financial situation.
 - (2) Identify the PCLS option in the relevant comparator scheme(s).
 - (3) Identify why the *consumer* wants to access their PCLS.
 - (4) Identify whether the *consumer* needs to transfer to the *proposed arrangement* to access their PCLS or could have used:
 - (a) the PCLS from the comparator scheme; or

- (b) other assets to create a lump sum without transferring the pension.
- (5) Identify the impact taking their PCLS may have on the level of other benefits which the *consumer* may obtain from the comparator scheme.
- 10.13 E Answer ‘yes’ to this question when the available evidence demonstrates that:
- (1) the *consumer* did not have the requisite capacity for loss because they were not able to forego scheme benefits to achieve this objective; and/or
 - (2) there was an alternative way for the *consumer* to access income-related benefits flexibly without transferring their pension benefits; and/or
 - (3) example (1) is present and taking higher PCLS makes it likely that the *consumer* would exhaust their pension savings during their lifetime (having regard to how the *consumer* will access their pension savings and the factors listed at 10.2R(5) above); and/or
 - (4) the *firm* has not collected the necessary information in Information Areas 5 and 6 of the Information Section and so it is not possible to complete the assessment in 10.11 because the *firm* has not demonstrated that it has a reasonable basis for believing that the *consumer* is able to bear the risk of the *pension transfer* to achieve their objective; and/or
 - (5) the *firm* has not obtained the necessary information in Information Area 2 of the Information Section and so it is not possible to understand the *consumer’s* rationale for pursuing this objective.
- 10.14 G For the purposes of 10.12(4)(b), the *firm* should have considered the following alternative options, where they were available:
- (1) where the lump sum need/objective relates to paying off a debt, whether they can restructure a mortgage or other debt;
 - (2) making increased contributions to a *workplace defined contribution pension scheme* to increase the PCLS;
 - (3) whether using the PCLS provision in the comparator scheme(s) will meet the *consumer’s* lump sum need/objective;
 - (4) whether the *consumer* can meet their lump sum need/objective using other available funds in a scheme with *flexible benefits* or from other savings or investments;
 - (5) taking a short-term loan.

Example 5: an aim of the transfer is to preserve or protect the value of the consumer's pension benefits but the comparator scheme(s) benefits would meet the consumer's needs

- 10.15 R Refer to the available evidence in Information Area 2 of the Information Section:
- (1) if the *consumer* has any objective related to preserving the value of their pension benefits or protecting their benefits from the PPF, take the steps in 10.16R; or
 - (2) if the *consumer* does not have this objective, answer 'no' to this question and proceed to Example 6.
- 10.16 R Take the following steps to determine whether this example is present:
- (1) Refer to the available evidence in Information Areas 2, 5 and 6 of the Information Section on the *consumer's* objectives and financial situation.
 - (2) Identify the relevant comparator scheme(s) benefits.
 - (3) Identify whether the comparator scheme(s) benefits would have met the *consumer's* needs. To do this:
 - (a) identify the *consumer's* needs in retirement;
 - (b) refer to the available evidence and Table 2 in *CONRED 3 Annex 17G* to identify the pension benefits the *consumer* would be likely to receive from the comparator scheme(s), having regard to the PPF income cap as it applied prior to 19 July 2021; and
 - (c) decide whether the level of comparator scheme benefits would meet the *consumer's* needs in (a).
- 10.17 E (1) Answer 'yes' to this question when the available evidence demonstrates that:
- (a) the level of comparator scheme benefits meets the *consumer's* income needs; and/or
 - (b) where Example 7 is present, the *consumer* wanted guaranteed income or returns and the comparator scheme met those needs; and/or
 - (c) the *firm* has not collected the necessary information in Information Areas 5 and 6 of the Information Section and so it is not possible to complete the assessment in 10.16R because the *firm* has not demonstrated that it had a reasonable basis for believing that the *consumer* was able to bear the risk of the *pension transfer* to achieve their objective.

- (2) Answer ‘no’ to this question where the level of comparator scheme benefits was not likely to meet the *consumer’s* income needs in retirement.

Example 6: the consumer wants to retire early but can meet their objective(s) in the comparator scheme(s)

- 10.18 R Refer to the available evidence in Information Area 2 of the Information Section:
- (1) if the *consumer* has a priority objective related to accessing benefits from their pension prior to the relevant scheme NRD (an ‘early retirement objective’), take the steps in 10.19R; or
- (2) if the *consumer* does not have this priority objective, answer ‘no’ to this question and proceed to Example 7.
- 10.19 R Take the following steps to determine whether this example is present:
- (1) Refer to the available evidence in Information Areas 2, 5 and 6 of the Information Section on the *consumer’s* objectives and financial situation.
- (2) Refer to the available evidence and Table 2 in *CONRED 3 Annex 17G* to identify what early retirement options were likely to be available and any protected retirement ages in:
- (a) the *proposed arrangement*; and
- (b) the comparator scheme(s).
- (3) Consider whether the *consumer* may have retired at a protected retirement age in the comparator scheme(s).
- (4) If (3) was not an option, identify whether there was an alternative way to meet the *consumer’s* objective without giving up the comparator scheme(s) benefits, including using:
- (a) other pensions (defined benefit or defined contribution);
- (b) income from part time work; and
- (c) savings, investments or other assets.
- (5) Decide whether the *firm* has a reasonable basis for believing that the recommendation to transfer to retire early:
- (a) meets the *consumer’s* investment objectives; and
- (b) the *consumer* is able financially to bear any risks consistent with their investment objectives.

- 10.20 E Answer ‘yes’ to this question when the available evidence demonstrates that:
- (1) the *consumer* could have retired in the comparator scheme(s) at a protected retirement age; and/or
 - (2) the *consumer* did not have the requisite capacity for loss because they were not able to forego comparator scheme benefits to achieve this objective; and/or
 - (3) a lower risk suitable alternative was available to achieve this objective; and/or
 - (4) it was likely that the *consumer* would exhaust their pension savings during their lifetime (having regard to how the *consumer* will access their pension savings and the factors listed at paragraph 10.2R(5) above) and so there will be minimal death benefits available; and/or
 - (5) the *firm* has not collected the necessary information in Information Areas 5 and 6 of the Information Section and so it is not possible to complete the assessment in 10.19R because the *firm* has not demonstrated that it has a reasonable basis for believing that the *consumer* is able to bear the risk of the *pension transfer* to achieve this objective; and/or
 - (6) the *firm* has not collected the necessary information in Information Area 2 of the Information Section and so it is not possible to understand the *consumer’s* rationale for this objective.

Example 7: the consumer wants or prefers guaranteed income or returns

- 10.21 R Refer to the available evidence in Information Areas 2 and 3 of the Information Section:
- (1) if the *consumer* wants or indicates a preference for guaranteed income or returns, take the steps in 10.22R; and/or
 - (2) if the *consumer* does not have this objective, answer ‘no’ to this question and proceed to Example 8.
- 10.22 R Take the following steps to determine whether this example is present:
- (1) Refer to the available evidence in Information Areas 2, 6 and 7 of the Information Section on the *consumer’s* objectives and financial situation.
 - (2) Identify whether the *proposed arrangement*:
 - (a) guarantees the *consumer’s* income or returns; or
 - (b) takes into account the *consumer’s* preference for a guarantee and puts in place a sustainable strategy to achieve this end.

- (3) Determine whether the recommendation to transfer met the *consumer's* preference for guaranteed income or returns.

10.23 E Answer 'yes' to this question when the available evidence demonstrates that:

- (1) the *consumer* wants or has indicated a preference for guaranteed income or returns throughout retirement; and
- (2) the *firm* has recommended that the *consumer* transfer into a *proposed arrangement* that does not meet these needs; or
- (3) the *firm* has not collected the necessary information in Information Area 3 of the Information Section about the *consumer's* attitude towards secure income or guarantees and so it is not possible to complete the assessment in 10.22 because the *firm* has not demonstrated that it has a reasonable basis for believing that the *consumer* has the requisite attitude to risk; or
- (4) Example 8 is present.

Example 8: the consumer does not have the necessary attitude to risk

10.24 R Take the following steps to determine whether this example is present:

- (1) Refer to the available evidence in Information Areas 3 and 5 of the Information Section regarding the *consumer's* preferences regarding risk taking and risk profile and their understanding of the risk of transfer.
- (2) Compare (a) with (b):
 - (a) the *consumer's* preferences regarding the risks specific to *pension transfers* in general, focusing on the *consumer's* attitude to:
 - (i) *safeguarded benefits* or guarantees;
 - (ii) flexible benefits or the ability to control how and when they withdraw money from their pension savings;
 - (iii) managing their investments or paying for someone to manage their investments on their behalf; and
 - (iv) the long-term sustainability of their fund;
 - (b) the risks associated with a *pension transfer* that the *consumer* must have been willing to take for a recommendation to transfer to be suitable. The relevant transfer risks are:

- (i) that their investments in the *proposed arrangement* will not perform as expected, and they will have less income in retirement (investment risk);
 - (ii) that the withdrawals from the *proposed arrangement* (planned and/or ad hoc) are not sustainable and the *consumer* will run out of money in retirement (longevity risk);
 - (iii) that inflation will erode the real value of the income they are able to draw from the *proposed arrangement* (inflation risk); and
 - (iv) that the *consumer* and/or their spouse may become less able to make the necessary financial decisions in relation to their income as they age (for example, due to illness or diminishing capacity).
- (3) Decide, with reference to (2)(a), whether the *consumer* was willing to take the risks associated with a *pension transfer* in (2)(b).
- 10.25 E (1) Answer 'yes' when the available evidence demonstrates that:
- (a) the *consumer* was not willing to take the risks in 10.24R(2)(a); and/or
 - (b) Example 7 or 10 is present; and/or
 - (c) the *firm* has not collected the necessary information in Information Area 3 or 4 of the Information Section and so it is not possible to complete the assessment in 10.24R(3) because the *firm* has not demonstrated that the recommendation meets the *consumer's* objectives.

Example 9: the firm's transfer analysis does not support a recommendation to transfer

- 10.26 R Take the following steps to determine whether this example is present:
- (1) Refer to the available evidence in Information Areas 7, 8 and 9 of the Information Section, the transfer value analysis and the *suitability report*.
 - (2) Identify the benefits and options available in the *proposed arrangement*.
 - (3) Identify the benefits and options likely (on reasonable assumptions) to be paid in the comparator scheme(s).
 - (4) Review the *firm's* analysis of the effect of replacing the benefits in the comparator scheme with the benefits in the *proposed arrangement*,

having regard to the *consumer's* circumstances, including their age, marital status and, where relevant, their objectives for taking a PCLS or early retirement.

- (5) Compare (a) with (b):
- (a) the rate of return required on investments in the *proposed arrangement* to match the income benefits in the comparator scheme(s) that is relevant to the *consumer's* circumstances and objectives:
 - (i) if the *consumer* is single or unmarried, use the single life critical yield;
 - (ii) if the *consumer* is taking a PCLS, use the critical yield that factors in the *consumer* taking the PCLS;
 - (iii) if the *consumer* wishes to retire early, use the critical yield at the early retirement date;
 - (b) the investment risk that the *consumer* must be willing and able to take in the *proposed arrangement* (taking into account a realistic rate of return) to match the desired income benefits in the comparator scheme(s).
- (6) Review how the *firm* says the transfer analysis supports the *firm's* recommendation to transfer.
- (7) Decide whether the *firm* has demonstrated that the transfer analysis supports the recommendation to transfer, taking into account:
- (a) the comparison undertaken at (5); and
 - (b) the analysis carried out by the *firm* and assessed at (4) and (6).
- 10.27 E (1) Answer 'yes' to this question when the available evidence demonstrates that:
- (a) the *firm* has not demonstrated that the transfer analysis supports the recommendation to transfer, for example because:
 - (i) the critical yield indicated in the transfer value analysis is likely to be unattainable, factoring in the term to retirement and the *consumer's* attitude to investment risk; or
 - (ii) the capitalised value of death benefits (where this is a priority objective) is significantly higher under the comparator scheme(s) than that available from the *proposed arrangement*; and/or

- (b) the *consumer* would not have been able to match the rate of return to replicate the benefits being given up if they invested in line with their attitude to risk; and/or
- (c) Example 8 is present; and/or
- (d) Example 1 is present; and/or
- (e) the *firm* has not collected the necessary information in Information Area 7 or 9 of the Information Section and so it is not possible to complete the assessment in 10.26 because the *firm* has not demonstrated that the recommendation meets the *consumer's* objectives.

Example 10: the firm did not have a reasonable basis for believing that the consumer had the necessary knowledge and experience to understand the risks involved in transferring their DB scheme

10.28 R Take the following steps to determine whether this example is present:

- (1) Refer to the available evidence and the information recorded in Information Area 4 of the Information Section including:
 - (a) the correspondence with the *consumer*;
 - (b) the transfer analysis; and
 - (c) the *suitability report*.
- (2) Establish the *consumer's* level of investment experience and knowledge of *pension transfers*, pensions and investments at the time of the advice:
 - (a) in relation to DB schemes;
 - (b) in relation to DC schemes;
 - (c) in relation to the cash equivalent transfer value offered, including any actuarial reductions;
 - (d) in relation to the separate roles of the trustee and the sponsoring employer of a scheme;
 - (e) in relation to the features, benefits and risks of the comparator scheme available to it at the time; and
 - (f) generally, in relation to pensions and investments.
- (3) Identify the steps that the *firm* took to establish that the *consumer* could appreciate the nature of the risks they were taking with this transfer.

- (4) Identify the steps the *firm* took to address the *consumer's* behavioural response to their situation in a balanced and rational way, including:
 - (a) any misunderstandings the *consumer* had about the benefits available in the comparator scheme(s);
 - (b) the roles of trustee and the employer where the *consumer* was concerned about belonging to a scheme where the employer would continue to be involved;
 - (c) the level of the cash equivalent transfer value on offer, including any actuarial reductions that were being applied at the time the value was prepared;
 - (d) any concerns the *consumer* had about the financial viability of the comparator scheme(s); and
 - (e) the role of the *firm* and their professional duties when providing *pension transfer advice*.
- (5) Identify the steps that the *firm* took to ensure that the *consumer* understood the *firm's* transfer analysis and its advice.
- (6) Decide whether the *consumer* had the necessary experience and knowledge to understand the risks involved in transferring to the *proposed scheme* taking into account, in particular:
 - (a) what the *consumer* already understood, including information such as:
 - (i) information about the *consumer's* existing investment and pensions portfolio and the nature, volume and frequency of the *consumer's* transactions in pensions and investments;
 - (ii) how long the *consumer* has been an investor;
 - (iii) the *consumer's* experience with, and knowledge of, personal, stakeholder or workplace pension schemes;
 - (iv) the *consumer's* experience of managing their pension or other investments or using a financial adviser to manage these investments;
 - (v) the *consumer's* profession (if any), including whether it is relevant to understanding DB *pension transfer* advice and investment advice;
 - (vi) whether the *consumer* had characteristics of vulnerability and the impact this had on the suitability of advice;

- (b) how the *firm* communicated the following to the *consumer*:
 - (i) the risks of transferring the *consumer*'s pension and investing in a scheme with flexible benefits;
 - (ii) the outcomes from the transfer analysis and whether the *firm* drew the attention to the factors that did, and did not, support the *firm*'s advice;
 - (iii) the option to remain in BPS while it entered the PPF assessment period, and the overall safety of their pension savings during this time; and
 - (iv) the option to transfer to BPS2, including the role of the trustee and the sponsoring employer and the ability to transfer out of BPS2 at a later date;
- (c) if the *consumer* approached the *firm* for advice before 12 October 2017 and the Time to Choose period, consider:
 - (i) whether the *firm* should have waited until more information was available about the comparator scheme(s) to provide the recommendation; and
 - (ii) what information the *firm* was able to provide the *consumer* with about the options in the comparator scheme(s); and
 - (iii) the effect of any failure to obtain information about the comparator scheme(s) on the *consumer*'s understanding of their options and the risk of transfer;
- (d) what the *consumer* is likely to have understood after this information was provided, taking into account the overall impression that the *consumer* would reasonably have had of the features and risks of a transfer, particularly in the light of:
 - (i) the entirety of the *firm*'s communications with the *consumer*, including communications the *consumer* received from the scheme trustees;
 - (ii) the extent to which the *firm*'s communications were balanced and rational in their presentation of features and risks; and
 - (iii) the *consumer*'s relevant experience and knowledge in (2) above.

10.29 E Answer 'yes' to this question where:

- (1) the *firm* did not communicate in substance the risks of transferring in a way the *consumer* would have understood; and/or
- (2) the *firm* did not take reasonable steps to ensure that the *consumer* understood the *firm*'s transfer analysis, their option to transfer to a comparator scheme, and its advice; and/or
- (3) the *firm* did not take reasonable steps to correct any misunderstandings the *consumer* had in relation to the benefits available and/or the security of their benefits in the comparator schemes; and/or
- (4) the *firm* has not collected the necessary information in Information Area 4 of the Information Section and so it is not possible to complete the assessment in 10.28R because the *firm* does not have a reasonable basis for believing that the *consumer* has the necessary knowledge and experience to transfer.

Example 11: the consumer is under 50 and cannot bear the risks of transfer

- 10.30 R (1) Refer to the available evidence in area 1 of the Information Section; and
- (2) Identify whether the *consumer*'s age at the time of the advice is 50 or under and:
- (a) if the *consumer* is under 50, take the steps in 10.31R; or
 - (b) if the *consumer* is 50 or over, answer 'no' to this question and proceed to Example 12.
- 10.31 R Take the following steps to determine whether this example is present:
- (1) Refer to the available evidence recorded in the Information Areas 1, 2, 3, 7 and 9 of the Information Section and to the scheme benefits available in the comparator scheme(s) (see *CONRED* 3 Annex 17G at Table 2).
 - (2) Identify the minimum age that the *consumer* can draw benefits from the comparator scheme(s), including their option to take any protected retirement benefits.
 - (3) Identify the objective for the transfer and:
 - (a) the amount needed;
 - (b) the date the amount is needed; and
 - (c) why the *consumer* needs to transfer their comparator scheme(s) benefits now, taking into account when the *consumer* wants to:

- (i) release capital and/or tax-free cash from their scheme; and
 - (ii) draw an income from the scheme.
- (d) The alternatives available to achieve the objective, including:
- (i) the option to remain in the scheme and wait for the outcome of the PPF assessment;
 - (ii) the option to remain in the scheme and transfer into BSPS2; and
 - (iii) use of other assets to achieve the *consumer's* objective.
- (4) Consider the investment strategy in the *proposed arrangement* and whether the *consumer* had the requisite attitude to the risks of investment in the *proposed arrangement*, including inflation risk.
- (5) If the *consumer* approached the *firm* for advice before 12 October 2017 and the Time to Choose period, consider:
- (a) whether the *firm* should have waited until more information was available about the comparator scheme(s) to provide the recommendation; and
 - (b) what information the *firm* was able to provide the *consumer* with about the options in the comparator scheme(s); and
 - (c) evaluate the effect of any failure to obtain information about the comparator scheme(s) on the *consumer's* understanding of their options and the risk of transfer.
- (6) Decide whether the *firm* had a reasonable basis for believing that the *consumer* was able financially to bear the investment risk consistent with their investment objectives and had the knowledge and experience to transfer.
- 10.32 E Answer 'yes' to this question when the available evidence demonstrates that:
- (1) the *consumer* was unable financially to bear the long-term investment risks associated with an investment in the *proposed arrangement*; and/or
 - (2) Example 10 is present and the *consumer* did not have the requisite knowledge and experience to understand their options and the risk of transfer; and/or
 - (3) the *firm* should have waited for more information to become available before it advised the *consumer* ahead of the Time to Choose exercise; and/or

- (4) the *consumer's* objectives for the transfer, their intended retirement date, and investments were uncertain or not clearly defined and the *firm's* recommendation to transfer has exposed the *consumer* to financial and other risks that they did not need to take with this investment.

Example 12: the recommendation to transfer is unsuitable for the consumer's investment objectives or for their financial situation for some other reason

10.33 R Take the following steps:

- (1) Refer to the available evidence and the information recorded in Information Areas 2, 6 and 7 of the Information Section.
- (2) Refer to the features and benefits of the comparator scheme(s) at *CONRED 3 Annex 17G*.
- (3) Consider whether there is any reason, other than the reasons at examples 1 to 11 above, why the recommendation to transfer was unsuitable for the *consumer's* investment objectives or financial situation.

10.34 G This example may be present when:

- (1) the transfer would result in a tax liability that the *consumer* is unwilling or unable to pay; and/or
- (2) the *consumer* could have taken an alternative course of action to meet their objectives (other than the specific objectives identified in the examples above) with less cost or less risk; and/or
- (3) the *consumer* has a specific objective in mind for the transfer (other than the objectives listed in Examples 2, 3, 4, 5 and 6 above), but this objective can be met without a *pension transfer*; and/or
- (4) the *firm* has recommended a transfer to mitigate against the risk of future redundancy, when there is no evidence on file that the *consumer* is at imminent risk of being made redundant or that redundancy was likely to cause significant financial hardship.

11 Causation Section

11.1 G The Causation Section is used to record the assessment of whether or not the *consumer's* loss was as a result of (or caused by) the *firm's* failure to comply with the suitability requirements.

11.2 G The Causation Section proceeds on an assumption that the *consumer* suffered a loss by transferring their BSPPS to the *proposed arrangement*. Whether or not there was actually a loss is dealt with in the Redress Section.

- 11.3 R Complete the Causation Section where the assessor has concluded that the *firm* has failed to comply with the suitability requirements.
- 11.4 R Take the following steps to complete the Causation Section:
- (1) Review the available evidence any communications to *consumers* during the relevant period, including those listed in *CONRED 3 Annex 17G* at Table 3, and any other relevant information recorded in the Information Section and Suitability Section of the BSPS DBAAT.
 - (2) Determine whether the *firm's* failure to comply with the suitability requirements ('non-compliant conduct') caused the *consumer* to transfer their BSPS to the *proposed arrangement* (the 'causation question').
 - (3) Answer the causation question by selecting 'yes' or 'no'.
 - (4) Explain the conclusion on the causation question with reference to the evidence at (1).
- 11.5 R To answer the causation question, decide whether it is more likely than not that the *firm's* non-compliant conduct was the effective cause of the *consumer's* decision to transfer.
- 11.6 G The effective cause in 11.5R above does not have to be the sole or primary cause of the *consumer's* decision. In particular:
- (1) as long as the non-compliant conduct was an effective cause of the *consumer's* decision, it is immaterial that other factors (for example, the influence of a third party such as an introducer) also influenced that decision;
 - (2) the *firm's* non-compliant conduct will not have been the effective cause of the *consumer's* loss if it is more likely than not that the *consumer* would have transferred their BSPS to the *proposed scheme* in the absence of non-compliant conduct. This may occur if, for example, the *firm* gave an unsuitable recommendation to transfer but the *consumer* would still have transferred their BSPS to the *proposed scheme* even if the *firm* had complied with the suitability requirements.
- 11.7 G For the purposes of the determination under 11.4R(2), have regard to the impact of the *firm's* non-compliant conduct on the *consumer's* decision to transfer, including:
- (1) the *consumer's* demands, needs and intentions at the time of the advice including in relation to:
 - (a) the *consumer's* financial situation;
 - (b) any potential tax or other liabilities the *consumer* has;

- (c) the *consumer's* objectives and future financial needs throughout retirement;
 - (d) the *consumer's* age and expected retirement age;
 - (e) the *consumer's* state of health; and
 - (f) the *consumer's* timeline for making any relevant decision about their BSPS in light of the BSPS restructuring;
- (2) the *consumer's* knowledge and experience at the relevant time, including:
- (a) the *consumer's* knowledge and experience as recorded in the Information Section;
 - (b) the extent to which the *consumer* understood the changes to the BSPS, the operation of the PPF, and other relevant matters in the BSPS restructuring following the publication of the Regulated Apportionment Agreement, or whether the *consumer* would have made a decision solely or primarily on the *firm's* recommendation;
 - (c) the extent to which the *consumer* understood the detailed reasoning (if any) within the *firm's* advice, or would have made a decision solely or primarily based on the *firm's* recommendation overall;
 - (d) the extent to which the *consumer* read the *firm's* written advice (or would have made a decision solely or primarily based on advice given orally); and
 - (e) the extent to which the *consumer* considered whether to take the relevant step independently of the *firm's* advice.
- (3) whether the *consumer* had characteristics of vulnerability as recorded in the Information Section;
- (4) the relevance of surrounding circumstances, including publicly available information at the time such as the information listed in CONRED 3 Annex 17G at Table 3, paying due regard to the reliance the *consumer* was reasonably likely to place on the *personal recommendation* of the *firm* as compared with generic and/or publicly available information;
- (5) the significance of any particular features of the BSPS, BSPS2, the PPF and the *proposed arrangement*, as regards the *consumer's* specific demands, needs and intentions;

- (6) whether the *consumer* sought specific information from the *firm* and to what extent that information was provided to the *consumer*. If the *consumer* has sought specific information from the *firm*, then it is more likely that the information was relatively important to the *consumer* when making a decision as to whether to take a relevant action;
- (7) whether the *consumer* was informed about the particular risks and benefits of:
- (a) staying in the BSPS and moving into the PPF;
 - (b) joining BSPS2; or
 - (c) transferring to the *proposed arrangement*,
- where those risks and benefits were of particular concern to the *consumer* (given their demands, needs and intentions);
- (8) whether a failure to provide information under (7)R above may make it more likely that the non-compliant conduct caused the *consumer* to take the decision they did;
- (9) the *consumer's* knowledge and experience at the relevant time, including:
- (a) the *consumer's* knowledge and experience as recorded in the Information Section;
 - (b) the extent to which the *consumer* understood the changes to the BSPS, the operation of the PPF, and other relevant matters in the BSPS restructuring following the publication of the Regulated Apportionment Agreement, or whether the *consumer* would have made a decision solely or primarily on the *firm's* recommendation;
 - (c) the extent to which the *consumer* understood the detailed reasoning (if any) within the *firm's* advice, or would have made a decision solely or primarily based on the *firm's* recommendation overall;
 - (d) the extent to which the *consumer* read the *firm's* written advice (or would have made a decision solely or primarily based on advice given orally); and
 - (e) the extent to which the *consumer* considered whether to take the relevant step independently of the *firm's* advice.

12 Attestation Section

- 12.1 G This section is for the *senior manager* at the *firm* to complete in compliance with *CONRED* 3.3.2R(1).

- 12.2 R The attestation must be signed by an individual approved to perform the SMF16 (Compliance oversight) *FCA controlled function* for the *firm* or by an individual approved to perform another appropriate *senior management function* within the *firm*.
- 12.3 R For the purposes of 12.2R, a notification is to be treated as signed where any of the following apply:
- (1) it contains an image of a ‘wet ink’ signature applied by the appropriate individual;
 - (2) it contains an electronic signature applied by the appropriate individual; or
 - (3) it contains a typed signature applied by, or with the express consent of, the appropriate individual.

[*Editor’s note*: the rules under Section 13 of CONRED 3 Annex 16 will be consulted on in July 2022. The below serves as placeholder text.]

[13 Redress Calculation]

Insert the following Annex as shown. The text is all new and is not underlined.

3 Annex BSPS DBAAT Annex 17G

1 Features, benefits and risks of a pension transfer

- 1.1 The definitions in *CONRED 3* and *CONRED 3 Annex 16 1.2R* apply to this Annex.
- 1.2 Table 1 illustrates in general the relative features and benefits of a *defined benefit pension scheme* (‘DB scheme’) and a *non-DB pension scheme* (‘DC scheme’).
- 1.3 Table 1 should be read alongside the *consumer’s* BSPS Scheme Rules and Handbook to determine how the BSPS benefits below apply to the *consumer* at the point the *firm* advised the *consumer*. Where there were special benefits in the BSPS that may be relevant to the *firm’s* advice and disclosure of risks and benefits of transfer in general these are mentioned in ‘notes’ in Table 1.

Table 1:		
	DB Scheme	DC Scheme

Benefits available	<p>Defined by scheme rules.</p> <p>Pay a regular income based on the <i>consumer's</i> salary and length of the <i>consumer's</i> membership in the pension scheme.</p>	<p>Benefits depend on <i>consumer</i> contributions. The <i>consumer</i> builds up a pension 'pot' over time.</p> <p>Benefits available include taking withdrawals directly from the pot either via <i>uncrystallised funds pension lump sums</i> (UFPLS) or flexi-access drawdown (FAD) or using part/all of the pot to purchase an annuity to secure a guaranteed income for life.</p>
When can benefits be taken?	<p>Scheme benefits are intended to be taken at the scheme Normal Retirement Date (NRD), defined in the scheme rules (e.g. at age 65).</p> <p>Most schemes permit benefits to be drawn earlier than NRD (but only once the <i>consumer</i> reaches the scheme's minimum pension age), though with an actuarial reduction typically applied for every year they are taken before NRD.</p> <p>Note – <i>Consumers</i> that joined the BSPS before 6 April 2006 had a protected minimum pension age of 50. This benefit was lost on transfer to a DC pension (unless it was done as part of a block/buddy transfer) but may have been retained in BSPS2 and the PPF.</p>	Benefits can be withdrawn from the pension at any point once the <i>consumer</i> meets their normal minimum retirement age.
Is a <i>pension commencement lump sum</i> (PCLS) available?	A PCLS is available and is typically achieved by 'commuting' pension benefits for lump sum benefits using a commutation factor outlined in the scheme rules. This typically leads to a lower PCLS available than from a DC scheme.	25% of the pension 'pot' is available to be withdrawn as a PCLS.
Are benefits protected against inflation?	The pension benefits under a DB scheme typically have a level of inflation protection (the income will increase every year) both in deferment (before the <i>consumer</i>	There is no explicit inflation protection for benefits invested in a DC scheme. DC pension pots may be invested in the markets to generate a return to offset inflation.

	<p>accesses the pension) and in payment.</p> <p>The level of inflation protection depends on the type of benefits accrued (for example, Guaranteed Minimum Pension ('GMP'), excess over GMP) and when they were accrued. It is also impacted by certain minimums set out in legislation. The scheme rules detail the level of indexation and escalation that is applied.</p>	<p>Where a <i>consumer</i> uses their pot to purchase an annuity, they can purchase levels of inflation protection, though this comes at the cost of reducing the initial income payment to the client.</p>
<p>What flexibility is available within the scheme?</p>	<p>DB schemes typically have flexibility around when benefits are taken from the pension, subject to confirmation in the scheme rules on early retirement and the factors that are used.</p> <p>All benefits are usually taken simultaneously – for example, PCLS and income benefits are usually taken in their entirety at the same time.</p>	<p>DC schemes allow for flexibility as to when and how benefits are taken. Further, not all benefits have to be taken at the same time. For example, partial or full PCLS can be taken without starting to withdraw income benefits.</p>
<p>Benefits available on death of consumer</p>	<p>A DB scheme will usually include a spouse's pension, which will continue to pay a proportion of the <i>consumer's</i> income after their death. There may also be pensions for dependent family <i>consumers</i>. Some schemes may make minor lump sum payments depending on when the <i>consumer</i> dies (e.g. if it was not long after they elected to take benefits).</p>	<p>Whatever is left in the pension pot at the <i>consumer's</i> death is an asset which is available to be inherited by a nominated individual. Annuities may also have other benefits (e.g. a spouse's pension) built in at the time of purchase which will continue paying an income to a spouse, though typically at a reduced rate.</p>

1.4 The key risks associated with a transfer from a DB scheme to a DC scheme include:

- (1) the loss of *safeguarded benefits*, in the form of a guaranteed lifetime income from the DB scheme for the *consumer* and their eligible dependants (usually spouses and dependent children);
- (2) the loss of the inflationary protection that is provided by the DB scheme associated with the pension (both in deferment and in payment);

- (3) the transfer of investment risk from the DB scheme (and sponsoring employee) to the *consumer*. Poor investment returns will directly impact on the value of the *consumer's* benefits in a DC scheme. In a DB scheme, investment returns impact on the scheme's funding position and the sponsoring employer must make good any shortfall;
- (4) the transfer of longevity risk, which is the risk of running out of money in retirement and having to rely on the state pension. This is a key risk for *consumers* that choose to withdraw money from their pension via UFPLS or FAD. It is not a risk that is present in a DB scheme;
- (5) the transfer of responsibility for decisions about scheme assets. A *consumer* must keep their DC scheme assets under review, particularly where benefits are withdrawn via either UFPLS or FAD. In these situations, the *consumer* will need to continue monitoring their pension and potentially making complex and important investment and withdrawal decisions for the remainder of their lives. Where professional support is needed to help with the monitoring and these decisions, this will come at a cost that will reduce the available benefits within the pension.

2 Comparison of benefits provided by BSPS2 and the Pension Protection Fund (PPF)

- 2.1 Table 2 compares the benefits available from the proposed BPS2 with the benefits available from the PPF for deferred (rather than retired) *consumers* who were eligible for a *pension transfer*. This information would have become available when Time to Choose packs were sent out between 9 and 11 October 2017 at the beginning of the Time to Choose period.
- 2.2 The BPS2 first entered the PPF assessment period on 29 March 2018. During the assessment period, the PPF considers whether the assets of the scheme can be used to secure benefits for the *consumer* in excess of those provided by the PPF. If they cannot, the scheme is transferred to the PPF. During the assessment period, *consumers* who retire receive benefits at PPF levels.

Table 2:			
	Benefits and features of BPS2	Benefits and features of the PPF	Comparison of BPS2 to PPF
'Starting' income benefits by comparison to Old BPS2 scheme – Consumers age 65 or over at	No reduction	No reduction	Both options are the same.

date of PPF assessment			
‘Starting’ income benefits by comparison to Old BPS scheme – Consumers below age 65 at date of PPF assessment	No reduction	All income benefits reduced by 10% AND subject to the benefit cap (see 3.1(3)): <ul style="list-style-type: none"> April 2016 to April 2017 – £37,420.42 at age 65 April 2017 to April 2018 – £38,505.61 at age 65 	BSPS2 provides unreduced income benefits for all scheme <i>consumers</i> .
Revaluation of benefits in deferment (pre-retirement) Source: Time to Choose Information Pack (for BSPS2)	Benefits accrued: <ul style="list-style-type: none"> Before 5 April 2006 – CPI with no cap 5 April 2006 – 5 April 2009 – CPI capped at 4% a year 5 April 2009 – 5 April 2012 – CPI capped at 4% a year 5 April 2012 – 5 April 2016 – CPI capped at 3% a year From 5 April 2016 – CPI capped at 2.5% a year 	Benefits accrued: <ul style="list-style-type: none"> Before 5 April 2006 – CPI capped at 5% a year 5 April 2006 - 5 April 2009 – CPI capped at 5% a year 5 April 2009 - 5 April 2012 – CPI capped at 2.5% a year 5 April 2012 - 5 April 2016 – CPI capped at 2.5% a year From 5 April 2016 – CPI capped at 2.5% a year 	BSPS2 generally provides more favourable revaluation in deferment, except for: <ul style="list-style-type: none"> benefits between 5 April 2006 and 5 April 2009 where PPF revaluation is better benefits from 5 April 2016 which are revalued at the same rate
Indexation of benefits in payment (post-retirement)	<ul style="list-style-type: none"> GMP benefits between 5 April 1978 and 5 April 1988 – No increases GMP benefits between 5 April 	<ul style="list-style-type: none"> GMP benefits between 5 April 1978 and 5 April 1988 – No increases GMP benefits between 5 April 	BSPS2 generally provides more favourable indexation in retirement except for: <ul style="list-style-type: none"> GMP benefits between 5 April 1978 and 5 April 1988 where

	<p>1988 and 5 April 1997 – CPI capped at 3% a year</p> <ul style="list-style-type: none"> • Excess over GMP pre 5 April 1997 – No increases • Pension benefits between 5 April 1997 and 5 April 2005 – CPI capped at 5% a year • Pension benefits from 5 April 2005 – CPI capped at 2.5% a year 	<p>1988 and 5 April 1997 – No increases</p> <ul style="list-style-type: none"> • Excess over GMP pre 5 April 1997 – No increases • Pension benefits between 5 April 1997 and 5 April 2005 – CPI capped at 2.5% a year • Pension benefits from 5 April 2005 – CPI capped at 2.5% a year 	<p>neither provide indexation;</p> <ul style="list-style-type: none"> • excess over GMP pre 5 April 1997 where neither provide indexation; and • pension benefits from 5 April 2005 where indexation is at the same rate.
Spouse and dependents benefits	<ul style="list-style-type: none"> • Continued income benefits valued at 50% of the <i>consumer's</i> pension, calculated with reference to the <i>consumer's</i> pension before any is commuted for a PCLS. • In Time to Choose packs (issued between 9 and 11 October 2017), there was uncertainty over whether same sex spouses or civil partners would be eligible to pension payments relating to benefits accrued before 1997. • The scheme pays out a lump sum 	<ul style="list-style-type: none"> • Continued income benefits valued at 50% of the <i>consumer's</i> pension, calculated with reference to the <i>consumer's</i> pension after any is commuted for a PCLS. • PPF treats same sex spouses and civil partners in the same way as an opposite sex spouse – they are eligible for a spouse pension relating to all benefits accrued, regardless of when they were accrued. 	<p>Death benefits under BSPS2 are generally more beneficial due to higher reference point for calculating spouses' pension plus the presence of a lump sum payment if death occurs in the first 5 years.</p> <p>However, there are question marks over eligibility for payments to same sex spouses and civil partners under BSPS2. These question marks do not apply to the PPF, which treats same and opposite sex spouses/civil partners the same.</p>

	<p>if the <i>consumer</i> dies less than 5 years after taking their pension. This equals the total amount of remaining pension they would have received in those 5 years. This is in addition to the spouse's pension.</p> <ul style="list-style-type: none"> • Children's allowance paid for 'qualifying dependent children'. 	<ul style="list-style-type: none"> • No lump sum death benefits are paid from the PPF. • Dependent's pension available for qualifying children either under 18 or over 18 but under 23 in 'qualifying education' or with a 'qualifying disability'. 50% of <i>consumers</i> compensation if there is one child, or 100% split equally if there are 2 or more children. 	
<p><i>Pension commencement lump sum (PCLS)</i></p>	<p>PCLS is available from BPS2 by commuting income.</p> <p>The commutation factors range from £12.60 to £23 of lump sum for every £1 of income, depending on the age at which the <i>consumer</i> retires and when the <i>consumer</i> built up benefits in the old scheme.</p> <p>Where a significant proportion of the <i>consumer's</i> rights are in the form of GMP benefits, this may inhibit the amount of pension they are able to</p>	<p>PCLS is available from the PPF by commuting income.</p> <p>The commutation factors range from £20.22 to £43.57 of lump sum for every £1 of income, depending on the age at which the <i>consumer</i> retires and when the <i>consumer</i> built up benefits in the old scheme.</p>	<p>The PPF provides more favourable PCLS commutation factors in all instances.</p> <p>Where a <i>consumer</i> wishes to take the maximum PCLS, the PPF will typically provide both a larger PCLS and a larger starting income (even after accounting for the 10% reduction in the PPF) than BPS2.</p>

	commute for a PCLS in BSPS2.		
Early retirement	<p>Early retirement is available from BSPS2.</p> <p>The early retirement factor ranges from 0.73 to 0.97, depending on the age at which the <i>consumer</i> retires and when the <i>consumer</i> built up benefits in the old scheme.</p> <p>Where a significant proportion of the <i>consumer's</i> rights are in the form of GMP benefits, this may reduce the level of income they can withdraw if they seek early retirement.</p>	<p>Early retirement is available for the PPF.</p> <p>The early retirement factor ranges for 0.819 to 0.978, depending on the age at which the <i>consumer</i> retires.</p>	<p>The PPF provides more favourable early retirement factors than BPS2 in all circumstances, regardless of the <i>consumer's</i> age and when they accrued benefits.</p> <p>However, the PPF reduces starting income by 10% (BSPS2 does not). After this reduction is applied, BPS2 typically provides a higher starting income.</p>
Potential for future transfer requests	BSPS2 allowed <i>consumers</i> the option to transfer out at any time up to a year from the <i>consumer's</i> NRD.	Once a scheme enters the PPF assessment period, <i>consumers</i> are no longer permitted to transfer out of the scheme.	BSPS2 provided <i>consumers</i> with more flexibility of options, in regard to the ability to transfer out at a future date, than the PPF.

3 Information available to advisers during the relevant period

3.1 The following information was available to advisers about the PPF benefits:

- (1) Once a scheme enters the PPF assessment period, the benefits that will be available to *consumers* of the BPS who have not yet commenced drawing a pension are calculated by reference to provisions governing the PPF and will not be the same as the pension that would have been available in the BPS.
- (2) The PPF treatment of *consumer* benefits throughout the relevant period was published or available:
 - (a) on the PPF website (<https://www.ppf.co.uk/>);

- (b) directly from the PPF;
 - (c) through continuing professional development, including in the study material for the qualifications required to be a *pension transfer specialist*.
- (3) In July 2021, the Court of Appeal ruled that the PPF compensation cap was unlawful on the grounds of age discrimination. The PPF confirmed that the compensation cap would no longer apply and it would be removed from affected PPF pensioners. Whilst this is the case now, advisers at the time would not have been aware of this change, so it would have been reasonable to assume that the cap would still apply to those *consumers* with benefits above the cap. More information is found here - <https://www.ppf.co.uk/trustees-advisers/valuation-guidance/compensation-cap-factors>.

3.2 The information in Table 3 was available to advisers about BSPS2 benefits during the relevant period.

Table 3:	
Date	Information
30 March 2016	Tata Steel Ltd announcement examining options for restructuring business and calling into question the future of BPS.
26 May 2016	DWP launch consultation on BPS outlining 4 options for the future of BPS.
26 May 2016	Letter to consumers from BPS Trustee (Allan Johnston) outlining Government consultation on potential changes to BPS.
16 June 2016	BPS Trustees response to the DWP consultation .
12 August 2016	Trustee update to consumers .
7 December 2016	Tata Steel UK announcement on proposal to close BPS to future accrual.
7 December 2016	Trustee update to consumers following Tata Steel UK Ltd's announcement on proposal to close BPS to future accrual.
12 January 2017	Trustee statement on potential future of the scheme.
27 January 2017	Trustee letter to consumers providing an update on developments.

31 March 2017	The old BSPS scheme closed to accrual and all active <i>consumers</i> became deferred.
1 April 2017	Trustee amendment to how the CETV was calculated resulting in most <i>consumers</i> seeing an increase in their CETV after 1 April 2017 compared to before.
16 May 2017	PPF and TPR announcements on key commercial terms for an RAA being agreed in principle.
11 August 2017	TPR announcement on initial approval of RAA for BPS.
25 August 2017	Trustee announcement to <i>consumers</i> on CETV change.
11 September 2017	Trustee announcement on RAA.
9-11 October 2017	Time to Choose packs sent out to <i>consumers</i> (received by <i>consumers</i> between 9 and 11 October 2017) which detailed personalised benefits for <i>consumers</i> under BPS2.
29 November 2017	The deadline for <i>consumers</i> to make a decision under Time to Choose was extended from 11 December to 22 December 2017.
16 February 2018	The trustees stated deadline for receiving transfer applications.
29 March 2018	The old BPS scheme entered the PPF assessment period and was closed to transfer.

Schedule 1 Record keeping requirements

After Sch 1.2G, insert the following table as Sch 1.3G. The text is all new and is not underlined.

Sch 1.3G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
<i>CONRED</i> 3.9.1R(1)(a)	BSPS consumer redress scheme	Certificate of posting for each letter sent	When letter sent	Five years
<i>CONRED</i> 3.9.1R(1)(b)	BSPS consumer redress scheme	Copy of each letter sent	When letter sent	Five years

<i>CONRED</i> 3.9.1R(1)(c)	BSPS consumer redress scheme	Record of attempts to contact <i>consumer</i> or obtain further information	When attempts made	Five years
<i>CONRED</i> 3.9.1R(1)(d)	BSPS consumer redress scheme	A copy of the Excel spreadsheet containing a completed BSPS DBAAT or FCA DBAAT for each scheme case	When BSPS DBAAT completed	Five years
<i>CONRED</i> 3.9.1R(1)(e)	BSPS consumer redress scheme	Information on the <i>consumer</i> file and information received from the <i>consumer</i>	When located on <i>consumer</i> file or obtained	Five years

Schedule 2 **Notification requirements**

After Sch 2.1G, insert the following table as Sch 2.2G. The text is all new and is not underlined.

Sch
2.2G

Handbook reference	Matters to be notified	Contents of notification	Time allowed
<p><i>CONRED</i> 3.8.2R and <i>CONRED</i> 3.8.3R</p>	<p>Information about each case the <i>firm</i> has taken scheme steps for</p>	<p>(1) <i>consumer</i> identifier;</p> <p>(2) after completing the first step set out in <i>CONRED</i> 3.3.2R (case review), whether the <i>consumer's</i> case falls within the subject matter of the scheme (yes/no);</p> <p>(3) where the <i>consumer's</i> case does not fall within the subject matter of the scheme (so the answer to (2) is 'no'):</p> <p style="padding-left: 20px;">(a) the reasons for its exclusion, with reference to the relevant condition or conditions at <i>CONRED</i> 3.2.2R;</p> <p style="padding-left: 20px;">(b) the date the letter at <i>CONRED</i> 3 Annex 1R was sent to the <i>consumer</i>;</p> <p style="padding-left: 20px;">(c) whether the <i>consumer</i> has complained about their exclusion from the scheme;</p> <p>(4) where the <i>consumer's</i> case falls within the subject matter of the scheme (so the answer to (1) is 'yes'):</p> <p style="padding-left: 20px;">(a) the date the letter at <i>CONRED</i> 3 Annex 2R was sent;</p> <p style="padding-left: 20px;">(b) whether the <i>consumer</i> receiving the letter in (a) has opted out of the scheme; and</p> <p style="padding-left: 20px;">(c) for those <i>consumers</i> who have opted out of the scheme, the date that the <i>firm</i> sent the opt-out acknowledgment in the form of <i>CONRED</i> 3 Annex 3R;</p>	<p>By [1 <i>month</i> after the scheme effective date] and then every 2 weeks</p>

		<p>(5) whether the <i>firm</i> requires more information to assess suitability (yes/no) (so that <i>CONRED 3.3.5R</i> applies) and if ‘yes’:</p> <p>(a) the date the letter at <i>CONRED 3 Annex 4R</i> was sent to the <i>consumer</i>;</p> <p>(b) the date any request for information was sent to any other <i>firm</i> involved in the BPS pension transfer;</p> <p>(c) the date the letter at <i>CONRED 3 Annex 5R</i> was sent to the <i>consumer</i>;</p> <p>(d) the date any further request for information was sent to any other <i>firm</i> involved in the BPS pension transfer;</p> <p>(e) whether, as a result of <i>consumer</i> or <i>firm</i> responses, the <i>firm</i> now has sufficient information about the <i>consumer</i> to complete the case review at <i>CONRED 3.3.2R</i> (yes/no);</p> <p>(f) if the answer to (e) is ‘no’, whether the <i>firm</i> has sent the letter at <i>CONRED 3 Annex 6R</i>.</p> <p>(6) where the <i>firm</i> has carried out the case review at <i>CONRED 3.3.2R</i>:</p> <p>(a) the date the case review was completed;</p> <p>(b) a copy of the completed FCA or BPS DBAAT;</p> <p>(c) whether the scheme case was rated suitable, unsuitable or non-compliant due to material information gap(s);</p> <p>(d) for scheme cases rated as unsuitable, the result of the causation assessment;</p> <p>(7) the conclusion of the suitability assessment of the scheme case, indicating whether the assessment has concluded that the advice was suitable, unsuitable or non-compliant</p>	
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Amend the following as shown.

Schedule 3 Fees and other required payments

There are no provisions for fees in CONRED. As noted in CONRED 2.5.19G and CONRED 3.5.8G, a fee is payable in any case where the *FCA* exercises its powers under CONRED 2.5.12R or CONRED 3.5.1R to take steps instead of a firm, or appoint one or more competent persons to do so. This fee is as specified in the table at *FEES 3.2.7R*.

