

22 December 2021

Dear CEO

British Steel Pension Scheme: Consideration of a consumer redress scheme

This letter is for firms who gave pension transfer advice to British Steel Pension Scheme members between 1 March 2017 to 31 March 2018 ('the relevant period'). It sets out the actions we expect firms to take with immediate effect.

Failing to act on the requests in this letter may be a breach of rules or other requirements by your firm, its directors, partners, or others enabling us to take enforcement action.

We expect you to be accountable for the actions your firm takes in response to this letter.

Since 2017 we have been reviewing the advice given to members of the British Steel Pension Scheme. Our work to date shows high levels of unsuitable pension transfer advice were given to British Steel Pension Scheme members. These levels of unsuitable advice are higher than those we have seen for advice given to members of other defined benefit pension schemes.

We have announced that the FCA's Board has asked for a Consultation to be prepared on a s404 redress scheme on pension transfer advice given to members of the British Steel Pension Scheme. Subject to final approval of the Consultation documents by the Board, we expect to consult by the end of March 2022, having gathered further evidence and following engagement with stakeholders.

Under a redress scheme, firms which advised on British Steel Pension Scheme transfers would be required to review their advice. If the advice is unsuitable and resulted in a financial loss for former British Steel Pension Scheme members, the firms would be required to provide compensation. Further details, including the scope of any scheme, will be provided as part of a Consultation.

WHAT WE EXPECT FIRMS TO DO, WITH IMMEDIATE EFFECT

Firms must have adequate financial resources

Our Principles and prudential rules require firms to have financial resources that are appropriate for the risk of harm and complexity of their business to ensure they can meet liabilities as they fall due. These liabilities may result from claims for poor advice.

Firms must meet the Principles for Businesses ([PRIN](#)). PRIN includes maintaining adequate financial resources (see Principle 4 - Financial prudence in PRIN 2.1.1). Firms may also have

specific prudential requirements that apply to them, including being required to have adequate Professional Indemnity Insurance.

In line with your responsibilities under PRIN and [COND](#), your firm must maintain adequate financial resources. [FG 20/1 Our framework: assessing adequate financial resources](#) can assist you when considering your firm's financial resources.

If your firm does not have adequate financial and / or non-financial resources, you must notify the FCA immediately using BSPSLetter@fca.org.uk.

If your firm has, or is likely to have, redress liabilities relating to advice provided to British Steel Pension Scheme members, you should consider their effect on your firm's solvency and, if necessary, seek the advice of an insolvency professional. You should also consider your duties under the Companies Act 2006 and the Insolvency Act 1986. We ask that you notify us of any such discussions as early as possible.

Additionally, if you have advised on the British Steel Pension Scheme during the relevant period you must not enter a solvent liquidation or apply to dissolve the firm without notifying us in advance. This is irrespective of your assessment of the firm's redress liabilities.

Firms should retain assets for a potential redress exercise

We expect to consult on a redress scheme by the end of March 2022. We expect firms who advised British Steel Pension Scheme members to comply with the relevant prudential requirement and be able to meet liabilities as they fall due.

So far as possible, and in line with your existing commitments, we request that you retain the firm's assets in the way we outline below. This is to ensure that you can meet the costs for carrying out a review and compensating customers for any unsuitable advice your firm may have given British Steel Pension Scheme members, if we implement a redress scheme. With immediate effect, and during any Consultation period that may result, we request that:

- Firms who advised British Steel Pension Scheme members should not dispose of, withdraw, transfer, deal with or diminish the value of any of their assets (including their client bank) and any funds that they hold, except in the ordinary course of business.
- Firms should ensure that any payment or disposal of assets is in the ordinary course of business and / or consistent with your usual monthly expenditure. For example, payments to suppliers to meet contractual obligations, usual and proper salary payments or transactions giving effect to instructions initiated by customers. The following are some examples of payments that we do not view as being in the ordinary course of business:
 - payments of unusual or significant amounts to the firm's controllers, shareholders, directors, partners, officers, employees or any connected persons
 - moving capital out of the business
 - making any gift or loan to any party
 - payments made as part of any financial restructuring or reorganisation of its business, whether share or asset based
- Before making any payments, in line with your duties under the Companies Act 2006 and the Insolvency Act 1986 you should consider your firm's solvency, taking account of any redress, or potential redress it might have to make, and the costs of dealing with this. If necessary, you should seek the advice of an insolvency professional.

As well as the above, your firm should not enter arrangements to remove assets from the business in anticipation of regulatory action or insolvency. This includes the sale, transfer or removal of all or any part of the business, as well as providing, or selling, client information to claims management companies. We will take such action as we deem necessary where a firm

attempts to avoid redress liabilities, including where a firm takes steps to enter a solvent liquidation or dissolution.

Firms should not try to avoid their responsibilities

In addition to retaining assets, firms should not apply to cancel their authorisation without first discussing their plans with us. They should also not apply unless they can demonstrate that they have assessed any relevant British Steel Pension Scheme-related liabilities and that the firm has sufficient financial and non-financial resources to cover them.

The same applies to directors, partners, controllers or others associated with firms who gave advice to British Steel Pension Scheme members during the relevant period who are considering applying for authorisation via a different legal entity. This applies whether this is through acquiring control of an existing firm, an appointed representative, a new authorisation or adding permissions. Applications from firms that have not adequately addressed the issue of liabilities will be subject to additional scrutiny.

In line with existing regulatory requirements, firms should continue to carry out robust due diligence before submitting any new applications for Significant Management or Controlled Functions for candidates who have a connection to giving advice to British Steel Pension Scheme members during the relevant period. Again, applications will be subject to additional scrutiny where there is uncertainty around any British Steel Pension Scheme liabilities for which an individual applicant may be responsible or accountable.

Firms are entitled to structure their businesses as they see fit. However, using arrangements to avoid regulatory responsibilities increases the risk of harm to consumers and the wider market. Such actions would also call into question your fitness to act in a Significant Management or Controlled Function and the firm's ability to meet Threshold Conditions. Being unable to compensate consumers and transferring these costs to other market participants via the Financial Services Compensation Scheme levy is unfair and places an unnecessary burden on other firms. Where we see firms attempt to do this, we will take action to stop it.

Firms' ongoing responsibilities

As well as asking firms to implement the actions in this letter, firms should continue to progress any existing FCA required Past Business Reviews and engage with us in any ongoing enforcement investigations or supervisory work connected to the British Steel Pension Scheme.

We will also be contacting firms in early 2022 in order to confirm our understanding of the British Steel Pension Scheme business written by them and to collect information to enable us to understand your firm's potential exposure to liabilities relating to British Steel Pension Scheme transfer advice.

Firms should also continue to handle complaints in accordance with [DISP](#). Firms must assess complaints fairly, consistently and promptly. We will consider acting if we find that firms are taking steps that might deter their customers from pursuing a complaint or referring a complaint to the Financial Ombudsman Service.

Yours sincerely

Sheldon Mills
Executive Director, Consumers and Competition