FCA FINANCIAL CONDUCT AUTHORITY

25 The North Colonnade
Canary Wharf
London
E14 5HS

Tel +44 (0)20 7066 1000
Fax +44 (0)20 7066 1099
www.fca.org.uk

Rt Hon Frank Field MP
Work and Pensions Select Committee
House of Commons
London
SW1A 0AA

18 January 2018

Dear Frank Field

Re: British Steel Pension Scheme

I wanted to write to you following the Committee's statement on Friday 12 January regarding our work on the British Steel Pension Scheme (BSPS). The statement read "the FCA could be sleepwalking into another huge mis-selling scandal" and follows our evidence to you on 13 December and subsequent correspondence. It also reiterated your comment that you believe our work has been "grossly inadequate." To note, we have published this letter on our website and provided this to the media as our response to the Committee's statement.

We wholly reject the conclusion the Committee has come to. The Committee's statement and correspondence do not set out the broader work on BSPS, the FCA's regulatory remit (and that of other organisations), or the collective work being undertaken by the Pensions Regulator (TPR), the Pensions Advisory Service (TPAS) and the FCA.

I am concerned the Committee's conclusions, and subsequent report, may not give a fully representative view. As such I thought it would be useful to set out the fuller picture of our considerable work by detailing the regulatory remit and our work on pension transfer advice and scams – all of which is relevant in the context of BSPS. I also wanted to discuss some additional points relating to the handling of Friday's statement.

The pensions remit

The regulatory perimeter for pensions is important when considering the work each organisation is able to do. This is particularly important when it comes to BSPS, which I will discuss later.

The regulatory framework is set by the Government through HM Treasury and the Department for Work and Pensions (DWP). As you will know, there are a number of different types of pensions, and the regulation of these is broadly split between the FCA and TPR. However, there are other organisations that have roles to play in the pension landscape, including TPAS, Pension Wise and the Pension Protection Fund (PPF); each organisation has a defined remit within which it must act.

The FCA

The FCA is sponsored by HM Treasury and is the regulator for the providers of personal pensions, including stakeholder personal pensions, self-invested personal pensions and workplace (group) personal pensions. These are all forms of defined contribution (DC) pensions. We also regulate the advice (including pension transfer advice) given by regulated advisers, asset managers and other firms that provide investment services.

Our powers are underpinned by the Financial Services and Markets Act 2000, and our regulatory remit is defined by the Financial Services and Markets (Regulated Activities) Order 2001.

TPR

TPR is sponsored by DWP and is the regulator for occupational pension schemes – these are split into defined benefit (DB), DC and public service schemes. TPR is also responsible for the rollout and enforcement of auto-enrolment as well as authorising and supervising master trusts under the Pension Schemes Act 2017.

As the regulator for DB occupational pension schemes, TPR is responsible for negotiating and agreeing arrangements where a DB scheme falls into deficit, or where the employer is unable to continue to support the scheme. This includes oversight of the trustees and scheme administrators.

TPAS

TPAS is an independent organisation from the FCA and TPR. It gives free, impartial guidance to help consumers understand their pensions. It provides useful information to consumers who may not know what type of pension they have. This includes through free telephone and webchat services. We have worked closely with TPAS on BSPS where they have provided excellent and swift action to help scheme members.

Pension Wise

Pension Wise provides a broadly similar service to TPAS, but focuses on DC schemes and on individuals close to, or at retirement. It also provides useful resources to help consumers make sense of their pension arrangements. Pension Wise provides free guidance to consumers aged 50 or over to discuss their options for accessing their pension savings. The FCA is responsible for setting and monitoring of the standards for Pension Wise under the current regulatory regime.

PPF

The PPF steps in where a DB pension scheme suffers a qualifying insolvency event relating to the employer (such as where the employer collapses). The PPF will provide compensation to members of the scheme where there are insufficient assets in the pension scheme to cover the liabilities.

DB to DC pension transfer advice

The pension freedoms that were announced in the 2014 Budget were intended to give people greater flexibility over their pension savings. DB scheme members can only access the freedoms if they transfer out of their scheme into a DC scheme. The "advice requirement" was introduced in 2015 requiring regulated financial advice for individuals with pension pots valued over £30,000 who wish to go down this route. These significant changes introduced by the pension freedoms have made pension savers a possible target for those wishing to scam them. As such, we have been acutely aware of the potential for consumer harm due to scammers, but more broadly as a result of unsuitable advice.

The FCA has previously submitted detailed written evidence to the Committee regarding our work in the build up to, and following, the implementation of the pension freedoms; this includes references to our DB to DC pension transfer work. Broadly speaking, our work on pension transfer advice covers supervisory work and policy work.

Supervisory work

Our strategic approach to our supervisory work has initially focused on those firms which were most active in DB-DC advice, as well as acting on intelligence on specific firms. This work has so far consisted of three phases, with the fourth phase beginning later this year.

Phase one began in October 2015 and ran through to March 2016. During this time we issued a formal request for information to six pension transfer advice firms which led to 29 detailed file reviews from four of those firms. We visited three firms and following the visits we provided formal feedback to each based on our findings. The results of this work were, of the files we reviewed:

- 24% (7) contained suitable advice
- 35% (10) contained unsuitable advice
- 41% (12) it was unclear whether the advice was suitable or not.

Phase two of this work began in December 2016. This phase considered an additional 16 firms, resulting in a review of 71 sample files. We visited nine of these firms. We found, of the files we reviewed:

- 38% (27) contained suitable advice
- 34% (24) contained unsuitable advice
- 28% (20) it was unclear whether the advice was suitable or not.

Following this work we had further conversations with a number of the firms. Four of these firms offered to voluntarily vary their permissions resulting in them no longer providing pension transfer advice.

Phase three of this work began in June 2017 to look into the significant increase in transfer activity; this work is continuing. Most recently, in December we sent a formal request for information to 45 firms. This information has been received and we are currently analysing the responses ahead of planning visits to specific firms.

We are currently planning our fourth phase of work which, as set out in our letter to the Committee of 21 December, will involve writing to all regulated firms that hold the pension transfer permission to collect and analyse data. This will allow us to build a detailed picture of the entire UK market.

The information that we have been able to gather over the last few years, as part of this supervisory work has been invaluable. It has allowed us to take targeted action where we have found concerns that need addressing – including the referral of 14 cases to Enforcement for investigation in relation to the provision of pension transfer advice. It has also been utilised for the benefit of our policy work looking into DB to DC pension transfer advice.

Policy work

In conjunction with our supervisory work we have been looking into the rules that apply to firms advising on pension transfers. The pension freedoms amounted to a significant change in how consumers are able to access their pension pots. As such, we felt it was right to assess whether our pension rules and guidance remained appropriate.

In October 2015 we published a broad consultation paper, 'Pension reforms – proposed changes to our rules and guidance', that asked a number of questions across a range of pension areas, including pension transfers and pension transfer advice. This consultation paper is available on our website: https://www.fca.org.uk/publication/consultation/cp15-30.pdf. The responses to this informed our policy work, and resulted in our June 2017 consultation on advising on pension transfers. This consultation paper is also on our website: https://www.fca.org.uk/publication/consultation/cp17-16.pdf.

The proposals in the paper aim to ensure that financial advice continues to consider the customer's individual circumstances while providing advisers with a framework that supports them in giving the right advice. They also aim to reflect the current environment and the increased demand for pension transfer advice. We noted the complexities and concerns we have when advice is given to transfer out of a DB pension scheme, particularly in making sure that consumers understand the implications of giving up a safeguarded (i.e. guaranteed) benefit from their pension scheme.

The key proposals we consulted on included:

- Ensuring that all advice on transfers should be a personal recommendation.
- Changing our starting assumption on suitability for a transfer to reflect the new pensions environment
- Introducing a new transfer analysis which includes a numerical presentation. We believe this will make it easier for members to understand their options.

We also asked several discussion questions to help inform our thinking. These included questions on the responsibilities of advice firms where two firms work together (which is common practice in this market); and how the required qualifications of a pension transfer specialist operate in practice.

As I have already mentioned, the results of our supervisory work are also informing our policy proposals.

We are in the process of analysing the responses to this paper – many of which were very detailed and informative. We received in excess of 120 responses, many of which were supportive of our proposals. The issues raised at BSPS did not raise any fundamentally new areas of concern and were issues covered in our consultation. We plan to publish our final rules by March along with feedback from the consultation process.

Scams, unauthorised business and enforcement

In addition to our wider supervisory and policy focused work, we have been taking steps to prevent consumers being scammed by taking action against scammers and raising awareness. We work closely with HM Revenue and Customs, DWP, the Serious Fraud Office, National Fraud Intelligence Bureau, National Crime Agency and TPR as part of 'Project Bloom'. Project Bloom is a multi-agency task-force taking coordinated action and sharing intelligence on scams given these may sit within another organisation's remit; meaning it will be able to take action rather than us.

Within the FCA we have specialist teams that monitor the markets and intelligence we receive to quantify and tackle cases of pension mis-selling and fraud involving both regulated and unregulated firms. Where the activity involves an authorised firm, we have a range of tools at our disposal to tackle cases of pension mis-selling and/or scams. These powers include restricting a firm's permissions, securing undertakings from firms, restrictions on the firm's assets or commissioning skilled persons reviews or, in the most serious of cases, referring cases to our Enforcement department for further investigation.

Since January 2016, the specialist scams supervision team has:

- Opened 338 cases for consideration,
- Carried out 33 firm visits,

- 24 firms have voluntarily offered to vary their permissions following conversations with us,
- Commissioned 17 skilled persons reviews,
- Referred 13 cases to Enforcement for investigation (this is in addition to the 14 cases referred to above).

There are inevitably issues involving scams that occur by firms that are not authorised, or by people who are actively seeking to defraud people. With these cases we detect, deter, disrupt and ultimately prosecute firms or individuals acting in this way. We also take action where unauthorised firms are carrying out activities where they are required by law to have FCA authorisation.

In the context of pensions, and more topically BSPS, we have been carrying out a programme of work on introducers. Introducers may not require FCA authorisation provided they comply with the conditions of an exemption within the Regulated Activities Order. If an introducer strays beyond these conditions and carries on regulated activities, we will take the appropriate action to enforce our perimeter. This could result in the introducer being prosecuted in court as a breach of the Financial Services and Markets Act is a criminal offence.

The FCA has been transparent about our concerns with the influence introducers could have over authorised firms, such as financial advisers. We have issued a number of alerts, warning regulated firms over the dangers posed by working with introducers and reaffirming our clear expectations. These alerts have targeted firms advising on pension transfers and SIPP operators.

We have also issued other alerts setting out our concerns with particular firms, the improper delegation of authorised activities by advisers and the risk posed by ever developing nature of scams. Since 2013 we have issued a total of 12 alerts, including one which we republished as it was relevant to the BSPS issue.

We also appreciate that it is important to make consumers aware of the risks they face from scammers, and arm them with useful, easy to use resources that will help them identify potential scams. Our high profile ScamSmart campaign has targeted those who are approaching retirement, or have retired, given we know they are most at risk from scammers.

The campaign uses advertising, the media and targeted communications to help consumers identify the warning signs that indicate a scam. We have also created the Warning List, an online tool which helps investors check a list of firms operating without authorisation and find out more about the risks associated with an investment.

We work closely with a range of partners, including the banks, pension providers, Project Bloom, Pension Wise and consumer groups to extend the reach of our campaign. We know our ScamSmart campaign is having an effect as we have seen:

- In total, over 680,000 visits to the FCA's ScamSmart website since it was launched in 2014,
- 320,000 of these visits were in the year 2016/17 following a further campaign run – and increase of over 200% from the year before,
- In total, more than 78,000 users have checked an investment or pension opportunity on our Warning List,
- 26,000 of these checks were again in 2016/17 – an increase of 90% from the previous year,
- Following analysis of these figures, 30% of all Warning List checks in 2016/17 involved pensions.

Building on the success to date with ScamSmart we are looking to continue ScamSmart and we are currently working with TPR to develop a single, coordinated awareness campaign focused specifically on pensions and investment scams. This work began last year and we are looking to roll this out later in 2018. However, in the meantime we will be launching a further run of the current campaign later this month.

BSPS

Turning to BSPS, we have already set out to the Committee the work we have been doing. The specific, targeted BSPS work complements the wider supervisory and policy work that was already ongoing prior to the issue arising. As has been mentioned to the Committee previously, we are responsible for the regulation of financial advisers, and with that in mind our focus has been on three key areas:

- Reminding firms of our expectations, their obligations and our view that transferring out of a DB scheme is unlikely to be in the consumer's best interests,
- Gathering intelligence on firms that may be active in this space,
- Using this intelligence to take swift action with firms where we have concerns.

To recap, we have held four meetings in Swansea and Doncaster with pension transfer advisers to remind attendees of our clear and firm expectations of them and of their obligations when dealing with unregulated introducers. 151 advisers attended these meetings, and we also wrote to an additional 148 authorised financial advisers. These sessions also led to us receiving further intelligence from additional sources which enabled us to take targeted action against specific firms.

We have also been in contact with TPR, TPAS and the scheme administrators to ask for further information on any additional firms operating in the area as well as information on transfer volumes. We chose to visit the administrators twice to gather the information we needed. We quickly worked with TPAS to set up, and communicate, a dedicated BSPS helpline. As of 5 January 2018 the TPAS helpline has received a total of 161 calls, with a further 91 to the general contact number, 9 contacts were made via the TPAS web chat and 7 were made in writing.

We also contacted 11 SIPP operators to find out if they had received, or were expecting to receive, any transfers out of the BSPS. Where this was the case we asked them for the names of the advice firms as well as details of the transactions (including the receiving funds). This information was reviewed along with information received via our Contact Centre, Whistleblowing Team and from correspondence received from MPs. We also received useful intelligence following the public meeting we attended alongside TPR, TPAS and Stephen Kinnock MP.

This extensive information gathering exercise led to further contact with 109 financial adviser firms. 66 of which were then required to provide us with further information on their business volumes, pipeline clients as well as insistent clients. We then reviewed, assessed and analysed the data to ascertain the harm each firm presented to BSPS members. We decided from this review to undertake 21 firm assessments which included a detailed review of a sample of individual case files to assess the suitability of the advice and we will be providing formal written feedback to each firm. On 1 December, we also chose to reissue a consumer alert with information on how to protect your pension pot – as of 17 January, this has had 1,490 views.

This work alone has accounted for 1,766 BSPS transfer cases of the total (as confirmed by the scheme administrators on 15 January 2018) of 2,054 transfers to date. Our work on BSPS is not finished, and we are continuing to take action where we have concerns. We have written to all pension transfer advisers in the UK to remind them of their responsibilities and our expectations – extending this from the initial 148 firms I have already mentioned. As you are aware, we have accepted voluntary restrictions from eight firms following conversations with us. This means they cannot provide pension transfer advice.

Along with TPR and TPAS we have issued a joint letter to around 12,000 BSPS members who have requested a transfer quote, including those who are in the process of transferring out. We have also sent a separate letter to those members who have transferred out already to provide information on the complaints process if they have concerns over the fees they have been charged, or whether the advice was suitable.

However, I'd like to underline an important point about advice to transfer out of a DB scheme. While the advice to transfer out of a DB pension scheme is generally unlikely to be in the consumer's best interests, it will not *always* be unsuitable for the individual consumer's circumstances. What is important is that the advice is suitable for the individual consumer's needs, and this is what we require. We have also received correspondence from individuals, both in the context of BSPS but also separately, to set out that they do wish to transfer out of a DB scheme, and appreciate the decision they are making.

In fact, from the 129 client files reviewed so far across the 21 firms I have referred to above, we found that in 51% of cases the advice was suitable. With the remaining files, we found 33% contained unsuitable advice and with 16% of the files it was unclear whether the advice was suitable or not. We are contacting these firms to set out our concerns; however, of those 21 firms, we have seen no evidence of funds being invested in scams. I cannot tell you more about those cases at this stage as it would breach the Financial Services and Markets Act to so, but we are not complacent in our approach to potentially unsuitable advice.

<u>The Committee's Statement</u>

The Committee issued its statement regarding our action on BSPS on Friday 12 January. I was disappointed to see that this was provided to the media around 30 minutes prior to us receiving it, meaning we were receiving queries regarding it before knowing the context.

While we appreciate the timing of statements or publications are a matter for the Committee, we note that with other select committees there is usually a courtesy in notifying us, at least at the same time as the media, that a publication has been issued. Further to this, I was concerned when I saw the cover email from committee staff that went to the media which I felt showed a flippant attitude to the issues, given the seriousness of the allegations the Committee was making. I understand we have picked these points up separately with your clerks; however, I wanted to reiterate these in my letter to you.

As I have already stated, we wholly reject the Committee's conclusion, and fundamentally disagree with the sentiment we may be 'sleepwalking into another mis-selling scandal'. As I have already set out, I am concerned the Committee's conclusion does not show the full scale of the work we are doing, nor does it factor in the role of other organisations in what is a coordinated exercise.

My letter to you shows we have been carrying out detailed, extensive and robust action that has been targeting the issues we have seen in BSPS but more broadly across the entire pensions advice landscape.

Yours Sincerely

Andrew Bailey

Andrew Bailey
Chief Executive