

Arch cru product advice suitability template User Guide and FAQs

Introduction

In December 2012 we published [PS12/24](#) and final rules on a redress scheme for consumers who have been given unsuitable advice to invest in Arch Cru funds. The consumer redress scheme started on 1 April 2013. If your firm gave advice to invest in the relevant Arch cru funds you should read the rules and the accompanying guidance to determine exactly what your firm needs to do under the scheme rules:

<http://fshandbook.info/FS/html/FCA/CONRED>

The redress scheme complements the separate voluntary settlement of £54m reached with Capita Financial Managers Limited, HSBC Bank plc and BNY Mellon Trust and Depositary (UK) Limited. The amount that the investor is eligible to receive under the CF Arch cru payment scheme should be entered into the template. If you submit the completed template for a redress calculation, the calculator will deduct this amount from any redress payable regardless of whether the consumer has accepted it.

Differences between the template firms are required to use and the assessment template in CONRED

There are a few very minor differences between the template that firms are required to use and the Arch cru product advice suitability assessment template in CONRED 2 Annex 12R:

- **Date of advice to consumer** - This question is in the 'Firm and case details' section within the template rather than in the 'Consumer details' section.
- **Consumer financial situation** - The template in CONRED indicates that the firm must insert details of the consumer's investments both before and after the investment in Arch Cru funds by selecting the Arch cru fund groups invested in from a drop down list. All six Arch cru fund groups are presented in the table and so there is no need for a drop down list in the template.
- **Consumer Investment objectives** – The prompt in italics has been removed because the questions it relates to are included in the table.
- **Redress** – the columns in the spread sheet are the same but the first two columns are in a different order to how they appear in CONRED.
- **Encrypted templates** – there is no longer a separate e-mail address for encrypted templates. Encrypted and non-encrypted templates can both be sent to archcrureview@fca.org.uk

Getting started

How do I get the data capture template?

The data capture template can be downloaded from the following web page.

<http://www.fca.org.uk/arch-cru-redress>

Only this template can be used; any other templates or documents sent in will be automatically rejected by our processing system.

You can download the template and save it on your computer. Do not copy and paste the spread sheet if you want to create a template for a new scheme case. If you would like to create a new scheme case, please either enter new information into the template you have already downloaded or download a new template from the website.

About the template

What is the template?

The Consumer Redress Schemes sourcebook ([CONRED](#)) requires firms to review advice given to consumers to invest in the relevant Arch cru funds if the consumer has opted into the consumer redress scheme. Firms are required to complete the standard template that we have created which is a spread sheet version of the template in [CONRED](#). Please e-mail a completed copy of the template to us for each opted-in scheme case.

What application can I open the template with?

The template has been tested with versions of Microsoft Excel from 2003 to 2010. The template can also be opened using Open Office on the Apple Mac but must be saved using the .xlsx extension and not .xls or any other extension. Note: Any other formats not mentioned will be rejected.

Using the template (see [CONRED 2 Annex 13 2](#))

The template contains factors to take into account to determine whether there has been a failure to comply with the suitability requirements in an opted in scheme case. Before completing the template you must familiarise yourself with the features and risks of the Arch cru funds that a reasonably competent firm should have identified, as specified in [CONRED 2 Annex 15R](#). Answer the questions in the template and complete your assessment by reference to the available evidence (information on the consumer file and any information received from a consumer).

Completing a template

Can I submit multiple reviews for the same investor within the same template?

The template must contain information relating to a single piece of advice only; a firm should not group together information relating to multiple pieces of advice for the same consumer over time, as this will result in incorrect redress statements being generated. A different template should be used for each scheme case. However, you can use one template if one piece of advice resulted in multiple investments e.g. if the investor was advised to invest £500 per month in the same fund for 2 years or to invest £1000 into two different Arch cru funds.

What are mandatory fields?

The template indicates which fields are 'mandatory' which means that an answer must be given. Once a valid response has been given the word 'Mandatory' by the field disappears.

How do I know if I have completed all of the mandatory fields?

At the top of the template there is a completion bar, this will show 100% if the all of the relevant sections have been completed.

I think I have completed all of the mandatory fields but the completion bar is not showing 100%

The spread sheet has a number of different tabs. Please ensure you have completed all of the mandatory fields in the first tab of the spread sheet and also in the second tab of the spread sheet – Transaction Details.

Do I need to complete the Transaction Details tab if the sale is compliant?

Yes, the scheme rules require you to enter the transaction details for compliant sales (See CONRED 2 Annex 12R).

Can I change the template order?

Firms should NOT alter the format of the template, if you amend the structure of the template or the order of the questions our e-mail server will not accept it.

Are there any restrictions on inputting information into the template?

Firms should not 'cut and paste' information into the template, if you do, our e-mail server will not accept it. For comment fields, firms are restricted to 3,000 characters which includes spaces.

What is an STR Reference?

This is an internal reference number a firm can create in order to uniquely identify a product advice suitability assessment template for a particular scheme case.

What does X% mean in row SR5 of the suitability requirements section?

X% relates to the percentage of the consumers savings and investments that were invested in the selected Arch cru fund.

I do not have all of the necessary information to complete the template, what should I do?

If you do not have sufficient information to complete the template (see CONRED 2.5.6 R) you should send out a letter to the consumer using the template set out in CONRED 2 Annex 8R (you can download a word version of the letter from our website:

<http://www.fca.org.uk/arch-cru-redress>

If the consumer does not respond to my request for information within 4 weeks what should I do?

If you do not receive a response from the consumer you should follow the steps set out in CONRED 2.5.7 (2).

Can I deduct the amount that the investor is eligible to receive under the CF Arch cru payment scheme from the amount of redress payable?

The amount that the investor is eligible to receive under the CF Arch cru payment scheme should be entered into the template. If you submit the completed template for a redress calculation, the calculator will deduct this amount from any redress payable regardless of whether the consumer has accepted it.

The investor has received more than one payment under the CF Arch cru payment scheme, how should I reflect this in the template?

If there is more than one payment under the CF Arch Cru payment scheme in relation to one investment, please add the payments together and enter the total sum in the template (the transaction type is called "Capita offer") and the date that the first payment was made.

The investor has received more than one Hardship Scheme payment in relation to one investment, how should I reflect this in the template?

Where there are multiple Hardship Scheme payments in relation to one investment please add the payments together and enter them as one total sum if the payments were received on the same date. If the dates of payment were different, please contact us using the details set out at the end of this guide.

How do I know which suitable investment benchmark to pick?

Please refer to [CONRED 2 Annex 13 10](#) - Redress Section which sets out how a firm should select a benchmark. [CONRED 2 Annex 14R](#) describes the suitable investment benchmarks.

What are the investment benchmarks and how are they calculated?

We do not have consumer-level data on attitude-to-risk for the entire population of investors. However, based on our file review sample, we have grouped the investors who received unsuitable advice into three broad categories based on the type of investment they would have made if suitably advised on this occasion:

- Consumers who should not have been advised to take any capital risk with their investment. We consider that an appropriate benchmark or comparator for these consumers would have been something achieving a return equal to the Bank of England base rate.
- Consumers who could have been suitably advised to take a small amount of risk with their capital. The benchmark used is a 50/50 combination of Association of Private Client Investment Managers and Stockbrokers (APCIMS) and Investment Management Association (IMA) indices characterised as 'cautious' or 'conservative'. This equates to an equity exposure of 20% to 60% in recognised public exchanges.
- Consumers who, if suitably advised, could have taken some amount of risk with their Capital. The benchmark used for these consumers is based on a 50/50 combination of APCIMS and IMA indices characterised as 'balanced'. This equates to an equity exposure of 40%-85% in recognised public exchanges.

We have extrapolated the APCIMS Conservative Index based on its constituent elements, as it does not cover the relevant period entirely. We used the same weightings of the underlying indices that made this up to create performance figures for our redress calculator backdated to the funds' inception.

What are distributions and how does the redress calculator take capital distributions into account?

Transaction inputs are defined in CONRED 2 Annex 13 4.1 R (3):

- **Income distribution:** any income distribution received by the *consumer* in respect of their shares in the *consumer's* investment prior to the date of suspension of the Arch cru funds.
- **Capital distribution:** any capital distribution received by the *consumer* in respect of their shares in the *consumer's* investment after the date of the suspension.

The key difference between the income distribution and the capital distribution is that the income distribution was received *before* suspension and the capital distribution *after* suspension. The redress calculator factors in any distributions when calculating the value of the alternative investment value over time, the distributions are not deducted at the end of the calculation. The relevant formulas are set out in CONRED 2 Annex 13R 10.

Submitting a completed template

What do I do when I have completed a template for a scheme case?

Please e-mail completed templates to archcureview@fca.org.uk

Can I encrypt the template before sending it?

Yes. Firms may encrypt their submissions by downloading and using the PGP key available from our website: <http://www.fca.org.uk/arch-cru-redress>

Encrypted submissions should be emailed to archcureview@fca.org.uk. Please note that you cannot use your own encryption software or post the templates to a secure data room. If you do use your own encryption rather than the PGP mentioned above, your submitted template will be rejected.

Will e-mail responses from the FCA be encrypted?

E-mail responses to firms from the FCA will not be encrypted.

How do I know if the completed template has been received?

You will receive an automatic e-mail confirming that the template has been received.

Can I send multiple templates in one email?

Yes, the system will accept up to TEN separate templates per email. If a firm wants to submit more than this at the same time then submissions must be split into separate emails. The number is set to keep processing efficient and the overall email size under the maximum size permitted by our email system.

What if the template contains errors?

The system will validate the data submitted overnight (if the template is submitted before 5pm on a working day and the next day is also a working day). Templates that have been amended (for example if the order of the questions has been changed) or contain incomplete data (e.g. if mandatory fields have not been completed) will be rejected. There are two rejection scenarios.

1. If the structure of the template has been changed e.g. if rows or columns have been removed an error will be detected and an email will be generated containing the rejection message(s). The email will be sent to the sender of the submission.
2. If the template contains missing data (for example if mandatory fields have not been completed) then a PDF rejection report will be generated (detailing which mandatory fields have not been completed) element and emailed back to the sender of the submission.

If there is a problem with the template, (and the template was submitted before 5pm on a working day) you will receive an e-mail the next working day explaining why the template has been rejected. The e-mail will explain why the template has been rejected and which particular field contains invalid data an example of this could be:

- a. If the format of the file does not match the file format expected e.g. PNG file is sent instead of Microsoft Excel document (version as stated earlier in the FAQ's)
- b. No attachment has been sent with the email
- c. Some of the files sent are valid but others are not e.g. this may happen if an email signature has an image and this may be treated as an attachment and rejected. Note: the valid attachment will be processed

Please correct the error and resubmit the template to archcureview@fca.org.uk

Redress calculation requests

How long will it be before the redress statement is produced?

If you need a redress calculation, send us your request before 5pm on a working day and

you should receive the calculation by e-mail the next working day. One redress statement will be produced per template.

What redress date will be used for the purposes of the calculation?

The redress will be calculated on the day that the firm submits the template if the template is submitted before 5pm on a working day and the next day is also a working day.

I submitted my template at 6pm on a Friday evening - what redress date will be used for the purposes of the calculation if the template does not contain any errors?

If the following Monday is a working day (not a bank holiday) the redress calculation will be carried out the following Monday and the redress statement will be e-mailed to you on Tuesday.

What happens to the submitted data?

Templates containing complete data will be stored in the system database.

What is the redress statement?

The redress statement details the redress payable to the consumer based on the data provided within the template. The statement provides a printed copy of all of the information relevant to the redress calculation submitted by the firm within the template.

The report will be emailed back to the sender of the submission on the next working day (if the template was submitted before 5pm on the previous working day) and will be created in a PDF file format.

What should I do if I have a query about the redress calculation?

CONRED sets out how the redress is calculated. If you have any questions about the calculation please contact the FCA's Customer Contact Centre on 0845 606 9966 or email fcc@fca.org.uk

General Questions on the scheme rules (CONRED)

Scope of the scheme

I provided advice to invest in the funds when Insinger de Beaufort was the manager, does CONRED apply to me?

Consumers who were advised to invest in the funds when Insinger de Beaufort was the manager are excluded from the scheme, but may be able to complain to the firm about the initial advice that they received or advice they may have received to stay invested when the fund's manager and strategy changed, or a failure to advise to disinvest where the adviser was under an obligation to do so.

The investor who I provided advice to is deceased, do I still need to carry out the steps under the scheme rules?

Yes. If the investor is deceased, the firm will have to deal with the deceased investor's personal representatives. You may wish to consider obtaining legal advice if in doubt as to how you should deal with PRs.

Identifying scheme cases – CONRED 2.4

Why are there specific dates set out in CONRED 2.4.2R?

CONRED 2.4.2 R (4) states:

2.4.2 R (4) if the applicable law in (3) is that of England, Wales or Northern Ireland, the consumer's investment in Arch cru funds was on or after 13 December 2006.

The date in CONRED 2.4.2 R (4) was chosen to reflect the applicable limitation period (the period of time within which a party must bring a claim). The usual limitation period for claims in contract or negligence is 6 years.

The FCA has the power to make rules requiring firms to establish and operate a consumer redress section under section 404 (Financial Services and Markets Act 2000). Under section 404(8) the FCA has the power to stop time running for the purpose of limitation.

The FSA Board made the rules for the consumer redress scheme on 13 December 2012. As such, for the purposes of calculating the limitation period (for England, Wales and Northern Ireland) sales made from 13 December 2006 will fall to be considered under the scheme, and are within the limitation period (so no defence of limitation is available to the firm).

Firms may be able to raise a defence of limitation for sales made before 13 December 2006, but will need to assess each sale on a case by case basis.

Under CONRED the limitation period is different for Scotland – this is because the law of limitation in this jurisdiction focuses on the ‘date of knowledge’. The “start date” for determining whether cases fall within the subject matter of the scheme where the applicable law is that of Scotland is set out in CONRED 2.4.2 R (5) - to summarise, there is no exact start date as such. However, cases where the consumer’s investment in the Arch cru funds was before 13 December 2007 are not within the subject matter of the scheme if the consumer knew or could with reasonable diligence have known before 13 December 2007 that they had suffered a loss (see also 2.4.3 E).

What should I do if my PI insurer tells me that taking any steps in CONRED would be in breach of my professional indemnity insurance policy?

Please refer to [CONRED 2.5.12-20](#) If, after reasonable efforts, you are unable to obtain the consent of your insurer to take the relevant steps, please contact us and we will consider whether it is appropriate for the FCA or a competent person to take the relevant steps under CONRED and (where relevant) issue a warning notice specifying the proposed determination. Please contact us using the contact details provided at the end of this guide.

What are the reporting requirements for firms?

Notifications and other reports required by the rules should be sent by e-mail to archcruadmin@fca.org.uk.

By 29 April 2013 – If a person has assumed a firm’s liabilities, the person must either perform the obligations the firm is required to perform under the scheme rules or ensure that those obligations are performed by the firm. The person must notify us whether the person or firm or both will be performing the obligations.

By 29 July 2013 – a firm must report to the FCA:

- 1) the total number of scheme cases (cases falling within CONRED 2.4.2R)
- 2) the total number of investments in Arch cru funds resulting from the regulated activities for a customer in CONRED 2.1.3R which fall outside the subject matter of the scheme (see CONRED 2.1.5R and CONRED 2.4.2R), with a summary explanation of the reason why in each case; and
- 3) the total number of opted-in scheme cases,

By 9 December 2013 – a firm must report to the FCA:

- 1) the total number of opted-in scheme cases (cases falling within CONRED 2.5.1R);
- 2) the total number of completed templates;

- 3) the total number of incomplete templates, with an explanation as to why the templates have not been completed;
- 4) the total number of redress cases;
- 5) the total number of *redress determinations* sent to *consumers*;
- 6) the total number of *consumers* that have been paid redress to date;
- 7) the total amount of redress paid to date; and
- 8) the total amount of redress unpaid to date.

What if my firm cannot carry out any of the steps required by the scheme rules within the timelines set out in the scheme rules?

If you consider that you are unable to comply with a scheme rule, we will consider granting a waiver if you are able to demonstrate that:

1. Compliance with the rule would be unduly burdensome OR would not achieve the rule's purpose; AND
2. the waiver would not adversely affect the advancement of any of the FCA's objectives.

Further information about how to apply for a waiver is available on our website:

<http://www.fca.org.uk/firms/authorisation/apply/waiver>

What is the latest on legal action in Guernsey?

The Policy Council of the States of Guernsey is appointing an independent mediator to help resolve some of the civil claims undertaken by the Arch Guernsey funds. The appointment will last until the end of June 2013.

The mediator will not be commenting on their appointment or on the mediation process.

We have been working with the Policy Council to set up this mediation and encourage all parties concerned to engage constructively with the mediator to avoid lengthy civil litigation.

This is a voluntary and confidential process, and we will be unable to comment further on its progress.

This does not affect the consumer redress scheme that began on 1 April. Firms which advised, arranged or managed investments in the CF Arch cru Diversified or Investment funds should continue to write to their clients and carry out the steps set out in CONRED.

Who do I contact if I have questions about the scheme that are not covered in the FAQs?

Firms should contact the FCA's Customer Contact Centre on 0845 606 9966 or email fcc@fca.org.uk