

## Policy Statement PS23/1

---

Extended asset retention  
requirement for firms under the  
British Steel Pension Scheme  
consumer redress scheme

January 2023

## This relates to

Consultation Paper 22/22  
which is available on our website at  
[www.fca.org.uk/publications](http://www.fca.org.uk/publications)

**Email:**

[cp22-22@fca.org.uk](mailto:cp22-22@fca.org.uk)

## Contents

<b>1.</b>	Summary	3
<b>2.</b>	The scope and duration of the extended asset retention rules	10
<b>3.</b>	The Financial Resilience Assessment	13
<b>4.</b>	The extended asset restriction rules	17
<b>5.</b>	Our Cost Benefit Analysis	21
<b>Annex 1</b>		
	List of non-confidential respondents	22
<b>Annex 2</b>		
	Abbreviations used in this paper	23
<b>Appendix 1</b>		
	Made rules – Legal instrument	



### Moving around this document

Use your browser's bookmarks and tools to navigate.

To **search** on a PC use Ctrl+F or Command+F on MACs.



### Sign up for our **news** and **publications alerts**

See all our latest press releases, consultations and speeches.

### Request an alternative format

Please complete this [form](#) if you require this content in an alternative format.

## Chapter 1

# Summary

- 1.1** In April 2022, we published Policy Statement [PS22/4](#) which introduced a temporary asset retention requirement for certain firms under the then proposed British Steel Pension Scheme (BSPS) consumer redress scheme. We introduced the temporary rules on an emergency basis, without consultation, in light of the risk that firms may seek to dispose of assets ahead of the consumer redress scheme being introduced.
- 1.2** In November 2022, we published Policy Statement [PS22/14](#) which confirmed that the consumer redress scheme would go ahead, with the scheme to start on 28 February 2023. The scheme rules require firms to assess any advice they gave to BSPS members to transfer out between 26 May 2016 and 29 March 2018, and to pay redress if the advice was unsuitable and caused the consumer a loss.
- 1.3** At the same time, we published Consultation Paper [CP22/22](#) which proposed an extension of the temporary asset retention requirement. This extension would mean that the asset retention rules continue to apply until firms have resolved all relevant BSPS cases that are subject to the rules of the BSPS consumer redress scheme ('scheme cases') and other relevant BSPS cases outside the scheme ('non-scheme cases'). Non-scheme cases include specific complaints that have been referred to the Financial Ombudsman Service and cases involving a past business review, which would have otherwise been in the scheme.
- 1.4** In this policy statement, we provide an update on the feedback that we received to our consultation paper in relation to the proposed extension of the asset retention requirement and set out our final rules that will apply from 11.59pm on 31 January 2023.

## Who this affects

---

- 1.5** These new rules affect:
- Firms that provided BSPS members with advice to transfer during the period of 26 May 2016 to 29 March 2018 (subject to certain exclusions) and their insurers. This will include firms that are subject to the BSPS consumer redress scheme, plus firms whose BSPS complaints have been referred to the Financial Ombudsman Service or are subject to a past business review (which are not in scope of the consumer redress scheme, but otherwise would have been).
- 1.6** Other groups may also be interested in this Policy Statement, including:
- industry groups and trade bodies
  - individual consumers, particularly BSPS members who transferred their pension, and their representatives
  - consumer groups

## The wider context of this policy statement

---

### Our consultation

- 1.7** We introduced a consumer redress scheme for consumers who were advised to transfer out of BPS because we were concerned about the widespread harm caused to a large number of consumers due to advice given by financial advisors between May 2016 and March 2018. We considered there may have been a widespread failure to provide suitable advice to BPS members between these dates.
- 1.8** We want to ensure that the firms that are responsible for causing this harm meet the cost of putting it right by paying redress to their customers where it is due. If firms seek to dissipate their assets, it will increase the prospect that they are unable to meet the cost of their redress liabilities and increase the likelihood of firm failure. This may mean that claims liabilities fall to the FSCS, with costs met by levy paying firms which were not responsible for the harm – and would ultimately likely lead to higher costs for consumers.
- 1.9** We have seen evidence of this risk materialising in the past, with firms trying to protect their interests at the expense of their customers and the wider industry. For example, in February 2022, we announced that we had stopped AJH Financial Services Limited, a firm that advised on transfers from BPS, disposing of assets without our permission. We were concerned that this firm did not have sufficient financial resources to pay potential redress claims and appeared to have paid out dividends rather than retaining assets. Additionally, in August 2021, an insolvency practitioner appointed to handle the potential liquidation of A.W. Dallas Financial Services Limited confirmed that the firm was to be placed into creditors' voluntary liquidation after we had opposed the potential sale of the business to a firm with common directors. The insolvency practitioner explained that the FCA did not consider it appropriate for the directors to continue to benefit from customers that were potentially mis-advised on BPS by A.W. Dallas, and whose redress liabilities would likely be left to the FSCS.
- 1.10** This is why we introduced the temporary asset retention rules in April 2022. We introduced these temporary rules on an emergency basis, without consultation, given the risk that firms may seek to dispose of assets before we introduced the (then) proposed consumer redress scheme. That intervention followed 'Dear CEO' letters we sent to firms in December 2021 and March 2022 where we explained that we expected to consult on a consumer redress scheme and set out our expectations on adequate financial resources and the retention of assets.
- 1.11** This is also why we consulted to extend the temporary asset retention rules in November 2022, so that they will continue to apply until firms have resolved all relevant cases of BPS advice that they are responsible for. This will help reduce the real risk that firms under the BPS consumer redress scheme seek to dispose of their assets to avoid having to meet the cost of any redress due to their customers.
- 1.12** This intervention will help ensure that the firms responsible for giving bad BPS advice meet the cost of the redress liabilities that arise and reduce the risk that the firm fails with costs being passed to FSCS levy payers. Accordingly, the intervention increases the likelihood that the 'polluters' which cause consumers harm and give rise to redress

liabilities meet the cost of those liabilities. Where firms do fail, the intervention is designed to increase the likelihood of an orderly wind up of the firm, reducing the impact on FSCS levy payers.

## How it links to our objectives

**1.13** The new rules support the following FCA objectives:

### *Consumer protection*

**1.14** The extended asset retention measures will increase the likelihood that firms can pay redress to consumers to meet their BSPS liabilities and reduce the likelihood of firms failing in a disorderly way. This should reduce the number of consumers who need to make a claim to the FSCS to get redress, where the FSCS's compensation limit (currently £85,000 for firms declared in default since April 2019) would apply.

**1.15** Reducing the number of claims referred to the FSCS may mean that lower costs are passed down to consumers. By reducing the opportunity for firms to avoid their liabilities by relying on the FSCS to pick up the cost of their misconduct, we expect to improve firm governance and conduct – to the benefit of consumers generally.

### *Market integrity*

**1.16** The asset retention measures help make sure the financial services market works well through improved financial resilience of firms and reduces the risk that firms who have caused consumer harm seek to avoid their liabilities. Where firms still fail, the measures are intended to reduce the impact on FSCS levy payers by helping to make sure the firms fail in an orderly way.

## What we are changing

---

**1.17** We have decided to implement the extended asset retention rules as consulted on in CP22/22 (subject to a minor change in relation to cases settled 'in full and final settlement', as explained at paragraph 3.9). The final rules have been updated in section 3 of the Consumer Redress Scheme sourcebook (CONRED) and have been included in Appendix 1.

**1.18** Our new rules extend the asset retention rules beyond the time when the current temporary rules expire on 31 January 2023. The extended rules will apply from 11:59pm on 31 January 2023 and require certain firms who provided transfer advice to BSPS members during the relevant period to preserve their ability to pay their customers' relevant claims. The rules will apply to a firm until it has resolved all scheme cases that it is responsible for under the rules of the BSPS consumer redress scheme, or other relevant non-scheme cases, as follows:

- Scheme cases: Instances of BSPS advice that are subject to the rules of the BSPS consumer redress scheme (subject to CONRED 3.1.1R(6A), as explained at paragraph 3.9).

- Non-scheme cases: Instances of BSPS advice that would be in scope of the rules of the BPS consumer redress scheme if they were not excluded under CONRED 4.2.2R(6) or CONRED 4.2.2R(7). These include certain complaints that have been referred to the Financial Ombudsman Service and cases that are subject to a past business review, that would have otherwise been in the scheme.

**1.19** The rules apply to firms that provided 'BSPS advice' during the relevant period which we defined as 26 May 2016 to 29 March 2018 (inclusive of both dates). By 'BSPS advice' we mean advice to a consumer to transfer their BPS pension benefits, which the consumer followed, where suitability requirements applied to the advice given. The following firms are excluded from the rules:

- Firms that provided BPS transfer advice to fewer than 3 consumers. This is a change from the previous exclusion under the temporary asset retention rules for firms which provided advice to fewer than 5 consumers.
- PRA-authorized firms.
- Firms that are natural persons (ie sole traders) or unlimited partnerships involving one or more natural persons.
- Firms that are subject to an insolvency order.
- Firms subject to a Creditors' Voluntary Liquidation. This is a change from the temporary rules, because of the similarities between that process and other insolvency processes.
- Firms subject to comparable asset retention requirements on their permissions through our direct and individual intervention.

**1.20** The asset retention rules require in-scope firms to assess whether they are likely to meet their contingent BPS redress liabilities on an ongoing basis. They are required to complete a prescribed Financial Resilience Assessment (FRA), and firms that have not previously completed an FRA (ie firms that arranged 3 or 4 BPS transactions) have to report the outcome to us by 28 February 2023. The FRA methodology is based on a combination of firm-specific inputs and assumptions based on market-wide data.

**1.21** Where the FRA suggests that a firm may not have sufficient assets to meet estimated contingent BPS liabilities, the asset restriction rules will prevent it from undertaking transactions that are not 'in the ordinary course of business'. Firms subject to the asset restriction rules would be able to continue carrying on their ordinary business but be unable to carry out other transactions that might reduce the assets that they have to meet potential redress liabilities.

**1.22** Firms that assess and have notified us that they have sufficient assets to meet estimated contingent BPS liabilities will not be affected by the extended asset restriction rules, or associated rules about notifications or consent for transactions, unless their circumstances change.

## Outcome we are seeking

---

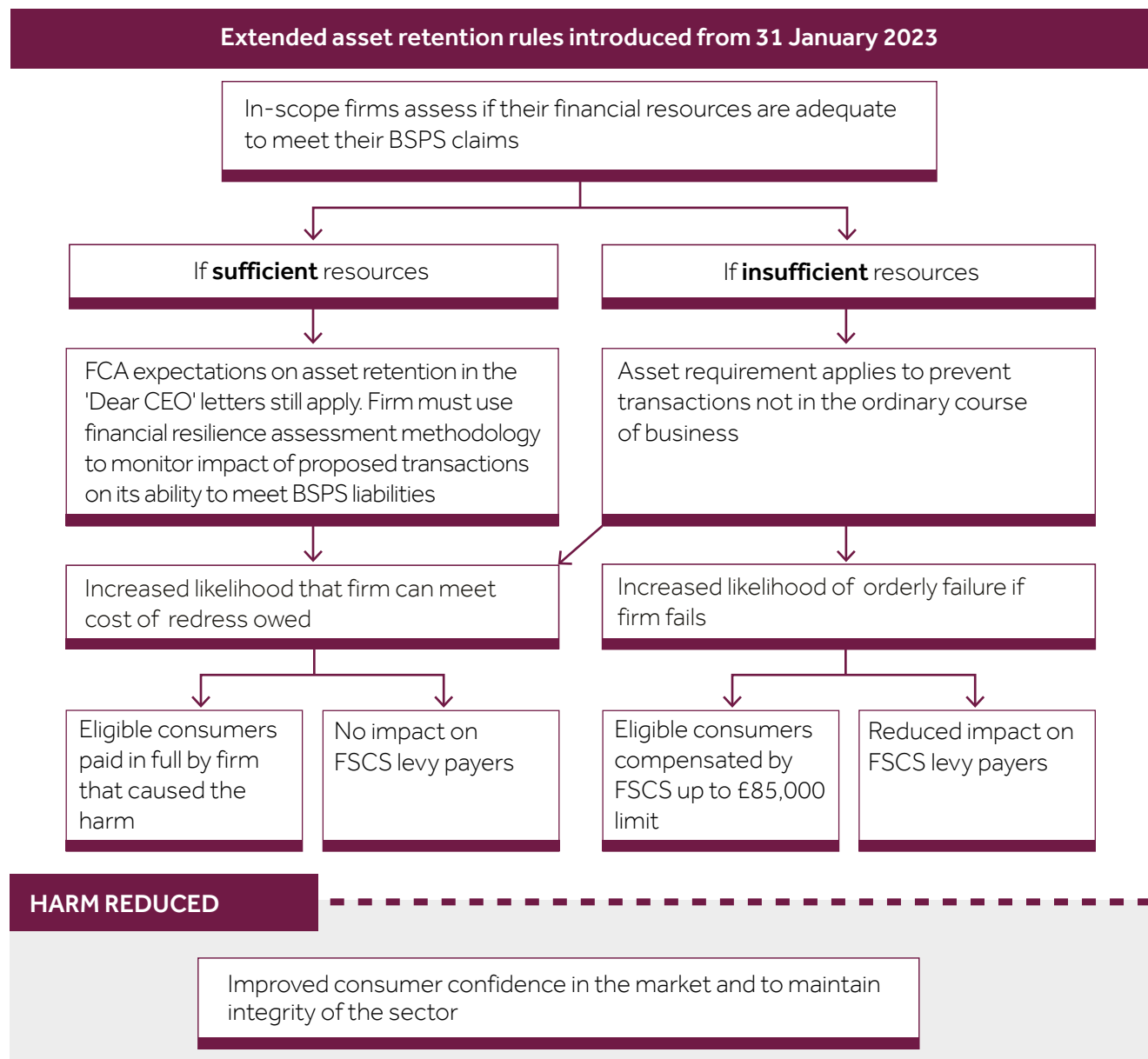
**1.23** We want to increase the likelihood that firms hold sufficient resources to enable them to meet the cost of BPS redress due to their customers. This will help ensure that the firms that have created BPS liabilities meet the cost of those liabilities, rather than

those liabilities falling to the FSCS and industry levy payers that were not responsible for the harm caused. Additionally, where the firm responsible meets the cost of redress itself, the customer who suffered financial loss because of the firm's conduct will be paid in full and not just up to the current compensation limit of £85,000 for FSCS claims.

**1.24** We know that some firms will still become insolvent despite our intervention. We want to increase the likelihood of an orderly failure of these firms and to increase the available resources for the firm's creditors – potentially including the FSCS. This may increase the amount that the FSCS is able to recover from the estate of the failed firm, assuming the FSCS declares it in default, and will help to reduce the costs to FSCS levy payers. Ultimately this intervention helps to protect consumers and to maintain the integrity of the financial services sector.

**1.25** The causal chain at Figure 1 illustrates the effect of our rules in reducing harm.

**Figure 1: Causal chain setting out how we expect the extended asset retention rules to reduce harm**



## Measuring success

---

- 1.26** Through these rules, we want to ensure that firms pay their redress liabilities as far as possible and do not seek to avoid responsibility. We would expect a lower proportion of BSPS firms to fail as a result of these rules. We will monitor the number of BSPS firms that fail following the commencement of the BSPS consumer redress scheme. We will also monitor notifications to ensure that the number of firms reporting that the asset restriction applies is in line with our expectations.

## Summary of feedback and our response

---

- 1.27** We received 2 responses to our consultation paper, from a statutory panel representing consumers and a firm that provides regulatory and business support to firms in the retail financial services market. Annex 1 lists the respondents. We are grateful for the respondents' input to our consultation.
- 1.28** The feedback was largely supportive of the purpose of the asset retention rules and the benefits. The main themes that arose from the consultation feedback were:
- One respondent queried whether it was appropriate to exclude firms which advised fewer than 3 customers to transfer out of BSPS and natural persons and asked for details of the numbers of excluded firms.
  - One respondent queried the treatment of cases in the FRA which had been assessed by the firm as being compliant, but which still had to be accounted for to allow time for the consumer to refer a possible complaint to the Financial Ombudsman Service.
  - One respondent queried how PII is accounted for in the FRA.
  - One respondent was concerned about the operational impact of the asset retention rules on firms, including reporting requirements. The respondent was also concerned about the impact of the financial restriction rules on firms, such as the ability of firms to pay reasonable wages. The respondent indicated that it would welcome further detail about the type of transactions that FCA would accept as being in the ordinary course of business.
  - One respondent requested further information about what the FCA or the FSCS is doing to pursue individuals knowingly and recklessly engaged in systemic mis-selling in relation to BSPS.
- 1.29** Considering the feedback received, we have decided to proceed with the extended asset retention rules as consulted on (subject to a minor change in relation to cases settled 'in full and final settlement', as explained at paragraph 3.9).
- 1.30** We provide further details about the feedback we received over chapters 2 to 5 and our response to the feedback.



## Equality and diversity considerations

---

- 1.31** We have considered the equality and diversity issues that may arise from the asset retention rules confirmed in this Policy Statement.
- 1.32** Overall, we do not consider that the proposals materially impact any of the groups with protected characteristics under the Equality Act 2010.
- 1.33** As explained in CP22/22, we believe our approach will not disadvantage or inadvertently discriminate against any person or group of people on the basis of their protected characteristics. The extended asset retention requirement will help ensure that the BSPS redress scheme will positively affect consumers with the protected characteristics of 'age', 'sex', and 'disability', as well as those in vulnerable circumstances such as consumers with low levels of financial resilience, by increasing the likelihood that those groups receive redress from their advising firm or that the firm fails in an orderly way.
- 1.34** We do not consider that the feedback we have received changes our original assessment.

## Next steps

---

- 1.35** The extended asset retention rules will apply from 11.59pm on 31 January 2023. The current temporary asset retention rules (ie as confirmed in PS22/4) continue to apply up to 31 January 2023.
- 1.36** In-scope firms are required to complete an FRA at least monthly, and immediately if the terms or availability of their professional indemnity insurance change or there is any other change in circumstances that could materially reduce their ability to meet BSPS claims. If a firm updates its FRA and the outcome previously notified to us has changed, it needs to re-notify us.
- 1.37** Firms that arranged 3 or 4 BSPS transactions, and which are subject to the asset retention rules for the first time, are required to report the outcome of their first FRA to us by 28 February 2023. The asset restriction will apply for these firms from the point the rules become effective until such time that the firm has reported the outcome of its FRA to the FCA, confirming that it is able to meet claims for unsuitable BSPS advice.

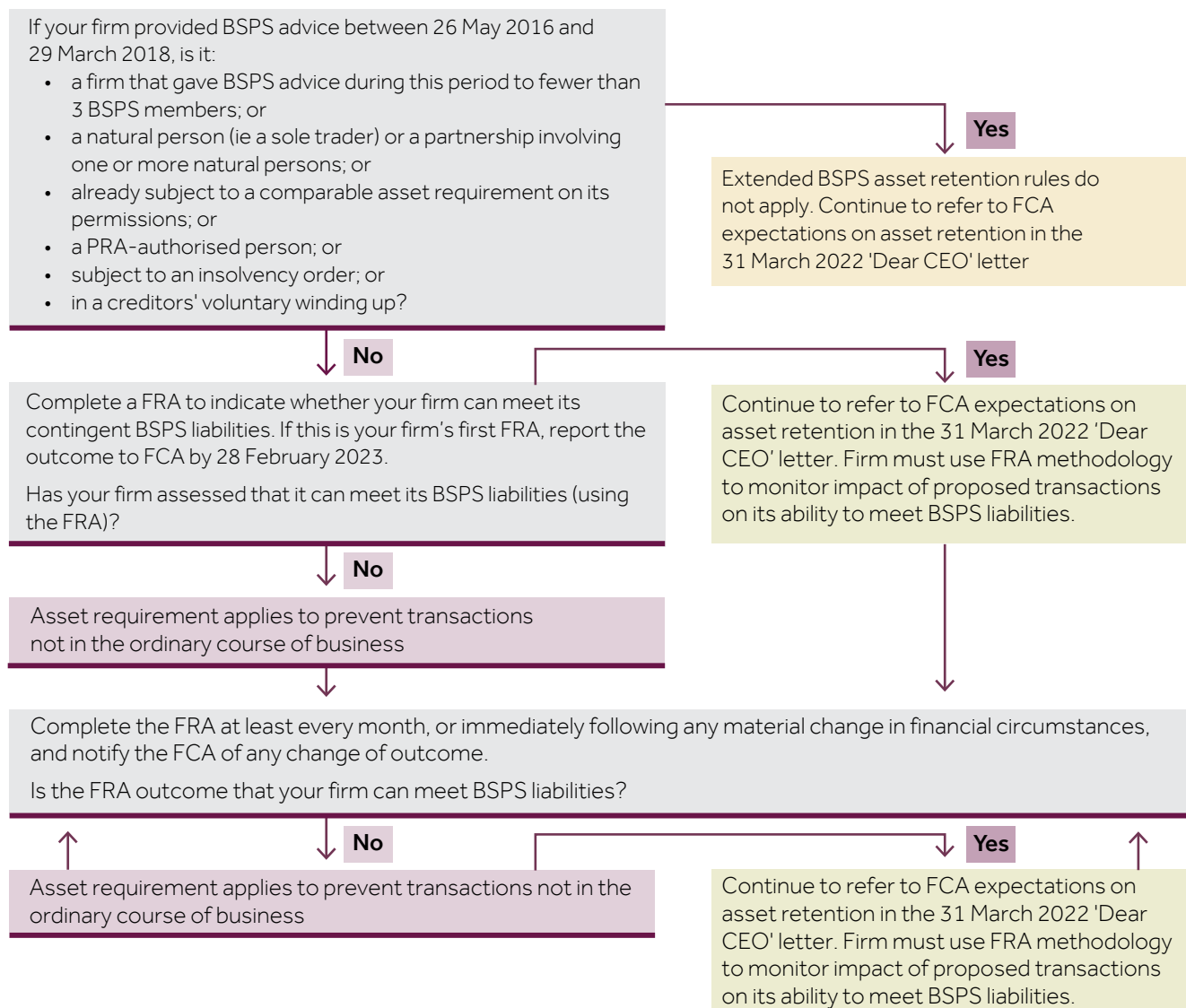
## Chapter 2

# The scope and duration of the extended asset retention rules

**2.1** In chapter 4 of our consultation paper, we set out our proposals in relation to the scope and duration of the proposed extended asset retention rules. We explained what categories of firm would be included and excluded from the scope of the extended asset retention rules and the duration that the rules would apply. We also explained how the rules would work for firms with appointed representatives and other similar scenarios.

**2.2** Figure 2 gives an overview of the scope and application of the extended asset retention rules.

**Figure 2: Application of BSPS asset retention measures**



**2.3** In CP22/22, we asked:

- Do you have any comments on the duration of the proposed extended rules?
- Do you have any comments on the types of firm that are in scope of the proposed extended rules?

## Duration of the extended rules

---

**2.4** One respondent indicated that it was disappointed that the asset retention rules would continue to apply beyond the point that a firm had completed an assessment in accordance with the rules of the consumer redress scheme.

### Our response

This point relates to how cases are accounted for in the FRA. We have therefore responded to this point in the next chapter.

---

## In-scope and excluded firms

---

**2.5** One respondent queried the proposal to exclude firms that arranged fewer than 3 BSPS transfers, suggesting that all firms should be subject to the rules, even if the firm only arranged 1 transfer. The respondent also queried the proposal to exclude firms that are 'natural persons' (ie. a sole trader). The respondent considered that these exclusions could penalise consumers and lead to different outcomes for customers of different firms. The respondent also asked for details of the number of firms that would be excluded and number of BSPS consumers affected.

### Our response

We consider that it is appropriate to exclude firms which arranged fewer than 3 BSPS transfers. This is to ensure that our intervention remains proportionate (considering the impact on both firms and the FCA) and is appropriately focused on those firms where there is a greater risk of customer harm (ie those firms which arranged a higher number of BSPS transfers). We also consider that it is appropriate to exclude firms that are natural persons (ie sole traders) or unlimited partnerships involving one or more natural persons. This is because there is no clear legal division between the personal and business assets of such firms, so we do not consider it appropriate to impose an asset restriction on these types of firm. As below, these firms represent a small proportion of the overall population of BSPS firms.

We have estimated that, of the approximately 352 firms that advised on BSPS, around 139 firms will be subject to the proposed asset retention rules, whilst around 213 firms will be subject to the proposed exclusions. The estimated 213 excluded firms include 194 firms which arranged fewer than 3 transactions (including 11 firms where other exclusions would also apply) and 19 firms which would be excluded for other reasons.

The estimated 139 in-scope firms were responsible for advising and arranging around 3,131 BPS transfers whilst the estimated 213 excluded firms were responsible for advising and arranging around 1,127 BPS transfers.

---

## Conclusion

---

### Our response

**After considering the feedback received, we have not made any changes to the rules consulted on in relation to the scope and duration of the extended asset retention rules.**

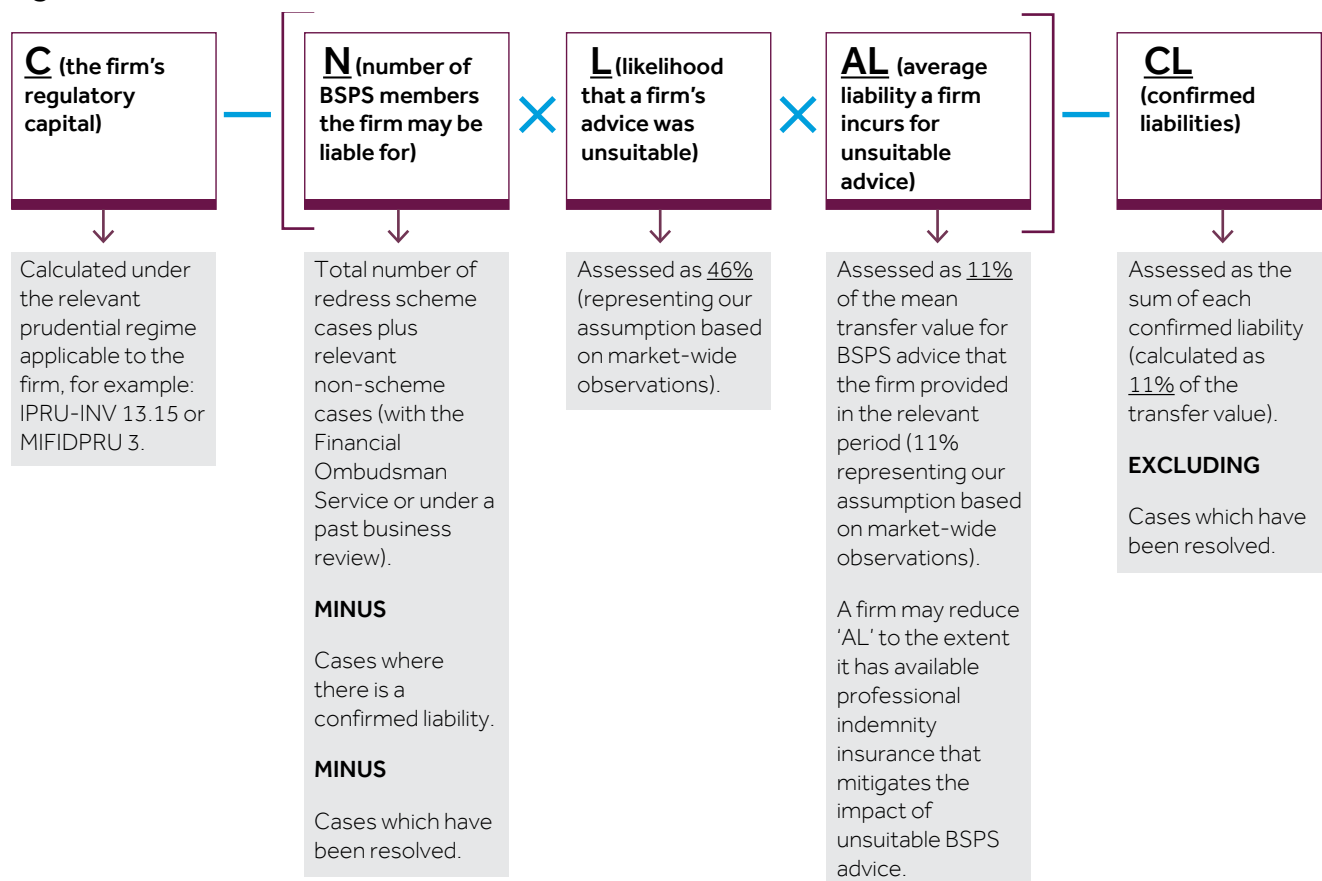
---

## Chapter 3

# The Financial Resilience Assessment

- 3.1** In chapter 5 of our consultation paper, we set out our proposals in relation to the FRA that firms were required to complete. The FRA represents a basic assessment of the adequacy of in-scope firms' financial resources to indicate if they can meet their BSPS claims. The assessment will also inform our risk-based supervision of these firms so our approach continues to be proportionate and targeted.
- 3.2** The FRA is a calculation that considers the firm's regulatory capital, the number of relevant BSPS claims the firm could be liable for, the likelihood of any BSPS advice being unsuitable and the estimated average liability for BSPS claims (reflecting any professional indemnity insurance in place). Some of these inputs are firm-specific, others prescribe assumptions based on market-wide data.
- 3.3** We also consulted on proposals to include an additional element for 'confirmed liabilities', which will apply once firms have assessed the suitability of their advice and causation (ie whether the advice caused the transfer and, if it did, whether the transfer caused any loss to the consumer).
- 3.4** The FRA calculation is summarised at Figure 3. Full details of how to calculate the individual elements of the FRA were included in CP22/22.

**Figure 3: Financial Resilience Assessment calculation**



**3.5** In CP22/22, we asked:

- Do you have any comments on the proposed Financial Resilience Assessment and the notifications process?

## The FRA calculation

---

**3.6** One respondent queried whether it was appropriate for the asset retention rules to apply to cases which the firm had assessed to be compliant, with no redress due. The respondent asked the FCA to consider whether only a proportion of such cases should continue to be accounted for in the FRA. The respondent was also concerned about the ability of the Financial Ombudsman Service to deal with BSPS complaints in a timely manner.

**3.7** Another respondent questioned whether it was appropriate that firms were able to account for PII in their FRA calculation and queried whether it may be preferable for a discount factor to be applied to reflect the risk that the PII provider may not cover all claims.

### Our response

The proposed rules require in-scope firms to complete a FRA for all relevant instances of BSPS advice. In cases where a firm has assessed the suitability of the advice given to be compliant, the proposed rules allow the firm to discount the case from the FRA calculation once the Financial Ombudsman Service has finished assessing any complaint, or 6 months has expired without a complaint being referred to it. We considered this would ensure that the case is only excluded from the asset retention rules once there is sufficient certainty as to whether the firm will owe the consumer a liability.

Following consideration, we maintain that it is reasonable to allow time for consumers to refer cases to the Financial Ombudsman Service – if they choose to – before allowing the firm to discount the case from their FRA calculation, to ensure there is greater certainty as to whether the firm's decision to reject a complaint is correct.

Whilst the Financial Ombudsman Service is operationally independent of the FCA, we are satisfied that, as the statutory body appointed to make decisions on financial services complaints, the Financial Ombudsman Service is able to deal with complaints about determinations under the BSPS consumer redress scheme and we understand that it is putting in place appropriate resources to ensure that consumer redress scheme cases are dealt with in a timely manner.

We consider it reasonable and appropriate to allow firms to account for the availability of PII in their FRA calculations. However, if a firm's PII policy excludes BSPS advice, or excludes liabilities that result from a consumer redress scheme, then a firm cannot rely on it to reduce the 'average liability'

or 'confirmed liability' elements of the FRA calculation. In November 2022, we sent a 'Dear CEO' letter to insurers that have provided PII insurance to BSPS firms, and to intermediaries that have arranged PII for BSPS firms, setting out our expectations including the provision of clear information about the extent of PII cover held by policyholders.

As explained in CP22/22, we will keep the average liability assumptions that form part of the FRA calculation under review in light of changing market conditions and may consider further changes if appropriate.

---

## Treatment of cases settled 'in full and final settlement'

---

- 3.8** On 26 January 2023 we published an update flagging that we are aware that certain firms are making unsolicited offers to former BSPS members who have not made complaints. We believe the actions by firms may be a deliberate attempt to exclude former members from participating in the consumer redress scheme, binding them to receiving less money than they might be entitled to under the scheme.
- 3.9** To ensure that cases are appropriately accounted for in the FRA, we have amended the rules as consulted on to clarify that a firm which has settled a potential case prior to the consumer redress scheme may only cease to count the case towards the FRA if the settlement amount has been calculated in accordance with the applicable FCA rules and guidance. We remind all firms that they are required to calculate any offer of redress in accordance with applicable regulatory requirements.
- 3.10** This is the only change to the rules for the FRA calculation as consulted on.

## Frequency of assessment and notifications to us

---

- 3.11** One respondent asked for confirmation that firms that are covered by the asset retention rules for the first time (ie firms that arranged 3 or 4 BSPS transfers) would be bound by the asset restriction until they had completed an FRA that confirmed they are able to meet their BSPS liabilities.
- 3.12** Whilst recognising the benefit in monitoring FRAs on an ongoing basis, one respondent asked the FCA to remain mindful of the burden that the FRA would place on in-scope firms along with other regulatory requirements, including those under the consumer redress scheme. The respondent suggested the FCA should consider the capacity and capability of smaller firms in its application of the rules and may wish to apply a more principles-based approach, particularly where a firm is aware through its management accounts that its capital position is increasing.

### Our response

Firms that arranged 3 or 4 BSPS transfers and are required to complete an FRA for the first time are required to report the outcome of their first FRA to us by 28 February 2023. These firms will be subject to the asset restriction from the point that the extended rules take effect (11.59pm on 31 January 2023) up to such time that the firm has reported the outcome of its FRA to the FCA, confirming that it is able to meet claims for unsuitable BSPS advice.

We are mindful of the impact of the asset retention rules on firms and have worked to ensure that the impact is proportionate to the benefits arising from the asset retention rules (particularly in minimising costs that arise from the failure of BSPS firms and helping to increase the likelihood that the firm that is responsible for BSPS advice meets the cost of any redress liabilities arising from negligent advice).

Ultimately, we consider that the impact of the requirement to complete a regular FRA calculation is moderate, considering that the data to be input into the FRA calculation is information that firms should have readily available (eg the status of BSPS cases that the firm is responsible for and the firm's regulatory capital). In particular, we consider the impact of the rules to be minimal for firms which can demonstrate that they can meet their BSPS liabilities under the FRA, meaning that they will not be affected by the extended asset restriction rules.

We consider that the prescribed nature of the FRA calculation (rather than an alternative principles-based assessment) is appropriate to ensure that firms apply the asset retention rules in a consistent way, to ensure that the intended outcomes are achieved and allowing the FCA to readily monitor adherence with the rules.

Accordingly, we have not made any changes to the frequency of the assessment or notification requirements.

---

## Conclusion

### Our response

**We have not made any changes to the rules consulted on in relation to the FRA although, as explained at paragraph 3.9, we have clarified the rules in connection with the treatment of cases settled in 'full and final settlement' in the FRA.**

---

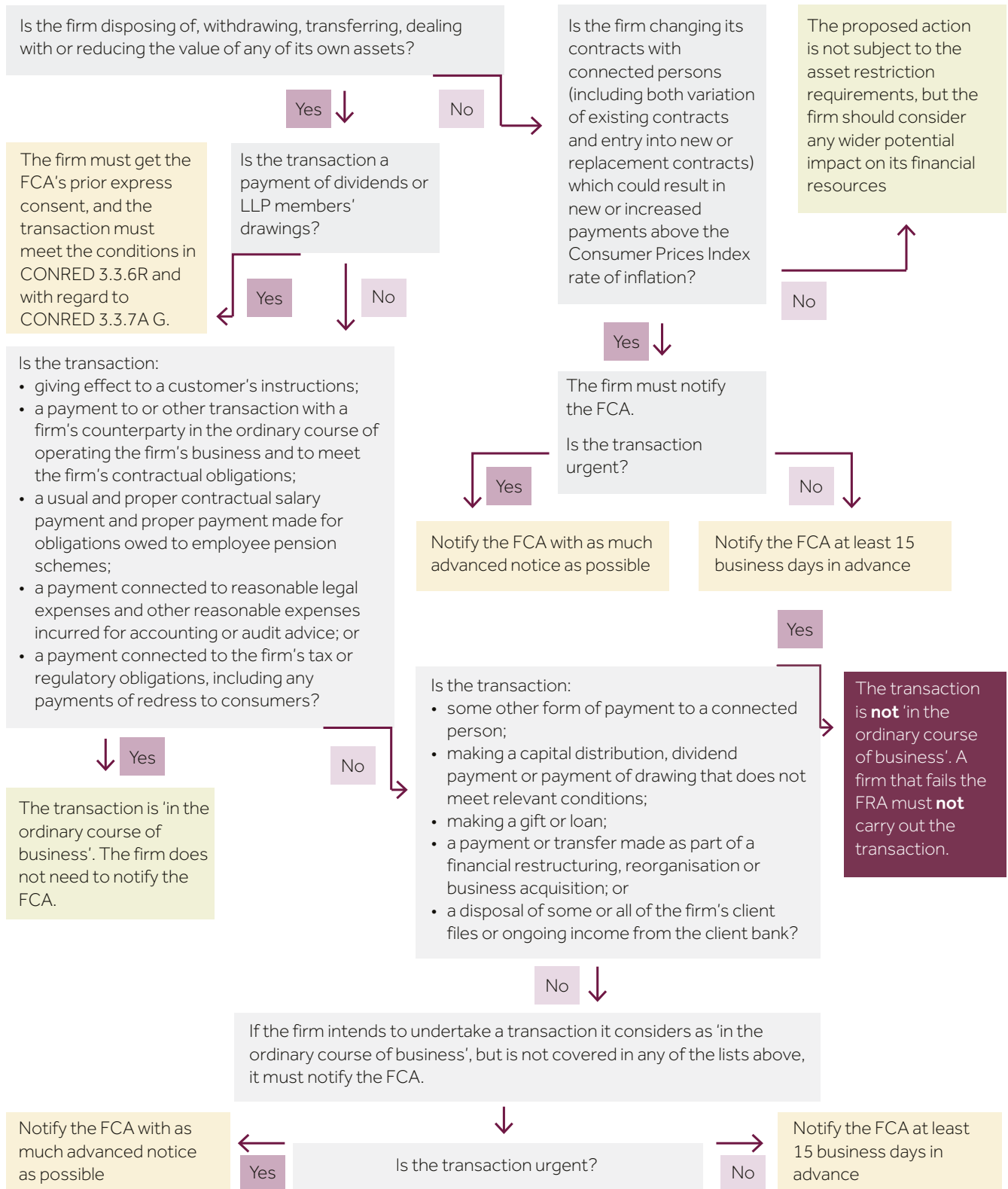


## Chapter 4

# The extended asset restriction rules

- 4.1** In chapter 6 of our consultation paper, we set out our proposals in relation to the extended asset restriction rules.
- 4.2** If a firm assesses that it cannot meet its BSPS liabilities using the FRA, or assesses that a proposed transaction would cause it to not be able to meet its BSPS liabilities, the extended asset restriction rules will prevent a firm from undertaking transactions that are not 'in the ordinary course of business'. Where a firm believes that certain higher-risk transactions are 'in the ordinary course of business', it must notify us in advance or have got our prior consent.
- 4.3** Figure 4 shows how the asset restriction rules work.

**Figure 4: Extended Asset Restriction Rules – transactions in the ‘ordinary course of business’**



**4.4** In CP22/22, we asked:

- Do you have any comments on the proposed extended asset restriction rules?
- Do you have any general comments about the overall proposals for the extended asset retention rules set out in this consultation paper?

## Comments on the asset restriction rules

---

**4.5** One respondent asked the FCA to ensure that due regard had been given to the individuals that sit behind in-scope firms, including the need to ensure individuals can be appropriately remunerated and to minimise the impact that the process has on individuals connected to in-scope firms. The respondent welcomed the additional guidance added at CONRED 3.3.7G but requested further examples of the types of transaction that have previously been permitted by the FCA (ie under the current temporary asset retention rules).

### Our response

The asset restriction rules have been designed to ensure that the impact on firms is proportionate, whilst ensuring that firms do not unduly dissipate assets which may mean that they are not able to meet the cost of BPS redress liabilities that may arise. The asset restriction rules allow firms to carry out transactions which are 'in the ordinary course of business', including the payment of usual and proper contractual salary payments. Where a transaction does not feature in the list of permitted payments, the rules require the firm to notify the FCA or obtain FCA consent.

Accordingly, the rules have been designed to allow in-scope firms to continue to operate, including making reasonable payments to staff, whilst reducing the risk that the firm dissipates assets to avoid meeting its redress liabilities. We consider that the approach taken is reasonable and proportionate.

We have not received large numbers of requests for clarifications about permitted transactions. We therefore believe these rules are generally understood and working as intended. We do not consider it to be appropriate to publish details of transactions which have been accepted as 'in the ordinary course of business' under the current temporary asset retention rules, as these assessments are necessarily firm-specific, and may not be relevant to other firms. The email address [BSPSredress@fca.org.uk](mailto:BSPSredress@fca.org.uk) remains available if firms have questions about particular transactions.

---

## General comments on the overall proposals

---

- 4.6** One respondent asked the FCA to remain mindful of the reputational impact on in-scope firms arising from the application of the asset retention rules. The respondent also asked for further detail about what the FCA or FSCS is doing to pursue those firms where individuals knowingly and recklessly engaged in systemic mis-selling in relation to BSPS.

### Our response

We consider that the impact of the asset retention rules is proportionate, including for those firms which are subject to the asset restriction. We do not consider that such firms will see a material adverse reputational impact, considering that the rules allow firms to undertake routine transactions which are in the ordinary course of business. Furthermore, we consider that firms would see a greater adverse reputational impact if they sought to dissipate assets in order to avoid the cost of BSPS redress liabilities (ie in the absence of the asset retention rules).

The FCA continues to progress around 30 ongoing enforcement investigations into firms and individuals relating wholly or partly to BSPS advice, all of which are at a very advanced stage and some are in litigation. In December 2022, we announced that we had fined Pembrokeshire Mortgage Centre Limited (trading as County Financial Consultants) (in liquidation) £2,354,331 for unsuitable advice to consumers to transfer out of the BSPS and other defined benefit pension schemes. As the statutory compensation scheme of last resort, the FSCS does not have regulatory responsibilities, therefore is not involved in taking action against firms.

---

## Conclusion

---

### Our response

**After considering the feedback received, we have not made any changes to the rules consulted on in relation to the asset restriction. Accordingly, we have made the asset restriction rules as consulted on in CP22/22.**

---

## Chapter 5

# Our Cost Benefit Analysis

- 5.1** In Annex 4 of our consultation paper, we set out assessment of the costs and benefits of the extension to the asset retention rules.
- 5.2** We explained that we considered the main benefits of the intervention are an estimated £3.2 million FSCS cost saving, as a consequence of fewer firms falling to the FSCS resulting in a reduction of the compensation costs and management expenses that would fall to FSCS levy payers, and a £1.4 million benefit to consumers as a result of being paid redress by the firm that is responsible for their BSPS advice, and by avoiding redress being capped at FSCS's compensation limit. We explained that the total benefits were greater than the estimated £0.8 million cost to firms of familiarising themselves and complying with the proposed rules. Under our 'full dissipation' scenario (whereby firms would dissipate all available assets, except for their regulatory minimum requirement), the benefit could be as high as £13.0 million.
- 5.3** In CP22/22, we asked:
- Do you have any comments on our cost benefit analysis?

## General comments

---

- 5.4** We did not receive any feedback in relation to our cost benefit analysis (CBA).

### Our response

As we have not made any material changes to the rules as consulted on (save for the minor change in relation to cases settled 'in full and final settlement', as explained at paragraph 3.9), and as we have not received any feedback in relation to the CBA, we have not updated the CBA in this Policy Statement.

---

## Conclusion

---

### Our response

**The CBA set out in CP22/22 continues to apply.**

---

## Annex 1

# List of non-confidential respondents

Financial Services Consumer Panel

Simply Biz Services Limited

## Annex 2

# Abbreviations used in this paper

Abbreviation	Description
<b>AL</b>	The 'average liability' element of the Financial Resilience Assessment calculation
<b>BSPS</b>	British Steel Pension Scheme
<b>C</b>	The 'regulatory capital' element of the Financial Resilience Assessment calculation
<b>CBA</b>	Cost benefit analysis
<b>CL</b>	The 'confirmed liabilities' element of the Financial Resilience Assessment calculation
<b>CONRED</b>	Consumer Redress Schemes sourcebook
<b>CP22/6</b>	'Consumer redress scheme for unsuitable advice to transfer out of the British Steel Pension Scheme' consultation paper, published in March 2022
<b>CP22/22</b>	'Proposed extended asset retention requirement for firms under the British Steel Pension Scheme consumer redress scheme' consultation paper, published in November 2022
<b>'Dear CEO' letters</b>	Letters sent to firms who gave pension transfer advice to BSPS members dated <u>22 December 2021</u> and <u>31 March 2022</u> . We also wrote to PII providers and intermediaries on <u>28 November 2022</u> .
<b>FCA</b>	Financial Conduct Authority
<b>FRA</b>	Financial Resilience Assessment
<b>FSCS</b>	Financial Services Compensation Scheme
<b>FSMA</b>	Financial Services and Markets Act 2000
<b>IPRU-INV</b>	Interim Prudential sourcebook for Investment Businesses
<b>L</b>	The 'liability' element of the Financial Resilience Assessment calculation
<b>LLP</b>	limited liability partnership
<b>LRRA</b>	Legislative and Regulatory Reform Act 2006

Abbreviation	Description
<b>MIFIDPRU</b>	Prudential sourcebook for Markets in Financial Instruments Directive Investment Firms
<b>N</b>	The 'number of relevant cases' element of the Financial Resilience Assessment calculation
<b>NAO</b>	National Audit Office
<b>Non-scheme case</b>	Instances of BSPS advice that would be in scope of the rules of the BSPS consumer redress scheme if not excluded under CONRED 4.2.2R(6) or CONRED 4.2.2R(7).
<b>PII</b>	Professional indemnity insurance
<b>PRA</b>	Prudential Regulation Authority
<b>PS22/4</b>	'Temporary asset retention requirement for certain firms subject to the proposed British Steel Pension Scheme consumer redress scheme' policy statement, published in April 2022
<b>PS22/14</b>	'Consumer redress scheme for unsuitable advice to transfer out of the British Steel Pension Scheme' policy statement, published in November 2022
<b>Scheme case</b>	Instances of BSPS advice that are subject to the rules of the BSPS consumer redress scheme (subject to CONRED 3.1.1R(6A))

All our publications are available to download from [www.fca.org.uk](http://www.fca.org.uk).

**Request an alternative format**

Please complete this [form](#) if you require this content in an alternative format.



**Sign up** for our **news and publications alerts**



## Appendix 1

# Made rules – Legal instrument

**BRITISH STEEL PENSION SCHEME (FINANCIAL RESILIENCE) (No 2)  
INSTRUMENT 2023**

**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 137T (General supplementary powers); and
  - (3) section 139A (Power of the FCA to give guidance).
- B. The rule-making provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force at 11:59pm on 31 January 2023.

**Amendments to the Handbook**

- D. The Consumer Redress Schemes sourcebook (CONRED) is amended in accordance with the Annex to this instrument.

**Notes**

- E. 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**

- F. This instrument may be cited as the British Steel Pension Scheme (Financial Resilience) (No 2) Instrument 2023.

By order of the Board  
26 January 2023

## Annex

## Consumer Redress Schemes sourcebook (CONRED)

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

### 3 British Steel Pension Scheme Financial Resilience Requirements

#### 3.1 Interpretation and application

##### Interpretation

3.1.1 R In this chapter, the following definitions apply:

...

(4) ‘BSPS claims’ means potential liability that a *firm* may incur for BSPS advice, determined as ~~the product of  $N \times L \times AL$  (as defined in accordance with *CONRED 3.2.2R*)~~ in accordance with *CONRED 3.2.2R(1)*;

(4A) ‘BSPS DBAAT’ means the British Steel Pension Scheme Defined Benefit Advice Assessment Tool in the form of the document at *CONRED 4 Annex 20R*;

(4B) ‘causation question’ is whether the *firm*’s failure to comply with the suitability requirements is the effective cause of the *consumer*’s loss;

(4C) ‘FCA DBAAT’ means the FCA Defined Benefit Advice Assessment Tool;

[*Editor’s note*: the FCA DBAAT is available at <https://www.fca.org.uk/firms/defined-benefit-pension-transfers>]

...

(6) ‘relevant period’ means 26 May 2016 to 29 March 2018 (inclusive of both dates);

(6A) (a) ‘scheme case’ is a case that meets the conditions in *CONRED 4.2.2R*, as modified by *CONRED 4.2.3R*;

(b) for the purposes of (a), *CONRED 4.2.2R(5)* must be read as follows:

(5) the *consumer* had not, prior to the scheme effective date, accepted an offer of redress from the *firm* or other *person* that was:

(a) calculated in accordance with the applicable *rules and guidance*; and

<p>(b) <u>in full and final settlement of all potential claims arising out of the advice in (1).</u></p>
--

(6B) 'non-scheme case' is a case that would be a scheme case if it were not for the condition in:

(a) CONRED 4.2.2R(6); or

(b) CONRED 4.2.2R(7);

...

3.1.1A G The effect of CONRED 3.1.1R(6A) is that a firm which has settled a potential case prior to the consumer redress scheme may only cease to count the case towards the Financial Resilience Assessment in CONRED 3.2 if the settlement amount has been calculated in accordance with the applicable rules and guidance. The FCA reminds all firms that they are required to calculate any offer of redress in accordance with applicable regulatory requirements.

Purpose

3.1.2 G The provisions in this chapter are ultimately intended to secure the payment of redress to consumers by ensuring that a firm does not inappropriately dissipate assets that could otherwise be used to fund redress payments. ~~However, they do not relate directly to a consumer redress scheme and are~~ This chapter is not made using the power in section 404 of the Act. However, it is intended to complement the consumer redress scheme in CONRED 4.

Scope of application

...

3.1.4 R CONRED 3 does not apply to any of the following:

...

(3) a firm that is subject to an insolvency order;

(3A) a firm that is in a creditors' voluntary winding up under Chapter IV of Part IV of the Insolvency Act 1986;

...

...

3.1.7 G ...

- 3.1.7A R Where a *firm* has advised one BSPS member on transferring multiple BSPS pension benefits (for example, pension benefits deriving from different periods of service), it must:
- (1) treat this as one instance of BSPS advice when calculating N in accordance with CONRED 3.2.4AR; and
  - (2) aggregate the cash equivalent transfer values for that member when calculating 'AL' in accordance with CONRED 3.2.5R.

Duration of application

- 3.1.8 R ~~CONRED 3 applies until the end of 31 January 2023.~~ has no end date.  
 G However, as a *firm* deals with potential redress cases (normally under CONRED 4), the cases will cease to count towards N or CL under the Financial Resilience Assessment in CONRED 3.2. Once N and CL are zero and a *firm* has notified the FCA accordingly, the obligations in CONRED 3 cease to be of any continuing relevance to the *firm*.

## 3.2 Financial resilience assessment

Purpose

...

- 3.2.2 R (1) A *firm* must assess its ability to meet BSPS claims for the relevant period using the following methodology:

$$C - (N \times L \times AL) - CL$$

where:

...

- (b) N is the ~~total number of BSPS members to whom the *firm* gave BPS advice,~~ less: number of cases calculated in accordance with CONRED 3.2.4AR;
- (i) ~~the number of BPS members to whom the *firm* has paid redress in full and final settlement; and [deleted]~~
  - (ii) ~~the number of BPS members who have made a complaint to the Ombudsman, and the Ombudsman has determined the complaint without making a money award in favour of the BPS member under DISP 3.7.1R; [deleted]~~
- (c) L is the likelihood that the *firm*'s BPS advice was unsuitable, which a *firm* must estimate at 46%; ~~and~~

- (d) AL is the average liability that a *firm* incurs for unsuitable BPS advice, which must be calculated in accordance with CONRED 3.2.5R; and
- (e) CL is the confirmed liabilities that a *firm* has, calculated in accordance with CONRED 3.2.6AR.

...

#### Regulatory capital

- 3.2.3 R (1) A *firm's* regulatory capital must be calculated in accordance with the prudential requirements applicable to it.
- (2) If a *firm* has made a provision on its balance sheet for liabilities connected to unsuitable advice on scheme cases that has reduced its regulatory capital, it may disregard the provision when calculating its regulatory capital for the purposes of this chapter.
- 3.2.4 G (1) A *personal investment firm's* regulatory capital is its capital resources calculated in accordance with *IPRU-INV* 13.15.
- (2) A *MIFIDPRU investment firm's* regulatory capital is its *own funds* calculated in accordance with *MIFIDPRU* 3.
- (3) CONRED 3.2.3R(2) addresses the scenario where a *firm* makes a provision on its balance sheet to cover anticipated losses arising from unsuitable BPS advice. The *FCA* encourages *firms* to consider making provision for redress liabilities on their balance sheets, in accordance with the relevant accounting standards.
- (4) When making a provision leads to a reduction of a *firm's* regulatory capital, this could result in 'double counting' of potential BPS liabilities when a *firm* performs the financial resilience assessment. As a result, the *FCA* is allowing a *firm* to disregard a provision that it has made which meets the relevant conditions. A *firm* may only disregard a provision to the extent it covers liabilities connected to unsuitable advice on scheme cases. Other provisions (for example, for liabilities for unsuitable advice that are not related to BPS) must not be disregarded. A provision may also only be disregarded when it has led to a reduction of a *firm's* regulatory capital.
- 3.2.4A R (1) N is the total number of scheme cases and non-scheme cases, less any cases falling within (2) or (3).
- (2) A *firm* may exclude the following scheme cases from N:
- (a) a case where the *firm* has sent the *consumer* the redress determination in CONRED 4 Annex 3R (Redress

determination: confirmation of consumer opt-out) in accordance with the requirements in CONRED 4;

(b) a case where:

(i) one of the following conditions is met:

(A) the firm has sent the consumer the redress determination letter in CONRED 4 Annex 6R (Redress determination: further information not provided) in accordance with the requirements in CONRED 4;

(B) the firm has sent the consumer the redress determination letter in CONRED 4 Annex 8R (Redress determination: unsuitable advice, no causation) in accordance with the requirements in CONRED 4; or

(C) the firm has sent the consumer the redress determination letter in CONRED 4 Annex 9R (Redress determination: suitable advice) in accordance with the requirements in CONRED 4;

(ii) 6 months have expired since the date of the letter in (i); and

(iii) a complaint relating to the letter in (i) has not been made to the Ombudsman;

(c) a case where a complaint has been made to the Ombudsman relating to the letter in CONRED 3.2.4AR(2)(b)(i), and the Ombudsman has dismissed the complaint; or

(d) a case where the firm, the Ombudsman or a skilled person has concluded that the advice provided to the consumer did not comply with the suitability requirements and has answered 'yes' to the causation question in the BSPS DBAAT or FCA DBAAT.

(3) A firm may exclude a non-scheme case in scenarios analogous to those in (2).

(4) If a firm is unsure whether a case falls within any of the exclusions in CONRED 3.2.4AR (2) or (3), it must include the case in N.

3.2.4B G (1) N is intended to be a dynamic number that reflects the total number of cases that could give rise to a redress liability. As a firm makes progress in resolving cases, we expect this number to fall as

cases are either recognised as ‘confirmed liabilities’ (‘CL’) or resolved in a way that confirms there is no liability.

- (2) CONRED 3.2.4AR(2) explains when a *firm* may cease counting a scheme case towards N. It works by referring to stages of the consumer redress scheme in CONRED 4, and certain letters required to be sent under the scheme.
- (3) Non-scheme cases are cases which are not required to be resolved through the consumer redress scheme, but which pose similar risks. As these cases are not required to be resolved in accordance with the prescriptive rules in CONRED 4, we are permitting a *firm* to exclude non-scheme cases in analogous scenarios to those in CONRED 3.2.4AR(2). For example, where a case has been excluded from the redress scheme because the *firm* appointed a *skilled person* to carry out a past business review and the *firm* has communicated to the *consumer* that the advice was suitable, a *firm* may exclude this case from N if 6 months have expired without a complaint to the *Ombudsman*, or if the *Ombudsman* dismisses the complaint.

#### Average liability for unsuitable BPS advice

- 3.2.5 R (1) A *firm* must calculate AL as ~~16%~~ 11% of the mean cash equivalent transfer value for BPS advice (excluding any advice given to BPS members falling within ~~CONRED 3.2.2R(1)(b)(i) or (ii)~~ CONRED 3.2.4AR (2) or (3)) that the *firm* provided in the relevant period, subject to (2).
- ...
- 3.2.6 G ...
- 3.2.6A R (1) CL must be calculated in accordance with this rule.
- (2) A *firm* has a confirmed liability where the *firm*, *Ombudsman* or a *skilled person* has concluded that the advice provided to a *consumer* did not comply with the suitability requirements and has answered ‘yes’ to the causation question in the BPS DBAAT or FCA DBAAT.
- (3) A *firm* may cease to treat a scheme case as a confirmed liability in the following scenarios:
- (a) the *firm* has paid redress to the *consumer* in full and final settlement; or
- (b) (i) one of the following applies:
- (A) the *firm* has sent the *consumer* the redress determination letter in CONRED 4 Annex 12R (Redress determination: Redress



calculation – information not provided) in accordance with the requirements in CONRED 4;

- (B) the firm has calculated the amount of redress owed to the consumer in accordance with CONRED 4.4.2R, decided that no redress is owed, and has sent the consumer the redress determination letter in CONRED 4 Annex 13R (Redress determination: Result of redress calculation) in accordance with the requirements in CONRED 4; or
- (C) the firm has sent the consumer the redress determination letter in CONRED 4 Annex 17R (Redress Determination: payment acceptance not provided) in accordance with the requirements in CONRED 4;
  - (ii) 6 months have expired since the date of the letter in (i); and
  - (iii) a complaint relating to the letter in (i) has not been made to the Ombudsman; or
- (c) a case where a complaint has been made to the Ombudsman relating to the letter in CONRED 3.2.6AR(3)(b)(i), and the Ombudsman has dismissed the complaint.
- (4) A firm may cease to treat a non-scheme case as a confirmed liability in scenarios analogous to those in (3).
- (5) If a firm is unsure whether a case falls within any of the exclusions in CONRED 3.2.6AR(3) or (4), it must include the case in CL.
- (6) A firm must quantify each confirmed liability as 11% of the mean cash equivalent transfer value for that case.
- (7) CL is the aggregate amount of all confirmed liabilities.
- (8) A firm may reduce the value of CL to reflect the impact of professional indemnity insurance where the conditions in CONRED 3.2.5R(2) to (4) are met (and applying the conditions and obligations in CONRED 3.2.5R(2) to (4) as if references to AL were to CL).

#### Notification ~~requirement~~ requirements

- 3.2.7 R (1) A firm must notify (save in the circumstances in (1A)) have notified the FCA of the outcome of the financial resilience assessment in CONRED 3.2.2R before the end of 27 May 2022.

- (1A) A firm that has only provided BSPS advice to a total of 3 or 4 members of the BSPS must notify the FCA of the outcome of the financial resilience assessment in CONRED 3.2.2R before the end of 28 February 2023.
- (2) If a firm has relied on professional indemnity insurance to reduce the value of its potential liability for BSPS advice in accordance with CONRED 3.2.5R(2), the notification in (1) must contain:
- (a) a statement of the value of the reduction that the firm has applied in connection with the professional indemnity insurance; and
  - (b) an explanation of why the firm has concluded that the potential liability is covered by professional indemnity insurance.
- (3) A firm must update its financial resilience assessment referred to in (1) or (1A):
- (a) immediately following any change in the firm's circumstances that could materially reduce its ability to meet BSPS claims; and
  - (b) in any case, at least once a month.
- (4) A firm must immediately notify the FCA if the firm has updated its financial resilience assessment and the outcome previously notified to the FCA has changed.
- (5) Any notification made under ~~(1) or (4)~~ (1), (1A), (4) or (7) must:
- (a) be submitted as follows:
    - (i) where an electronic system has been made available by the FCA for the purposes of the notification, the notification must be submitted using that electronic system; and
    - (ii) in any other case, the notification must be submitted by email to the FCA at BSPSredress@fca.org.uk; and
  - (b) be approved and signed by an individual approved to perform the *compliance oversight function* for the firm or, if that is not possible, by an individual approved to perform another appropriate *senior management function* within the firm.
- (6) For the purposes of (5)(b), a notification is to be treated as signed where any of the following apply:

- (a) it contains an image of a ‘wet ink’ signature applied by the appropriate individual;
- (b) it contains an electronic signature applied by the appropriate individual; or
- (c) it contains a typed name applied by, or with the express consent of, the appropriate individual.

(7) A firm must promptly notify the FCA once N and CL, as calculated under CONRED 3.2.4AR and CONRED 3.2.6AR, are both zero.

(8) This rule ceases to apply to a firm once N and CL, as calculated under CONRED 3.2.4AR and CONRED 3.2.6AR, are both zero and the firm has notified under (7).

### 3.3 Asset restriction

...

The asset restriction

...

- 3.3.4 G (1) CONRED 3.3.3R contains a restriction (the ‘asset restriction’) that prevents a *firm* from undertaking transactions that could have the effect of dissipating the value of the *firm*’s assets, except to the extent that an exception in CONRED 3.3.3R(1) or (2) applies.
- (2) Under CONRED 3.3.3R(1), the asset restriction does not apply to a transaction that a *firm* undertakes in the ordinary course of business. CONRED 3.3.5R contains a non-exhaustive list of transactions that a *firm* may treat as being undertaken in the ordinary course of business for these purposes. ~~CONRED 3.3.6R~~ 3.3.8R contains a list of transactions that a *firm* must not treat as being undertaken in the ordinary course of business.

...

...

Payment of dividends and LLP members’ drawings

- 3.3.6 R (1) A *firm* may treat a dividend as being paid in the ordinary course of business for the purposes of CONRED 3.3.3R(1) if the *firm* has obtained prior express consent from the FCA.
- (2) To obtain the consent in (1), a *firm* must:

- (a) notify the *FCA* by email to [BSPSredress@fca.org.uk](mailto:BSPSredress@fca.org.uk), including the following information:
  - (i) the value of the proposed dividend(s);
  - (ii) the date on which the *firm* intends to pay the proposed dividend(s);
  - (iii) the recipients of the proposed dividend(s);
  - (iv) a clear statement of the quantified effect of the payment of the proposed dividend(s) on the *firm*'s regulatory capital position;
  - (v) a copy of the *firm*'s latest management accounts; and
  - (vi) an express confirmation that the payment of the proposed dividend(s) is lawful under applicable company or partnership law and insolvency law; and
- (b) as part of the notification in (1), demonstrate both of the following to the reasonable satisfaction of the *FCA*:
  - (i) the dividend(s) will be paid in connection with services provided for or on behalf of the *firm* by a natural person; and
  - (ii) the timing of the proposed payment and the value of the dividend(s) are consistent with the historical pattern of the payment of dividends for equivalent purposes over the immediately preceding 12 *months*.
- (3) For the purposes of this *rule*, a reference to a 'dividend' includes drawings paid to a member of a *limited liability partnership*.

3.3.7 G The purpose of *CONRED* 3.3.6R is to permit a *firm* that is subject to the asset restriction to pay dividends or drawings to individual shareholders or members where those individuals perform services for the *firm* and have historically been paid through similar dividends or drawings and prior *FCA* consent to the dividends or drawings has been obtained. Any dividends or drawings paid must be consistent in terms of both their value and their timing with previous dividends or drawings paid by the *firm* for that purpose. The *firm* must also confirm to the *FCA* that the payment of the dividend or drawings would be lawful, having regard to any relevant restrictions that may apply in areas such as company law or insolvency law. A *firm* may wish to obtain professional advice to confirm its analysis before giving the required confirmation.

3.3.7A G (1) As part of the notification in *CONRED* 3.3.6R, a *firm* is required to include a clear statement of the quantified effect of the payment

of the proposed dividend(s) on the *firm*'s regulatory capital position. A *firm* should provide this information by:

- (a) providing financial forecasts which show the expected change in the *firm*'s regulatory capital over time; and
- (b) explaining the impact of proposed dividend payments on these financial forecasts.

- (2) When quantifying a proposed dividend payment, we expect a *firm* to consider its regulatory obligations under the *threshold conditions* and the *principles*. Dividend payments which allow a *firm* to increase its regulatory capital over time, and which support the *firm* in passing the financial resilience assessment in *CONRED 3.2.2R* over a reasonable time horizon, would support compliance with these obligations.

...

## Sch 2 Notification requirements

...

After Sch 2.1G, insert the following table as Sch 2.1AG. The text is all new and is not underlined.

Handbook reference	Matters to be notified	Contents of notification		Time allowed
<i>CONRED 3.2.7R(1), (1A) and (4)</i>	Outcome of the financial resilience assessment in <i>CONRED 3.2.2R</i>	Outcome of the financial resilience assessment in <i>CONRED 3.2.2R</i>		Before the end of 27 May 2022 or 28 February 2023, and immediately if the outcome changes
<i>CONRED 3.2.7R(7)</i>	That N and CL, as calculated under <i>CONRED 3.2.4AR</i> and <i>CONRED 3.2.6AR</i> , are both zero	That N and CL, as calculated under <i>CONRED 3.2.4AR</i> and <i>CONRED 3.2.6AR</i> , are both zero		Promptly
<i>CONRED 3.3.6R</i>	Where the <i>firm</i> wishes to obtain prior express consent from the <i>FCA</i> for payment of dividends or	(a)	the value of the proposed dividend(s);	In advance (express consent required)
		(b)	the date on which the <i>firm</i> intends to pay the proposed dividend(s);	

	LLP members drawings	(c)	the recipients of the proposed dividend(s);	
		(d)	a clear statement of the quantified effect of the payment of the proposed dividend(s) on the <i>firm's</i> regulatory capital position;	
		(e)	a copy of the <i>firm's</i> latest management accounts;	
		(f)	an express confirmation that the payment of the proposed dividend(s) is lawful under applicable company or partnership law and insolvency law;	
		(g)	demonstration that the dividend(s) will be paid in connection with services provided for or on behalf of the <i>firm</i> by a natural person; and	
		(h)	demonstration that the timing of the proposed payment and the value of the dividend(s) are consistent with the historical pattern of the payment of dividends for equivalent purposes over the immediately preceding 12 months.	
<i>CONRED</i> 3.3.10R	Transactions in the ordinary course of business which do not fall within <i>CONRED</i> 3.3.5R  Any contract change with <i>connected persons</i> which could result in payments above	(a)	an explanation of the transaction or contract change;	At least 15 <i>business days</i> in advance, unless urgent situation
		(b)	an explanation of the quantifiable impact on the <i>firm's</i> financial resilience assessment under <i>CONRED</i> 3.2.2R;	
		(c)	an explanation of why the <i>firm</i> considers that the transaction or contract	

	the de minimis threshold		change occurs in the ordinary course of business and is therefore permitted;	
		(d)	reference to any comparable historic payments or contract changes which support the <i>firm's</i> view that this occurs in the ordinary course of business; and	
		(e)	in the case of a notification on an urgent basis under <i>CONRED</i> 3.3.10R(2), an explanation of the nature of the urgency and why it has not been possible to comply with the normal 15- <i>business day</i> notification requirement in <i>CONRED</i> 3.3.10R(1).	

