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**FIRST SUPERVISORY NOTICE**

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**To: QED Financial Associates Ltd****Reference Number: 587216****Address: Regents Court  
St Mary's Street  
Penistone  
Sheffield  
S36 6DT****Date: 28 April 2023****1 ACTION**

1.1 For the reasons given in this First Supervisory Notice, and pursuant to section 55L(3)(a) of the Financial Services and Markets Act 2000 ("the Act"), the Financial Conduct Authority ("the Authority") has decided to impose the following requirements ("the Requirements") on QED Financial Associates Ltd ("the Firm") with immediate effect:

- 1) Where consumers who were BSPS members have accepted unsolicited settlement offers from the Firm prior to 28 February 2023, the Firm must, subject to Requirements (2) to (5) below, follow in full all the same processes set out in the Redress Scheme that they must for consumers who did not, prior to 28 February 2023, accept any offer of redress in connection with BSPS pension transfers, including (but not limited to):
  - i. following all requirements in relation to reporting to and notification to the Authority;
  - ii. observing all deadlines;

- iii. sending all letters and conducting all communications required under the Redress Scheme in circumstances specified therein and following the provisions relating to communications with consumers and other firms;
    - iv. following all information gathering requirements;
    - v. conducting case reviews using the process set out within the Redress Scheme;
    - vi. following all supervision and delegation requirements;
    - vii. complying with requests for information from the Authority (in the circumstances specified in the Redress Scheme); and
    - viii. following all record-keeping requirements.
  - 2) For any consumers who have accepted unsolicited settlement offers the Firm must by 9 May 2023 send a letter in the form at Annex B instead of the letter at CONRED 4 Annex 2 R Consumer within scope/confirming inclusion and any reference within the Redress Scheme to the letter at CONRED 4 Annex 2 R should be read as a reference to the letter at Annex B.
  - 3) If in carrying out requirement 1) the Firm calculates that the redress payable to a consumer is higher than the payment that consumer received pursuant to an unsolicited settlement offer, the Firm must offer the difference to the consumer using the process set out in CONRED 4.4.5R.
  - 4) If in carrying out requirement 1), the Firm calculates that the redress payable to a consumer is lower than the payment that consumer received pursuant to an unsolicited settlement offer, the Firm must not ask the consumer to repay the difference to the Firm.
  - 5) The Firm must not make any communication to a consumer which seeks to influence, for the benefit of the Firm, the outcome of requirement 1) or a consumer's decision to opt out in relation to requirement 2), either by seeking to influence the content of information provided by the consumer in response to the Firm's requests made when following the processes set out in the Redress Scheme, or otherwise. For the avoidance of doubt, this also applies such that the Firm must not allow any other parties to make any communications to consumers in this way.
  - 6) The Firm must secure all books and records and preserve information and systems that relate to regulated activities carried on by it, and must retain these in a form and at a location (to be notified to the Authority in writing by 9 May 2023 such that they can be provided to the Authority, or to a person named by the Authority, promptly upon request.
- 1.2 These Requirements shall take immediate effect and remain in force unless and until varied or cancelled by the Authority (either on the application of the Firm or of the Authority's own volition).

## 2 REASONS FOR ACTION

### Summary

- 2.1 In December 2022 and January 2023, the Firm made unsolicited settlement offers to 26 out of 28 (93%) of its customers who were former BSPS members. Of those offers, 25 out of 26 were for £300 on the basis that they were “no loss” cases and one client was offered £3,141.57 as redress. As at the date of this Notice, the Authority is aware that 17 (65%) of former BSPS members have accepted the Firm’s offer, including the customer who received an offer of c.£3,000.
- 2.2 The Authority has concluded, on the basis of the facts and matters described below that, in respect of the Firm, it is necessary to exercise its power under section 55L(3)(a) of the Act to impose the Requirements on the Firm because it is failing, or is likely to fail, to satisfy the Threshold Conditions and it is desirable in order to advance one or more of the Authority’s operational objectives, which includes securing an appropriate degree of protection for consumers.
- 2.3 The Authority has serious concerns about the Firm’s conduct in respect of the Redress Scheme because of evidence that it may be in breach of Principle 6 of the Authority’s Principles for Businesses, requiring it to pay due regard to its customers’ interests and to treat them fairly. Specifically:
- 1) Although the Firm has the legal right to enter into settlement agreements, in doing so the Firm must have due regard to customers’ interests and treat them fairly.
  - 2) The unsolicited settlement offers of £300 and c.£3,000 are significantly misaligned with estimates used in the sensitivity analysis for the Authority’s cost benefit analysis (“CBA”) conducted in connection with the introduction of the Redress Scheme. The Authority estimated average redress of £45,000 per former BSPS member, based on estimated average financial loss of 12% of the average transfer value of £374,000. Even allowing for a reasonable variation within settlement figures, it is unlikely that there should be such a significant disparity between the Firm’s calculation and the CBA estimate. Although it appears that the Firm considered the customer who was offered c.£3,000 as entitled to redress (and so was not a “no loss” case) that offer is still significantly below the CBA estimate.
  - 3) It appears that the Firm considered customers to whom it made offers of £300 as having suffered no loss. Since the offers were made to 25 out of 28 (89%) of the Firm’s BSPS customers, it appears that the Firm considers that that 89% of its BSPS customers suffered no loss. Again, this is significantly misaligned with the Authority’s estimate that 32% of members would have suffered no loss. That all the offers were for the same very low amount indicates that the Firm may not have considered the likely redress owed to customers on a case-by-case basis, and it appears that it may have treated almost all customers as no loss cases. The Authority would expect that the disparity to case the Firm to question whether its settlement offers were actually treating customers fairly and whether it would have been appropriate to include such customers in the Redress Scheme. Supervision considers that this indicates a risk that the approach taken by the Firm in calculating the settlement offers is flawed and fails to treat customers fairly.
  - 4) The offers to the purported “no loss” customers were not communicated to

customers in a manner that was clear, fair and not misleading. The offer letters sent by the Firm's lawyers indicated that, in their view, the prevailing economic position would lead to lower redress irrespective of any changes to the redress calculation methodology introduced as a result of the Authority's consultations CP22/6 and CP22/15. The Authority considers that this downplayed the likelihood that calculations carried out at a later date in accordance with a BSPS redress scheme or other modified guidance might lead to greater redress than the sum of £300 offered.

5) The Firm made three settlement offers on 31 January 2023 despite the Authority's press release on 26 January 2023 and Dear SMF email on 30 January 2023 warning firms against making unsolicited settlement offers to former BSPS members.

2.4 The Authority is concerned that the Firm represents a serious ongoing risk to consumers and considers that the imposition of the proposed Requirements is desirable to secure an appropriate degree of protection for consumers (section 1C of the Act). The Authority further consider that the Firm may be failing, or may be likely to fail, to satisfy the Effective Supervision Threshold Condition (paragraph 2C of Schedule 6 of the Act) because the Firm may not be capable of being effectively supervised by the Authority having regard to all the circumstances.

2.5 These Requirements shall take immediate effect and remain in force unless and until varied or cancelled by the Authority (either on the application of the Firm or of the Authority's own volition).

### **3 DEFINITIONS**

3.1 The definitions below are used in this First Supervisory Notice:

"the Act" means the Financial Services and Markets Act 2000;

"the Authority" means the Financial Conduct Authority;

"BSPS" means the British Steel Pension Scheme;

"DB" means Defined Benefit;

"DC" means Defined Contribution";

"the Firm" means QED Financial Associates Ltd;

"Handbook" means the Authority's online handbook of rules and guidance (as in force from time to time);

"Principles" means the Authority's Principles for Businesses which are general statements of the fundamental obligations of firms under the regulatory system;

"the Redress Scheme" means the consumer redress scheme created by CONRED 4 (British Steel Consumer Redress Scheme);

"Requirements" means the terms imposed on the Firm by this First Supervisory Notice as outline in section 1 above; and

"Tribunal" means the Upper Tribunal (Tax and Chancery Chamber); and

“unsolicited settlement offers” means settlement offers to consumers who have not made a complaint purporting to be in full and final settlement of claims in connection with BSPS pension transfers.

## **4 FACTS AND MATTERS**

### **Background**

#### *The Firm*

- 4.1 The Firm is an advisory firm based in Sheffield with permissions to advise on and arrange deals in investments and pensions.
- 4.2 The Firm is in-scope of the Redress Scheme, as it provided defined benefit pension transfer advice to 28 BPS members between 26 May 2016 and 29 March 2018.

#### *BSPS*

- 4.3 The BPS was a defined benefit (“DB”) pension scheme sponsored by Tata Steel. A DB scheme is a pension arrangement which typically pays safeguarded benefits to its members in the form of a guaranteed income for life once they retire. The monetary amount a member will receive depends on the terms of each DB scheme.
- 4.4 A defined contribution (“DC”) scheme is a pension arrangement by which members invest a “pot” of money in a selection of assets. The benefits provided depend on performance of the investments over time. DC schemes are typically more flexible in how benefits may be drawn, but do not normally provide any safeguarded or guaranteed income.
- 4.5 A DB transfer is the process by which a member of a DB scheme transfers the capitalised value of their pension benefits out of a DB scheme and into a DC scheme. The Authority regulates the provision of DB transfer advice, and rules related to this are found with the Authority Handbook, predominantly in the Conduct of Business Sourcebook (“COBS”).
- 4.6 In March 2016, Tata Steel announced publicly that it was considering options for restructuring its business and that it would be unable to continue funding the BPS. In May 2017, Tata Steel agreed to establish a new DB scheme for its employees to replace BPS. This new DB scheme became known as “New BPS” or “BPS2”. BPS members were given a choice between remaining in the existing scheme, which would move into a Pension Protection Fund assessment period, with an associated reduction in pension benefits entitlements, or transferring their accrued rights into the BPS2 scheme, with reduced increases in the future. Some BPS members instead opted for a DB transfer and transferred the capitalised value of their pension benefits out of the BPS and into a DC scheme.
- 4.7 The Authority’s review of files from firms that advised BPS members found that in 46% of cases the recommendation was unsuitable. The Authority has used estimates in the sensitivity analysis in their cost benefit analysis accompanying PS22/14 that the average amount lost per consumer who received unsuitable advice is about £45,000, based on estimated average financial loss being 12% of the average transfer value of £374,00.00.

#### *Redress Scheme*

- 4.8 On 28 November 2022, the Authority published the final rules for the Redress Scheme requiring firms to assess any advice they gave to BPS members to

transfer out and to pay redress if the advice was unsuitable and caused consumer loss. The rules in the Consumer Redress Scheme Sourcebook (CONRED 4) (British Steel Redress Scheme) came into effect on 28 February 2023.

- 4.9 CONRED 4.2.2R will require firms to identify all Redress Scheme cases. A consumer will not be considered within the Redress Scheme where *"a consumer has, prior to the scheme effective start date [28 February 2023] accepted an offer of redress from the firm or other person in full and final settlement of all potential claims arising out of"* advice which a firm gave in relation to a BSPS pension transfer during the relevant period (CONRED 4.2.2R(1) and (5)).

#### **Failings and risks identified**

- 4.10 On 20 January 2023, the Authority sent the Firm a section 165 information requirement seeking information regarding the Firm's preparation for the introduction of the Redress Scheme.
- 4.11 On 26 January 2023, the Authority published a news story expressing concern that some firms were sending unsolicited offers prior to the start of the Redress Scheme. The statement noted that the Authority believed that *"the actions by the firms may be deliberate attempt to exclude former members from participating in the scheme, binding them to receiving less money than they might otherwise be entitled"*. The Authority's expectations for firms were set out: *"we expect firms to treat customers fairly and to clearly explain the implications of accepting an offer before the scheme starts"*.
- 4.12 On 27 January 2023, the Firm responded to the Authority's letter dated 20 January 2023 stating that *"The firm has taken steps to redress calculate [sic] all cases, both this [sic] which would fall within the proposed scheme and those which sit within FOS. Where we have calculated redress, we have made offers of settlement and reminded customers of their duty to mitigate and loss [sic]"*.
- 4.13 The Firm had attached a spreadsheet that listed 23 customers, including 21 customers who had not complained to the Firm but had received unsolicited settlement offers of £300 (20 customers) and c.£3,000 (one customer). 15 of the 23 customers were listed as having accepted the offer. The spreadsheet classified the offer for c£3000 as "amount of redress offered" and the offers for £300 as "value of payment in addition/in place of redress". This appears to indicate that the offers for £300 were to BSPS members the Firm considered suffered no loss.
- 4.14 On 30 January 2023, the Authority sent the Firm an email stating *"if firms have offered or are offering any settlements to consumers in advance of the [Redress] Scheme without a complaint being made by the consumer, firms should inform their supervisory contact and submit a SUP 15 notification in a timely manner. A reasonable explanation should be provided confirming (but not limited to) the reasons for offering a settlement in advance of the Scheme and how this meets the fundamental obligations of our Principles, notably Principles 6 (Customers' interests) and 9 (Customers: relationships of trust). Firms should also provide their supervisory contact with copies of the correspondence sent to the consumers."*
- 4.15 On 2 February 2023, the Firm sent an email to the Authority stating that: *"We are able to make offers to BSPS customers to allow them to replace their guaranteed benefits, should they wish to. Our process replicates the PS22/13 rules. Our calculations have been generated by specialist actuarial software. We have taken great care in the calculation of any offer. We have complied with your request of*

*the 30th January 2023 to notify you using SUP15. We want our clients to be properly redressed and have taken careful steps to ensure this is the case."*

- 4.16 Attached to the email was a SUP 15 notification and a spreadsheet of customers to whom the Firm had made offers. The spreadsheet listed 17 customers that had received and accepted settlement offers of either £300 (16 customers) or c.£3,000 (one customer).
- 4.17 The SUP 15 notification states that *"The firm has calculated offers of redress utilising specialist actuarial software which reflects the PS22/13 guidance for redress [...] The firm is able to offer to the BSPS member(s) a settlement which allows the members to replicate the scheme benefits. The BSPS member would suffer no prejudice in doing this. The firm is discharging its duty to treat customers fairly by acting in this way. The BSPS member is under a "Duty to Mitigate" loss. The current position is based on the calculation, which will naturally change as markets move. If the market moves and the BSPS member could have settled at this time, but in the future can only do so requiring further redress, then the firm will argue that the member has not mitigated their loss. Additionally, the firm has the capital resources to settle matters now, whereas if annuity rates fall or the fund values fall, this will not be the case. This could lead to the firm failing, leading to a call on the FSCS."*
- 4.18 The standard covering letter provided by the Firm stated that based on calculations carried out using specialised software, no redress was payable. The letter also stated, *"You do not have to take this offer. You can wait and see what either CP22/6 or CP22/15 introduce as to whether this makes any material difference. Our view is that the prevailing economic position will lead to higher interest rates and higher inflation, both of which would make any annuity purchase cheaper (and by consequence redress amounts lower / surpluses bigger)."*
- 4.19 On 7 February 2023, the Authority published a further news story in relation to offers made to BPS members ahead of the Redress Scheme.<sup>1</sup> It stated that the Authority had now identified 15 firms which had engaged in making the unsolicited offers. The Authority set out its expectations that firms:
- *"Withdraw any existing unsolicited settlement offers pending any consumer agreement;*
  - *"Stop making further unsolicited offers to former BPS members who have not made complaints;*
  - *"Treat any pending unsolicited settlement offers as withdrawn."*
- 4.20 On 10 February 2023, the Authority emailed the Firm directing it to the Authority's announcements of 26 January 2023 and 7 February 2023 that outlined the Authority's expectations that firms would not provide unsolicited offers to former BPS members who had not made complaints.
- 4.21 On 6 March 2023, the Authority sent a further section 165 information requirement to the Firm requiring it to provide an updated register of offers made to customers. The updated spreadsheet provided by the Firm showed that the Firm made 26 unsolicited settlement offers between 6 December 2022 and 31 January 2023, with 17 members agreeing to the offers. 16 members agreed to a payment of £300 and one member agreed to c.£3,000. The Firm made three of the offers on 31 January 2023, which was after the Authority's press release on 26 January 2023 and email

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<sup>1</sup> [FCA news story dated 7 February 2023.](#)



to the Firm on 30 January 2023 setting out the Authority's concerns about making unsolicited settlement offers to former BSPS members.

- 4.22 The potential implications for BSPS members of accepting an offer prior to the commencement of the Redress Scheme is that they may be excluded from the scheme and may not receive appropriate redress. The Authority is therefore concerned that the Firm has not taken adequate steps to ensure that in making these settlement offers it is paying due regard to customers' interests and treating them fairly.

## **5 CONCLUSION**

- 5.1 The regulatory provisions relevant to this First Supervisory Notice are set out in Annex A.

### **Analysis of failings and risks**

#### Consumer protection operational objective

- 5.2 The Authority's operational objective of consumer protection requires the Authority to ensure an appropriate degree of protection for consumers (section 1C(1) of the Act). The Authority considers that the Firm represents a serious ongoing risk to consumers because of the evidence that it may be in breach of Principle 6 of the Authority's Principles for Businesses, requiring it to pay due regard to its customers' interests and to treat them fairly. Specifically:

- 1) Although the Firm has the legal right to enter into settlement agreements, in doing so the Firm must have due regard to customers' interests and treat them fairly.
- 2) The unsolicited settlement offers to customers of £300 and c£3000 are significantly misaligned with estimates used in the sensitivity analysis for the Authority's cost benefit analysis ("CBA") conducted in connection with the introduction of the Redress Scheme. The Authority estimated average redress of £45,000 per former BSPS member who received unsuitable pension transfer advice based on estimated average financial loss of 12% of the average transfer value of £374,000. Even allowing for a reasonable variation within settlement figures, it is unlikely that there should be such a significant disparity between the Firm's calculation and the CBA estimate. Although it appears that the individual who was offered c.£3,000 was considered to be entitled to redress (and so was not a "no loss" case) that offer is still significantly below the anticipated average figure.
- 3) It appears that the Firm considered those to whom it made the offers of £300 as having suffered no loss. Since the offers for £300 were made to 25 out of 28 (89%) of its customers, it appears that the Firm considers that 89% of its customers suffered no loss. Again, this is significantly misaligned with the Authority's estimate that 32% of BSPS members would have suffered no loss. That the offers were all for the same very low amount indicates that the Firm may not have considered the likely redress owed to customers on a case-by-case basis, and it appears that it may have treated almost all customers (save for the individual who was offered c.£3,000) as "no loss" cases. The Authority would expect the disparity to cause the Firm to question whether its settlement offers were actually treating customers fairly and whether it would have been appropriate to include such customers in the Redress Scheme. The Authority considers that the offers indicate that the approach taken by the



Firm in calculating the settlement offers is likely to be flawed and therefore fails to treat customers fairly.

- 4) The offers to the purported “no loss” customers were not communicated to customers in a manner that was clear, fair and not misleading. The offer letters sent by the Firm’s lawyers indicated that, in their view, the prevailing economic position would lead to lower redress irrespective of any changes to the redress calculation methodology introduced as a result of the Authority’s consultations CP22/6 and CP22/15. The Authority considers that this downplayed the likelihood that calculations carried out at a later date in accordance with a BSPS redress scheme or other modified guidance might lead to greater redress than the sum of £300 offered.
- 5) The Firm made three settlement offers on 31 January 2023 despite the Authority’s press release on 26 January 2023 and Dear SMF email on 30 January 2023 warning firms against making unsolicited settlement offers to former BSPS members.

5.3 The Authority has concluded, in light of the matters set out above, that it is necessary to exercise its own-initiative power under section 55L(3)(a) of the Act by imposing the Requirements in order to protect the interests of consumers.

#### Effective Supervision Threshold Condition

- 5.4 The Authority considers that the Firm is failing, or is likely to fail, to satisfy the Effective Supervision Threshold Condition. The Firm made three settlement offers on 31 January 2023 despite the Authority’s press release on 26 January 2023 and email on 30 January 2023.
- 5.5 The Authority is therefore concerned that the Firm has demonstrated a willingness to act against guidance and requests from the Authority to reduce its liability for redress (by securing settlement agreements which would take its clients outside the scope of the Redress Scheme) and has impeded the Authority’s ability to effectively supervise the Firm.
- 5.6 The Authority considers that the Requirements are a proportionate and appropriate means to address the current and immediate risks, and are desirable in order to advance the Authority’s operational objective of consumer protection.

#### **Timing and duration of the Requirements**

- 5.7 It is necessary to impose the Requirements to take immediate effect given the seriousness of the risks and the need to protect consumers.
- 5.8 The Authority considers that it is necessary for the Requirements to remain in place indefinitely.

## **6 PROCEDURAL MATTERS**

### **Decision-maker**

- 6.1 The decision which gave rise to the obligation to give this First Supervisory Notice was made by an Authority staff member under executive procedures according to DEPP 2.5.7G and DEPP 4.1.7G.
- 6.2 This First Supervisory Notice is given under section 55Y(4) and in accordance with section 55Y(5) of the Act.

6.3 The following statutory rights are important.

### **Representations**

6.4 The Firm has the right to make written representations to the Authority (whether or not it refers this matter to the Tribunal). The Firm may also request to make oral representations but the Authority will only consider this in exceptional circumstances according to DEPP 2.3.1AG. The deadline for providing written representations and notifying the Authority that the Firm wishes to make oral representations is 16 May 2023 or such later date as may be permitted by the Authority. Any notification or representations should be sent to the SPC Decision Making Secretariat ([SPCDecisionMakingSecretariat@fca.org.uk](mailto:SPCDecisionMakingSecretariat@fca.org.uk)).

### **The Tribunal**

6.5 The Firm has the right to refer the matter to which this First Supervisory Notice relates to the Tribunal. The Tax and Chancery Chamber is part of the Tribunal which, amongst other things, hears references arising from decisions of the Authority. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Firm has 28 days from the date on which this First Supervisory Notice is given to it to refer the matter to the Tribunal.

6.6 A reference to the Tribunal can be made by way of a reference notice (Form FTC3) signed by or on behalf of the Firm and filed with a copy of this First Supervisory Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, 5<sup>th</sup> Floor, Rolls Building, Fetter Lane, London EC4A 1NL (telephone: 020 7612 9730; email: [uttc@hmcts.gsi.gov.uk](mailto:uttc@hmcts.gsi.gov.uk)).

6.7 Further information on the Tribunal, including guidance and the relevant forms to complete, can be found on the HM Courts and Tribunal Service website: <http://www.justice.gov.uk/forms/hmcts/tax-and-chancery-upper-tribunal>

6.8 The Firm should note that a copy of the reference notice (Form FTC3) must also be sent to the Authority at the same time as a reference is filed with the Tribunal. A copy of the reference notice should be sent to the SPC Decision Making Secretariat ([SPCDecisionMakingSecretariat@fca.org.uk](mailto:SPCDecisionMakingSecretariat@fca.org.uk)).

### **Confidentiality and publicity**

6.9 The Firm should note that this First Supervisory Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining legal advice on its contents).

6.10 The Firm should note that section 391(5) of the Act requires the Authority, when the First Supervisory Notice takes effect, to publish such information about the matter to which the notice relates as it considers appropriate.

### **Authority contacts**

6.11 Any questions regarding this matter generally or the executive procedures decision-making process should be directed to the SPC Decision Making Secretariat ([SPCDecisionMakingSecretariat@fca.org.uk](mailto:SPCDecisionMakingSecretariat@fca.org.uk)).

### **Decision made under Executive Procedures Head of Department, Consumer Investments**

## **Annex A**

### **RELEVANT STATUTORY PROVISIONS**

1. The Authority's operational objectives established in section 1B of the Act include securing an appropriate degree of protection for consumers, and protecting and enhancing the integrity of the UK financial system.
2. Section 55L of the Act allows the Authority to impose a new requirement on an authorised person if it appears to the Authority that the authorised person is failing, or likely to fail to satisfy the Threshold Conditions (section 55L(2)(a)), or it is desirable to exercise the power in order to advance one or more of the Authority's operational objectives (section 55L(2)(c)).
3. Section 55N of the Act allows a requirement to be imposed under section 55L of the Act so as to require the person concerned to take specified action (section 55N(1)(a)), or to refrain from taking specified action (section 55N(1)(b)).
4. Section 55P of the Act allows a requirement to be imposed under section 55L of the Act prohibiting the disposal of, or other dealing with, any of an authorised person's assets (whether in the UK or elsewhere), or restricting such disposals or dealings.
5. Section 55Y(3) of the Act allows a requirement to take effect immediately (or on a specified date) if the Authority, having regard to the ground on which it is exercising its own-initiative power, reasonably considers that it is necessary for the requirement to take effect immediately (or on that date).
6. Section 391 of the Act provides that:  
“[...]”
  - (5) When a supervisory notice takes effect, the Authority must publish such information about the matter to which the notice relates as it considers appropriate.
  - (6) But the Authority may not publish information under this section if in its opinion, publication of the information would, be unfair to the person with respect to whom the action was taken or proposed to be taken [or] prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
  - (7) Information is to be published under this section in such manner as the Authority considers appropriate.”

### **RELEVANT REGULATORY PROVISIONS**

#### **The Enforcement Guide**

7. The Authority's approach in relation to its own-initiative powers is set out in Chapter 8 of the Enforcement Guide (EG), certain provisions of which are summarised below.
8. EG 8.1.1 reflects the provisions of section 55L of the Act by stating that the Authority may use its own-initiative power to impose requirements on an authorised person where, amongst other factors, the person is failing or is likely to fail to satisfy the threshold conditions for which the Authority is responsible (EG 8.1.1(1)), or it is desirable to exercise the power in order to advance one or more of its operational objectives (EG 8.1.1(3)).

9. EG 8.2.1 states that when the Authority considers how it should deal with a concern about a firm, it will have regard to its statutory objectives and the range of regulatory tools that are available to it. It will also have regard to the principle that a restriction imposed on a firm should be proportionate to the objectives the Authority is seeking to achieve (EG 8.2.1(2)).
10. EG 8.2.3 states that in the course of its supervision and monitoring of a firm or as part of an enforcement action, the Authority may make it clear that it expects the firm to take certain steps to meet regulatory requirements. In the vast majority of cases the Authority will seek to agree with a firm those steps the firm must take to address the Authority's concerns. However, where the Authority considers it appropriate to do so, it will exercise its formal powers under section 55L of the Act to impose a requirement to ensure such requirements are met. This may include where, amongst other factors, the Authority has serious concerns about a firm, or about the way its business is being or has been conducted (EG 8.2.3(1)), or is concerned that the consequences of a firm not taking the desired steps may be serious (EG 8.2.3(2)).
11. EG 8.3.1 states that the Authority may impose a requirement so that it takes effect immediately or on a specified date if it reasonably considers it necessary for the requirement to take effect immediately (or on the date specified), having regard to the ground on which it is exercising its own-initiative powers.
12. EG 8.3.2 states that the Authority will consider exercising its own-initiative power where: 1) the information available to it indicates serious concerns about the firm or its business that need to be addressed immediately; and 2) circumstances indicate that it is appropriate to use statutory powers immediately to require and/or prohibit certain actions by the firm in order to ensure the firm addresses these concerns.
13. EG 8.3.3 states that it is not possible to provide an exhaustive list of the situations that will give rise to such serious concerns, but they are likely to include one or more of four listed characteristics, these include: 1) information indicating significant loss, risk of loss or other adverse effects for consumers, where action is necessary to protect their interests; 2) information indicating that a firm's conduct has put it at risk of being used for the purposes of financial crime, or of being otherwise involved in crime; 3) evidence that the firm has submitted to the Authority inaccurate or misleading information so that the Authority becomes seriously concerned about the firm's ability to meet its regulatory obligations; 4) circumstances suggesting a serious problem within a firm or with a firm's controllers that calls into question the firm's ability to continue to meet the threshold conditions.
14. EG 8.3.4 states that the Authority will consider the full circumstances of each case when it decides whether an imposition of a requirement is appropriate and sets out a non-exhaustive list of factors the Authority may consider.
15. EG 8.3.4(1) includes the extent of any loss, or risk of loss, or other adverse effect on consumers. The more serious the loss or potential loss or other adverse effect, the more likely it is that the Authority's exercise of own-initiative powers will be appropriate, to protect the consumers' interests.
16. EG 8.3.4(7) includes the risk that the firm's conduct or business presents to the financial system and to confidence in the financial system.
17. EG 8.3.4(9) includes the impact that use of the Authority's own-initiative powers will have on the firm's business and on its customers. The Authority will need to be satisfied that the impact of any use of the own-initiative power is likely to be

proportionate to the concerns being addressed, in the context of the overall aim of achieving its statutory objectives.

## **Annex B**

1.

### **FORM OF LETTER TO SEND TO CONSUMERS IN ACCORDANCE WITH REQUIREMENT 2**

[To be sent on the Firm's letterhead]

***[Please delete or amend any drafting instructions in italics before sending]***

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

[Firm details]

[Date]

[Consumer details]

#### **British Steel consumer redress scheme**

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

Dear [*Insert name*],

[If applicable: You were introduced to our firm by [*insert name of introducer firm*] for advice about your British Steel Pension Scheme benefits]

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

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

**If you do not want us to review the advice you were given, please complete the enclosed form and return it to us by [*insert day date month year*].**

The Financial Conduct Authority (FCA) has gathered evidence that suggests nearly half of the advice given to people to transfer out of the BSPS was unsuitable. Unsuitable advice is advice that was not in line with FCA requirements.

You accepted our offer dated [*date*]. The FCA has asked us to follow the same processes set out in the British Steel Consumer Redress scheme in full as we must for those who have not accepted an offer. We will therefore review the advice we gave you to decide if it was unsuitable.

If we find that we gave you unsuitable advice, we will ask you for some information to help us check if you are owed money. We will do this by calculating if our advice caused you a financial loss. If our advice did cause you a loss that is higher than the amount that we have already paid you, we will be required to offer you an additional payment. The payment will aim to put you in the position you would have been in if we had given you suitable advice. **Whatever the result of our review, you will not need to pay anything.**

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

You do not need to use a claims management company as it will not affect our review and, if you do, they will charge you for the service.

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

You can find out more about the BSPS consumer redress scheme at [www.fca.org.uk/bsps](http://www.fca.org.uk/bsps). If you want to contact the FCA, you can:

- call its Consumer Helpline on 0800 098 4100; or
- email [consumer.enquiries@fca.org.uk](mailto:consumer.enquiries@fca.org.uk).

If you would like to contact the FCA using next generation text relay, please call on (18001) 0207 066 1000.

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

Yours sincerely,

<signature>

<name of adviser or customer service>

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

[I/We] have enclosed 2 copies of this letter.

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

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

CONFIRMATION THAT I DO NOT WANT MY ADVICE REVIEWED

I do not want you to review the advice you gave me to transfer out of the BSPS to see if I am entitled to a payment.

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