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## **FINAL REPORT**

# **THE COMPLAINTS COMMISSIONER'S FINAL REPORT ON THE ALLEGATIONS MADE BY FORMER MEMBERS OF THE BRITISH STEEL PENSION SCHEME AGAINST THE FINANCIAL CONDUCT AUTHORITY**

**26 March 2026**

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## 1. **Introduction**

- 1.1. This report addresses the complaints from 189 former members of the British Steel Pension Scheme (“**BSPS**”) who were adversely affected by transferring out of that scheme (the “**Complainants**”). These complaints focus on the actions and inactions of the Financial Conduct Authority (“**FCA**”) in regulating the defined benefit (“**DB**”) pension transfer advice given to BSPS members following the restructuring of Tata Steel UK Limited (“**TSUK**”). Many BSPS members received poor advice to transfer their pensions out of the BSPS DB scheme when it was not in their best interests to do so<sup>1</sup>. This report covers this and related issues (the “**BSPS Issues**”).
- 1.2. The FCA is the regulator responsible for overseeing the DB pension transfer advice market. The FCA’s view of DB to defined contribution (“**DC**”) pension transfers was summarised in a June 2022 BSPS Public Accounts Committee (“**PAC**”) hearing, *“To transfer a defined benefit pension into a defined contribution pension is the most complex piece of advice people can take. You have to form a view on your expected longevity, the discount rate during the rest of your life and your future earnings potential. Those are complex things... For most people this [i.e. a transfer out of a DB] is not suitable”*<sup>2</sup>.
- 1.3. The Complainants have written to me to say that they support representations made to the FCA on behalf of some BSPS members by a law firm. The complaint letter (“**Complaint Letter**”) is set out in Appendix 1 of this report. The Complaint Letter was first sent to the FCA, who did not uphold the complaints, following which it was referred to me by Complainants. Complainants allege that the FCA was slow to act, failed to use its regulatory tools effectively and did not provide timely protection or

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<sup>1</sup> DB pensions, (sometimes known as final salary schemes) usually provide a guaranteed, predictable income in retirement. Due to the high cost to employers, DB schemes are now less likely to be offered to employees than they were in the past. By contrast, if a consumer transfers their DB pension into a DC scheme (which are now much more commonly offered by employers), the security of a guaranteed income is lost. Consumers in a DC pension bear the risk of how the pension investments will perform and whether these will provide the income they need for the rest of their lives, the retirement income can be uncertain and will often depend on market performance and decisions at retirement.

<sup>2</sup> <https://committees.parliament.uk/oralevidence/10604/default/>.

redress for BSPS members. I am aware that Complainants, were initially represented by a law firm at the time the Complaint Letter was submitted to the FCA but subsequently did not receive assistance from that law firm in referring their complaint to me in response to the FCA's Decision Letter. This is because the law firm had ceased to act for the Complainants prior to that point. I have interpreted the complaints raised with me by reference to the referral of the Complaint Letter, the written and oral submissions of, and meetings with, the Complainants as described in Section 4 below.

- 1.4. In order to navigate this report, the various sections are set out below. The Complaints are set out in Section 4. The FCA Decision Letter is set out in Appendix 2. The methodology used in analysing the Complaint and the underlying evidence considered is set out in Appendix 3. The detailed facts and analysis in respect of each of these Complaints is set out in this report as follows: Complaint 1 (Sections 9.1 to 9.4); Complaint 2 (Section 9.5); and Section 9.6 for Complaint 3. A summary of the FCA's position in relation to each complaint and my conclusions can be found at the beginning of each section. More information regarding my decisions and the reasons for them can be found under the heading 'Analysis' in each section.
- 1.5. In finalising this report I have taken into account comments I have received from Complainants and the FCA on the Preliminary Report which was issued to both parties on 22 September 2025. I have upheld Complaint 1 but not Complaints 2 and 3. The FCA does not agree that Complaint 1 should be upheld. In its response to the Preliminary Report, the FCA raised a number of points. I amended certain paragraphs in this report to address minor issues of factual accuracy and completeness. However, I did not accept all of the FCA's comments and where we disagreed I have not amended the report. My overall findings remain unchanged.

## 2. **Executive Summary**

- 2.1. The handling of BSPS transfers caused serious consumer detriment. In announcing the BSPS redress scheme, the FCA said *“The circumstances around British Steel Pension Scheme transfers were exceptional, with former members receiving significantly higher levels of unsuitable advice compared with other cases”*<sup>3</sup>. When the BSPS was restructured in 2017 (**“BSPS Restructure”**), the FCA estimates that approximately 7,700 members decided to transfer out of the scheme after receiving advice. The FCA estimates that almost half of this advice was unsuitable. The poor conduct by some advisers caused significant harm and distress<sup>4</sup> and led to severe financial consequences for a significant number of former BSPS members.
- 2.2. The FCA failed to protect affected former members of the BSPS from foreseeable harm in the context of the DB pension transfer market.
- 2.3. The FCA was aware of significant risks in the DB transfer market well before the BSPS restructuring, yet it failed to:
  - 2.3.1. take preventative action before the BSPS advice was given to prevent foreseeable harm by strengthening the regulatory framework or to otherwise enhance consumer protection;
  - 2.3.2. intervene effectively during the Time to Choose (**“TtC”**) period (which ran from 1 October 2017 to 22 December 2017 with a February 2018 deadline for providing the necessary documentation to proceed with a transfer) whilst the unsuitable advice was being given to BSPS members; and
  - 2.3.3. respond with urgency once the damage had subsequently materialised.
- 2.4. These were not isolated misjudgements, but a series of regulatory failings spanning the period before, during and after the giving of unsuitable advice.

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<sup>3</sup> <https://www.fca.org.uk/news/press-releases/fca-sets-out-plans-deliver-compensation-former-british-steel-pension-scheme-members>.

<sup>4</sup> <https://www.fca.org.uk/publications/corporate-documents/british-steel-pension-scheme-transfers-action-fca-fos-and-fscs>.

- 2.5. My findings align with, and build upon, those of other independent bodies (as further described in Section 6 below), including the National Audit Office (“**NAO**”) and the PAC, who have already identified serious regulatory shortcomings in the FCA’s handling of the BSPS. The FCA has generally argued against the findings of the independent reports, stating that the BSPS Issues were caused by unique circumstances and limited early intelligence. It has defended the timing of its response, stating that it acted promptly once it had sufficient information. It has accepted, however, that *“had data sharing with The Pensions Regulator (“**TPR**”) been in place for the BSPS, the FCA may have been able to start its assessments of firms sooner.”*<sup>5</sup>
- 2.6. **I uphold Complaint 1** that the FCA was consistently behind the curve in anticipating, preventing and responding to the widespread unsuitable financial advice that caused serious detriment to BSPS members. Systemic regulatory failings enabled that advice to proliferate and the FCA did not take timely or appropriate action to protect those affected.
- 2.7. In relation to **Complaint 2** that *“The FCA has not been sufficiently proactive or timely in using its enforcement powers generally and with respect to two specific firms identified in the Complaint Letter but referred to in this report as Firms 1 and 2”*,, I have seen no evidence indicating undue delay by the FCA with respect to the firms the FCA took action against. However, as the FCA has not specifically assessed the overall effectiveness of its supervisory and enforcement actions across all advisory firms providing BSPS advice, **I am unable to make findings on this point.** Regarding the FCA’s enforcement actions for Firms 1 and 2, **I have not upheld this element of Complaint 2, as I find the FCA’s actions to have been reasonable.**
- 2.8. In relation to **Complaint 3**: *“The way that compensation has been provided in the British Steel Pension Scheme case has been slow and unfair”* and *“[t]he FCA’s actions have resulted in inconsistent outcomes for consumers entitled to compensation”*. There are some aspects of Complainants’ allegations about the compensation they received which I cannot review including complaints about delays in compensation by firms, the Financial

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<sup>5</sup> <https://www.fca.org.uk/publication/correspondence/fca-bsps-decision-letter-redacted.pdf>.

Ombudsman Service (“**FOS**”) or the Financial Services Compensation Scheme (“**FSCS**”). Complaints relating to changes in FSCS limits and the calculation of the Retail Prices Index (“**RPI**”) which led to inconsistent outcomes for Complainants are also excluded from the Complaints Scheme. **I cannot make a finding or a recommendation for compensation for those elements of Complaint 3 that are excluded.** Regarding the fairness of compensation provided by the redress scheme under section 404 of the Financial Services and Markets Act 2000 (“**FSMA**”) (“**s404 Scheme**”) or the fairness of other compensation arrangements that were available to former BPS members, I invited the FCA and Complainants to provide information on whether alternative options were available at the time that may have delivered better value to affected members. Whilst I cannot review the methodology of the s404 Scheme itself, I can consider whether the FCA could reasonably have adopted a different scheme which would have led to a materially better outcome for former BPS members. Complainants told me that alternative redress proposals (including bulk and deferred annuities) had been presented to the FCA both in response to its consultations (e.g. CP22/15) and through correspondence and meetings with the FCA. I have analysed the evidence I have received from the FCA and Complainants on this point. The evidence confirms that discussions took place between external stakeholders and the FCA about the possibility of a bulk or deferred annuity, however these discussions were exploratory in nature and I am told by the FCA that it did not receive a sufficiently developed proposal of an alternative solution to the s404 Scheme by any of these stakeholders. **I have not been able to establish from the information that I have received from the FCA and Complainants that a sufficiently developed alternative redress method, which would have produced fairer results than the s404 Scheme, was proposed to the FCA which the FCA unreasonably rejected. Therefore, I cannot uphold this element of Complaint 3.**

### 3. **Summary of the findings**

The FCA's failings fall into the following three broad phases:

#### 3.1. **Pre-advice failings (prior to November 2017 i.e. the point at which the FCA considers it had "actionable intelligence"): the FCA's failure to take proactive steps to strengthen the regulatory framework before harm began to occur.**

3.1.1. The FCA's failure to strengthen the regulatory framework in advance of the BPS Issues despite known concerns, created the conditions in which unsuitable advice could flourish, setting in motion a sequence of events that unscrupulous advisers were able to exploit.

3.1.2. Long before the TtC window opened on 1 October 2017, the FCA had substantial evidence that the DB transfer market posed serious risks to consumers. The FCA's 2014 thematic review (TR14/12) and subsequent file reviews which ran between October 2015 – March 2016 ("**DB1**") (further detailed at 9.1.9) and its second phase of file reviews which ran between December 2016 and July 2018 ("**DB2**") (further detailed at 9.1.14) revealed a high prevalence of unsuitable advice. Despite this, the FCA did not take sufficient actions to strengthen the regulatory framework or otherwise enhance consumer protection.

Key missed opportunities during this period include:

- **Contingent charging:** Advisers were allowed to operate on a contingent charging basis — being paid only if a transfer was recommended. This created a clear conflict of interest. The FCA recognised the risks but did not prohibit the practice until much later.
- **Adviser qualification standards:** The FCA failed to require enhanced adviser qualifications. This was also introduced much later.
- **Pll oversight:** Rules on Professional Indemnity Insurance ("**PII**") were unclear and often misunderstood by firms, leading to inadequate cover for a number of firms.
- **Systemic weaknesses in regulatory safeguards:** Most advisers were small firms. There was no mechanism to limit the volume of high-risk business relative to their capital base. Firms could advise on dozens or even hundreds

of BSPS transfers without real-time supervisory intervention or a cap on risk accumulation. The financial exposure per transfer was high: even one mis-sold transfer could create a liability far exceeding a small firm's capital buffer.

- **Capital adequacy:** The capital adequacy regime, as applied to small advisory firms in the DB transfer market, was manifestly unfit for the scale and risk of the BSPS episode.

### 3.2. **Failings during the TtC advice window post 7 November 2017 - missed opportunities whilst harm was occurring to consumers.**

3.2.1. The TtC period was when BSPS members had to make a decision and during which they were actively receiving advice. During this critical window, the FCA still had opportunities to mitigate harm — but it failed to act decisively.

Key missed opportunities in this period include:

- **Lack of coherent strategy:** The FCA's approach was reactive. It did not develop a clear strategy to identify and mitigate emerging risks.
- **Lack of real-time data:** The FCA did not know which firms were advising BSPS members during the TtC window — a fundamental failure. Without this knowledge, it could not supervise effectively, issue targeted warnings, or intervene in time to prevent harm. Crucially, the FCA could have obtained this information by writing to firms with relevant permissions — but it failed to do so until later.

### 3.3. **Post TtC failings: Delayed, reactive and nonstrategic response.**

3.3.1. After the TtC period ended, the FCA's regulatory response remained fragmented and slow. It did not demonstrate the strategic urgency required to address the scale of consumer harm.

3.3.2. I have not found undue delay in the FCA taking enforcement action in relation to the firms it took action against. However, the FCA has never assessed the overall effectiveness of its actions across all relevant firms — which limits what can be concluded about its broader enforcement performance.

3.3.3. I note from a recent FCA enforcement update that it has carried out approximately 30 enforcement investigations into BPS transfer advice and it is currently working to reach final decisions on appropriate sanctions where it has found misconduct<sup>6</sup>. However, it is not clear from the evidence available whether all firms which gave unsuitable advice to BPS members have been identified by the FCA and if so, when they were identified and what action was taken against them.

Key issues include:

- **Delayed evidence gathering:** Despite having clear evidence by early 2017 of unsuitable DB transfer advice, including specific concerns about BPS members, the FCA did not initiate a targeted review of BPS cases. Instead, it continued with broad market-wide work under DB3, DB4 and later Operation Branford – delaying a focused response to BPS Issues that could and should have started much earlier.
- **Late redress:** The Section 404 redress scheme was introduced too late. Had it been launched earlier, more firms may, for example, have had valid PII cover to fund redress.
- **Delayed asset retention rules:** Emergency asset retention rules were not introduced until April 2022. There is no persuasive reason why this step could not have been taken much earlier.
- **Lack of strategic oversight:** At no point did the FCA demonstrate a coordinated, forward-looking strategy to resolve the BPS crisis.

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<sup>6</sup> <https://www.fca.org.uk/firms/british-steel-pension-scheme-our-approach-enforcement>

#### 4. **Summary of Complaints**

4.1. I have summarised the complaints I have received and set out my decisions on each of them as follows:

4.1.1. **Complaint 1:** The FCA was consistently behind the curve in anticipating, preventing and responding to the widespread unsuitable financial advice that caused serious detriment to BSPS members. Systemic regulatory failings enabled that advice to proliferate and the FCA did not take timely or appropriate action to protect those affected. I **uphold** Complaint 1 for the following reasons:

4.1.1.1. **Inadequate regulatory framework** – The regulatory framework for DB pension transfer advice prior to and during the TtC period was inadequate to protect consumers from foreseeable harm. The FCA permitted and oversaw a regime that contained inherent weaknesses, which left BSPS members exposed to significant risks which had already been identified. Despite mounting evidence of risk in the DB advice market, the FCA did not take timely steps to raise adviser competence standards, identify high-risk firms, restrict the ability of firms to take on high volumes of risky business, amend problematic rules or remove contingent charging and ensure it had adequate oversight of firms' PII cover. These were missed opportunities to prevent or reduce foreseeable harm both before and during the TtC window. These structural failings set the stage for widespread consumer detriment once advice began to be delivered.

4.1.1.2. **Failure to act on known risks** - Alongside the structural weaknesses of the regulatory framework, the FCA failed to act on clear warning signs arising out of its own supervisory and thematic work. This was not a case of unforeseeable harm; rather, it was a failure to respond effectively to existing evidence of market-wide risks in

relation to DB pension transfer advice. The FCA had, by the time of the TtC, already identified widespread concerns in the DB advice market through its Thematic Review (TR14/12) which had highlighted the dangers of unsuitable advice during employer-led pension restructures; DB1 which identified systemic problems in the quality of transfer advice; and DB2 which reinforced those findings with additional evidence of poor advice standards. Despite this, the FCA did not act to anticipate or mitigate the risks posed by the BSPS restructure. It failed to recognise the obvious parallels with earlier employer-led exercises. The FCA has since claimed that the risks associated with the BSPS were unforeseeable. I do not accept this. The scale and profile of the BSPS restructure should have triggered a strategic regulatory response. The FCA had sufficient prior knowledge to anticipate that a high volume of vulnerable consumers would be exposed to complex, high-risk advice which in the past had a high incidence of unsuitable advice — and yet it did not take sufficient proactive steps to prevent this.

4.1.1.3. **Weak oversight of PII**– The FCA’s rules on PII were unclear and its oversight of firms’ compliance was inadequate. A number of firms providing BSPS advice operated without sufficient PII cover in breach of regulatory requirements. The FCA did not identify these deficiencies in time and failed to alert consumers to the implications for redress or complaint deadlines. This contributed to firms’ inability to pay out on claims and the ultimate failure of firms. This, in turn, led to some consumers being subject to the relevant FSCS cap, thus reducing the amount of compensation.

4.1.1.4. **Lack of real-time market intelligence** - The FCA failed to collect or use real-time data to determine which firms

were actively advising BSPS members during the TtC. This was a fundamental regulatory failure. Without this information, the FCA could not supervise those firms, issue targeted warnings or identify firms that may have been providing unsuitable advice in order to take proactive enforcement steps against those firms.

- 4.1.1.5. **Failure to intervene using supervisory tools** - The FCA failed to employ the supervisory tools available to it prior to November 2017 (as set out in 9.1.26.4.7) including a form of enhanced supervision given its existing concerns about pensions transfers. The FCA considered that it did not have sufficient evidence to take supervisory action. Supervisory action taken subsequently by the FCA to address the BSPS Issues were open to the FCA to take earlier in order to protect BSPS members. The FCA was slow to use its supervisory powers to prevent harm arising.
- 4.1.1.6. **Delayed use of asset retention and redress powers** - The FCA introduced an emergency asset retention ban in April 2022, several years after BSPS transfers took place. I have seen no clear justification for the delay in implementing this measure. Similarly, the FCA launched additional data-gathering exercises, such as Operation Branford, despite having substantial earlier evidence of harm, for example, from DB1 and DB2.
- 4.1.1.7. **Delay in launching the Redress Scheme** - I find that the FCA was slow insofar as it should have used its powers under s404 of FSMA to implement the s404 Scheme sooner than it did. Had the FCA acted more swiftly, the s404 Scheme could have been introduced at a point when, for example, more firms still held adequate PII cover. The timing of the s404 Scheme significantly affected the availability of compensation for consumers.

4.1.1.8. **Lack of strategic planning** - The FCA has not demonstrated that it had a clear, coordinated strategy for dealing with, or responding to, the BSPS Issues. Its actions were reactive, fragmented, and focused primarily on reviewing past business rather than preventing ongoing harm. I have seen no evidence of a plan to identify, plan for or utilise regulatory levers, engage with the relevant advisers, or deliver timely redress. This lack of strategic foresight contributed directly to the scale and persistence of consumer detriment. Taken together, these failings illustrate that the FCA did not merely act too late — it failed to act strategically at any stage: before, during, or after the giving of unsuitable advice.

4.1.2. **Complaint 2:** *The FCA has not been sufficiently proactive or timely in using its enforcement powers generally and with respect to two specific firms identified in the Complaint Letter but referred to in this report as Firms 1 and 2.*

4.1.2.1. In relation to the FCA's use of enforcement powers generally, I have seen no evidence indicating undue delay in enforcement on their part with respect to the firms the FCA took action against. Enforcement is necessarily after the event. However, as the FCA has not specifically assessed the overall effectiveness of its supervisory and enforcement actions across all advisory firms providing BSPS advice, **I am unable to make findings on this point.**

4.1.2.2. Regarding the FCA's enforcement actions for Firms 1 and 2, **I have not upheld this element of the complaint, as I find the FCA's actions to have been reasonable.**

4.1.3. **Complaint 3:** *"The way that compensation has been provided in the British Steel Pension Scheme case has been slow and unfair"* and

*"[t]he FCA's actions have resulted in inconsistent outcomes for consumers entitled to compensation."*<sup>7</sup>

4.1.3.1. Complainants argue they have not been adequately compensated for losses suffered as a result of leaving the BSPS DB scheme and consider that they are entitled to further redress. Whilst I accept that unsuitable advice from financial services providers was the primary cause of harm, I find that the FCA had a contributory role, though it has never accepted this. Nevertheless, it was accepted that affected former BSPS members should be compensated, which is why compensation arrangements were available via FOS and the FSCS and through the s404 Scheme established by the FCA. Some Complainants argue they have not been put back in the position they would have been had they remained in the DB scheme. Those Complainants who have raised complaints about the outcome of the s404 Scheme and its methodology should note that the s404 Scheme methodology is excluded from the Complaints Scheme. To recommend compensation beyond the s404 Scheme, I would have to see that the FCA could reasonably have adopted a different scheme that would have led to a materially better outcome for former BSPS members. Based on the evidence I have been provided with, I do not see that a sufficiently developed alternative to the s404 Scheme was identified. **I am therefore unable to uphold this element of Complaint 3.**

4.1.3.2. There are some aspects of Complainants' allegations about the compensation they received which I cannot review. The redress scheme methodology falls outside of the scope of the Complaints Scheme. However, I have

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<sup>7</sup> Complaint Letter (26 January 2023), pages 7 and 8.

noted a number of observations, including that certain inconsistencies in compensation were unavoidable (for example, those arising from changes to FSCS limits or RPI index values) and were not necessarily attributable to the FCA. The Complaints Scheme also excludes complaints about delays in compensation by firms, the FOS or the FSCS, as well as complaints relating to changes in FSCS limits and the calculation of the RPI. **I cannot make a finding or a recommendation of compensation in relation to these elements of Complaint 3.**

## 5. **Recommendations**

- 5.1. The FCA should revisit its decision not to uphold any of the Complaints.
- 5.2. In my Preliminary Report I recommended that the FCA publish a clear evaluation of the lessons the FCA has learned from BSPS — particularly how its supervisory framework and compensation arrangements can be improved to anticipate and mitigate similar consumer harm in relation to pension transfers in the future. The FCA says this information is contained in various publications it has made in relation to BSPS and has therefore declined this recommendation. Nevertheless, I encourage the FCA to reconsider this recommendation in light of any new issues that have been raised in this report for example issues in relation to capital adequacy.
- 5.3. Complainants have alleged some firms did not adhere to the 3 month deadline for making a redress offer to Complainants following the valuation date. I recommend the FCA consider any evidence Complainants have of this in the first instance (this may or may not lead to compensation for affected former BPS members). The FCA has accepted this recommendation. I suggest Complainants provide the information to the FCA, or if they prefer, notify me and I will pass it to the FCA.

6. ***Previous public reports and findings in relation to BSPS and the FCA's response***

6.1. My report is not the first to analyse the BSPS Issues and the FCA's handling of the matter nor is this report the first to find that the FCA's actions in relation to the BSPS Issues were not sufficiently robust, proactive or prompt to deal with the scale of unsuitable advice that unfolded in relation to BSPS. I have not reperformed the investigations already carried out by other bodies but having reviewed the various reports, there are several findings that I consider significant in the context of the complaint I have received. I have not included all the findings from the previous reports, but I have highlighted key points that I consider relevant to this complaint in the summary below.

6.2. Previous reports in relation to the FCA's handling of the BSPS include the following:

6.2.1. The January 2019 *'Independent review of communications and support given to British Steel Pension Scheme members'* authored by Caroline Rookes (the "**Rookes Report**")<sup>8</sup> findings against the FCA included the lack of information sharing between the FCA and TPR which the Rookes Report found exacerbated the BSPS Issues. In addition, the Rookes Review highlighted that the FCA's slow response failed to adequately protect BSPS members who were vulnerable and potentially manipulated into transferring their pensions. The FCA welcomed the recommendations made in the Rookes Report<sup>9</sup> and acknowledged that limited information sharing between regulators affected the collective focus of all organisations on BSPS. Following the Rookes Review, the FCA said that better data sharing would have enabled it to have started its assessment of BSPS firms sooner. The FCA accepted the recommendation from the Rookes Review to strengthen collaboration and published the joint FCA, TPR and the Pensions Advisory Service ("**TPAS**")

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<sup>8</sup> <https://www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/rookes-review-british-steel-pension-scheme-members.ashx>

<sup>9</sup> <https://www.fca.org.uk/news/statements/regulatory-and-consumer-bodies-welcome-review-pension-scheme-communications-provided-steel-workers>

Protocol<sup>10</sup> to address the Rookes Report recommendation for ‘early intervention and sharing intelligence between public bodies’, and for clear communication materials for trustees in future scheme restructurings. The FCA said it would consider the other recommendations made in the Rookes Report. It is not clear whether the other Rookes Report recommendations were implemented by the FCA.

6.2.2. The NAO Report titled "*Investigation into the British Steel Pension Scheme*"<sup>11</sup> dated 18 March 2022 highlighted contingent charging as a key issue and included findings that the FCA’s regulation of the advice market had failed to protect BSPS members or to provide sufficient redress. It also found that the FCA could improve its efforts to identify and mitigate consumer risks. The NAO Report commented that, following its own reflections on the BSPS Issues, the FCA had made several operational and regulatory changes including:

- 6.2.2.1. from 2018 collecting more data from financial advisers to improve market intelligence;
- 6.2.2.2. making the reporting of data on pension transfers a formal requirement in 2021;
- 6.2.2.3. creating a Defined Benefit Advice Assessment Tool (“**DBAAT**”) to assist its review of DB transfer advice cases;
- 6.2.2.4. developing a joint protocol with the TPR and TPAS (now MaPS) to enable early intervention DB transfer cases;
- 6.2.2.5. ensuring pension transfer specialists checked pension transfer advice before transfers are made;

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<sup>10</sup> FCA, TPR and TPAS [Protocol](#)

<sup>11</sup> <https://www.nao.org.uk/wp-content/uploads/2022/03/Investigation-into-the-British-Steel-pension-scheme.pdf>

- 6.2.2.6. from October 2020, banning charges for advice where consumers only pay when a transfer proceeds except in certain limited circumstances.
- 6.2.3. The FCA welcomed the NAO Report<sup>12</sup> and in a letter dated 28 September 2022<sup>13</sup> describes how the operational and regulatory changes it had taken (described in 6.2.2.1-6.2.2.6 above) would enable it to proactively monitor and engage with firms active in the DB market.
- 6.2.4. The House of Commons PAC fourteenth report of session 2022-23 titled “Investigation into the British Steel Pension Scheme” published on 21 July 2022 (“**PAC Report**”)<sup>14</sup> found that the FCA was slow to respond throughout the BSPS Issues and failed to take timely preventative action or proactively use its regulatory powers such as banning contingent charging earlier or enforcing asset restrictions earlier. It also found that compensation had been delayed and unfair, with lengthy delays in resolving complaints. It also found that despite gathering evidence on the BSPS case since 2018, the FCA only began considering the potential use of a compensation scheme and analysing its impacts in early 2021.
- 6.2.5. In response to the PAC Report, the FCA accepted that there are lessons to learn both for how it operates as a regulator and for how the wider pensions regulatory system serves to protect consumers. However, the FCA said it was *“concerned the report does not fully acknowledge the ways the FCA has responded since 2017, acting against poorly performing firms and improving the wider defined DB pension transfer market. For example, in the case of BSPS over £20*

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<sup>12</sup> <https://www.fca.org.uk/news/statements/fca-response-national-audit-office-report>

<sup>13</sup> <https://committees.parliament.uk/publications/30285/documents/175251/default/>

<sup>14</sup> <https://committees.parliament.uk/publications/23164/documents/169426/default/>.

*million of redress has been paid out by firms due to the action the FCA has taken”.*<sup>15</sup>

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<sup>15</sup> <https://committees.parliament.uk/publications/30266/documents/175189/default/#:~:text=FCA's%20response%20to%20the%20Committee,action%20the%20FCA%20has%20taken.>

## 7. **Remedy**

- 7.1. Complainants feel they have not been adequately compensated for the losses they believe they have incurred and are now seeking appropriate redress. The FCA reviewed a request for remedy as follows: *“To remedy this complaint, you have asked the FCA to make ex-gratia payments to those affected and pay compensation for losses suffered where you believe that the FCA was the primary cause of the loss”*. The FCA considered the issue of compensation, but it did not make a determination. I have power under the Complaints Scheme to recommend the FCA pay compensation. I accept that the FCA was not the primary cause of any losses suffered by Complainants. The Independent Financial Advisers (“**IFAs**”) who gave unsuitable advice in breach of the FCA Rules are the primary cause of the loss. However, I have found that the FCA did have a contributory role. I note the FCA itself did not uphold such a finding. In cases where I uphold a complaint about FCA regulatory failure, one of the remedies available under the Complaint Scheme is compensation.
- 7.2. However, this complaint is not typical of complaints to my office. In this case, affected members have received compensation. The FCA has exercised its powers to remediate via a formal, statutory compensation scheme, the s404 Scheme. In addition, affected BSPS members have had access to the FOS and FSCS for compensation purposes in the normal way. The FCA say that Complainants have been compensated as far as possible in accordance with these arrangements.
- 7.3. I asked the FCA to consider whether the compensation arrangements that have been put in place to deal with the BPS Issues are adequate particularly in light of the FCA’s stated objective of putting consumers, so far as possible, back in the position they would have been in if the non-compliant or unsuitable advice had not been given and also in light of the issues highlighted below. In response, the FCA says that it took considerable steps to ensure the adequacy of the s404 Scheme before it was finalised. I have detailed the actions that the FCA took in relation to the s404 Scheme in 9.6.2. The FCA’s position is that it is not clear what further steps it could have taken outside of the actions it took to ensure that redress for mis-advised DB

pension transfers was appropriate. Nevertheless, Complainants allege compensation was “slow and unfair”. As mentioned above, it is evident from points made to me by Complainants that there is a very strong sense of injustice and unfairness regarding compensation. There is a feeling that the system has not worked well. That it has failed Complainants. Complainants have raised a number of issues to substantiate these allegations outlined in section 9.6 below.

- 7.4. I have reviewed Complainants’ allegations about the s404 Scheme. Although I have found that the s404 Scheme could have been implemented earlier, I agree with the FCA that the redress scheme methodology is excluded from the Complaints Scheme and therefore I cannot review it or make a recommendation for compensation in relation to it. I have however, made a number of observations including that some inconsistencies in compensation were unavoidable (for example due to changing FSCS limits or RPI index values), and not necessarily the fault of the FCA and the reasons why (further set out in 9.6.45 and 9.6.46); that bulk annuities were considered but disregarded as viable alternatives and why (further detailed in 9.6.6 and 9.6.7); and that complaints about slow compensation from firms and FOS or FSCS are excluded from the Complaints Scheme (as detailed in 9.6.47).
- 7.5. I acknowledge the actions the FCA took in relation to the s404 Scheme, however I am of the view that the s404 Scheme should not have been described as returning former BSPS members back to the position they would have been in, as far as possible, had they remained in the DB scheme. This is because the security of a guaranteed income on retirement that the DB scheme offered cannot be replicated by a DC pension nor the provision of cash to purchase an annuity in years to come. The s404 Scheme assumed that former BSPS members receiving redress under the s404 Scheme would ultimately purchase an annuity on retirement. Redress was therefore calculated as the top-up needed to bring a former BSPS member’s DC pension pot, at the redress date, up to the cost of an annuity on that date to compensate for the DB benefits given up. This explains why awards varied, even for former BSPS members with a similar service history or of a similar

age. Market fluctuations meant that redress calculated on consecutive days could differ significantly but still potentially provide the relevant annuity.

7.6. In theory, if a former BPS member had been able to purchase an annuity on the day that the redress was paid, the member would have been restored to the position they would have been in had they not transferred, as far as possible. In practice, many former BPS members were not eligible to purchase an annuity at or near to the point that they received the redress amount so the redress amount received was a best estimate of what would be needed to buy an annuity in the future (based on the cost of an annuity at the date the redress was received). The redress did not guarantee sufficiency at retirement, since market movements and annuity pricing remain uncertain. Over the years between the redress settlement date and retirement, some former BPS members may find the amount insufficient on retirement to secure equivalent benefits to what they would have had in the DB scheme, whilst others may be in a better position depending on market fluctuations. To the extent that former BPS members have not purchased an annuity with the compensation received, their potential loss (or gain) has not yet crystallised. This exposure to market risk and uncertainty is inherent in a DC arrangement but not in a DB scheme.

7.7. In summary, Complainants sought redress because they had suffered harm. In my view, that harm arose from both unsuitable advice by some IFAs and shortcomings on the part of the FCA. The FCA itself has acknowledged that former BPS members had been harmed, although the FCA has never formally accepted a contributory role. It was accepted nevertheless that former BPS members affected by the BPS Issues should be compensated, which is why the FCA established the s.404 Scheme. Some Complainants argue that they have not been put back in the position they would have been in had they remained in the DB scheme. Their disagreement is with the outcome of the compensation arrangements. As set out above, the methodology for the s404 Scheme is excluded from the Complaints Scheme. The FCA's position is that in setting up the s404 Scheme, it followed the approach that a court would take to awarding damages for non-compliant DB pension transfer advice and it consulted

widely on the approach it was taking with the s404 Scheme. I have reviewed the evidence I have received regarding alternative redress methods but I have not been able to definitively conclude from this information that an alternative redress method which would have produced fairer results, was proposed to the FCA which the FCA unreasonably rejected. To have recommended compensation beyond the s404 Scheme, I would have had to see that the FCA could have reasonably adopted a different solution to the s404 Scheme that would have led to a materially better outcome for former BPS members but the FCA unreasonably rejected such a solution. Based on the evidence I have received, I do not see that such an alternative was identified.

7.8. The FCA's position is that the s404 Scheme appeared to the FCA to be the best solution it had at the time based on legal advice and public consultation. Some Complainants allege that the FCA failed to consider alternative redress solutions that were proposed to the FCA, including a bulk annuity and a deferred annuity which Complainants allege would have been more effective than the s404 Scheme in putting former BPS members back in the position that they would have been in had they remained in the BPS DB Scheme. I asked the FCA for an explanation of the alternative redress solutions put to it and why the FCA considered that these could not proceed. The FCA's position (as summarised in 9.6.6 and PS22/14<sup>16</sup>) is that the alternative redress options were not viable. For example, the possibility of a bulk or deferred annuity were considered by the FCA in discussions with external providers but these discussions did not progress beyond high-level engagement with the providers who did not present sufficiently detailed proposals to the FCA. As a result, the FCA says that there was no basis on which it could progress the options further. In addition, the FCA has explained that such solutions would have required oversight and authorisation by TPR as the lead regulator for alternative pension superfund arrangements. The FCA says that its internal consideration of bulk or deferred annuity options identified a number of significant barriers, including the

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<sup>16</sup> <https://www.fca.org.uk/publication/policy/ps22-14.pdf>

inability to compel consumers to purchase a particular product, potential tax and age-related constraints and the risk that such approaches could result in redress outcomes exceeding what a court would be likely to award. I invited Complainants and the FCA to submit any additional evidence they had on this point but I have not received definitive evidence to show that the FCA considered alternative proposals but rejected them unreasonably in favour of the s404 Scheme. I am therefore unable to recommend further compensation.

- 7.9. Separately, Complainants allege that some advisers took advantage of the falling annuity rates immediately following the mini-budget in September 2022 to delay making the redress calculations which had the effect of reducing sums due in some cases from significant amounts offered in previous weeks to zero. The FCA has told me that it has asked the FOS whether it has any evidence of firms delaying payments until after the mini-budget and FOS has said that it does not have any evidence of this. The FCA has said that on some occasions there may be genuine reasons why calculations were delayed, for example delays in collecting the relevant information to undertake calculations or where firms needed to find an actuarial firm to undertake calculations for them. The FCA has also said that *“even if a calculation is delayed or carried out after the September 2022 mini-budget, the calculation is appropriate for the customer’s circumstances at the time it is undertaken, whether it results in more or less redress for the firm to pay. The aim of redress is not to punish a firm, but to put the customer back in the position they would have been as far as practically possible”*. The FCA is correct that even if firms have timed redress to coincide with favourable (to them) economic conditions, provided they have not broken any rules or otherwise acted inappropriately, the calculation is considered appropriate if it reflects the customer’s circumstances at the time it is carried out. Whether this results in the firm paying more or less redress, additional compensation would generally not be payable. I have received information from a number of Complainants which shows evidence that firms took an inordinate amount of time to conduct the calculations without providing valid reasons for delay to Complainants. The FCA has said that it will investigate such matters and

consider any evidence Complainants have of this in the first instance (this may or may not lead to compensation for affected former BSPS members).

7.10. The FCA has referred me to an FCA webpage<sup>17</sup> (last updated on 25 September 2024) which contains statistics regarding the redress actions taken by the FCA, FOS and FSCS. This webpage summarises the redress position as at 25 September 2024 as follows:

7.10.1. Approximately 7,700 individuals transferred out of BSPS after receiving advice. Overall, out of the approximately 7,700 individuals, the FCA says 3,958 received unsuitable advice.

7.10.2. 1,870 of the 3,958 were offered £106m in redress.

7.10.3. Over 200 claims were still working their way through the FCA s404 Scheme. It is unclear if these former members have now received redress as the webpage has not been updated. [I **invited** the FCA to provide updated figures as to how many claims remain outstanding but it has not done so].

7.10.4. 1744 former members received unsuitable advice but were not offered redress payments because the FCA says they did not lose out financially. The FCA explains this by saying because of changing economic conditions since 2022, the expected cost of funding a guaranteed retirement income through an annuity is now cheaper than those who received redress before 2022.

7.11. I conclude from the figures above that approximately 350 former members may not have made a claim for compensation, particularly those whose advice firms went out of business prior to or during the redress scheme. These customers were required to approach the FSCS directly as their advice was not automatically reviewed in the way that it was for firms still in existence under the s404 Scheme.

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<sup>17</sup> [FCA webpage](#)

## 8. **Background**

- 8.1. The BSPS Issues arose against a backdrop of concerns known to the FCA in relation to the DB pensions transfers market more generally. A number of reviews (summarised below) had taken place prior to 2016 which indicated specific, serious concerns around contingent charging, failure of pensions advisors to follow FCA rules, and clear evidence of unsuitable advice being offered.
- 8.2. As far back as October 1994, the Securities and Investments Board (“**SIB**”) established an industry-wide pensions review (“**SIB Review**”)<sup>18</sup> amid concerns around the mis-selling of personal pensions between 1988 – 1994. Phase 1 of the SIB Review began in October 1994 and firms were required to submit details of compensation offered by December 1998. Phase 2 of the SIB Review began on in January 1999 and lasted until 30 June 2002. The SIB Review addressed 1.6 million cases of personal pension mis-selling that happened between 1988 and 1994. The SIB Review identified that up to 500,000 people may have received unsuitable advice on transfers and opt-outs from occupational pension schemes. Some of the transfers and opt-outs were transacted in a materially non-compliant way, and some consumers suffered loss as a result of unsuitable advice. HM Treasury conclusions<sup>19</sup> from the SIB Review included that “*firms simply did not abide by the regulatory rules*” and that there was a critical need to focus on effective supervision and enforcement within the UK's financial regulatory framework to ensure rules were being properly implemented.
- 8.3. In July 2014, the FCA conducted a thematic review<sup>20</sup> on Enhanced Transfer Value (“**ETV**”) pension transfers which found a third of transfer advice in relation to ETV transfers was unsuitable. ETVs were used to incentivise transfers out of DB schemes. Although the advice was generally limited and solely in respect of whether to take the ETV offer, it provided insight generally into the suitability of bulk pension transfer advice provided by financial

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<sup>18</sup> <https://researchbriefings.files.parliament.uk/documents/SN00429/SN00429.pdf>.

<sup>19</sup> HM Treasury [conclusions](#)

<sup>20</sup> <https://www.fca.org.uk/publication/thematic-reviews/tr14-12.pdf>.

advisers during employer-led exercises. This review found that the advice was often 'process driven'. Issues included the use of generic templates not tailored to individual circumstances, over-reliance on critical yield analysis without considering broader member needs, neglect of tax and benefit implications and inadequate assessment of members' risk tolerance and capacity for loss. The FCA has said that TR14/12 focused specifically on ETV which is a small subset of the transfer market and did not reflect the broader DB advice market. I disagree. ETV transfers differ from standard DB transfers only in the incentive structure offered by employers. Both require assessing complex actuarial values, understanding future income compromises, complying with FCA suitability requirements and communicating risks to clients. The decision-making and behavioural incentives are materially similar so the findings of TR14/12 provided insight into issues with the DB pension transfer market.

- 8.4. In August 2016, the FCA had issued an alert<sup>21</sup> highlighting some of the risks particularly with respect to pension advice, arising from authorised firms accepting business via unauthorised introducers or lead generators, and reminding investment advisers that they were fully responsible for ensuring regulatory compliance, retaining control of the advice process, conducting due diligence, and avoiding delegation of regulated activities to unregulated parties. The FCA was concerned that many of the authorised firms it had visited did not have adequate input or control over the advice they were ultimately responsible for giving to customers. This had been particularly evident in relation to advice on switching and transfer of pension benefits.
- 8.5. In January 2017, the FCA published an alert<sup>22</sup> setting out its expectations in relation to firms providing DB transfer advice. The FCA was concerned that some firms had been advising on DB pension transfers without considering the assets in which their client's funds would be invested following the switch

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<sup>21</sup> August 2016 alert, <https://www.fca.org.uk/news/news-stories/investment-advisers-responsibilities-accepting-business-unauthorised-introducers-lead-generators>.

<sup>22</sup> January 2017 alert, <https://www.fca.org.uk/news/news-stories/advising-pension-transfers-our-expectations>.

leaving consumers *“at risk of transferring into unsuitable investments or – worse – being scammed”*.

8.6. In June 2017, an FCA consultation paper, CP17/6<sup>23</sup> ‘Advising on Pension Transfers’, primarily aimed at financial advisory firms, sought to gain the views of the industry on proposals *“intended to improve consumer outcomes through improving the quality of advice on pension transfers and increasing adviser confidence.”* This was prompted by the 2015 pension reforms and mainly the requirement for advice to be taken when transferring a DB pension. Whilst contingent charging was not a topic addressed in CP17/6 published June 2017, respondents raised concerns about the practice: *“There was significant comment from respondents on the practice of contingent charging and the consumer risks it causes.*

8.7. In October 2017, the FCA published findings<sup>24</sup> from its assessments of DB pension transfers over the previous 2 years. This work had highlighted that some firms made transfer recommendations without considering a receiving scheme or investments or knowing the introducing adviser’s intentions for investment. This opened up the risk of consumers’ pension savings ending up in inappropriate or scam investments. The general risks associated with this practice had been set out by the FCA as detailed in 8.4 above but some firms had not taken the earlier alert on board. The findings also showed FCA concerns regarding the suitability of advice where the recommendation was to transfer and concerns about the suitability of the recommended product.

8.8. In addition, the BPS Issues also arose against a background of pensions-related legislative reform. In particular:

8.8.1. On 19 March 2014, the UK Government issued its 2014 Budget,<sup>25</sup> which included pension freedom reforms designed to allow those in DC schemes greater flexibility in accessing their pensions.<sup>26</sup> These reforms were initially not aimed at those in DB schemes but following

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<sup>23</sup> <https://www.fca.org.uk/publication/consultation/cp17-16.pdf>.

<sup>24</sup> October 2017, <https://www.fca.org.uk/news/news-stories/our-work-defined-benefit-pension-transfers>

<sup>25</sup> <https://www.gov.uk/government/topical-events/budget-2014>

<sup>26</sup> HM Treasury Budget 2014 (19 March 2014), page 42 onwards.

feedback from interested parties, the Government expanded the reforms to include individuals in DB schemes acknowledging that increased flexibility could lead to more individuals transferring from DB to DC schemes.

- 8.8.2. To implement the pension freedom reforms set out in the 2014 Budget, the Pension Schemes Act 2015 introduced a new legislative framework on 3 March 2015 for private pensions covering both DC and DB schemes, which came into force from 6 April 2015 (the "**Pensions Freedoms**").<sup>27</sup> The primary purpose of the Pensions Schemes Act 2015 was to strengthen the regulatory framework governing pension schemes, ensure better governance and administration, and offer greater flexibility and security to pension scheme members. It aimed to protect the interest of savers and provide them with more control over their retirement savings.
- 8.8.3. On 4 March 2015, the FCA published a consultation paper ("**CP15/7**") that aimed to address concerns regarding the reforms implementing Pensions Freedoms.<sup>28</sup> On 8 June 2015, the FCA published its policy statement in response to CP15/7 ("**PS15/12**"), setting out the new rules for pensions transfers. The new rules came into effect on 6 April 2015. In relation to DB transfers, these rules introduced new requirements such that: (i) advising on conversions or transfers from safeguarded benefits to flexible benefits was to be a "*specified activity*" requiring specific permission from the FCA;<sup>29</sup> and (ii) individual pension scheme members were required to take advice from an FCA authorised adviser before a transfer was allowed to proceed, where the value of their safeguarded benefits was

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<sup>27</sup> Pension Schemes Act 2015, <https://www.legislation.gov.uk/ukpga/2015/8/contents>.

<sup>28</sup> CP15/7: Proposed changes to our pension transfer rules (4 March 2015).

<sup>29</sup> Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, Section 53E.

greater than £30,000.<sup>30</sup> In this context, the FCA published a webpage update on the new pensions reforms on 30 June 2015.<sup>31</sup>

8.9. The concerns about the DB pensions market were exacerbated by the Pensions Freedoms legislative reforms. By the time of the announcement of the expected sale of British Steel and the BSPS Restructure, the FCA was aware that there was a significant risk of unsuitable advice occurring in the DB pension transfer market. These concerns were evident from the various reviews carried out by the FCA and its predecessors, summarised above and the work the FCA had undertaken in advance of, and following, the introduction of Pensions Freedoms. This included the internal FCA Pension Freedoms FCA Risk Assessment carried out in April 2015. In particular, the FCA's response to the concerns took the form of file reviews DB1 – DB4 (as described in further detail below). By the time the BSPS Restructure came about in 2017, DB1 (described further in 9.1.9 below) had concluded that there was a "*strong likelihood of consumer detriment from both bulk and individual transfers*" and a significant number of client files were rated as "*unsuitable*" or "*unclear*". The FCA had decided to carry out DB2 to gather further evidence (described further in 9.1.14 below) and DB2 was underway by the time of the BSPS Restructure (DB2 ultimately found the "*potential for significant harm*" and the FCA consequently decided to undertake a further review to gather more evidence). The findings from the file reviews raised material concerns over the suitability of DB transfer advice.

8.10. The FCA undertook DB1, between October 2015 and March 2016, i.e. prior to the BSPS Restructure. During DB1 it gathered information about "*higher risk*" firms.<sup>32</sup> As part of this, the FCA issued requests for information to six pension transfer advice firms and, for four of those firms, it conducted 29 detailed file reviews. The FCA also conducted site visits to three of the four firms. Most of the files that were reviewed under DB1 concerned transfers

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<sup>30</sup> PS15/12: Proposed changes to our transfer rules (8 June 2015), page 5, paragraph 1.5.

<sup>31</sup> FCA webpage, The new pensions flexibilities – updated from the FCA (30 June 2015), <https://www.fca.org.uk/news/statements/new-pension-flexibilities-%E2%80%93-update-fca>.

<sup>32</sup> Further information on how the FCA identified these "*higher risk*" firms is set out at paragraph 9.1.10 below.

that had started before the Pensions Freedoms were introduced. Further information on DB1 is set out at paragraph 9.1.9 below.

- 8.11. From December 2016 to July 2018, the FCA had concluded DB1 (which concluded there was a “*strong likelihood of consumer detriment*”) and had started conducting DB2 (which found there was “*potential for significant harm*”) as the BSPS Issues unfolded. DB2 was not specific to firms providing advice to BSPS members. It was part of the FCA’s response to general concerns about the DB transfer market. As part of DB2, the FCA considered a further 16 pension transfer advice firms and conducted 71 file reviews and nine firm visits. Unlike DB1, the files that were reviewed under DB2 concerned transfers that post-dated Pensions Freedoms. This work led to some firms agreeing to a voluntary requirement (“**VREQ**”) to vary their permissions, resulting in them no longer being able to provide pension transfer advice.
- 8.12. Despite the information it had about the BSPS Restructure (as further detailed in 8.16 below) and related DB pensions concerns, the FCA did not consider that it received its first “*actionable intelligence*” in respect of the BSPS Issues until 7 and 8 November 2017 (as discussed in more detail at paragraph 9.1.22 below). The FCA did not take action in relation to BSPS prior to this. After this point, the FCA sought to gather intelligence on what was happening, for example, the FCA reached out to TPR in relation to BSPS on 10 November 2017 and it spoke with TPR on 14 November 2017.<sup>33</sup>
- 8.13. Further file reviews were conducted to verify and build on DB1 and DB2 (“**DB3**”), between June 2017 and February 2019. DB3, like DB1 and DB2 before it, was not BSPS specific (at least not when it started in June 2017). DB3 was not a whole market review as the FCA did not consider that the tests for carrying out a review of the whole DB transfer market had been met (for further detail see 9.2.9). DB3 continued on from the work of DB1 and DB2 to further evidence the unsuitability rates in the pensions transfer market. DB3 was paused temporarily to divert resource to handling BSPS

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<sup>33</sup> FCA Report (12 April 2024), Background timeline to the BSPS page 12.

Issues. The DB3 file reviews re-started again in March 2018, where 45 firms provided information, and the FCA conducted site visits to 18 firms.

8.14. On 16 January 2018 (after the BSPS TtC period had ended), the FCA wrote to all firms holding the pension transfer and opt out regulatory permission, setting out its expectations in relation to pension advice.<sup>34</sup> This letter did not mention BSPS but it summarised findings from its file reviews. Following each of the DB file reviews, the FCA published its findings on its website.<sup>35</sup>

8.15. The BSPS was a DB pension scheme for British Steel employees. The scheme had assets worth approximately £13.3 billion and there was approximately 130,000 scheme members in 2017.<sup>36</sup> British Steel was acquired by TSUK in 2010. In March 2016, TSUK announced that it would examine restructuring options, in light of financial difficulties it was experiencing, including an underfunded pension scheme (i.e. BSPS).<sup>37</sup> The Tata Group explored options to amend pensions regulations and a public consultation on options for BSPS was launched by the DWP in Summer 2016.<sup>38</sup> In May 2016, the Chairman of the BSPS trustee wrote to all members informing them of the Government's consultation.<sup>39</sup>

8.16. TSUK approached TPR and the Pension Protection Fund ("**PPF**") in mid-2016 to propose a Regulated Apportionment Arrangement ("**RAA**"). A RAA allows an employer facing solvency issues to detach itself from the liabilities of an underfunded DB scheme. In December 2016, TSUK closed the BSPS to further accruals from 31 March 2017, and, in May 2017, the key

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<sup>34</sup> FCA letter to firms, "Pension Transfer Advice – reminder of our requirements" (16 January 2018).

<sup>35</sup> FCA webpage, Defined Benefit (DB) transfers – further update on our work (5 June 2020), <https://www.fca.org.uk/publications/multi-firm-reviews/defined-benefit-db-transfers-further-update-our-work>.

<sup>36</sup> PAC Report (21 July 2022), pages 4 and 9. It is unclear from the evidence provided exactly how many members the BSPS scheme comprised. The PAC Report indicates that there were 130,000, whereas the Rookes Report indicates that there were 122,000.

<sup>37</sup> Rookes Report (January 2019), page 13.

<sup>38</sup> DWP Consultation Paper (26 May 2016) and Government response to the British Steel Pension Scheme consultation (March 2018), <https://assets.publishing.service.gov.uk/media/5aaf79cee5274a7fbb4d68f2/british-steel-pension-scheme-government-response.pdf>.

<sup>39</sup> Rookes Report (January 2019), page 13.

commercial terms of the RAA were agreed.<sup>40</sup> The FCA was not involved in relation to the BSPS Restructure during this early period, but I consider it most unlikely that they were not aware of it due to press coverage at the time.

8.17. In September 2017, it was publicly announced that TPR had granted formal approval for the RAA.<sup>41</sup> BSPS subsequently announced to its members on 11 September 2017 that the separation of BSPS from TSUK was complete.<sup>42</sup> As part of this, BSPS members were asked at this point to decide between two options for managing their pensions benefits:<sup>43</sup> (i) to switch to a new scheme, i.e. the 'new BSPS' (which provided the same accrued benefits as the original DB scheme but with lower future increases); or (ii) to remain in the then current BSPS and move into the PPF (which may have resulted in a reduced pension).<sup>44</sup> BSPS members were sent newsletters, which outlined the proposals and timetable for consultations, and were directed to a BSPS webpage which had been set up to provide BSPS members with information about the transfer process, including deadlines for submitting the necessary documents to transfer out of BSPS. BSPS members were also invited to attend meetings across various locations to discuss their options in detail.<sup>45</sup> In the context, the TtC period, during which BSPS members were required to consider their options and make a final choice on the options set out above was a very short window.

8.18. During the TtC period, BSPS members were sent "*professionally-designed*" packs of information which highlighted that the new BSPS scheme would be "*less generous*" than the old scheme, but more generous than PPF

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<sup>40</sup> TPR, Regulatory intervention report issued under section 89 of the Pensions Act 2004 in relation to the British Steel Pension Scheme (February 2018) <https://www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/regulatory-intervention-section-89-british-steel.ashx>.

<sup>41</sup> TPR, Regulatory intervention report issued under section 89 of the Pensions Act 2004 in relation to the British Steel Pension Scheme (February 2018) <https://www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/regulatory-intervention-section-89-british-steel.ashx>.

<sup>42</sup> Grant Thornton, Pension Transfer Advice to British Steel Pension Scheme ("BSPS") members by FCA-authorized firms (18 March 2022), page 6, paragraph 2.5.

<sup>43</sup> PAC Report (21 July 2022), page 9, paragraph 2.

<sup>44</sup> BSPS webpage, <https://www.bspensions.com/>.

<sup>45</sup> Grant Thornton, Pension Transfer Advice to British Steel Pension Scheme ("BSPS") members by FCA-authorized firms (18 March 2022), page 7, paragraph 2.6.

compensation.<sup>46</sup> Trade unions also wrote to BSPS members, encouraging them to complete their TtC forms and drawing attention to rogue financial advisers (against whom the FCA had brought enforcement action and such firms had been required by the FCA to stop providing advice). The TtC resulted in 97,000 BSPS members, out of the total 122,000 BSPS members making an active choice regarding whether or not to transfer, with the majority transferring to the new BSPS scheme.<sup>47</sup> As most BSPS members had a pension value of over £30,000, they were also required to take financial advice before transferring as a result of the legislative changes referred to earlier. The majority of transfer advice was provided during the TtC, and the decisions made as a result were implemented after this period.

8.19. By the end of the TtC exercise, of the 122,000 total BSPS members, around 83,000 BSPS members moved into the new BSPS scheme, and around 39,000 remained in the old scheme (25,000 remained by virtue of expressing no preference and the remainder chose to remain in the old scheme).<sup>48</sup> Deferred BSPS members, being those who had not yet accessed their pensions and were no longer earning increased benefits, were the only members who had the choice to transfer out of BSPS completely.<sup>49</sup> The Complainants are within this group of BSPS former members. In April 2017, 44,000 of the 122,000 total BSPS members were deferred members who were eligible for this, and those that wanted to proceed with transferring out were required to have the necessary documentation to do so by 16 February 2018 (ahead of the PPF assessment on 29 March 2018). This was independent of the TtC exercise.<sup>50</sup>

8.20. In December 2017,<sup>51</sup> towards the end of the TtC period, in response to concerns about the financial advice BSPS members were receiving (for

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<sup>46</sup> Rookes Report (January 2019), page 14.

<sup>47</sup> Rookes Report (January 2019), page 15.

<sup>48</sup> NAO Report (18 March 2022), page 16, paragraph 1.9.

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.*

<sup>51</sup> December 2017, <https://www.fca.org.uk/news/statements/fca-updates-work-financial-advice-given-members-british-steel-pension-scheme>.

example following the “actionable intelligence” received at the November 2017 conference), the FCA held four seminars in Swansea and Doncaster for advisers specialising in pension transfers. Separately, the FCA said that it would continue its previously planned work on DB transfer advice in the wider market (not connected with BPS).

8.21. Between April 2017 and March 2018, 5,517 of the 44,000 deferred BPS members transferred out of the old BPS scheme. A further 2,317 BPS members who had requested a transfer before the 16 February 2018 deadline also subsequently transferred out, bringing the total to 7,834 deferred BPS members transferring out of the old scheme to a DC scheme.<sup>52</sup> As noted in paragraph 8.8.3, these transfers were a ‘specified activity’, and, therefore, advice on them was required to be provided by FCA-regulated advisers. There was high demand for DB pension advice given that it was, in most cases, a requirement, and in view of the wider circumstances. Firms were financially incentivised to advise BPS members to transfer into the new scheme, given the contingent charging arrangements in place at the time. Pursuant to these contingent charging arrangements, firms were only paid if transfers out occurred. These circumstances led to many advisers providing unsuitable advice. 79% of BPS members who received advice chose to transfer out of BPS to a DC scheme.<sup>53</sup>

8.22. In March 2019, following DB3, the FCA posted an update to BPS members on its website, noting that it was “*looking into the suitability of the advice*” provided to BPS members.<sup>54</sup>

8.23. In April 2019, the FSCS announced the increase in its compensation limit (from £50,000 to £85,000).<sup>55</sup> This was a result of the normal review process and was not connected, or limited, to BPS.

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<sup>52</sup> NAO Report (18 March 2022), page 19, paragraph 2.3.

<sup>53</sup> NAO Report (18 March 2022), page 7, paragraph 12.

<sup>54</sup> FCA webpage, Important information for British Steel Pension Scheme members (1 March 2019), <https://www.fca.org.uk/news/news-stories/important-information-british-steel-pension-scheme-members>.

<sup>55</sup> FSCS webpage, FSCS announced higher protection limits of £85,000 for some products and services (1 April 2019), <https://www.fscs.org.uk/media/press/2019/apr/higher-protection-limits/>.

8.24. The FCA conducted a fourth phase of file reviews ("**DB4**") from May to December 2019, some two years after the TtC. It assessed 85 firms during DB4, with 79 firm visits and six desk-based reviews. 55 of the firms reviewed during DB4 were referred to a final phase of file reviews known as 'Operation Branford'. As with DB1, DB2 and DB3, the file reviews for DB4 were in respect of firms providing DB advice but were not specific to firms who had advised on BSPS. During DB4, in June 2019, the FCA also updated its website to announce to former BSPS members that it was hosting a series of events to inform them of their right to complain.<sup>56</sup> In August and September 2019, the FCA announced two events it was holding in Port Talbot for former BSPS members, which took place on 21 August and 5 September 2019, where it provided further information on pensions advice and consumers' right to complain.<sup>57</sup>

8.25. Operation Branford was the FCA's final phase of file reviews, which again was not specific to BSPS. The purpose of Operation Branford was to assess past failings and levels of consumer harm at firms that were identified as high risk during DB1-DB4. Operation Branford was proposed in January 2019, and took place between July 2019 and April 2020, overlapping with DB4. Operation Branford involved further reviews of files from firms about which the FCA had concerns arising out of its previous file reviews and included 18 firms which had given advice in relation to BSPS.

8.26. From May 2020 onwards, the FCA began its past business reviews ("**PBRs**") and, simultaneously, progressed enforcement investigations. PBRs involved asking firms to carry out a review of their own business practices in contrast to the earlier DB reviews which the FCA had carried out itself or with the help of external resources by taking and reviewing a sample of files from certain firms. The FCA states that it carried out the DB1 – DB4 file reviews first prior to the PBRs to understand the scale and nature of failings by firms in order

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<sup>56</sup> FCA webpage, FCA to host events for British Steel Pension Scheme Members (7 June 2019), <https://www.fca.org.uk/news/press-releases/fca-host-events-british-steel-pension-scheme-members>.

<sup>57</sup> FCA webpage, FCA announces August and September events for former members of the British Steel Pension Scheme (1 August 2019), <https://www.fca.org.uk/news/news-stories/fca-august-and-september-events-former-members-bsps>.

to see if the threshold for taking enforcement action or carrying out PBRs had been met. The FCA says that the DB file reviews informed FCA supervisory work and further enforcement referral decisions as well as VREQ, OIREQ and PBR decisions. The FCA took a number of steps as a result of the findings of the PBRs, including:

- 8.26.1. On 3 June 2020, the FCA published its DBAAT advice checker, to enable consumers to check if they had been misadvised.<sup>58</sup>
- 8.26.2. On 22 June 2020, the FCA wrote to former BSPS members to inform them that they may have been misadvised and detailing their next steps.<sup>59</sup>
- 8.26.3. On 22 December 2021, the FCA wrote a 'Dear CEO' letter to firms that had provided former BSPS members with pension transfer advice, reminding firms of their requirements and noting that a s404 Scheme was being considered.<sup>60</sup>
- 8.26.4. Subsequently, an updated 'Dear CEO' letter was sent to firms on 31 March 2022.<sup>61</sup> This letter updated the relevant period for the scope of the proposed s404 Scheme. In the December 2021 letter, the relevant period for the proposed s404 Scheme started from 1 March 2017, but in the March 2022 letter, the relevant period began on 26 May 2016. The March 2022 letter also provided firms with the redress scheme consultation link.
- 8.26.5. On 31 March 2022, the FCA also published a consultation paper (CP22/6),<sup>62</sup> in which it sought advice from firms, consumers and stakeholders on the possibility of introducing a s404 Scheme pursuant to its powers under FSMA.

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<sup>58</sup> FCA webpage, Advice checker: defined benefit pension transfers (3 June 2020), <https://www.fca.org.uk/consumers/pension-transfer-defined-benefit/advice-checker>.

<sup>59</sup> FCA letter, Action needed: for former members of the British Steel Pension Scheme (22 June 2020).

<sup>60</sup> FCA Dear CEO Letter (22 December 2021).

<sup>61</sup> FCA updated Dear CEO letter (31 March 2022).

<sup>62</sup> CP22/6: Consumer redress scheme for unsuitable advice to transfer out of the British Steel Pension Scheme (31 March 2022).

- 8.27. On 4 April 2022, and connected to CP22/6, the FCA published a policy statement (PS22/4),<sup>63</sup> in which, without consultation (as it was for a specific good purpose to prevent harm), it introduced emergency asset retention rules for firms involved in BSPS transfer advice pursuant to its powers under section 137A of FSMA. It did this without consultation to increase the likelihood that former BSPS members would get compensation directly from firms for any losses suffered from being given unsuitable pension transfer advice rather than the costs being borne by FSCS levy payers and ultimately being passed on to customers.
- 8.28. On 14 November 2022, the FCA confirmed by way of PS22/14<sup>64</sup> that the s404 Scheme would go ahead. PS22/14 noted that transfer advice provided to former BSPS members between 26 May 2016 and 29 March 2018 would be in scope, and that all firms would need to identify in-scope consumers and write to them about the s404 Scheme by 28 March 2023.<sup>65</sup>
- 8.29. On 28 November 2022, the FCA wrote a 'Dear CEO' letter to PII insurers who provided PII for firms that advised on the BSPS (amongst others), setting out the FCA's expectations of these firms.<sup>66</sup>
- 8.30. In January 2023, the FCA published PS23/1, in which it confirmed that asset retention rules would be extended "*until firms have resolved all relevant BSPS cases*".<sup>67</sup>
- 8.31. On 28 February 2023, the s404 Scheme came into force over 4 years after the TtC period ended.

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<sup>63</sup> PS22/4: Temporary asset retention requirement for certain firms subject to the proposed British Steel Pension Scheme consumer redress scheme (4 April 2022).

<sup>64</sup> PS22/14: Consumer redress scheme for unsuitable advice to transfer out of the British Steel Pension Scheme (14 November 2022).

<sup>65</sup> PS22/14: page 4, paragraph 1.11 and page 9, paragraph 1.24.

<sup>66</sup> FCA, "Dear CEO" letter to PII firms (28 November 2022).

<sup>67</sup> PS23/1: Extended asset retention requirements for firms under the British Steel Pension Scheme consumer redress scheme, page 3, paragraph 1.3.

## 9. ***Analysis of the Complaints***

### 9.1. ***FCA actions/inactions in relation to the wider DB advice market and BSPS prior to 7 November 2017***

#### ***Description of Section 9.1 (Complaint 1)***

9.1.1. This section deals with the period up to 7 November 2017 (which was during the early part of the TtC period) when the FCA states that it first obtained “*actionable intelligence*” at the Birmingham pensions conference. This period relates to the first complaint of the Complainants, which is that “*the Financial Conduct Authority has consistently been behind the curve in responding to the catastrophic impact on British Steel Pension Scheme members*”. The Complainants also alleged that the FCA “*failed to take steps to protect consumers.... When it knew [that they were] ... likely to be mis-sold*”. In order to understand the FCA’s actions in relation to this period, it is necessary to understand what had happened in the market, what the FCA knew the risks were and what it had done to address these in the period leading up to the BSPS Issues (including two key FCA initiatives, DB1 and DB2). This time period is critical because action taken after this period was unlikely to have prevented the unsuitable advice being given to BSPS members. The FCA’s involvement and actions it took during TtC are dealt with in section 9.2 below.

#### ***Summary of FCA’s position and my conclusions in response***

9.1.2. The FCA’s position regarding this period is that it did not have timely knowledge of the BSPS Issues and it could not have reasonably prevented the harm from occurring prior to 7 and 8 November 2017. The FCA’s position is based on the following:

9.1.2.1. There was an appropriate regulatory framework around pension transfers in place.

9.1.2.2. The FCA had undertaken “*significant work in relation to pensions transfer advice following the introduction of Pensions Freedoms in 2015*”. This included updating the

FCA rulebook and conducting DB1, DB2 and starting DB3.

9.1.2.3. The FCA had no formal role and was not involved in the BSPS Restructure taking place between March 2016 and September 2017 which fell within the remit of the TPR.

9.1.2.4. The FCA considers that it received the first “*actionable intelligence*” at the Personal Financial Society Conference in Birmingham on 7 and 8 November 2017.

9.1.2.5. BSPS was “*unique*” and the FCA could not see how it “*could have identified this very specific risk sooner*”.

9.1.3. I do not agree with the FCA’s position above for the following reasons:

- **Appropriate Regulatory framework** – The regulatory framework in place between March 2014 and November 2017 was not appropriate to prevent consumer harm due to:
  - Contingent charging – where advisers are only paid if a transfer proceeds – created a strong financial incentive for advisers to recommend transfers, even when unsuitable. This model compromised the impartiality of advice, leading to biased recommendations.
  - IFAs involved in DB pension transfer advice could have benefited from enhanced qualifications which the FCA later introduced (e.g. raising qualification levels for pension transfer specialists (**PTs**) to require them to obtain the same qualification as an investment adviser alongside the existing PTS qualification)
  - The FCA’s rules on PII lacked clarity, leading to misunderstandings among firms.
  - The FCA did not have robust systems in place to monitor firms’ PII cover.
  - The capital adequacy arrangements for IFAs were not sufficient to withstand systemic issues.
  - Regulatory returns from firms with pension transfer permissions were not sufficient to provide information about levels of DB transfers carried out.
  - Advisers were known not to follow the relevant pension transfer rules applying to them.

- ***FCA's prior work in relation to pension transfer advice*** – I consider that the FCA was on notice of the following issues arising in the DB transfer market in advance of the BSPS Issues occurring and it did not respond sufficiently robustly.
  - The FCA had found that a significant proportion of DB pensions transfer advice was unsuitable.
  - The FCA lacked a robust supervisory mechanism to monitor the DB pensions transfer market. It did not have a mechanism for collecting robust data for DB pension transfers.
  - The FCA lacked adequate monitoring of whether pension advisers were adhering to the rules.
  - The FCA lacked an adequate strategy for dealing with known concerns.
- ***FCA's formal role in the BSPS Restructure*** – The FCA acknowledged, that it could have been better joined up with its regulatory partners during the BSPS Restructure. By not considering or taking a proactive approach the FCA missed an opportunity to prevent or at least reduce the harm before it happened.
- ***The need for actionable intelligence*** – In my view, the FCA had sufficient intelligence prior to the inception of BSPS advice to take some form of preventative action. I do not agree that the FCA must wait until consumer harm has occurred before taking supervisory steps especially where the FCA had known concerns about the DB pension transfer advice market.
- ***Unique circumstances*** – I do not consider that BSPS presented unique circumstances such that the FCA could not have foreseen the likely consequences.

#### 9.1.4. ***Relevant background information in relation to this aspect of the Complaint***

##### *DB pensions concerns known to the FCA in advance of the BSPS Issues*

- 9.1.5. As summarised in section 8 above, DB pension transfers was a topic that the FCA had been concerned about and considering for some time, prior to the BSPS Restructure in 2017. The FCA had

information about the DB transfer market generally during this period from the following sources:

- 9.1.5.1. As set out in 8.2 above, the SIB Review findings raised issues around unsuitable advice relating to DB pension transfers. It identified 1.6 million mis-sold pensions relating to DB transfers during the 1980-1990s. The cost of compensation relating to these reviews was estimated at, at least, £11.5 billion with an additional £2 billion spent on administration. Treasury conclusions from this review included that *"firms simply did not abide by the regulatory rules"*.
- 9.1.5.2. As set out in 8.3 above, the FCA's July 2014 thematic review on ETV pension transfers concluded that a significant portion of the ETV pension transfer advice was unsuitable, highlighting issues such as misaligned incentives, high incidences of disclosure failings<sup>68</sup> and 'process driven' advice that failed to consider individual circumstances. The FCA also found that some advisers had failed to comply with the requirements and guidance in force at the time – for example, TPR's guidance that no cash incentives should be offered that were contingent on the member's decision to accept the offer.<sup>69</sup>
- 9.1.5.3. With the introduction of the Pension Freedoms in 2015, the FCA concluded, in its Risk Assessment in April 2015, that DB transfer activity was likely to increase and the risk of unsuitable transfers leading to harm was likely to be greater. The FCA stated in the Risk Assessment *"We believe there is a strong likelihood of consumer detriment from both bulk and individual transfers."*

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<sup>68</sup> TR14/12: Enhanced transfer value pension transfers (July 2014), pages 7-8, <https://www.fca.org.uk/publication/thematic-reviews/tr14-12.pdf>.

<sup>69</sup> *Ibid.*

9.1.5.4. Respondents to an FCA consultation paper issued in June 2017 (CP17/16) (which closed for comments on 21 September 2017) had provided "*significant feedback on contingent charging and its potential for consumer harm. Respondents highlighted the conflict of interest in the model (the misalignment of incentives between advisers and consumers). In particular, the increased incentive for advisers to recommend a transfer or only recommend products where ongoing advice charges can be deducted*".<sup>70</sup> Contingent charging is a model under which financial advisers receive payment for the advice they give only if their client transfers their DB pension following such advice. This might incentivise advisers to recommend transfers out of DB schemes. From July 2019, the FCA started to review the rules in relation to contingent charging, this is considered further in section 9.1.25.1.

*The work / preparation undertaken by the FCA in relation to DB transfers in response to Pensions Freedoms and broader concerns*

9.1.6. The FCA considered the pensions transfer market in relation to the Pensions Freedoms from March 2014 onwards when the changes were announced in the 2014 Budget. As noted at paragraph 8.8.1 above, Pensions Freedoms were designed to provide individuals with more choice and control over their retirement savings. Relevant to the present complaint, the introduction of Pensions Freedoms led to the following:

- 9.1.6.1. early and more flexible access to DC pensions savings;
- 9.1.6.2. those with safeguarded benefits with a Cash Equivalent Transfer Value (CETV) of more than £30,000 were required to seek regulated financial advice before making

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<sup>70</sup> FCA CP18/7: Improving the quality of pension transfer advice.

a decision about any transfer or conversation of those benefits into flexible benefits; and

9.1.6.3. the FSMA (Regulated Activities) Order 2001 was amended to make advising on the conversion or transfer of safeguarded pension benefits into flexible benefits a specific regulated activity.

9.1.7. In response to the proposed introduction of the Pensions Freedoms, the FCA, in March 2015, launched a consultation (CP15/7) on changes to its rules.<sup>71</sup> The FCA stated the following in CP15/7:

9.1.7.1. the FCA "*...expect that more DB scheme members will seek to transfer their benefits to DC schemes for early and more flexible access to their pension savings*";<sup>72</sup>

9.1.7.2. "*The Government's new flexible pension regime will make advising on pension transfers significantly more complex, so we now wish to require the Pension Transfer Specialist qualification for advice on all transfers from DB schemes to DC arrangements, regardless of when the transferred benefits are being crystallised*";<sup>73</sup>

9.1.7.3. "*The greater variety of options for accessing pension wealth will increase the complexity of comparing the long-term outcomes of a switch from a DB scheme to a DC arrangement. Although the Government has mandated that consumers must take regulated financial advice on such transfers, the increased complexity raises the risk of unsuitable advice from non-specialist financial advisers*";<sup>74</sup>  
and

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<sup>71</sup> CP15/7: Proposed changes to our pension transfer rules (4 March 2015).

<sup>72</sup> CP15/7: page 5, paragraph 1.5.

<sup>73</sup> CP15/7: page 6, paragraph 1.11.

<sup>74</sup> CP15/7, page 16, paragraph 3.6.

9.1.7.4. *"Behavioural biases may further increase the risk where consumers wish to transfer with a view to accessing their benefits immediately. They may place more value on accessing their benefits now and underestimate how much they will need to draw on in the future. They may also underestimate the value of the future guarantees of their pension income implicit in a DB scheme".<sup>75</sup>*

9.1.8. In light of the known pre-existing issues together with the changes and increased risks associated with the introduction of Pensions Freedoms set out by the FCA in CP15/7 and as outlined above, the FCA made certain amendments to its rules from June 2015,<sup>76</sup> and, following their introduction, took steps to review how advice in the pensions market was operating in practice. The FCA launched the Retirement Outcomes Review<sup>77</sup> in 2016 to generally assess how the retirement income market evolved after the introduction of the Pension Freedoms (this did not focus specifically on DB transfer advice). The FCA had already identified general concerns with mis-selling and they undertook various file reviews due to the concerns of mis-selling, or potential mis-selling, in the DB transfer market. Although there were various file reviews across the period of this Report, DB1 and 2 were relevant to the period under consideration in this section.

## **DB1**

9.1.9. DB1 was a thematic review undertaken between October 2015 and March 2016, taking the form of file reviews of firms providing DB transfer advice. The FCA described the reason for undertaking DB1 as follows: *"As a result of an increase in the number of transfers from DB (Defined Benefit) to DC (Defined Contribution) pensions to take*

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<sup>75</sup> CP15/7, page 17, paragraph 3.11.

<sup>76</sup> FCA Report (12 April 2024), page 22, paragraphs 6.36-6.37 and PS15/12: Proposed changes to our pension transfer rules (June 2015).

<sup>77</sup> PS19/1 Retirement Outcomes Review: feedback on CP18/17 and our final rules and guidance (January 2019)

*advantage of the new freedoms, there is a concern that employee benefit consultants and advisers will encourage, or customers themselves pursue, transfers (e.g. insistent customers) without due consideration of the guaranteed benefits they are giving up".*<sup>78</sup> The FCA became aware of this increase in transfers as "*the sector team*" carried out an assessment in April 2015 and provided it with a list of firms that had an "*apparent increase in pension transfer business*".<sup>79</sup> This was made apparent from product sales data ("**PSD**").<sup>80</sup> PSD comprises information about the sales of a product,<sup>81</sup> which firms are required to provide the FCA with in line with SUP 16.11.<sup>82</sup>

9.1.10. DB1 was a very limited review that sought data from only six firms and conducted reviews of only four of those six firms. This is described by the FCA as "*following a risk-based supervisory strategy*" and "*targeted on firms viewed as higher risk, i.e. firms most active in DB transfer advice - as well as acting on intelligence on specific firms*".<sup>83</sup> In terms of the scope of DB1:<sup>84</sup>

9.1.10.1. The FCA initially identified potential firms for review based on those that had an apparent increase in pensions transfer advice (identified from the PSD) since Pensions Freedoms. The FCA looked at the first 35 firms on the list and identified 22 firms to contact; though the FCA does not make it clear what this entailed, it seems that it sought

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<sup>78</sup> Internal FCA document, Defined Benefit (DB) pension transfers – Findings and proposed next steps (undated), page 1.

<sup>79</sup> *Ibid.*

<sup>80</sup> The Internal FCA document, Defined Benefit (DB) pension transfers – Findings and proposed next steps, notes that PSD was used to "*identify smaller financial advisers that have shown big increases in pension transfers*".

<sup>81</sup> CP18/7 notes that "*PSD requires pension providers to separately identify product sales that result from an 'individual pension transfer'*", page 12, paragraph 3.20.

<sup>82</sup> FCA, SUP 16.11: Product Sales, Performance and Back-book Data Reporting, <https://www.handbook.fca.org.uk/handbook/SUP/16/11.html>.

<sup>83</sup> FCA Report (12 April 2024), page 24, paragraph 6.42.

<sup>84</sup> Internal FCA document, Defined Benefit (DB) pension transfers – Findings and proposed next steps (undated), page 1.

further information to identify the firms it would then conduct file reviews of.

9.1.10.2. Five of those 22 firms were selected for data, and one additional firm was identified through intelligence. Four of those five firms were then identified for review, based on the volume and type of business they conducted and "*how they were responding to pensions freedoms*".

9.1.10.3. The FCA reviewed 32 client files and ultimately undertook a detailed review of 29 of client files (as two were out of scope) from those four firms, visiting three in person and undertaking a virtual visit to the remaining firm.<sup>85</sup>

9.1.11. The findings of DB1 included the following:<sup>86</sup>

9.1.11.1. Only 35% of the advice was assessed as "*suitable*";

9.1.11.2. A further 59% of files were held to be "*unclear*";

9.1.11.3. 6% of files were held to be "*unsuitable*"; and

9.1.11.4. in respect of disclosure issues relating to DB transfer advice, 48% of the 29 files were deemed "*unacceptable*". Such issues could include, for example, inadequate or misleading disclosure of the loss of guarantees and risks associated with the transfer, and provision of an accurate Transfer Value Analysis report.

9.1.12. The FCA's overall conclusion was that DB1 indicated that there was a "***strong likelihood of consumer detriment from both bulk and individual transfers***" (emphasis in bold added).<sup>87</sup> The FCA highlighted that a significant number of client files were rated as "*unsuitable*" or "*unclear*" but "*generic failings meant it was difficult to*

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<sup>85</sup> Internal FCA document, Defined Benefit (DB) pension transfers – Findings and proposed next steps (undated), page 13.

<sup>86</sup> *Ibid.*

<sup>87</sup> Internal FCA document, Defined Benefit (DB) pension transfers – Findings and proposed next steps (undated), page 1.

*assess if the recommendations to transfer out of the DB scheme was in the clients best interests". Whilst the FCA concluded that, in general, the firms reviewed had identified and sought to adapt to the risks associated with DB transfers, the FCA had "concerns that the risks identified are not being sufficiently managed or mitigated, and that this could be resulting in poor outcomes for consumers".<sup>88</sup>*

9.1.13. The FCA determined that the "*appropriate response was to continue its risk-based supervisory strategy*" through expanding the sample size and undertaking a further phase of work known as 'DB2', as the FCA ultimately concluded that the sample size for DB1 was not sufficient to draw broader conclusions which would have justified taking action at this stage.<sup>89</sup> The FCA, therefore, decided to conduct further file reviews given its concerns about mis-selling, or the potential of mis-selling, in the DB pension transfer market.

## *DB2*

9.1.14. DB2 was undertaken between December 2016 and July 2018, and built on DB1, essentially with the same remit as DB1 but seeking to expand the sample size to increase its statistical significance. Whilst DB2 did expand the sample size, that sample was still small. The initial proposal was that 15 firms would be considered<sup>90</sup> and ultimately 16 additional firms comprised DB2.<sup>91</sup> The FCA review team visited and reviewed files from nine of those firms, assessing 71 customer files and business models. Whilst DB2 was intended to conclude in August 2017, it was extended by 11 months due to its findings.<sup>92</sup> The findings of DB2 included the following:<sup>93</sup>

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<sup>88</sup> Internal FCA document, Defined Benefit (DB) pension transfers – Findings and proposed next steps (undated), page 2.

<sup>89</sup> FCA Decision Letter (19 April 2024), page 7, paragraph 12 (b).

<sup>90</sup> Internal FCA document, Defined Benefit (DB) pension transfers phase two (undated), page 2.

<sup>91</sup> Internal FCA document, Work Initiation Document - Defined benefit (DB) pension transfers phase three (undated), page 1.

<sup>92</sup> *Ibid.*

<sup>93</sup> *Ibid.*

9.1.14.1. Only 39.4% of the advice was assessed as *"suitable"*. This compared to 90.9% of retirement income advice identified in other work;

9.1.14.2. A further 28% of files were held to be *"unclear"*; and

9.1.14.3. *"In effect 62% of files reviewed did not meet our requirements for 'suitable' advice"*.

9.1.15. Across DB1 and DB2, the key conclusions were as follows:<sup>94</sup>

9.1.15.1. The rate of *"unsuitable"* advice was found to be 17%;

9.1.15.2. There were material information gaps in a further 36% of files; and

9.1.15.3. Only 47% of files indicated *"suitable"* advice had been given.

9.1.16. Following DB2, the FCA identified the *"potential for significant harm"* and consequently decided to undertake a further review to gather more evidence (which ultimately became 'DB3', discussed further in the next section at paragraph 9.2.9 onwards), using *"lessons learned to streamline our assessment process, and to target those firms who may have poor business models that lead to harm"*.<sup>95</sup>

9.1.17. In October 2017, coincidentally, during the start of TtC, the FCA's Executive Committee ("**ExCo**") was provided with a paper entitled *"A new approach to past business reviews and redress exercises"*.<sup>96</sup> The paper suggested that resources expended on PBRs *"reduces the resource available for proactive work stopping future harm caused by other firms"* and assessed that *"we consider that such a switch would be likely to result in a greater reduction in harm overall"*.

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<sup>94</sup> FCA webpage, Defined Benefit (DB) transfers – further update on our work, (5 June 2020), <https://www.fca.org.uk/publications/multi-firm-reviews/defined-benefit-db-transfers-further-update-our-work>.

<sup>95</sup> Internal FCA document, Work Initiation Document - Defined benefit (DB) pension transfers phase three (undated), page 1.

<sup>96</sup> FCA ExCo Decision Paper, *A new approach to past business reviews and redress exercises* (presented at 3 October 2017 meeting).

The paper put forward a proposal for this hypothesis to be tested "*through applying the new approach to the current Defined Benefit (DB) to Defined Contribution (DC) pension transfer project firms and to compare the outcomes with the results of the ETV project redress exercise which is currently ongoing*". In particular, the proposal was for a more proactive approach, suggesting that the FCA would actively write to consumers to communicate its concerns about the DB advice provided by particular firms, and "*invite consumers to think about whether they should complain*" about such firms on the basis of such concerns. This proposal was considered by ExCo, as evidenced in the minutes of the ExCo meeting in October 2017.<sup>97</sup>

- 9.1.18. The October 2017 ExCo minutes evidence the ExCo conclusion that "*the proposed approach was not the right means of securing*" the aims to achieve cost savings and timely redress payments.<sup>98</sup> The ExCo minutes noted that if the FCA expressed a "*clear view that the firm had acted improperly*", this would amount to public censure of the firm, which would not be lawful without following proper procedure.<sup>99</sup> Equally, if the FCA did not communicate a clear view and a consumer's right to redress, then this would be "*unlikely to secure redress for consumers*".<sup>100</sup> Instead ExCo recommended that supervision and enforcement should work together to find the best way forward for redress, (i.e. after harm had occurred) focusing on FCA intervention where firms displayed a widespread breach of standards. Therefore, ExCo supported FCA intervention, where suitable, and noted that, in the meantime, consumers could seek to complain to the FOS for redress.

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<sup>97</sup> ExCo Minutes (October 2017).

<sup>98</sup> *Ibid.*

<sup>99</sup> *Ibid.*

<sup>100</sup> *Ibid.*

## *The proposed restructure of British Steel and BSPS from March 2016*

9.1.19. Around the time that the FCA completed DB1, in March 2016, TSUK announced its intention to restructure British Steel and, by mid-2016, had approached TPR to propose an RAA,<sup>101</sup> an arrangement that allows an employer facing solvency issues to detach itself from an under-funded DB pension scheme. Shortly thereafter, in May 2016, the DWP launched a public consultation on options for BPS as part of a restructure of British Steel<sup>102</sup> and discussions continued between TPR, TSUK and the BPS trustee around the BPS Restructure. The scheme was closed to future accruals in March 2017.<sup>103</sup> Key terms of the BPS Restructure<sup>104</sup> were agreed in May 2017 and the RAA formally announced in August 2017.

9.1.20. As well as the formal steps set out above, which were reported publicly, the need to restructure BPS was widely reported in the press from shortly after the announcement of the restructure of British Steel, and negotiations over BPS were reported throughout 2017.<sup>105</sup> Within these articles, there was reference to the fact that members could be transferring out of a DB scheme, i.e. BPS.<sup>106</sup> From a regulatory perspective, it was TPR and the PPF who were involved in those negotiations, with TPR responsible for providing

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<sup>101</sup> TPR, Regulatory intervention report issued under section 89 of the Pensions Act 2004 in relation to the British Steel Pension Scheme (February 2018), page 5.

<sup>102</sup> DWP Consultation Paper (26 May 2016).

<sup>103</sup> TPR, Regulatory intervention report (February 2018), page 16.

<sup>104</sup> TPR, Regulatory intervention report issued under section 89 of the Pensions Act 2004 in relation to the British Steel Pension Scheme (February 2018), page 5.

<sup>105</sup> See, for example, The Guardian webpage, Struggle over Tata steel pensions argument (21 December 2016), <https://www.theguardian.com/business/2016/may/26/tata-steel-pension-chief-backs-controversial-cuts>; The Financial Times webpage, Tata Steel is a heavy burden for the Pension Protection Fund (10 April 2016), <https://www.ft.com/content/39a6ba74-fbe0-11e5-8f41-df5bda8beb40> (*behind a paywall*); The BBC webpage, Struggle over Tata Steel pensions argument (21 December 2016), <https://www.bbc.co.uk/news/uk-wales-38383449>; The WalesOnline webpage, What happens next to the final salary British Steel Pension Fund? (16 February 2017) <https://www.walesonline.co.uk/business/personal-finance/what-happens-next-final-salary-12614192>.

<sup>106</sup> See, for example, The Financial Times webpage, Tata Steel workers cash in final salary pensions (5 June 2017), <https://www.ft.com/content/78cfbc0c-46c9-11e7-8519-9f94ee97d996> (*behind a paywall*).

approval and clearance for the RAA and BSPS Restructure, including the process for the TtC period which took place between October and December 2017. The FCA was not involved in the process of approving the BSPS Restructure. It was, however, the FCA's responsibility to oversee the advisers who provided advice to BSPS members in respect of transferring their DB pensions. The BSPS Restructure involved a number of firms in the DB advice market, and the FCA was required to oversee those firms providing advice to BSPS members.

9.1.21. The FCA has not provided evidence of what, if any, steps it took in relation to the BSPS Restructure prior to November 2017 when the TtC started and the advice was given. The FCA has confirmed that it did not communicate with TPR, nor the BSPS trustee, during this period,<sup>107</sup> which is consistent with the fact that the FCA has not provided evidence that it sought information about the proposals for the RAA, for example in advance of the TtC period. It is unclear whether the FCA might have been successful in influencing these arrangements including, for example the length of the TtC period. It has, however, no legal right to do so.

9.1.22. In September 2017, the FCA received reports from a variety of sources of "*factory-gating*"<sup>108</sup> of BSPS members by advisers in Port Talbot, but it did not take any action to understand the nature or extent of the issue, on the basis that the reports were "*vague*" and not sufficiently specific, and that no regulated firms were named.<sup>109</sup> Factory-gating occurred by way of "*hanging around*" near BSPS roadshow events<sup>110</sup> and the PPF was concerned that advisers "*touted*

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<sup>107</sup> FCA Report (12 April 2024), Background timeline to the BSPS, pages 10-12.

<sup>108</sup> The practice of advisers turning up unsolicited at or close to individuals' place of work to make efforts to recruit new clients.

<sup>109</sup> FCA Report (12 April 2024), page 27, paragraph 6.65.

<sup>110</sup> Work and Pensions Committee, Inquiry into Pension Freedom and Choice, report into BSPS, Chapter 4: Vultures (9 February 2018) [British Steel Pension Scheme - Work and Pensions Committee - House of Commons](#).

*for business through the media looking to encourage transfers*".<sup>111</sup> On 7 and 8 November 2017, the FCA states that it was made aware of particular mis-selling<sup>112</sup> concerns in relation to advice provided to BSPS members in the TtC period, from firms attending the Personal Finance Society Conference in Birmingham, which the FCA states was the first "*actionable intelligence*" that it received in relation to mis-selling concerning BSPS. From this point in time, which was during the TtC period, the FCA took steps to communicate with members and advisers, and also to obtain information from the BSPS trustee and TPR to address concerns about BSPS mis-selling.

## **Analysis**

9.1.23. The FCA's position regarding this period is that it did not have timely knowledge of the BSPS Issues and it could not have reasonably prevented the harm from occurring. It says that it acted as and when it "*received intelligence on potential unsuitable advice*". Whilst the FCA accepts that DB1 and DB2 raised concerns about the DB transfer advice market and that information about the BSPS Restructure was in the public domain, it does not consider that it should have taken steps in relation to BSPS prior to November 2017. As summarised in 9.1.2 above, the FCA's position is based on the following:

9.1.23.1. There was an appropriate regulatory framework around pension transfers in place.

9.1.23.2. The FCA had undertaken "*significant work in relation to pensions transfer advice following the introduction of Pensions Freedoms in 2015*" and the FCA was taking steps to review and consult on additional measures. The

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<sup>111</sup> Written evidence from the Pensions Protection Fund (PFC0097) provided in December 2017 to the Work and Pensions Committee Inquiry into Pension freedom and choice, report into the BSPS, [PFC0097 - Evidence on Pension freedom and choice](#).

<sup>112</sup> FCA Report (12 April 2024), page 28, paragraph 6.67.

FCA states that these steps were appropriate and reflected the FCA’s risk-based approach and resources. The FCA highlights changes such as updating the FCA rulebook and conducting DB1, DB2 and starting DB3. Whilst the FCA states that, at the time of commencing its market-wide review work in 2015, the *“data and intelligence the FCA held around the quality of pension transfer advice... was limited”* and describes its DB file reviews as *“significant”*. It acknowledges that the reviews were part of a *“risk-based supervisory strategy”*. As part of that strategy, the FCA’s approach was incremental, only reviewing a small sample of firms even as part of its second phase DB2 work (files from only 13 firms were reviewed across DB1 and DB2, for example. The work was also retrospective and backward-looking.

- 9.1.23.3. The FCA had no formal role and was not involved in the BSPS Restructure taking place between March 2016 and September 2017 which fell within the remit of the TPR. There was also no specific information sharing protocol in place with TPR.<sup>113</sup>
- 9.1.23.4. Whilst the FCA was the responsible regulator for the provision of pensions transfer advice, it did not have what it describes as *“actionable intelligence”* in relation to deficiencies in the advice being provided before late 2017, i.e. prior to the Personal Financial Society Conference in Birmingham on 7 and 8 November 2017.
- 9.1.23.5. BSPS was *“unique”* and the FCA could not see how it *“could have identified this very specific risk sooner”*.

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<sup>113</sup> FCA Report (12 April 2024), page 20, paragraph 6.24.

9.1.24. I do not agree with the FCA's position above for the reasons set out below. I have not received evidence of any consideration of possible steps to prevent the BSPS Issues from arising.

#### *Appropriate Regulatory Framework*

9.1.25. In the lead up to, and following, the introduction of the Pensions Freedoms in 2015, the FCA changed its pension transfer rules for example it consulted on changes to introduce a specific regulated activity for pension transfers. These rules were finalised in June 2015 (PS15/12). In light of these changes, I have considered whether the regulatory framework in place during March 2014 – November 2017 was appropriate to deal with the known issues of concern about DB transfers and the potential risks for consumer harm that the Pensions Freedoms presented. I do not agree that the regulatory framework in place at the time (between March 2014 – November 2017) was appropriate to prevent consumer harm due to the following reasons:

9.1.25.1. *Contingent charging* - Although the FCA had taken some steps to change the rules in response to the introduction of Pension Freedoms in 2015, this did not mitigate the issues which arose in relation to BSPS. Whilst contingent charging was not a topic addressed in CP17/6 published in June 2017, respondents raised concerns about the practice and the interplay between contingent charging and the potential for consumer harm in relation to DB transfers, *"There was significant comment from respondents on the practice of contingent charging and the consumer risks it causes"*. The FCA did not consult on contingent charging specifically until July 2019,<sup>114</sup> by way of CP19/25,<sup>115</sup> and a ban on contingent charging was not

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<sup>114</sup> Whilst contingent charging formed part of CP18/7, CP18/7 was more broadly focused on *"improving the quality of transfer advice"*, including a section in respect of *"charging structures associated with advising on pension transfers"*. This section considered contingent charging, but a specific consultation on contingent charging itself did not occur until July 2019.

<sup>115</sup> CP19/25: Pension transfer advice: contingent charging and other proposed changes (July 2019).

introduced until October 2020 by way of COBS 19.1B.<sup>116</sup> The NAO Report highlights contingent charging as a key issue, noting that 60% of firms and 39,414 individual transfers were subject to the contingent charging model between October 2018 and March 2020, yet the FCA did not implement the ban on the model until three years after the BSPS Restructure.<sup>117</sup> Similarly, the PAC Report also notes that the Work and Pensions Committee had, in February 2018, identified contingent charging as a "key driver of poor advice".<sup>118</sup> The PAC Report notes the FCA was "slow to implement its regulatory powers" to ban the model, in circumstances where, rather than taking immediate action, the FCA took 32 months to ban the charging structure. The PAC Report further notes that the FCA was unconvinced by other funding models, delaying the changes to contingent charging,<sup>119</sup> which led to poor advice through advisers manipulating BPS members to transfer (being incentivised to do so).<sup>120</sup> Giving evidence at a PAC Committee Parliamentary hearing on 13 June 2022, the then CEO of the FCA was asked why contingent charging was not banned sooner, he explained "*I and my colleagues were never particular supporters of contingent charging. We were looking for a better method because we could see alternatives that were just as bad*".<sup>121</sup>

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<sup>116</sup> COBS 19.1B Ban on contingent charging for pension transfers and conversions (1 October 2020), <https://www.handbook.fca.org.uk/handbook/COBS/19/1B.html>.

<sup>117</sup> NAO Report (18 March 2022), page 31.

<sup>118</sup> PAC Report (21 July 2022), page 11 and Work and Pensions Committee Sixth Report of Session 2017-19, HC 828 (15 February 2018), page 5.

<sup>119</sup> PAC Report (21 July 2022), pages 7 and 11.

<sup>120</sup> PAC Report (21 July 2022), page 10.

<sup>121</sup> <https://committees.parliament.uk/oralevidence/10604/default/>.

9.1.25.2. *Pension transfer qualifications* – The FCA had published an alert on its website in January 2017<sup>122</sup> after reviewing several cases of poor advice following the introduction of Pension Freedoms. The FCA subsequently consulted<sup>123</sup> on additional adviser qualifications to address its concerns about unsuitable advice to transfer out of a DB scheme and how it could improve the framework to raise the standards of advice. Despite these concerns, the rules in relation to adviser qualifications did not change until 1 October 2020, following PS18/20 which was published in October 2018.<sup>124</sup> From 1 October 2020, the qualification requirements for pension transfer specialists increased and required a full qualification for retail investment advice together with a specialist pension transfer qualification.

9.1.25.3. *PII* – Since March 2016, the FCA had been generally aware of the hurdles pension advisers faced in securing PII at an affordable price. There was also a misunderstanding of the rules relating to PII with some firms operating under a misconception that they could operate without PII cover if they held the minimum capital required. During this period, the FCA does not appear to have had effective systems for monitoring PII cover. CP19/25 published in July 2019 stated that the FCA did not have sufficient data from existing returns to inform it fully of the PII cover firms had in place, or whether it included advice on DB transfers. The FCA subsequently changed its PII data collection requirements from 1

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<sup>122</sup> <https://www.fca.org.uk/news/news-stories/advising-pension-transfers-our-expectations>.

<sup>123</sup> <https://www.fca.org.uk/publication/consultation/cp18-07.pdf>.

<sup>124</sup> <https://www.fca.org.uk/publication/policy/ps18-20.pdf>.

October 2020 in an effort to monitor firms' PII cover more effectively.<sup>125</sup>

9.1.25.4. *Capital adequacy of firms* – Most of the firms providing BSPS advice were IFAs. IFAs are often small and thinly capitalised. Many are subject to risk-based supervision which means that the FCA will not actively supervise the IFA unless it receives complaints that meet the FCA's threshold for intervention. The FCA appears to have been aware that the capital adequacy arrangements that the IFAs were required to meet were not sufficient to withstand a systemic issue such as BSPS. There appears to be acknowledgement that: (a) smaller IFAs are thinly capitalised and available resources are likely to be insufficient to enable firms to provide compensation in the context of a material number of claims; (b) that PII cover was not designed to cover this kind of material issue (but rather to cover *“the genuine honest mistake, not systematic mis-advice or mis-selling”*); (c) that it is not practical to expect smaller firms to increase materially their capital to meet these liabilities; (d) the asset retention rules do not appear to prevent further dissipation of assets. The combination of these things makes it likely that smaller firms will be unlikely to withstand these claims and will therefore fail. The FSCS will take over responsibility in these circumstances but the level of the cap that will be applied may have a material impact on the amount recovered by those affected. The FCA did not, however, change the capital adequacy rules to address these concerns. It appears to acknowledge that IFAs would likely not have the resources to increase their capital but did not come up with other solutions as to how

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<sup>125</sup> <https://www.fca.org.uk/publication/policy/ps20-06.pdf>.

they would meet their liabilities if a systemic issue arose. The FCA's current work<sup>126</sup> to require personal investment firms to set aside capital so that they can cover compensation costs and ensuring the "polluter pays" is welcome although it is unclear if it will be sufficient to mitigate future systemic shocks to the regulatory system similar as arose with BSPS.

9.1.25.5. *Data* - The FCA has acknowledged that the information provided through regulatory returns from firms with pension transfer permissions do not appear to have provided sufficient information on the DB transfers the firms were undertaking nor whether they held PII cover (as further set out above). The FCA acknowledges that the returns did not consistently meet the necessary standards of quality. The FCA was receiving PSD which identified an apparent increase in pension transfer business from firms with pensions transfer permissions following Pension Freedoms but it was also aware of limitations in this data because it did not distinguish between DB and DC transfers. Subsequently, on 5 June 2020, the FCA published final rules<sup>127</sup> which included requirements for a new section of the Retail Mediation Activities Return ("**RMAR**") regulatory return covering data on DB that advice firms would be required to provide from 1 October 2020 on a bi-annual basis. The FCA stated that these changes would improve the FCA's ability to supervise the pension transfer sector. These changes if brought in sooner could have resulted in additional protections for consumers.

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<sup>126</sup> <https://www.fca.org.uk/publication/consultation/cp23-24.pdf>.

<sup>127</sup> <https://www.fca.org.uk/publication/policy/ps20-06.pdf>.

*FCA's work in relation to pension transfer advice from March 2014 – November 2017*

9.1.26. I do not agree that the FCA's response to DB pension transfer advice in the lead up to and following the introduction of Pensions Freedoms was sufficient. The FCA had: (i) knowledge of material past misconduct by some IFAs (as highlighted by its alert in August 2016<sup>128</sup>); and (ii) concerns around the Pensions Freedoms, and (iii) the conclusions of DB1 ("*strong likelihood of consumer detriment*"). Despite this, the FCA did not seek to prevent or mitigate potential consumer harm adequately, including in relation to BSPS members. This meant that the BPS Issues provided an unfortunate opportunity for the known risks to materialise. In responding to the known risks, the FCA should have done more with respect to the following:

9.1.26.1. *Unsuitable DB pension advice was a known issue* - The FCA was on notice from past reviews and its own work that a significant proportion of DB pension advice was found to be unsuitable. This, together with the long history of concerns in the DB market, as well as the introduction of the Pension Freedoms which the FCA knew would likely exacerbate consumer harm, should have led to the FCA taking concentrated action to ensure consumers were protected. Whilst it took certain actions, these were neither sufficient nor effective at preventing consumer harm adequately.

9.1.26.2. *Lack of a robust mechanism to monitor the DB transfer market*- The FCA did not have a robust mechanism or detailed data to monitor the DB transfer market instead relying on ad hoc file reviews which were incremental, slow and backward-looking as well as relying on

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<sup>128</sup> August 2016 alert, <https://www.fca.org.uk/news/news-stories/investment-advisers-responsibilities-accepting-business-unauthorised-introducers-lead-generators>.

inadequate data reports. As noted at 9.1.17, in October 2017, ExCo considered a proposal to move FCA resources away from its file reviews and towards more forward-looking reviews, where the FCA would actively communicate its concerns about DB advice to consumers and encourage them to consider complaining. Ultimately, this proposal was not implemented, in favour of supervision and enforcement teams working together to find an efficient way of collaborating for the redress exercises. ExCo's concerns about the October 2017 proposal are explained further at paragraph 9.1.18. above. In any event, it was, at that point too late to have impacted the FCA's approach to BSPS Issues. However, it does indicate that the FCA had an approach looking at past harms and redress and it was aware that a more reactive and retrospective approach risked missing the opportunity to prevent future harm that a more proactive approach might achieve. Despite this knowledge, the FCA continued with the incremental DB reviews which were limited in scope and sample size (files from only 13 firms were reviewed across DB1 and DB2, for example). I am not persuaded that DB1 and DB2, were sufficiently broad, and I have not received detailed information in respect of the FCA's data gathering and methodology. The FCA's internal document sets out that when setting up DB1, the FCA was provided with a list and it only looked at the first 35 firms to determine which firms to contact, and it eventually only contacted 22 firms, choosing six firms to provide data and four firms to review. I do not have sight of the list used by the FCA, but it is clear there were more than 35 firms of possible concern. Without sight of that list, it is unclear what the scale of increase in DB pensions transfer advice was, and whether the FCA chose the "*first 35*" firms alphabetically, by volume of increase, or

otherwise. In any event, I am not convinced that the FCA's evidence and data gathering was sufficient, and conducting only four reviews does not seem reasonable in the circumstances. This was again apparent in respect of DB2, where the FCA visited only nine firms. The FCA's reasoning for choosing the firms and the significance of the numbers is unclear to me, and I am not persuaded that the FCA reviewed firms using a clear and considered approach and in accordance with a clear strategy. As mentioned above, it is not clear that the FCA had identified what the potential solutions were and what level of evidence was needed to satisfy them. There does not appear to be any consideration of where such file reviews were heading.

9.1.26.3. *Lack of adequate monitoring* - Based on the findings of DB1 and the initial findings of DB2, the FCA was concerned that advisers were not adhering to its expectations around pension transfers. It published a reminder on its website in January 2017 in an alert entitled 'Advising on pension transfers (our expectations)'. This reiterated the transfer advice rules, guidance and expectations for firms advising on pension transfers. It does not appear that a mechanism for monitoring whether advisers were adhering to the rules was put in place despite the concerns.

9.1.26.4. *No coherent strategy* - Despite concerns being raised from the results of DB1, the work undertaken by the FCA in relation to DB transfers advice remained incremental in its scope.

9.1.26.4.1. The FCA concluded that the findings of DB1 evidenced a "*strong likelihood of consumer detriment*" and the findings of DB2 showed a "*potential for significant harm*". Due to the

small sample size, the findings gave the FCA limited insight into the scale of the risks associated with the DB transfer advice market as a whole.

- 9.1.26.4.2. The FCA has highlighted that a key reason for DB1 and DB2 being limited in scale was that it was "*unable to secure more resources for larger reviews as there was no indication of systemic failing in the market*". I have not seen evidence of detailed considerations of what the policy options were if the data established the worst, as it did. Nor have I seen evidence that the FCA, at any time, had a considered timetabled strategy as to how it would deal with the results of the DB reviews and the levers it would employ should the findings reveal, as they did, material risks of consumer harm.
- 9.1.26.4.3. The FCA has not provided details of the evidential thresholds that needed to be established in order to warrant proactive steps to avoid or mitigate the risk of potential harm occurring in relation to DB pension transfers.
- 9.1.26.4.4. I acknowledge that the FCA had identified problems in the DB market through DB1 and DB2 and it was doing further analysis but that did not amount to the FCA taking action to prevent or mitigate further issues arising. However, even accounting for the limited scope of DB1 and DB2, the FCA is itself clear that the findings from those reviews as to the level of unsuitable advice were

inconsistent with the wider pensions advice market and this work raised "*concerns*".<sup>129</sup> Those concerns led to the January 2017 alert, the consultation on DB transfer advice in July 2017 and DB3.

9.1.26.4.5. I am aware of the overarching risk-based regulatory approach taken by the FCA and I note that, clearly, the FCA must be mindful of the fact it has limited resources when determining how it should marshal those resources. However, I note that DB1 and DB2, which between them considered relatively few firms and files, took almost two years to undertake, and that there was a nine-month gap between the two. This is against the background that I consider that the FCA was, by its own admission, aware and on notice of the risks associated with advice in the DB transfer market (based on the known risks and the conclusion of DB1) by the time that the proposed BSPS Restructure was public knowledge in March 2016.

9.1.26.4.6. It appears that despite this knowledge the FCA did not formally even consider the additional risks posed by BSPS nor whether it could or should take action. Instead, it continued with its overarching incremental approach. It follows that no action appears to have been taken to address the additional risks posed by BSPS.

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<sup>129</sup> See, for example, FCA Decision Letter (19 April 2024), page 7, paragraphs 12(b) and (e).

9.1.26.4.7. In reaching this conclusion, I am reminded of the adage that an ounce of prevention is worth a pound of cure. Preventative supervisory action did not need to take a single form; the FCA did, however, need to take some form of action to address the potential for harm. Furthermore, the steps that the FCA took following November 2017 (addressed below in more detail in Section 9.2) were certainly open to the FCA to take earlier. This includes steps that would have either provided the FCA with more intelligence and information around BSPS (such as seeking information from the scheme administrators, engagement with TPR to understand more about the TtC process, requiring advisers who may advise BSPS members to provide information) or engaging more closely with advisers (for example, through drawing their attention to their obligations and the January 2017 alert, or through some form of enhanced supervision). However, no proactive steps appear to have been taken or even considered in relation to BSPS during this period.

9.1.27. I do not agree that, as the FCA had no formal role in the BSPS Restructure (which I accept) it could not have taken proactive steps to seek to prevent or mitigate consumer harm.

9.1.28. Although the BSPS Restructure which took place between approximately March 2016 and September 2017 fell within the remit of the TPR, the FCA was the responsible regulator for the provision of pensions transfer advice. When it became public knowledge in

May 2017 that the BSPS Restructure was likely to involve a significant DB transfer exercise, it must have known, in light of the historic issues in relation to DB transfers, that the BSPS Restructure could pose a risk to consumers.

9.1.28.1. The FCA could have taken proactive steps that would have provided the FCA with further intelligence and information about BSPS. This action could have included for example seeking information from the scheme administrators, engaging with the TPR to understand more about the TtC process or requiring advisers who were advising BSPS members to provide information or engaging more closely with advisers and BSPS members. The actions it took to warn consumers about the risks of DB transfers were taken after the TtC period ended and were thus too late to prevent the transfers from occurring.

9.1.28.2. The evidence I have received positively confirms that, prior to November 2017, the FCA had no communication with TPR, nor did the FCA seek any additional information or intelligence from the BSPS trustee, nor seek to emphasise to advisers their responsibilities in relation to DB transfer advice.<sup>130</sup>

9.1.28.3. The FCA acknowledged, in its response to the Rookes Report, that it could have been better joined up with its regulatory partners during the BSPS Restructure.<sup>131</sup> Such engagement would have provided the FCA with some of the information it states it did not have about the enhanced risks associated with the BSPS Restructure. However, I am also not convinced that there was anything to prevent the FCA from taking action based on the information it already held about regulated firms. The FCA would have

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<sup>130</sup> FCA Report (12 April 2024), Background timeline to the BSPS, pages 10-12.

<sup>131</sup> FCA Decision Letter (19 April 2024), page 33, paragraph 109.

had details of firms providing DB transfer advice in general, and it could and should have used this to take proactive action.

9.1.28.4. The FCA later sent a letter on 16 January 2018 (after the TtC period had ended) to all firms holding the pension transfer permission setting out its expectations in relation to pensions advice but this was too late to prevent the BSPS Issues. It could have done this sooner and certainly within the TtC period as it did not have to rely on any external parties (for example the TPR or BSPS trustee) to obtain the information as to who held the pension transfer permissions, the FCA already had this information. There is therefore no evidence of any proactive consideration during this period of whether the BSPS Restructure provided the potential for further consumer harm, consistent with the FCA's concerns about the DB transfer market as a whole.

9.1.28.5. Whilst I cannot determine what effect any additional steps might have had if they had been taken or taken earlier, I can observe that in adopting a purely reactive approach to BSPS, the FCA only became involved in matters related to BSPS advice when harm was already being or had already been caused to scheme members. By not considering, or not taking, a proactive approach, the FCA missed an opportunity to prevent, or at least reduce, that harm before it happened, a harm the potential for which was foreshadowed by, amongst other things, a long history of concerns in the DB market and the FCA's DB1.

### *Actionable intelligence*

9.1.29. The FCA's position as to its role in relation to the regulation of pensions transfer advice concerning BSPS during this period appears to acknowledge that it adopted a reactive approach, i.e. the

FCA holds that it was only reasonable to expect the FCA to take supervisory or enforcement action in relation to BSPS once it had "*actionable intelligence*" of actual harm to BSPS members being caused by substandard advice.

9.1.29.1. I do not agree with the FCA's assertion that it did not have actionable intelligence prior to the inception of BSPS advice. In any event, I do not agree that the FCA must wait until consumer harm has occurred before taking supervisory steps, especially where the FCA already had material concerns about the DB pension transfer advice market, and it already had evidence to back this up in the form of DB1 and the initial work it had done on DB2. It is unclear why these concerns did not translate across to the potential issues and risks which were, arguably, obvious in the context of the BSPS Restructure. It was open for the FCA to take a more proactive, preventative approach to supervision of advisers to protect BSPS members prior to the 7 and 8 November 2017 especially given the material concerns the FCA had about the DB pension transfer advice market.

9.1.29.2. I have not been provided with evidence of the FCA's knowledge about the BSPS Restructure in May 2017 but I find it improbable that the FCA was not, at least institutionally, aware of the basic information about the BSPS Restructure from the amount of press attention and given the FCA's DB work at that time, it ought to have been aware of the consumer risks posed by this significant restructure and should have made efforts to understand and take pre-emptive steps with respect to the TtC exercise which started on 1 October 2017. To the extent it was not aware, I consider that it should have been. The BSPS Restructure was a significant event affecting one of the largest DB pension schemes in the country with, as at

June 2017, approximately 125,000 members and £15 billion of assets.<sup>132</sup> Ultimately, despite not having been provided with any evidence of the FCA's awareness, I consider it probable that the FCA was institutionally aware, at a minimum, of basic information around the BSPS Restructure and the size of the BSPS scheme. This awareness should have prompted the FCA to take steps earlier than it did to identify the possible issues that such a large-scale restructure could present, together with potential causes of action, which may have enabled it to intervene sooner and more meaningfully.

9.1.29.3. Consequently, the FCA had knowledge of the risks associated with DB transfer advice by mid-2016 and, at a minimum, knew or should have known basic information around the BSPS Restructure, such as the size of the scheme. The FCA also knew that regulation required that all BSPS scheme members with a pension of £30,000 or more would need to seek advice on their decision and that this was likely to cause high demand in a short period of time, possibly in restricted geographic areas.

9.1.29.4. With this in mind, and given the scale of the BSPS Restructure, I consider that the FCA could have, and should have, taken steps towards some form of enhanced supervision. For example, the FCA could have taken the steps outlined in paragraph 9.1.26.4.7 earlier, to prevent consumer harm; the FCA could have communicated with advisers (for example, to reiterate expectations and require accurate and detailed reporting of the number of percentages to transfer out) and BSPS members (for example, to explain that in the FCA's view, it is rarely

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<sup>132</sup> TPR, Regulatory intervention report issued under section 89 of the Pensions Act 2004 in relation to the British Steel Pension Scheme (February 2018), page 3.

beneficial to transfer out of a DB scheme), and reallocated resource to DB3, sooner than it did.

9.1.29.5. It is not for me to determine precisely what would have been appropriate, but it appears that no consideration was given at this stage to the opportunity to prevent harm.

9.1.29.6. The FCA was also informed in September 2017 about instances of “factory gating” in relation to BSPS members. I do not accept that the factory gating intelligence lacked sufficient detail for the FCA to take steps to mitigate or prevent harm especially given the FCA’s knowledge at the time of issues with DB transfers. I do not see that the information from the conference was of a different order of magnitude to that relating to factory gating. The delay in taking preventative steps until after the conference on 7 and 8 November 2017 conference does not appear to me to be justified. It is not clear to me why FCA action was not possible in response to the reports of factory gating (for example it seems likely to me that the FCA could have established the identity of the firms had it asked questions or possibly from press reports.) nor why the information was more specific or “actionable” by the time of the November 2017 conference.

### *Unique circumstances*

9.1.30. The FCA's stance is that certain unique features of BPS meant that it was not on notice of the "*unusually high potential for unsuitable advice during the TtC exercise*", such as the complexity of the decision, the short time frame for the TtC process, the concentration of members and scaremongering around the role of the PPF.<sup>133</sup>

9.1.31. Whilst those factors certainly further enhanced the risks associated with the BPS Restructure, I do not accept that they made BPS

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<sup>133</sup> FCA Decision Letter (19 April 2024), page 13, paragraph 27, which refers to the unique factors identified by the Rookes Report.

unique or that, without being aware of them, the FCA should not reasonably have been on notice of significant risks associated with the BSPS Restructure. I do not consider that BSPS presented unique circumstances such that the FCA could not have foreseen the likely consequences for the following reasons:

9.1.31.1. I consider that the “*unique*” factors referenced by the FCA, namely the short timeframe for the TtC process, the complexity of the decision, the concentration and volume of members requiring DB transfer advice in limited geographies (as would be obvious from the fact that the BSPS was for current and former employees within a steel-making company that was present in only a few locations) were all reasonably obvious and in the context of concerns raised by DB1 and DB2 should have reasonably triggered at least consideration within the FCA of the risks, and whether action to mitigate or prevent harm could have been taken.

9.1.31.2. Ultimately, I find that the FCA did not need to have actual awareness of all the unique factors that further enhanced the risks associated with BSPS in order to know, from its work to date at the time, that such a restructure would raise the risk of high levels of substandard advice as identified through DB1 and DB2, amongst other things. It had more than sufficient knowledge of risks (of “significant harm”) and, as mentioned above, the BSPS specific issues were reasonably obvious. Against the background of the known risks of DB pensions transfers, it would have been fairly straightforward to predict that a significant DB pension restructuring, such as that the BSPS was engaged in, could lead to significant detriment for those receiving DB transfer advice. The FCA did not need to wait to be told what was reasonably obvious.

## 9.2. **7/8 November 2017 to February 2018**

### 9.2.1. **Description of Section 9.2**

This section deals with the work that the FCA undertook in the TtC period from when it considered that it had “actionable intelligence” on 7 November 2017 (approximately 6 weeks before the end of the TtC period) until February 2018 when the BSPS transfers were effected. Complainants allege in Complaint 1 that during this period, the FCA was consistently “*behind the curve in responding to the catastrophic impact on British Steel Pension Scheme members*”.<sup>134</sup> I acknowledge that the time period for action during the TtC was short, running as it did from 1 October 2017 – 22 December 2017.

### **Summary of FCA’s position and my conclusions in response**

9.2.2. A summary of the FCA’s position is that, from the point at which it had “actionable intelligence” from 7 and 8 November 2017, it took a number of steps between then and February 2018 with the intention of preventing harm to BSPS members. These steps comprised attempting to secure information from third parties, most notably the TPR and the scheme administrators, seeking information to identify firms providing advice to BSPS members, and engagement with those advisers themselves. It also took steps towards enforcement action and onsite supervisory visits. The FCA also sought to engage directly with BSPS members.<sup>135</sup>

9.2.3. I do not consider that these steps were sufficient or taken in a timely manner to prevent consumer harm for the following reasons:

- **Information gathering** – The FCA did not attempt to identify the IFAs providing advice to BSPS members; despite having the means to do more it failed to rely on its own records.

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<sup>134</sup> Complaint Letter (26 January 2023), page 3.

<sup>135</sup> FCA Report (12 April 2024), Background timeline to the BSPS, page 12-14.

- **Supervision and enforcement** - The FCA had the capability to identify all IFAs providing BSPS advice using its own resources but failed to do so. As a result, it remains unclear whether further supervisory or enforcement action was warranted against additional firms. The FCA has not investigated this matter, and I have therefore been unable to do so either.
- **PII and Asset Retention** - The FCA did not analyse issues with respect to PII and asset retention on a market/industry basis during this period, nor did it make efforts to improve its deficient monitoring of firms' PII cover and asset retention.
- **Communications with Members** – The FCA acted too late in attempting to communicate with members of the BSPS scheme which may have resulted in consumer harm. It also did not proactively inform them about the limitations of the PII 12-month rule.

9.2.4. I cannot say with certainty what the impact would have been had the steps above been taken earlier but it is likely that they would have had a positive effect in preventing consumer harm for BSPS members.

9.2.5. The FCA acknowledges that it *“could have been better joined up with its regulatory partners during the BSPS Restructure”* and that *“had data sharing with TPR<sup>136</sup> been in place for the BSPS, the FCA may have been able to start its assessments of firms sooner”*. I do not consider this explanation to be sufficient to warrant the lack of preventative action during this period.

### **Relevant background information in relation to this aspect of the Complaint**

9.2.6. As set out in Section 9.1 above, the FCA did not consider that the information it received prior to November 2017 amounted to sufficient

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<sup>136</sup> FCA Report (12 April 2024), page 67, paragraph 8.89.

intelligence to act in relation to BSPS (i.e. the FCA had received reports of "*factory-gating*" in September 2017, but it did not consider that the reports were sufficiently specific and no regulated firms were named).<sup>137</sup> The FCA's position is that the first actionable intelligence in relation to BSPS came from firms attending the November 2017 Conference on 7 and 8 November 2017, when some advisers raised their concerns regarding the advice provided to BSPS members in Port Talbot.<sup>138</sup> Given the scale of the restructure, the magnitude and implications of potentially harmful advice was high.

9.2.7. In late 2017, once the FCA considered it was aware of issues related to advice being provided to BSPS members by specific firms, the FCA took action as follows:

9.2.7.1. DB3 resource reallocation to handle BSPS Issues from mid-November 2017;

9.2.7.2. communicated with relevant bodies in relation to BSPS;

9.2.7.3. engagement with advisers including supervisory and enforcement action against advisers; and

9.2.7.4. communications with BSPS members.

9.2.8. The main purpose of those steps was for the FCA to gather information about BSPS and the firms providing BSPS members with advice so that it could take steps to protect BSPS members during the TtC period as well as to communicate the FCA's expectations of advisers. The FCA also took enforcement action against some firms. Further detail on those steps is set out below.

### **DB3**

9.2.9. By November 2017, the FCA was already conducting DB3, which further increased the sample size following the results of DB1 and

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<sup>137</sup> FCA Report (12 April 2024), page 27, paragraph 6.65.

<sup>138</sup> FCA Report (12 April 2024), page 27, paragraph 6.66.

DB2, to determine with greater statistical significance<sup>139</sup> whether the unsuitability rate of the advice identified in DB1 and DB2 was extensive enough to substantiate a whole market review. This was also the aim of DB2 but, although DB2 concluded there was a potential for significant harm, the FCA did not believe the tests had been satisfied and decided to undertake DB3. By conducting DB3, I understand that the FCA was gathering more data to ascertain whether the unsuitability rates were concerning enough to require a fuller market review.

9.2.10. DB3 commenced in June 2017 and was initially scheduled to finish in August 2018. However, soon after obtaining intelligence surrounding the BSPS Restructure at the conference on 7 and 8 November 2017, the FCA paused DB3 to reallocate the resources to BPS Issues (i.e. 10 members of staff from the FCA's Supervision retail investment department, representing a quarter of the available resource in that department)<sup>140</sup> to focus on BPS cases.<sup>141</sup> Though the FCA does not make it clear what this additional resource was for, it appears that this was to obtain information e.g. about relevant advisers, including from the Scheme administrator and TPR.

9.2.11. DB3 started again in March 2018, when the FCA collected information from 45 additional firms. Following this, the FCA conducted further assessment work, including file reviews and site visits performed on 18 firms, in relation to advice on 154 pension transfers.<sup>142</sup> The results of these file reviews were that 29.2% evidenced unsuitable advice, 22.7% evidenced unclear advice, and only 48.1% evidenced suitable advice. The final output from DB3 was

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<sup>139</sup> FCA Report (12 April 2024), page 28, paragraph 6.67.

<sup>140</sup> FCA Report (12 April 2024), page 66, paragraph 8.77. It is not clear from the FCA Report exactly when this pause occurred, but it appears to have been some time after "*the FCA received intelligence that there was an issue surrounding the advice given to BPS members*", which the FCA Report indicates was in November 2017.

<sup>141</sup> FCA Report (12 April 2024), page 25, paragraph 6.52.

<sup>142</sup> FCA Report (12 April 2024), page 25, paragraphs 6.52 and 6.53.

not available until 2019, as discussed further in Section 9.3.4. below.<sup>143</sup>

### *Communications with relevant bodies in relation to BSPS*

9.2.12. Starting in November 2017, the FCA attempted to obtain information in relation to BPS members and the firms that were providing pensions transfer advice to them, and requested that information from the following sources:

9.2.12.1. On 10 November 2017, the FCA reached out to the TPR to seek intelligence - this was the first time the FCA engaged with TPR in relation to BPS.<sup>144</sup>

9.2.12.2. The BPS scheme administrators (from mid-November 2017). The FCA was seeking information as to the specific firms that were providing advice to BPS members. The scheme administrators did not have sufficient resources to provide the requested adviser data to the FCA and the FCA could not compel the scheme administrators to provide the information.<sup>145</sup> Instead, the FCA's staff were invited and went to the offices of the scheme administrators, and ultimately gathered information directly themselves,<sup>146</sup> as set out further below.

9.2.12.3. The FCA requested information about firms providing BPS transfer advice from a local financial adviser who was operating a blog assisting BPS members (on 13 November 2017).<sup>147</sup>

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<sup>143</sup> FCA Report (12 April 2024), page 25, paragraph 6.53.

<sup>144</sup> FCA Report (12 April 2024), Background timeline to the BPS, page 12.

<sup>145</sup> Email chain between FCA (Ritchie Thomson) and BPS, Pensions (Martin Ross and Mulholland, Derek) (17 November – 6 December 2017) and FCA Report, page 28, paragraphs 6.69 – 6.73.

<sup>146</sup> FCA Report (12 April 2024), page 65, paragraph 8.79 and page 66, paragraph 8.83.

<sup>147</sup> FCA Report (12 April 2024), page 28, paragraph 6.68.

9.2.12.4. Three trade union leaders about any firms advising the BPS members (on 14 November 2017).<sup>148</sup>

9.2.13. Despite its attempts to gather information from the parties set out above, the FCA was unable to obtain comprehensive data on the financial advisers involved in advising BPS members. For example:

9.2.13.1. TPR was unable to provide a comprehensive set of information concerning the financial advisers and could only offer a handful of names as it did not collect real-time data from the BPS scheme trustees on the number of DB transfer requests.<sup>149</sup>

9.2.13.2. The scheme administrators did not have electronic records and could not provide the requested files.<sup>150</sup> When the FCA requested the individual files, the scheme administrators stated that they were unable to supply the information due to a lack of resources, despite the FCA's persistence in seeking the files. The FCA made two visits to the scheme administrators, on 30 November 2017 and 11 December 2017, but concluded that the information was insufficient and that there was a significant backlog of applications of members seeking to transfer which had not yet been examined by the administrators.<sup>151</sup>

9.2.14. The FCA was therefore unable to get a clear picture during the TtC period about the firms providing advice to BPS members via these routes.

9.2.15. The FCA has stated that one significant obstacle to a more rapid response was the difficulty in obtaining information about which firms were providing advice on transfers to BPS members and

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<sup>148</sup> FCA Report (12 April 2024), page 28, paragraph 6.70.

<sup>149</sup> FCA Report (12 April 2024), page 28, paragraph 6.67 and FCA Decision Letter, page 13, paragraph 26.

<sup>150</sup> FCA Report (12 April 2024), page 28, paragraphs 6.67 – 6.73.

<sup>151</sup> FCA Report (12 April 2024), page 70, paragraph 9.11.

information about the identity of BSPS members. The FCA states that, if the scheme administrators had been able to provide the list of firms involved, the FCA would have been able to visit and assess a much larger group of firms sooner and estimates that it would have been able to start visiting firms several weeks earlier had it been provided with the list of firms when first requested.<sup>152</sup> The scheme administrators said they were unable to provide this information.<sup>153</sup>

### *Engagement with advisers, including supervisory and enforcement action against advisers*

9.2.16. The FCA took the following actions, including supervisory and enforcement action, in relation to advisers during this period:

9.2.16.1. It visited financial advisers<sup>154</sup> after receiving intelligence at the November 2017 Conference, particularly those with high volumes of transfers, starting from 20 November 2017.<sup>155</sup> In oral evidence in November 2017, the then Executive Director of Strategy and Competition at the FCA stated that the FCA had a "*programme ongoing of visiting advisers*" at the time, in Swansea and Port Talbot, to remind firms of their regulatory requirements.<sup>156</sup> It visited the advisers without relying on intelligence from third parties.

9.2.16.2. It held seminars for advisers in Swansea on 21 November 2017 and in Doncaster on 28 November 2017 (151 firms attended across Swansea and Doncaster) and sent a letter to clarify its expectations regarding pension transfer

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<sup>152</sup> FCA Report (12 April 2024), page 70, paragraph 9.12.

<sup>153</sup> FCA Report (12 April 2024), page 28, paragraph 6.72.

<sup>154</sup> FCA webpage, FCA updates on its work on financial advice given to members of the British Steel Pension Scheme (BSPS) (11 December 2017), <https://www.fca.org.uk/news/statements/fca-updates-work-financial-advice-given-members-british-steel-pension-scheme>.

<sup>155</sup> FCA Report (12 April 2024), page 28, paragraph 6.74 and page 56, paragraph 8.30.

<sup>156</sup> Work and Pensions Committee, Oral Evidence, HC 404 (15 November 2017), Q106.

advice on 16 January 2018 (following the end of the TtC period).<sup>157</sup>

- 9.2.16.3. By 11 December 2017, the FCA had collected data from a total of 50 financial advice firms and 12 operators of self-invested personal pensions via its ongoing DB review work.<sup>158</sup>
- 9.2.16.4. It identified seven firms that were deemed to be the "*most harmful*", which agreed to VREQs, resulting in them no longer being able to provide pension transfer advice as of December 2017.<sup>159</sup>
- 9.2.16.5. Between December 2017 and March 2018, the FCA took action in respect of certain BSPS specific firms, it conducted visits to seven firms and requested files from an additional four firms. In oral evidence to the PAC on 13 June 2022, the then CEO of the FCA noted that as a result of FCA interventions, a total of 10 firms had withdrawn from the market by January 2018 thereby ceasing to offer pension transfer advice.<sup>160</sup>
- 9.2.16.6. In January 2018, the FCA wrote to all advisers holding pension transfer permissions to remind them of their general regulatory duties in relation to pension transfers (this letter did not refer to BSPS Issues).<sup>161</sup>

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<sup>157</sup> FCA, Letter to firms: Pensions Transfer Advice – reminder of our requirements (16 January 2018); FCA Report, page 13, paragraph 5; FCA Decision Letter, page 16, paragraph 42.

<sup>158</sup> FCA webpage, FCA updates on its work on financial advice given to members of the British Steel Pension Scheme (BSPS), Update (15 December 2017), <https://www.fca.org.uk/news/statements/fca-updates-work-financial-advice-given-members-british-steel-pension-scheme>.

<sup>159</sup> FCA Report (12 April 2024), page 29, paragraph 6.76.

<sup>160</sup> PAC, Oral Evidence, HC 251 (13 June 2022), page 4, Q4.

<sup>161</sup> NAO Report (18 March 2022), page 10, paragraph 2.9.

## *Communications with BSPS members*

9.2.17. On 19 December 2017 (3 days before the end of the TtC period)<sup>162</sup> and continuing beyond the end of the TtC period into the beginning of 2018,<sup>163</sup> the FCA updated its website with information about how to complain about poor advice.

## **Analysis**

### *Information gathering*

9.2.18. As summarised in 9.2.7 above, from the point at which it considered it had "*actionable intelligence*" in November 2017, the FCA took a number of steps with the intention of preventing harm to BSPS members.<sup>164</sup> This primarily comprised attempting to secure information from third parties, most notably TPR and the scheme administrators, seeking information to identify firms providing advice to BSPS members, engagement with those advisers themselves and carrying out supervisory and enforcement action. The FCA worked with TPR and the Money and Pensions Service to enable the BSPS trustee to send a joint letter to BSPS members who had requested a transfer quotation to urge them to be careful if considering this option. The first contact with members appears to be very close to the end of the TtC period which ended on 22 December 2017.

9.2.19. The FCA diverted resources from DB3 to respond to the BSPS Issues and sent staff in person to the scheme administrators to collect information about firms advising BSPS when the administrators themselves were unable to assist due to resourcing issues. The NAO Report notes that between November 2017 and

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<sup>162</sup> FCA webpage, FCA updates on its work on financial advice given to members of the British Steel Pension Scheme (BSPS), Information for members concerned about BSPS transfers (19 December 2017), <https://www.fca.org.uk/news/statements/fca-updates-work-financial-advice-given-members-british-steel-pension-scheme>.

<sup>163</sup> FCA webpage, FCA updates on its work on financial advice given to members of the British Steel Pension Scheme (BSPS), Updates (15 February 2018), <https://www.fca.org.uk/news/statements/fca-updates-work-financial-advice-given-members-british-steel-pension-scheme>.

<sup>164</sup> FCA Report (12 April 2024), Background timeline to the BPS, pages 12-14, paragraph 9.77.

March 2018, the FCA diverted staff from different teams, including those conducting DB3, to resource its work on BSPS.<sup>165</sup> These steps indicate that, from mid-November 2017, the FCA appreciated the need to respond to the BSPS Issues seriously and swiftly. It is clear that the FCA experienced difficulties, in obtaining the further information that it sought, meaning that it did not have all the information it wanted in order to take the most effective steps to prevent harm during the TtC period.

9.2.20. The FCA's view is that these difficulties were beyond its control. The FCA estimates that it would have been able to start visiting firms several weeks earlier had it been provided with the list of firms when it first requested it from the TPR and scheme administrators.<sup>166</sup> I do not accept this. I consider that the FCA was not proactive in identifying the IFAs providing advice to BSPS members as there was scope for the FCA to have relied less on third parties than it did, armed with the information it already had. I consider that the FCA wasted time trying to obtain information about the firms from TPR and Scheme Administrators needlessly. A more proactive approach could have included for example, sending out a 'Dear CEO' letter to all advisers with the regulatory permission to undertake pensions transfer advice to ask which of these firms were providing BSPS advice but the FCA did not do this. The FCA has told me that there is no evidence this would have led to the FCA receiving data any quicker than it did by visiting the scheme administrators. I fundamentally disagree. As the FCA acknowledges (further detailed in 9.2.13 above), the FCA was unsuccessful in obtaining any sufficient information on the advisers when it carried out two visits to scheme administrators during the TtC. The FCA subsequently sent a 'Dear CEO' letter to pension transfer firms reminding them of its expectations in relation to pension transfers, but this was

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<sup>165</sup> NAO Report (18 March 2022), page 26, paragraph 14.

<sup>166</sup> FCA Report (12 April 2024), page 65, paragraph 8.81.

unfortunately in January 2018 after a number of transfers had already taken place. This letter also did not mention the BSPS Issues. It seems to me that the FCA missed a key opportunity in this 'Dear CEO' letter to request information from the entire portfolio of pension transfer firms as to whether they were advising BSPS members. The FCA could have also used this letter as an opportunity to identify the relevant numbers of potentially affected members as well as any other information.

9.2.21. What can also be said is that most, if not all, of the steps that the FCA took between November 2017 and February 2018 as detailed above in 9.2.16 above could have been taken sooner.

9.2.22. Had the FCA acted sooner, ideally prior to the TtC period to allow it to prevent harm, it would have been better able to gather information, analyse it, and take appropriate steps to seek to prevent unsuitable advice being provided to BSPS members and to caution BSPS members from acting on that advice. As such, had the FCA acted sooner, it is in my view highly likely to have been more effective in preventing, or at least reducing, harm to BSPS members.

9.2.23. I find that the FCA were, or should have been aware of the risks associated with DB transfers and with BSPS specifically earlier than November 2017, and could, in that earlier period, reasonably have been expected to engage with TPR and other relevant constituents, and to contact firms providing advice to BSPS members, as part of a proactive, and preventative, response to the risks posed by the BSPS Restructure. If it had done so, the FCA would almost certainly have been able to gather more complete and informative information and would also have had more time to consider and act on that information in order to protect BSPS members.

### *Supervision and enforcement*

9.2.24. The FCA's supervisory and enforcement actions during this period were based on a sample of IFAs obtained from intelligence it had received and its own limited DB work. I consider that the FCA could

have identified the entire range of IFAs providing BPS advice from its own resources but had failed to do so. It is unknown whether additional supervisory or enforcement action should have been taken against more firms. This has not been investigated by the FCA and I do not have the data to be able to investigate this issue directly. I am therefore unable to determine whether the FCA's approach to supervision and enforcement during this period was appropriate.

#### *PII and asset retention*

9.2.25. The FCA did not do any concentrated analysis of the wholesale issues with respect to PII and asset retention on a market/industry basis, nor did it actively consider how it was monitoring PII and asset retention in the round during this period.

#### *Communication with BPS members*

9.2.26. The FCA participated in a communication exercise with BPS members, however, this was too late in the TtC process to prevent consumer harm. It also did not proactively inform them about the limitations of the PII 12-month rule.

9.2.27. To summarise, whilst the FCA did undertake some actions between November 2017 and February 2018, only starting to engage with the BPS Issues in November 2017 meant that its efforts were ultimately too little, too late. As set out above, I consider that the FCA should have taken preventative steps for example writing to the firms specifically in relation to BPS setting out its expectations on pension transfers. It could have also written to BPS members sooner either prior to or earlier within the TtC period to warn them of the potential risks of pension transfer advice. This would have likely been more effective in preventing or mitigating harm to BPS members.

9.2.28. I cannot say with certainty what the impact would have been had the steps above been taken earlier but it is likely that they would have had a positive effect in preventing consumer harm for BPS members.

9.2.29. The FCA accepts that it *"could have been better joined up with its regulatory partners during the BSPS restructure"* and that *"had data sharing with the TPR been in place for the BSPS, the FCA may have been able to have started its assessments of firms sooner."*<sup>167</sup> I do not consider this explanation to be sufficient to warrant the lack of preventative and proactive action during this period.

### 9.3. ***Post-February 2018 and into 2019/20 – DB4, Operation Branford and DBAAT***

#### **Description of Section 9.3 (Complaint 1)**

9.3.1. This section addresses the FCA's work in relation to the DB transfer market following the unsuitable advice given in relation to BSPS including carrying out DB4 and Operation Branford and publishing its DBAAT. Action taken during this time could not have prevented the unsuitable advice to BSPS members as it was after the end of the TtC period but it was relevant to the market more broadly and to subsequent actions in relation to BSPS. During this period, the FCA's stated aim was to *"stop harm and to remediate past harm"*.<sup>168</sup>

#### **Summary of the FCA's position and my conclusions in response**

9.3.2. The FCA states that the following actions it took during this period were adequate to stop harm and remediate past harm including the following steps: recommencing work on DB3, introducing a framework for better quality advice, conducting DB4, developing the DBAAT, conducting Operation Branford, holding BSPS member events in Port Talbot to encourage members to complain and carrying out the PBRs as well as taking the enforcement action described in 9.2.16 above.

9.3.3. I do not agree that the FCA's actions during this period were adequate for the following reasons:

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<sup>167</sup> FCA Report (12 April 2024), page 67, paragraphs 8.88 and 8.89.

<sup>168</sup> FCA Report (12 April 2024), page 109, paragraph 10.4.

- **Further evidence gathering** – Despite having clear evidence by early 2018 of unsuitable DB transfer advice, including specific concerns about BSPS members, the FCA did not initiate a targeted review of BPS cases. Instead, it continued with broad market-wide work under DB3, DB4 and later Operation Branford. This delayed a focused response to BPS Issues that could and should have started much earlier.
- **Steps to mitigate harm** – Events such as those held in Port Talbot in August 2019 should have occurred much earlier. Writing to BPS members to highlight they might have been misadvised should also have taken place sooner.
- **Regulatory measures** – These included the DBAAT advice checker and the new rules in relation to pension transfers set out in PS18/6 to ensure consistency and improve advice in relation to DB transfers going forward. These measures were not aimed at BPS members and in any event came too late to mitigate the harm to BPS members.

## Relevant background in relation to this aspect of the Complaint

### *DB3 recommenced*

9.3.4. DB3 started again in March 2018, when the FCA collected information from 45 additional firms. Following this, the FCA conducted further assessment work, including file reviews and site visits performed on 18 firms, in relation to advice on 154 pension transfers.<sup>169</sup> The results of the file reviews (which became available in February 2019) were that 29.2% evidenced unsuitable advice, 22.7% evidenced unclear advice, and only 48.1% evidenced suitable advice.

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<sup>169</sup> FCA Report (12 April 2024), page 25, paragraphs 6.52 and 6.53.

## *PS18/6 - new framework for DB pension transfer advice*

9.3.5. Following consultation CP17/6 published in June 2017, the FCA introduced new rules and guidance (PS18/6) on 1 April 2018. The new rules aimed to provide DB pension transfer advisers with a framework to give good quality advice and help consumers make better informed decisions in relation to general DB transfers (this was not BSPS-specific).

## *DB4*

9.3.6. In its 2018/2019 Business Plan, published in April 2018,<sup>170</sup> the FCA outlined the concern it had about pension transfer advice and made a commitment to undertake market-wide work on DB transfer advice. As such, the FCA proposed conducting DB4, which centred around obtaining data from firms with DB transfer permissions to help identify the scale and composition of the DB transfer advice market, the degree of risk presented by individual firms, and to develop a programme to interact with all firms significantly active in providing DB transfer advice. An ERPC Paper from December 2019 notes that the purpose of DB4 was to prevent harm to consumers, and "*improve public confidence in the DB pension transfer market*".<sup>171</sup>

9.3.7. In an Executive Regulation and Policy Committee ("**ERPC**") Paper dated January 2019, the FCA stated that DB4 was important as a "*recent, market-wide data request suggests that since the pensions freedoms were introduced, the scale of poor advice may be worse than previously thought and the level of harm more significant.*"<sup>172</sup> It was noted that "*DB4 work may reveal serious concerns about a significant number of additional firms*". The FCA proposed to establish a "*common evidence base*" to inform its approach to DB4,

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<sup>170</sup> FCA, Business Plan: 2018/19 (April 2018), <https://www.fca.org.uk/publication/business-plans/business-plan-2018-19.pdf>.

<sup>171</sup> ERPC Paper, DB4/Operation Branford Update (16 December 2019), page 3, paragraph 1.1.

<sup>172</sup> ERPC Paper, Our approach to Defined Benefit pension transfer advice firms (28 January 2019), page 6, paragraph 3.6.

the scope of which was yet to be finalised, and to help it understand the extent of harm and provide an "*appropriate regulatory response*".<sup>173</sup> The purpose of DB4 seems to have been to gather further evidence after DB1–DB3, to inform and evidence the FCA's approach to eventual enforcement.

9.3.8. The FCA conducted file reviews for DB4 between May and December 2019, with 85 firms under assessment (comprising 79 firm visits and six desk-based reviews).<sup>174</sup> Of these, 55 DB4 firms were referred to Operation Branford for file reviews, as described further below. As with DB1, DB2 and DB3, the file reviews for DB4 were in respect of firms providing DB transfer advice, but were not specific to firms who had advised on BSPS.

#### *DBAAT advice checker*

9.3.9. The FCA states that its work in developing the DBAAT advice checker "led to Operation Branford" further detailed below. The DBAAT enabled consumers to check if they had generally been misadvised around DB pensions transfers. It was a forward-looking tool that aimed to provide consistency in relation to good practice in the DB advice market going forward.

#### *FCA holds BSPS events in August and September 2019*

9.3.10. During DB4, in June 2019, the FCA also updated its website to announce to former BSPS members that it was hosting a series of events to inform them of their rights to complain. In August and September 2019, the FCA announced two events it was holding in Port Talbot for former BSPS members, which took place on 21 August and 5 September 2019. The FCA provided further information on pensions advice and consumers' right to complain.

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<sup>173</sup> ERPC Paper, Our approach to Defined Benefit pension transfer advice firms (28 January 2019), page 8, paragraph 3.23.

<sup>174</sup> FCA Report (12 April 2024), page 14.

## Operation Branford

9.3.11. Operation Branford was proposed in January 2019 and commenced in July 2019 and was a joint FCA supervision and enforcement project which sought to gather evidence and enable appropriate action in relation to the largest and highest harm firms in the DB market.<sup>175</sup> Operation Branford was focused on the DB market as a whole (as opposed to BSPS transfers specifically), with the work involving a "*firm-by-firm approach*" of obtaining files and reviewing these against the DBAAT.<sup>176</sup> In this context, the aim was to "*determine the percentage of unsuitable advice likely at the firm*".<sup>177</sup> The findings could then be used to inform decisions on enforcement investigations and PBRs.

9.3.12. Operation Branford occurred between July 2019 and April 2020, where the FCA carried out market-wide suitability assessments of DB transfers through a review of "*representative samples*" covering over 120 firms, with more than 1,400 files reviewed.<sup>178</sup> As well as the 55 DB4 firms, this included 12 DB3 firms, and 18 firms from BSPS, DB2 or other enforcement investigations.<sup>179</sup>

9.3.13. The FCA Report notes that "*timescales were stretched*" during Operation Branford, due to significant challenge from the firms and/or PII providers, as explained further in Section 9.4 below.<sup>180</sup> This is also noted in the ERPC Paper from April 2018, where the FCA stated that information gathering was met with reluctance.<sup>181</sup>

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<sup>175</sup> FCA Report (12 April 2024), page 109, paragraph 10.5.

<sup>176</sup> *Ibid.*

<sup>177</sup> FCA Report (12 April 2024), page 109, paragraph 10.6.

<sup>178</sup> NAO Framing Document (8 November 2021), page 6.

<sup>179</sup> FCA Report (12 April 2024), page 15.

<sup>180</sup> FCA Report (12 April 2024), page 109, paragraph 10.6.

<sup>181</sup> ERPC Paper, British Steel Pensions Scheme Transfers – Supervisory Response (30 April 2018), page 6, paragraph 3.13.

- 9.3.14. The FCA Report notes that Operation Branford furthered its DB work through assessing the failings of the firms identified during DB2, DB3, DB4 as well as specific firms who had advised BSPS members, and the FCA notes that this produced "*robust and consistent evidence on suitability*" by assessing firms against the DBAAT.<sup>182</sup> The FCA states that this work resulted in a number of firms agreeing further VREQs, some asset retentions, and six referrals to Enforcement for investigation.<sup>183</sup>
- 9.3.15. From March 2020, the FCA reviewed its approach "*in light of the high level of unsuitable advice in BSPS compared to other advice*" uncovered in its evidence gathering via its file reviews.<sup>184</sup> With increased evidence of harm, the FCA changed its approach from being focused on evidence gathering to consider alternatives and to test whether it could impose asset restrictions, which ultimately resulted in the use of its powers to impose a s404 Scheme.<sup>185</sup> This is discussed in more detail in Section 9.5 below. The FCA also sent a 'Dear CEO' letter in December 2021 to firms who gave transfer advice to BSPS members between 1 March 2017 to 31 March 2018 to remind them of their responsibilities, including in relation to asset retention.<sup>186</sup> The FCA continued to use its VREQ powers and, between 2019 and 2021, the FCA obtained a total of 25 VREQs, as well as one OIREQ.<sup>187</sup>

## Analysis

- 9.3.16. By March 2018, the FCA was aware—through the findings of DB2—that 17% of the sampled files contained unsuitable defined benefit (DB) transfer advice, and a further 45% were deficient, raising

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<sup>182</sup> NAO Framing Document (8 November 2021), page 7.

<sup>183</sup> FCA Report (12 April 2024), page 57, paragraph 8.37.

<sup>184</sup> FCA Report (12 April 2024), page 110, paragraph 10.9.

<sup>185</sup> FCA Report (12 April 2024), page 110, paragraphs 10.10 and 10.13.

<sup>186</sup> FCA, Letter to firms: British Steel Pension Scheme: Consideration of consumer redress scheme (22 December 2022), pages 1-2.

<sup>187</sup> FCA Report (12 April 2024), page 115, paragraph 10.39.

concerns about the quality and appropriateness of advice more broadly. Separately, the FCA also had evidence that unsuitable transfer advice had been provided specifically to members of the BSPS. For example, during the TtC exercise, it identified 26 firms under investigation, of which 10 subsequently agreed to cease providing advice altogether. Additional indicators also suggested that BSPS members had received poor advice.

- 9.3.17. Despite this, when the FCA commenced DB3, its focus remained on the DB advice market in general—a continuation of the work started under DB1 and DB2—rather than a targeted review of BSPS-related issues. This remained the case for DB4 as well. A more focused approach on BSPS did not begin until Operation Branford was launched in 2019. Even then, the operation largely continued the FCA’s broader market work, though it did include a higher proportion of BSPS cases for sampling.
- 9.3.18. It was not until the conclusion of Operation Branford, around March or April 2020, that the FCA recognised the BSPS files reviewed showed a disproportionately high rate of poor advice compared to other cases. This finally prompted a more active and focused response to BSPS-specific issues.
- 9.3.19. In my view, the FCA should have directed its attention to BSPS much earlier—at the conclusion of DB2—when it already had clear evidence of unsuitable DB advice both generally and in relation to BSPS. There appears to be no justifiable reason for the delay in initiating a focused review until Operation Branford.
- 9.3.20. Furthermore, considering the findings of DB1 to DB3, which clearly evidenced consumer harm in DB pension transfers, the necessity of further evidence gathering in the form of DB4 is questionable. The FCA stated that the purpose of DB4 (conducted between May and December 2019) was intended to build a common evidence base to inform an ‘appropriate regulatory response’. However, the existing evidence already appeared sufficient to justify a shift in strategy. In

my view, the criteria for initiating a s404 Scheme, i.e. widespread failure by firms to comply with requirements applicable resulting in consumer harm, had already been met.

9.3.21. The events that the FCA hosted for BSPS members in Port Talbot in August and September 2019 aimed to inform them about their right to complain about the BSPS advice they had received. From an asset retention and PII perspective, it appears to me that these events would have been more effective if held earlier, ideally as soon as possible after the TtC, so that affected BSPS members had a better chance of pursuing redress directly from the firms that had advised them. By mid-2019, many of those firms had ceased trading, leaving the FSCS as the only available route for compensation.

9.3.22. The DBAAT advice tool was a forward-looking tool which went some way to mitigate the risks of consumer harm relating to DB pensions transfer advice going forward but of itself could not stop or remediate past harm to BSPS members.

#### 9.4. ***Post-February 2018 – Adequacy of Assets – PII Cover, asset retention and capital requirements***

##### **Description of this Section 9.4 (Complaint 1)**

9.4.1. This section addresses Complaint 1 in relation to the FCA's regulatory approach to PII, asset retention, and capital adequacy and how this approach impacted the BSPS Issues. The FCA's rules on PII lacked clarity, leading to misunderstandings among firms. Additionally, the FCA did not have robust systems in place to monitor firms' PII cover, which contributed to consumer detriment. It is my view that the FCA should have assessed whether PII arrangements were adequate to address failures relating to BSPS sooner than it did. The FCA had the opportunity to be more proactive in advising affected members on PII-related risks and could have, at a minimum, collected relevant information and acted against firms that misapplied the PII requirements.

- 9.4.2. In relation to asset retention, the FCA’s approach was not timely. The application of the asset retention rule could have been introduced earlier. Furthermore, although Complainants have raised concerns about capital adequacy, this issue has not yet been the subject of formal investigation.

## **Summary of FCA’s position and my conclusions in response**

### *PII cover*

- 9.4.3. The FCA’s position in relation to PII cover is that it is not within its remit to intervene in the PII market, and such intervention may not have been possible, or if possible, may have resulted in further complications within the PII market.
- 9.4.4. Whilst I am sympathetic to the FCA’s position with respect to what actions it could have taken directly with respect to insurers, the FCA should have acted sooner to address the known issues in relation to PII cover.
- 9.4.5. Whilst I acknowledge that the FCA took some steps in response to the PII issues, I find that the FCA was aware of the issues in relation to PII highlighted in the grey box below but did not appropriately address them.

### *Asset retention*

- 9.4.6. The FCA’s position is that its approach to asset retention rules was “timely and proportionate” and that it was not appropriate for it to impose blanket asset retention rules until April 2022 for the following reasons:
- 9.4.6.1. It is incorrect to assume there was a systemic issue until April 2022 when it imposed emergency asset retention rules.
- 9.4.6.2. An in-depth file review (in the form of DB4 and Operation Branford) was needed to gather evidence to inform such a view, where asset retention in particular requires “*an evidential burden*”.

9.4.6.3. Evidence of widespread harm was required in order to avoid potential legal challenge against the asset retention rules.

9.4.7. I do not agree with the FCA in relation to PII cover and asset retention for the following reasons:

#### **PII cover**

- ***Lack of clarity of PII rules*** - A number of firms generally misunderstood their responsibilities in respect of PII cover and capital resource requirements: this meant in practice they were holding capital in lieu of PII cover.
- ***A proportion of firms had either no PII cover or inadequate PII cover in breach of the requirements*** - For example, by 2019 insurers were starting to apply exclusions for BSPS advice where the policyholder was insolvent or when a third party other than the firm (such as the FSCS) was entitled to make a claim. By 2020 firms were finding it difficult to secure PII cover at renewal.
- ***Insufficient monitoring measures*** - The FCA had insufficient measures in place to monitor the firms' PII coverage adequately and did not appear to be aware of the insufficiency of the data it held to monitor PII cover until July 2019.

#### **Asset retention**

- ***Systemic issues*** - The FCA was aware, from at least early 2020, that firms had inadequate financial resources and yet it was not until April 2022, over two years later, that the FCA imposed blanket asset retention rules.
- ***Evidential burden*** - FSMA does not include a threshold for imposing asset retention rules, so it is unclear what evidential burden the FCA believes it is subject to. I have not seen evidence from the FCA on this point.

- **Legal challenge** – Possible legal challenge in itself should not have been a material reason for not taking action.

#### **Capital requirements**

- I have not investigated this aspect of the complaint for the reasons set out below.

### **Relevant background in relation to this aspect of the Complaint**

9.4.8. By way of background, in any regulatory system, it is important that firms are, in the main, able to meet their liabilities including claims for compensation where they have fallen short and consumers have suffered loss as a result. In the UK system, we have rules requiring the maintenance of adequate capital resources on an ongoing basis (including insurance where appropriate). That said, the FCA does not have a zero tolerance to failure and firms will fail. In such cases we have a safety net in the form of the FSCS. The FSCS does not provide a complete solution to losses in the case of the failure of the firms. There is a compensation limit (a “**cap**”) on what can be recovered via the FSCS and consumers therefore bear the risk of losses they suffer over and above the amount of the cap. Consumers are not subject to a cap in relation to claims made against firms themselves unless they are made via the FOS in which case the FOS cap will apply. Consumers are better off if the firm against which they have a claim for compensation remains in existence and is able to pay from its capital resources and PII provision. It is also important that firms do not unfairly dissipate their assets e.g. to shareholders, thus reducing the amount available to pay claims from consumers. In this regard the FCA is able, in appropriate circumstances to employ asset retention rules.

9.4.9. The issues raised in this part of the Complaint are particularly important in relation to the ability of a firm to pay compensation for unsuitable advice. Without sufficient assets (whether from its capital resources or insurance cover), a firm may face insolvency. The

FSCS has, of course been set up as a safety net to provide compensation in these circumstances. FSCS awards are, however, subject to a cap (which changed from £50,000 to £85,000 during the period when BPS claims were being considered). The NAO Report suggested that £18 million of redress compensation was 'lost' due to the imposition of the FSCS cap. In other words, had firms remained in existence, the BPS members would have received £18 million more than they did. Adequacy of resources in the first place and maintenance of those assets (in accordance with FCA rules and use of the FCA's powers to require firms to retain assets) to cover liabilities is, therefore, extremely important in order to avoid consumers suffering a 'haircut' on compensation when a firm fails.

### *Pll cover*

9.4.10. From May 2018, the FCA received anecdotal information from its engagement with industry stakeholders that some firms were finding it difficult to get fully compliant PII cover, in the context of claims for suitable advice manifesting themselves. As explained further below, there appear to have been several factors contributing to the challenges firms faced in obtaining PII, including:

9.4.10.1. increased risk perception among insurers in relation to DB transfer advice, which led to a more cautious approach;

9.4.10.2. rising costs of premiums and excesses for PII, which many firms, especially smaller firms, found unaffordable;

9.4.10.3. policy exclusions that insurers began applying, particularly for DB transfer advice, which meant that, even if firms could obtain PII, it might not cover all of the areas needed, making it difficult to renew existing policies or switch insurers;

9.4.10.4. market contraction, where there was a reduction in the number of insurers willing to offer PII for certain types of financial advice (including DB transfer advice), which limited the options available to firms; and

9.4.10.5. increased regulatory scrutiny and interventions by the FCA as a result, which highlighted the risks associated with DB transfer advice and, in turn, influenced insurers' willingness to provide coverage.

9.4.11. The market for PII was evolving, with insurers adjusting their terms and premiums in response to perceived risks. The FCA Report clarifies that firms' experiences at renewal varied depending on their circumstances. In some cases, firms considered the premium to be unaffordable, and in other cases there were DB exclusions applied on renewal such that the firms found it difficult to move to new insurers and obtain DB cover.<sup>188</sup> By May 2018, it was becoming clear that insurance was more expensive to obtain and there were several press articles on the topic. The FCA Report indicates that it was not until 2019 that insurers were starting to apply exclusions for BSPS advice and some firms were starting to find it difficult to secure PII cover when renewing their policies in 2020.<sup>189</sup>

9.4.12. The FCA had rules in place at the time,<sup>190</sup> which had applied since January 2016, setting out the requirements for personal investment firms (which category includes IFAs) regarding their financial stability and risk management. The rules mandated that such firms must meet, on a continuing basis, two key financial criteria: (i) a basic solvency requirement; and (ii) a minimum capital resources requirement. These requirements were in place to ensure that firms were financially stable and had sufficient capital on an ongoing basis to withstand financial stresses, including the ability to pay potential compensation, thereby protecting their clients and the integrity of the market.

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<sup>188</sup> FCA Report (12 April 2024), page 76, paragraphs 9.39-9.40, page 78, paragraph 9.46, page 79, paragraphs 9.47 - 9.48; FCA Decision Letter (19 April 2024), page 29, paragraph 91.

<sup>189</sup> FCA Report (12 April 2024), page 76, paragraph 9.40.

<sup>190</sup> FCA Handbook, IPRU-INV Principle 13.1.

9.4.13. In accordance with these FCA rules, firms who offered DB transfer advice were required to:<sup>191</sup>

9.4.13.1. have and maintain a minimum level of capital resources, which should be equivalent to their specific capital resources requirement, and be able to meet liabilities as they fall due, including potential claims;

9.4.13.2. continuously possess adequate PII coverage. A valid PII policy could not exclude any type of business or activity that had been carried out by the firm in the past or would be carried out by the firm during the time for which the policy would be in force, nor could it exclude liabilities which were to be identified or crystallised as a result of regulatory action against the firm (either individually or as a member of a class of authorised persons), unless the firm held additional capital resources. Firms were also under the misconception that they could hold additional capital resources in place of PII; and

9.4.13.3. consider their circumstances to identify whether they should hold additional capital (over and above the minimum level) to cover potential liabilities that could arise from their past activities. For a firm with revenue of £500,000 to £600,000, the required additional capital resource was £25,000, and for a firm with revenue of £900,000 to £1,000,000, it was £31,000.<sup>192</sup> Firms were also required to hold additional capital in excess of those minimum requirements where the additional capital resources provide firms with insufficient cover, which must

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<sup>191</sup> FCA Report (12 April 2024), page 28, paragraphs 9.28-9.36 and FCA Decision Letter (19 April 2024), page 28, paragraph 83.

<sup>192</sup> FCA, IPRU-INV 13.1.23R.

be assessed in respect of a firm's individual circumstances.<sup>193</sup>

9.4.14. PII was meant as an additional safeguard over and above capital resources, for transfer advice firms, providing a financial shield against the costs incurred from compensating clients due to negligent services or advice.<sup>194</sup> PII operated on a 'claims made' basis, meaning that insurance payouts would be made in respect of:<sup>195</sup>

9.4.14.1. claims made during the policy period (typically 12-months), regardless of when the incident or alleged breach of duty actually occurred; and

9.4.14.2. some claims made after the end of the policy period – in some cases, only if the insurer accepted a valid notification of circumstances during the policy period.

9.4.15. Firms were required to confirm the existence of their PII cover to the FCA twice a year.<sup>196</sup> A failure to do so would trigger an alert in the Automated Regulatory Information system, prompting supervisory action. In such instances, FCA Supervision would usually expect the firm to seek cover and provide a certificate as soon as possible. In October 2020, following a consultation paper (CP19/25) published by the FCA in July 2019 the forms used for this process were updated in order to address the fact that the forms/returns were not producing

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<sup>193</sup> FCA, IPRU-INV 13.1.24G.

<sup>194</sup> ABI webpage, Professional indemnity insurance (undated), <https://www.abi.org.uk/products-and-issues/choosing-the-right-insurance/business-insurance/liability-insurance/professional-indemnity-insurance/>; FCA Report (12 April 2024), page 71, paragraph 9.17; FCA Decision Letter (19 April 2024), page 28, paragraph 83.

<sup>195</sup> FCA Report (12 April 2024), page 71, paragraph 9.19 and FCA Decision Letter (19 April 2024), page 28, paragraph 85.

<sup>196</sup> FCA webpage, Technical information on RMAR source data (6 June 2019), <https://www.fca.org.uk/data/retail-intermediary-market/technical-information-rmar-source-data> and FCA Report (12 April 2024), page 76, paragraph 9.37.

a high quality of answers.<sup>197</sup> The information did not provide the FCA with sufficient data to fully inform it regarding firms' PII coverage.

9.4.16. In instances where firms informed the FCA that PII was unobtainable, the FCA maintains that it directed these firms to retain additional capital to fulfil their liabilities. The FCA also employed supervisory tools to prevent firms from operating, if necessary, to ensure that the firms could meet their financial obligations, for example through VREQs.<sup>198</sup>

9.4.17. For a firm to make a successful claim on PII for advice given in previous years, it must have continuously renewed its insurance up to the point of the claim and have made an appropriate notification in respect of the potential claim in the relevant policy period. In the context of BSPS, this meant that firms needed, in particular, to have renewed their PII coverage in the years which followed the TtC exercise up until the date of the complaint made by the BSPS member.<sup>199</sup> If a firm failed to renew its PII, coverage would cease, unless the insurer was notified of the claim before the policy lapsed.

9.4.18. Insurers underwrote new policies based on disclosed risks, considering the information provided by the firm, including past claims. Insurers identified key risk areas and adjusted the premium and excesses accordingly. Insurers could refuse to provide overall cover or could include partial exclusions,<sup>200</sup> as indicated in the policies. Interventions by the FCA in respect of BSPS Issues, though necessary and beneficial, understandably affected insurers' willingness to take on risk. The volume of pension transfers, the frequency of complaints, and the probability of claims being

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<sup>197</sup> CP19/25: Pension transfer advice: contingent charging and other proposed changes (July 2019); FCA Report (12 April 2024), page 76, paragraph 9.38.

<sup>198</sup> FCA Decision Letter (19 April 2024), page 28, paragraph 83.

<sup>199</sup> FCA Decision Letter (19 April 2024), page 28, paragraph 85.

<sup>200</sup> FCA Report (12 April 2024), page 73, paragraph 9.26 and page 83, paragraph 9.58.

successful all influenced the perceived risk and, consequently, the level of difficulty for firms in obtaining PII.<sup>201</sup>

9.4.19. Firms were generally obliged to inform their insurers of any claims or circumstances that might reasonably be expected to lead to a claim, even before an individual claim arose.<sup>202</sup> In this context, and following the FCA's visits to firms and identification of unsuitable advice,<sup>203</sup> issues in preserving PII were starting to arise because:

9.4.19.1. *"an insurer may consider a firm was aware of the notified circumstances prior to the inception of the current policy, therefore triggering a 'prior circumstances' exclusion";<sup>204</sup> or*

9.4.19.2. *"despite not all individuals who may have been provided with unsuitable advice being identified (and hence notified to the insurer), it could lead to exclusions being applied to the PII policy at renewal, either relating to BSPS transfers specifically or pension transfer advice more generally";<sup>205</sup> or*

9.4.19.3. *"if the current policy contains specific exclusions for claims arising from advice provided to BSPS members, or defined benefit pension transfer advice more generally, again disputes may arise with insurers as to the scope of such exclusions, and whether claims brought by BSPS members trigger their express terms".<sup>206</sup>*

9.4.20. Potential issues with getting PII cover for firms giving advice to BSPS members were signalled in the press from January 2018 (i.e.

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<sup>201</sup> FCA Decision Letter (19 April 2024), page 29, paragraph 90.

<sup>202</sup> FCA Report (12 April 2024), page 71, paragraph 9.20 and FCA Decision Letter (19 April 2024), page 28, paragraph 86.

<sup>203</sup> FCA Decision Letter (19 April 2024), page 29, paragraph 88.

<sup>204</sup> FCA Decision Letter (19 April 2024), page 29, paragraph 89.

<sup>205</sup> FCA Report (12 April 2024), page 73, paragraph 9.23.

<sup>206</sup> *Ibid.*

immediately after the TtC).<sup>207</sup> After seeing several press articles on the topic, and following engagement with industry stakeholders (including trade/professional bodies and compliance consultants), the FCA became aware in May 2018 that some firms were struggling to obtain or renew compliant PII coverage.<sup>208</sup> At this point, the FCA was also aware of the poor advice being provided to BSPS members, given it had already sent a letter in January 2018 to BSPS members who had transferred out of their DB scheme with details on how to complain. The FCA did not request firms to disclose whether they were having difficulty obtaining PII cover.

9.4.21. In some cases, the advisory firms considered the premium to be unaffordable, as policy excesses for DB transfers had already been increased from £5,000-10,000 prior to the introduction of the Pensions Freedoms to £20,000-50,000 in 2020. The smaller firms were the most affected, as many could not afford the increased premium levels and excesses and the insurers were also cautious where firms carried out small numbers of transfers.<sup>209</sup> In other cases, DB exclusions were applied on renewal of the PII coverage, and the firms found it difficult to move to new insurers and obtain DB cover.

9.4.22. By 2019, exclusions for BSPS advice were becoming even more common, and premiums for DB advice cover were being significantly increased. This was followed by challenges in securing PII cover during policy renewals in 2020.<sup>210</sup> These difficulties were acknowledged by the then CEO of the FCA, during his appearance before the PAC in June 2022. The FCA stated that there was a

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<sup>207</sup> Citywire webpage, PI insurers quiz IFAs over British Steel pension transfer (16 January 2018), <https://citywire.com/new-model-adviser/news/pi-insurers-quiz-ifas-over-british-steel-pension-transfers/a1083782?re=51762&refea=344546> and FCA Report (12 April 2024), page 78, paragraph 9.46.

<sup>208</sup> FCA Report (12 April 2024), page 76, paragraphs 9.39 - 9.40 and FCA Decision Letter (19 April 2024), page 29, paragraph 91.

<sup>209</sup> FCA, Adviser PII Intelligence Gathering, 2 October 2020, page 1.

<sup>210</sup> FCA Report (12 April 2024), page 76, paragraph 9.40 and FCA Decision Letter (19 April 2024), page 29, paragraph 91.

notable contraction in the number of insurers providing PII and he recalled that the figures roughly halved from about fifteen down to around seven, with associated withdrawal of approximately 12% of firms that had permission to provide pensions advice from the market following the BPS Restructure. He suggested that a key factor for this withdrawal was the inability of these firms to secure or maintain the necessary PII coverage.<sup>211</sup> As firms withdrew in this manner, responsibility for paying potential claims against those firms would have been transferred to the FSCS. Though this was useful to allow BPS members to obtain some compensation, albeit subject a cap it did not result in firms fulfilling their obligations.

9.4.23. The then CEO of the FCA, during his appearance before the PAC in April 2022, also noted the significant reduction in insurers willing to cover DB transfer advice and the potential consumer harm that would ensue if the PII market seized up.<sup>212</sup> It was expressed that such harm could potentially be that customers that wanted to "*legitimately transfer are no longer able to do so*".<sup>213</sup> The FCA expressed concern about the feasibility of requiring PII that covered all historic business, suggesting that imposing such an obligation would potentially lead to a situation where no insurers were willing to offer PII at all, due to the increased risk. The FCA considered that it was "*not able to force insurers to provide cover or to do so at reduced cost*" and there was "*no opportunity to intervene in a way that would not potentially close the market*".<sup>214</sup>

9.4.24. Besides the difficulties firms experienced in obtaining adequate PII coverage at all, during its assessment under DB4 between May and December 2019, the FCA also found that a third of the assessed firms that did have PII cover lacked adequate PII for DB transfers,

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<sup>211</sup> FCA Report (12 April 2024), page 77, paragraph 9.42.

<sup>212</sup> FCA Report (12 April 2024), page 78, paragraphs 9.44- 9.45.

<sup>213</sup> PAC Oral Evidence, HC 1216 (27 April 2022), page 41.

<sup>214</sup> FCA Decision Letter (19 April 2024), page 29, paragraph 92 and page 35, paragraph 119.

with some firms mistakenly believing they could hold additional capital instead on maintaining PII.<sup>215</sup> This was not permitted under the FCA's capital requirements.

### *Steps the FCA took in response to the PII issues*

9.4.25. The FCA says it took the following steps to address the PII issues and progressed various workstreams aimed at improving the existing market regulations. These issues all took place after TtC:<sup>216</sup>

9.4.25.1. In May 2018, the FCA consulted on new regulations (CP18/11)<sup>217</sup> requiring personal investment firms to have in place PII policies that did not exclude coverage in situations where the policyholder was insolvent or when a third party other than the firm (such as the FSCS) was entitled to make a claim.<sup>218</sup>

9.4.25.2. In October 2018, the FCA published a consultation paper (CP18/31)<sup>219</sup> proposing an increase of the FOS award limit, which highlighted the potential for PII premium increases and the risk of firms being unable to afford cover for pension transfer advice.<sup>220</sup> This consultation closed on 21 December 2018 and PS19/8<sup>221</sup> was issued on 8 March 2019, in which the FCA said it had modelled a 'worst-case' scenario of PII premiums increasing by between 200% and 500% (based on forecasts by insurers) and, under the

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<sup>215</sup> ERPC Paper, DB4/Operation Branford Update (December 2019), page 5.

<sup>216</sup> FCA Report (12 April 2024), page 79, paragraphs 9.47-9.51.

<sup>217</sup> CP18/11: Reviewing the funding of the Financial Services Compensation Scheme (FSCS) (May 2018).

<sup>218</sup> FCA Decision Letter (19 April 2024), page 28, paragraph 84.

<sup>219</sup> CP18/31: Increasing the award limit for the Financial Ombudsman Service (October 2018).

<sup>220</sup> FCA Report (12 April 2024), page 82, paragraph 9.55.

<sup>221</sup> PS19/8: Increasing the award limit for the Financial Ombudsman Service (March 2019).

FCA's own upper estimate, up to 1,000 firms might be unable to afford PII cover for pension transfer advice.<sup>222</sup>

9.4.25.3. The FCA's Supervision team held meetings with insurance brokers, which led to a new workstream on PII being set up in 2019, which brought together internal stakeholders in the FCA to investigate and discuss options in relation to PII.<sup>223</sup>

9.4.26. By October 2020, an executive summary produced by FCA Supervision revealed that PII was still available for many firms, including those advising on DB transfers.<sup>224</sup> However, the ability to move between insurers at renewal appeared "*limited*". The market had seen a reduction in active insurers, but a new entrant had also emerged. Brokers could generally secure coverage for clients, including DB transfers, but with higher excesses or policy limits.

9.4.27. The FCA directed firms to allocate additional capital to cover potential liabilities from unsuitable advice as the BPS Issues and issues with PII became more apparent, but the FCA found that firms were reluctant, often denying the provision of unsuitable advice and not reporting complaints to the FCA. Firms were required to report under FCA rules (SUP 15.12.1) if they had three upheld cases or redress payments exceeding £50,000 within a 12-month period.<sup>225</sup> The FCA has not provided any data on whether firms were complying with this requirement.

9.4.28. Firms that made every effort to obtain PII cover but were unable to obtain it were advised to estimate potential liabilities and hold additional capital, in accordance with the FCA rules, as noted at paragraph 9.4.11 above.<sup>226</sup> The FCA Report states that, whilst the

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<sup>222</sup> FCA Report (12 April 2024), page 82, paragraph 9.56 and PS19/8, page 9, paragraph 1.49.

<sup>223</sup> FCA Report (12 April 2024), page 80, paragraph 9.50.

<sup>224</sup> FCA Report (12 April 2024), page 80, paragraph 9.51.

<sup>225</sup> FCA Report (12 April 2024), page 81, paragraph 9.52.

<sup>226</sup> FCA Report (12 April 2024), page 81, paragraph 9.53.

FCA could have imposed VREQs or OIREQs to require firms to retain assets within the business, instead of blanket asset retention rules, firms advising on BSPS transfers were generally very small and had low levels of capital compared to the potential liabilities from DB advice, so the FCA did not consider that requiring firms to retain assets in the business would have provided significant funds for redress.<sup>227</sup>

9.4.29. In respect of retaining assets through other means, the FCA Report states that it was "*questionable*" as to whether the FCA had "*adequate evidence*" on individual firms to utilise its OIREQ powers during 2017/2018, as FCA Supervision had conducted only small sample reviews at that time. However, post-2018, with more substantial evidence from larger samples and the new DBAAT methodology, the FCA secured asset retention VREQs in a number of cases, (as explained further in Section 9.6 below). Between 2019 and 2021, the FCA secured one asset retention OIREQ and 25 asset retention VREQs for firms advising on BSPS transfers.<sup>228</sup>

9.4.30. On 1 April 2019, a confidential ERPC Paper noted concerns about increased PII premiums and potential firm failures.<sup>229</sup> It suggested that some firms might continue to give pension transfer advice without adequate PII cover, opting instead to hold additional capital. This could lead to more firm failures and consumers seeking compensation from the FSCS, which had a lower compensation limit than the FOS. The paper called for increased supervisory measures and proposed amendments to data collection in respect of PII for personal investment firms, to better identify high-risk firms. These amendments involved updating the list of PII policy exclusions and

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<sup>227</sup> FCA Report (12 April 2024), page 81, paragraph 9.54.

<sup>228</sup> *Ibid.*

<sup>229</sup> FCA Report (12 April 2024), page 83, paragraph 9.59.

collecting data on additional capital held for PII excesses and exclusions at policy level.<sup>230</sup>

9.4.31. The FCA identified a lack of clarity from firms about PII policy exclusions. Following a review of the Information Governance Board ("**IGB**") data request form from May 2019, it was proposed to update the PII self-certification ("**RMA-E**") data to help the FCA identify high-risk firms.<sup>231</sup> The FCA Report describes this request as part of a "*Phoenixing project*", which found that some firms had not reported exclusions in their PII cover when submitting RMA-E data, despite having exclusions for DB transfer advice. Supervision uncovered these and other issues through data obtained from PII insurers via an ad hoc data request.<sup>232</sup>

9.4.32. The FCA Report notes that some firms continued to advise or operate without proper PII cover due to a misunderstanding of the rules.<sup>233</sup> In particular, some firms believed that holding the minimum required capital would suffice in lieu of PII cover.<sup>234</sup> It is unclear how many firms misunderstood this requirement.

9.4.33. The FCA noted that it clarified when PII was mandatory and advised firms lacking cover to cease advising on DB transfers:<sup>235</sup>

9.4.34. A May 2020 ERPC Paper outlined potential responses if insurers exited the PII market for pension transfer advice, weighing the pros and cons of market closure, holding additional capital, and emergency policy responses.<sup>236</sup>

9.4.35. A June 2022 ERPC paper discussed existing workstreams and potential FCA actions if the insurance situation worsened, concluding

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<sup>230</sup> *Ibid.*

<sup>231</sup> FCA Report (12 April 2024), page 84, paragraph 9.60.

<sup>232</sup> FCA Report (12 April 2024), page 84, paragraph 9.61.

<sup>233</sup> FCA Report (12 April 2024), page 85, paragraph 9.65.

<sup>234</sup> FCA Report (12 April 2024), page 85, paragraph 9.66.

<sup>235</sup> FCA Report (12 April 2024), page 86, paragraph 9.70.

<sup>236</sup> FCA Report (12 April 2024), page 86, paragraph 9.72.

that intervening in the PII market structure could disrupt the market and negatively impact firms and consumers. The paper suggested long-term solutions involving increased capital and liquidity requirements.<sup>237</sup>

9.4.36. However, notwithstanding the FCA's actions, the levels of complaints among the BSPS members remained low.<sup>238</sup> The NAO Report, published in March 2022, stated that: "*In total, only 1,878 members out of 7,834 members who received advice to transfer out in the relevant period had complained to the FOS or FSCS by March 2022*".<sup>239</sup>

9.4.37. In late 2024, in view of the s404 Scheme (addressed below in more detail in Section 9.6), the FCA undertook a PII project to ensure firms could meet their BSPS liabilities.<sup>240</sup> The FCA reviewed the data submitted by firms in scope of the redress scheme and assessed whether they had PII cover in place and analysed the capital requirements. The FCA identified: (i) four firms with no PII cover; (ii) 63 firms with PII cover expiring before the redress scheme deadline of 28 December 2023; (iii) 41 firms with PII cover excluding DB transfer advice; (iv) 114 firms with PII cover without exclusions; and (v) 106 firms whose PII status was unknown.<sup>241</sup> However, these findings were mitigated by the fact most firms had a capital surplus, with only two of them being found to be in capital deficit.<sup>242</sup> It is unclear whether it was considered this surplus was enough to cover any potential liabilities.

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<sup>237</sup> FCA Report (12 April 2024), page 86, paragraph 9.73.

<sup>238</sup> FCA Report (12 April 2024), page 91, paragraph 9.86, page 93, paragraph 9.98 and FCA Decision Letter (19 April 2024), page 35, paragraph 118.

<sup>239</sup> FCA Decision Letter, page 19, paragraph 44.

<sup>240</sup> FCA Report (12 April 2024), page 84, paragraph 9.62.

<sup>241</sup> FCA Report (12 April 2024), page 84, paragraph 9.63.

<sup>242</sup> FCA Report (12 April 2024), page 85, paragraph 9.64.

9.4.38. For my analysis in relation to PII cover, see the Analysis section below.

### *Asset retention*

#### *Lead up to emergency asset retention rules*

9.4.39. The below timeline covers what the FCA states it did in the lead up to the imposition of the emergency blanket asset retention rules:

9.4.39.1. VREQs were introduced from December 2017, at the conclusion of the TtC period, as noted in the FCA's March 2018 update to the Work and Pensions Select Committee.<sup>243</sup> The use of these powers continued in July 2020, after which relevant firms with high unsuitability rates were asked to agree to VREQs to retain assets.<sup>244</sup> This informed the FCA's approach to preventing immediate harm.

9.4.39.2. On 31 March 2022, the FCA consulted on the proposed s404 Scheme for affected BSPS members (CP22/6). The consultation was open for three months.<sup>245</sup>

9.4.39.3. Prior to April 2022, the FCA worked with individual firms to ascertain whether asset retention was required in their case. Where there was clear evidence that asset retention was required, the FCA used existing regulatory powers to put in place asset retention requirements where necessary (as it did with the firm noted in paragraph 9.5.14).<sup>246</sup> The information on the FCA's action in respect

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<sup>243</sup> FCA, Letter to Work and Pensions Select Committee (12 March 2018).

<sup>244</sup> FCA Report (12 April 2024), page 111, paragraph 10.17.

<sup>245</sup> FCA Report (12 April 2024), page 157, paragraph 11.49 and CP22/6: Consumer redress scheme for unsuitable advice to transfer out of British Steel Pension Scheme (31 March 2022).

<sup>246</sup> FCA Decision Letter (19 April 2024), page 26, paragraph 74.

of these firms is, however, limited due to its policy on sharing information under section 348 FSMA.<sup>247</sup>

9.4.39.4. The FCA had concerns that CP22/16 may lead to firms disposing of assets in order to avoid their liabilities.<sup>248</sup> The FCA posted an update regarding asset dissipation concerns on its website on 5 June 2020. As such, the FCA proposed temporary emergency asset retention rules in April 2022 (PS22/4), without consultation. The rules applied to BSPS advisers that were found to have provided unsuitable advice.<sup>249</sup> The rules were in place until January 2023. The FCA used its powers under section 138L FSMA to introduce these rules as the FCA felt that a delay to allow for a consultation would be prejudicial to the interests of consumers.<sup>250</sup> In PS22/4, the FCA explained that, if it did decide to implement a consumer redress scheme, it might consult on extending the asset retention measures until firms had resolved all cases under the scheme and paid redress, which it did in November 2022, as explained further below.

9.4.39.5. Following the CP22/6 consultation, the FCA proceeded with implementing the s404 Scheme in November 2022 (PS22/14).<sup>251</sup> It is unclear what evidence underpinned this decision when it did.

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<sup>247</sup> FCA Decision Letter (19 April 2024), page 30, paragraph 101.

<sup>248</sup> FCA Report (12 April 2024), page 112, paragraph 10.21.

<sup>249</sup> PS22/4: Temporary asset retention requirements for certain firms subject to the proposed British Steel Pension Scheme consumer redress scheme (25 April 2022), page 3, paragraph 1.1.

<sup>250</sup> PS22/4: page 4, paragraph 1.9.

<sup>251</sup> PS22/14: Consumer redress scheme for unsuitable advice to transfer out of the British Steel Pension Scheme (14 November 2022).

9.4.39.6. After a further consultation issued in November 2022 (CP22/22),<sup>252</sup> the temporary asset retention rules were subsequently extended in January 2023 until all BSPS cases would be resolved (PS23/1).<sup>253</sup>

9.4.39.7. The s404 Scheme commenced on 28 February 2023, as discussed further in Section 9.6 below.

9.4.40. The original asset retention rules applied to firms that provided BSPS advice between 26 May 2016 and 29 March 2018, and did not apply to firms that had provided advice to fewer than five BSPS members.<sup>254</sup> The extended rules under PS23/1 applied to firms that arranged for three or four BSPS transactions, widening the exclusion threshold to firms that had provided advice to fewer than three BSPS members.<sup>255</sup> Changing this threshold meant that more firms were within the remit of the asset retention rules; a wide range of firms provided BSPS members with advice, so widening this threshold meant further firms were within the remit of the FCA rules. The extended rules applied to firms that would not meet their asset requirements after any potential redress repayments, but if the firms could prove that they did meet these requirements, the rules no longer applied to them. The rules required firms to complete a Financial Resilience Assessment ("**FRA**"), and in April 2022, the FCA confirmed that 26 firms had failed their FRAs and were subject to asset retention.<sup>256</sup>

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<sup>252</sup> CP22/22: Proposed extended asset retention requirement for firms under the British Steel Pension Scheme consumer redress scheme (28 November 2022).

<sup>253</sup> PS22/4: page 3-4, paragraphs 1.7-1.8.

<sup>254</sup> FCA Report (12 April 2024), page 113, paragraph 10.26 and PS22/4: Temporary asset retention requirement for certain firms subject to the proposed British Steel Pension Scheme consumer redress scheme (25 April 2022), page 3, paragraph 1.7.

<sup>255</sup> PS23/1: Extended asset retention requirement for firms under the British Steel Pension Scheme and consumer redress scheme (January 2023) page 9, paragraph 1.37.

<sup>256</sup> FCA webpage, 101 firms in scope of new emergency asset retention rules for British Steel Pension Scheme transfer advice (22 August 2022), <https://www.fca.org.uk/news/news-stories/101-firms-scope-new-emergency-asset-retention-rules-british-steel-pension-scheme-transfer-advice#:~:text=We%20announced%20emergency%20rules%20on,continue%20until%2031%20January%202023>.

9.4.41. The FCA Report states that the introduction of the asset retention rules was linked to its work on redress, to ensure firms had assets in place to meet their redress responsibilities.<sup>257</sup> The FCA was already doing this by reminding firms of their requirements, but this approach was now much stricter. The FCA states that it "*took steps during the relevant period to remind firms of*" their capital requirements and this included "*the interaction with wider redress liabilities*".<sup>258</sup> The FCA also states that there are no clear rules contained in FSMA on the threshold required to introduce asset retention rules.<sup>259</sup> Section 137A of FSMA provides that the FCA may make rules that apply to authorised persons "*as appear to the FCA to be necessary or expedient for the purpose of advancing one or more of its operational aims*".<sup>260</sup> The only requirement to meet, therefore, is one of purpose. The FCA also states that while it could have brought in asset retention rules at an earlier stage, if it had not followed a firm-by-firm approach, such rules would likely have been at risk of legal challenge in the absence of sufficient evidence as to widespread harm.<sup>261</sup> The FCA reiterated this position in its response to the BSPS questions for FCA stakeholders on evidence gathering.<sup>262</sup>

9.4.42. For my analysis in relation to asset retention see the Analysis section below.

## **Analysis**

### *PII cover*

9.4.43. Broadly speaking, whilst the FCA had a suite of rules in place, I do not consider the FCA's rules on PII to have been fit for purpose as

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<sup>257</sup> FCA Report (12 April 2024), pages 113 and 114, paragraphs 10.25-10.33.

<sup>258</sup> FCA Decision Letter, page 38, paragraph 137.

<sup>259</sup> FCA Report (12 April 2024), page 114, paragraph 10.32.

<sup>260</sup> FSMA, section 137A.

<sup>261</sup> FCA Report (12 April 2024), page 114, paragraph 10.35.

<sup>262</sup> FCA, BSPS questions for FCA stakeholders on evidence gathering (31 July 2023), pages 7-8.

they did not do enough to ensure the prerequisite PII cover for redress in many cases.

9.4.44. By 2020, it was apparent that a proportion of firms had either no PII cover as they could not secure PII cover at renewal or they had inadequate PII cover. For example, some PII policies had exclusions for DB transfer advice, insolvent policyholders were excluded, or third parties other than the firm (such as the FSCS) were excluded from making a claim. In particular, the rules on PII lacked clarity which resulted in some firms misapplying them, leading to decreased consumer protection.

9.4.45. The FCA Report outlines that the rules of PII did not *"permit firms to hold additional capital resources in place of PII"*. Additional capital resources were required in the circumstances set out in IPRU-INV 13.1.21R, in the amounts set out in IPRU-INV 13.1.23R. Further additional capital resources were required in the circumstances set out in IPRU-INV 13.1.24G. The FCA was aware that many firms, however, misunderstood the rules and believed they could operate without PII cover if they held the minimum basic capital required as per the rules. The FCA became aware of this misconception in November 2019 i.e. that some firms thought that they could hold capital in lieu of PII (as discussed at paragraph 9.4.32) and as a consequence, some firms were providing DB advice without having compliant PII in place. The rules in this regard were not clarified until May 2020, as noted at paragraph 9.4.33 above. It appears that the FCA obtained this information following the DB4 file review, which raises the question of whether the FCA could have identified the firms' misinterpretation of PII coverage rules earlier, during the DB1 to DB3 file reviews (particularly if those reviews had been more extensive and conducted more swiftly). To properly assess whether the FCA could have obtained this information sooner, I would need clarification as to whether the scope of the previous file reviews included PII compliance or, alternatively, if such file reviews were solely focused on the suitability of pension transfer advice. It is

unclear exactly what steps the FCA could have taken had it identified firms' misunderstanding at an earlier stage, and what implications this might ultimately have had (for example, any impact on the FSCS limit), but it seems that the FCA did not appear to have a robust mechanism in place for monitoring firms' compliance with PII requirements and at the very least could have at least considered how to address these issues.

9.4.46. However, I consider the primary question to be whether the FCA anticipated, or ought to have reasonably anticipated, the problems arising in relation to PII in cases of widespread unsuitable advice. It is not enough to have had rules in place if, in practice, as happened, they did little to address the issues of ensuring the prerequisite PII cover or of firms' capital adequacy for redress.

9.4.47. I consider that there is an argument that the FCA could have, or should have, foreseen the PII issues related to BSPS.

9.4.48. The FCA indicates that by May 2018, it was aware that PII was becoming more expensive. However, there is evidence to suggest that the FCA had been cognisant, since March 2016, of the hurdles small firms faced in securing PII at an affordable price. The situation was exacerbated by a limited market and restrictive policy terms, which increased firm failures and dependency on the FSCS. As the NAO Report states, despite the FCA's rules on capital resources, 22% of complaints made to the FOS have been passed onto the FSCS due to firms entering liquidation. I consider this a large number of complaints being passed onto the FSCS, with BSPS members subject to the FSCS caps due to firms failing in their obligations to meet these liabilities.

9.4.49. I consider that it should have been reasonably foreseeable that high levels of unsuitability in relation to a particular type of advice, which was reasonably foreseeable from as early as 2017, would result in increased claims and, by extension, increased premiums or other difficulties with obtaining coverage on the right terms. The FCA

should have been able to predict that these circumstances would lead to a diminished appetite on the part of PII insurers to take on this type of business, or otherwise offer unaffordable premiums (as did happen, as discussed at paragraph 9.4.10).

- 9.4.50. The tightening of the PII market was, at least in part, indirectly caused by the actions of the FCA, notably its supervisory and enforcement action in relation to BPS advice. Though such enforcement was both necessary and beneficial, I consider that the FCA should have anticipated these consequences. The FCA should, generally, be aware of the fact that any regulatory action it takes could have unintended consequences, as is the case here with PII coverage. The FCA should have been able to predict that firm interventions could have had an impact on insurers' risk appetite and ultimately led to more insurers withdrawing from the market, higher premiums, or more restrictive cover, further reducing the availability of advice on pension transfers. The FCA was aware of these issues, considering approximately 12% of pension advice firms withdrew from the market following the BPS Issues. The FCA should have foreseen that the action it took, whilst entirely appropriate, would likely lead to a negative impact on the PII market as insurers saw the risk of claims increasing.
- 9.4.51. Overall, I consider that the FCA should have been aware of the factors affecting firms' ability to obtain PII, such as pension transfer volumes, complaint frequency, and the probability of successful claims, as noted at paragraph 9.4.18 above. The FCA should also have been aware that the same factors would mean that advisers would likely struggle financially to make the alternative provision required under the rules, and some firms did collapse before submitting valid notifications, resulting in the automatic cessation of their PII cover.
- 9.4.52. The issue arises however, as to what, if anything, the FCA could have done about the matter to improve the outcome for affected

BSPS members if it had been aware (as it ought to have been) of issues related to PII.

- 9.4.53. I am in agreement with the FCA as to the limitations as to what it could do in the face of a tightening PII market. The FCA does not have the authority to compel insurers to provide cover. Insurance providers assess and price risk independently, and regulatory intervention to compel the provision of insurance would be a significant departure from market principles which could have wider implications for the insurance industry. Mr Bailey also acknowledged, in his evidence to the PAC in June 2022, the FCA's lack of authority to extend PII contracts.
- 9.4.54. I have considered the fact that the FCA took steps to raise awareness among BSPS members and to encourage complaints (although I note it failed to communicate to BSPS members that there were time limitations on PII cover) including through a complaints-led strategy with the FSCS and FOS (which is discussed in more detail in Section 9.6). If effective, this could have addressed the problems in relation to PII cover. However, given the low uptake of complaints against the background of the difficulties with PII cover, the FCA should have considered what steps it could have taken sooner to mitigate the effects that reducing PII cover may have on BSPS members. The FCA could have encouraged BSPS members to raise complaints by alerting them about PII cover timescales, but it did not do so. I cannot say with certainty what beneficial impact this would have had. It is possible that if it had done so, this would have made at least some difference to some BSPS members.
- 9.4.55. However, the FCA's position is that, notwithstanding this, *"even if large volumes of complaints had been made much earlier it is unlikely firms would have been able to successfully use PII to cover their complaints liabilities. It is likely that a higher volume of complaints at an earlier stage would have expedited the changes and hardening in the PII market. This would essentially remove cover for DB pension transfers, particularly for advice relating to BSPS, or*

*increase premiums until they become prohibitively expensive, rendering firms unable to afford cover".*

- 9.4.56. In such circumstances, I note that swifter FCA action against the advisory firms and increased complaints from scheme members could have instead resulted in the PII market becoming more restrictive more quickly.
- 9.4.57. This may have increased the difficulties in the following period and I acknowledge that the FCA would have had to look at wider tools. In order to mitigate this impact, the FCA could have required firms to retain additional capital, and appropriate capital should have included enough capital to pay any potential liabilities, including redress claims although retaining additional capital may not have solved the problem (see the asset retention section below for further information on this).
- 9.4.58. Complainants have noted that capital requirements for the firms offering BSPS advice were inadequately low in proportion to risk. The FCA make the argument in response, that requiring firms to hold additional capital could strain their financial resources, possibly leading to business closures and further limiting consumer access to advice.
- 9.4.59. I can appreciate the difficulty the FCA faced. On the one hand, if it had encouraged a higher volume of complaints at an earlier stage or taken extended enforcement action against firms, this would have expedited the changes and hardening in the PII market. If it attempted to shore up capital requirements, there would have been a prospect firms, especially small firms, would fail.
- 9.4.60. I consider it the case to be, that capital requirements are not structured to deal with systemic risk as things stand. The evidence from the FCA to the PAC in June 2022 noted that PII was also not intended to address systemic issues such as advice given in relation to BSPS. The rules did not require a run-off period for lapsed policies.
- 9.4.61. Nevertheless, I believe that the FCA should have assessed whether PII would meet the challenges of systemic failure in relation to BSPS, where it would only remain in place as long as firms maintained their

cover and insurers continued to insure the risk associated with DB transfers, however, although it was open to it to consider changing the rules on capital adequacy, or being more proactive to advise affected BSPS members about matters related to PII earlier. I cannot say with certainty what beneficial impact this would have had given the potential pitfalls associated with this as described above.

- 9.4.62. The FCA had an opportunity to at least capture information and take action against firms which had misapplied PII rules. It is possible that if it had done so, this would have made at least some difference to some BSPS members. This is because at the very least it may have prevented asset dissipation which was known to occur, with these assets instead being used to provide additional redress to affected BSPS members if it was found firms did not have sufficient PII cover.

#### *Asset retention*

- 9.4.63. I do not agree that the FCA's approach to asset retention rules was timely.
- 9.4.64. The Complainants' position is that the FCA did not act in a swift and sufficient manner in relation to asset retention. By way of example, the Complainants state that by March 2018, the FCA had asked 10 firms to stop providing DB pension transfer advice, and in May 2020, the FCA had asked 45 firms to conduct PBRs. However, according to the Complainants, none of these firms, or "*any other firms later identified as being of concern*", were asked to retain assets until the FCA's announcement of the asset retention rules in April 2022.<sup>263</sup> The Complainants also state that, by the time the asset retention rules had been announced, a number of firms were no longer covered by PII for BPS transfers, and 31 firms were declared to be in default.<sup>264</sup> As such, a number of firms had already failed and therefore BPS members were already subject to the FSCS's cap on compensation. Complainants also allege the capital adequacy rules were

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<sup>263</sup> Complaint Letter (26 January 2023), page 5.

<sup>264</sup> *Ibid.*

inadequate because the required capital retention was insufficient to cover liabilities in the absence of PII cover.

9.4.65. The FCA did not comment on the general point about capital adequacy and did not uphold the complaint that it had acted inappropriately with respect to asking firms to retain assets. The FCA states that its approach was a "*phased approach*" and was "*timely and proportionate*".<sup>265</sup> The FCA further states that its approach to working with individual firms was "*appropriate at the time*"<sup>266</sup>, as it worked with firms to remind them of their capital requirements and wider redress liabilities and firms that provided unsuitable transfer advice had requirements placed on them to prevent dissipation of assets.<sup>267</sup> This is evidenced by the FCA's communications to firms. For example, the FCA's 'Dear CEO' letter in December 2021 reminded firms of the need for adequate financial resources and the need for asset retention for any potential redress exercise.<sup>268</sup> The FCA's position is therefore that it maintained appropriate communication with firms, and such communications did reiterate capital requirements and asset retention for potential redress (though the communications did not formally impose asset retention rules at this stage).

9.4.66. The FCA concludes that its early approach was sufficient until it found evidence that the amount of unsuitable advice had increased, and that firms were dissipating assets, leading to the implementation of the emergency asset retention rules.<sup>269</sup> The Complainants' position is that the FCA imposed the asset retention rules some four and a

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<sup>265</sup> FCA Decision Letter (19 April 2024), page 37, paragraph 131.

<sup>266</sup> FCA Decision Letter (19 April 2024), page 38, paragraph 137.

<sup>267</sup> FCA Decision Letter (19 April 2024), page 26, paragraph 73.

<sup>268</sup> FCA, "Dear CEO" letter (22 December 2021), pages 1-2.

<sup>269</sup> FCA Report (12 April 2024), page 142, paragraph 10.151.

half years after it became aware of a “*systemic issue with the transfer of members from the BSPS*”.<sup>270</sup> The FCA considers that:

9.4.66.1. it is incorrect to assume there was a systemic issue during this period;

9.4.66.2. that an in-depth file review (in the form of DB4 and Operation Branford) was needed to gather evidence to inform such a view, where asset retention in particular requires “*an evidential burden*”;<sup>271</sup> and

9.4.66.3. evidence of widespread harm was required in order to avoid potential legal challenge against the asset retention rules.

9.4.67. The FCA’s overarching position indicates that it did not believe it had sufficient evidence of systemic issues until 2022 when the asset retention rules were introduced, which happened once it was aware that there was evidence of widespread harm and a risk of firms disposing of assets in the context of the FCA’s redress consultation (CP22/6). However, I note that the FCA wrote the ‘Dear CEO’ letter in 2021 and it was not the first time the FCA had written to firms – in a letter dated 21 January 2020, the FCA shared concerns that firms had inadequate financial resources and/or PII, and that this letter stated that firms must meet their financial resource requirements, which includes a requirement to maintain PII cover. The 21 January 2020 letter also states the FCA’s ongoing supervisory work will include a focus on whether firms have adequate financial resources and PII. The FCA had also written to all firms in January 2018 to remind them of the FCA’s regulatory expectations. From early on, the FCA did remind firms of their regulatory requirements, including asset retention (e.g. capital resources) and PII. The FCA was aware from at least early 2020 (if not before), as demonstrated by its letter dated 21 January 2020, that firms had inadequate financial

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<sup>270</sup> Complaint Letter (26 January 2023), page 7.

<sup>271</sup> FCA Decision Letter (19 April 2024), page 27, paragraph 77.

resources and yet it was not until April 2022, over two years later, that the FCA imposed asset retention rules. During this period, there must have been at least a risk, if not evidence, that assets were being 'stripped' from some firms.

9.4.68. FSMA does not include a threshold for imposing asset retention rules, so it is unclear what evidential burden the FCA believes it is subject to.

9.4.69. The FCA further suggests that evidence of widespread harm was required in order to avoid potential legal challenge against the asset retention rules. The asset retention rules were introduced against a backdrop of the FCA's information gathering having been met with reluctance.

9.4.70. Nonetheless, in the absence of specific thresholds required for asset retention, it is not clear why the FCA did not bring in asset retention rules at an earlier stage, and the FCA does not define or discuss what the potential legal challenge might involve. The FCA uses the legal challenge in respect of the redress scheme as evidence that legal challenge against a s404 Scheme was possible,<sup>272</sup> but no such evidence is provided for asset retention. I am therefore not convinced that possible legal challenge should have been a material consideration. Legal challenges are generally a possibility but there is nothing to suggest that any such challenge would have merit or would have been a realistic barrier to asset retention. In my view, therefore, for the reasons I give above, the FCA could have imposed asset retention rules earlier.

9.4.71. I turn to the question of what potential impact this may have had on affected BSPS members. The FCA Report suggests that the 'Dear CEO' letter being sent earlier would not have changed the situation with PII or prevented firms from failing. I am sympathetic to the FCA's position in this regard. Against the background of many firms having

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<sup>272</sup> FCA Report (12 April 2024), page 159, paragraph 11.60.

to pay significant amounts of redress, the steps that were ultimately taken to impose asset retention obligations, whilst fairly late in the day, were likely to have had a limited impact on the amounts of assets available to firms to pay redress and also little impact on whether firms were wound up (be it on a solvent or insolvent basis). Generally, DB transfer advice was provided to BSPS members by small firms with little capital, and a number of these firms were failing as a result of their redress obligations. It is also arguable that the effect that asset retention rules would have on a regulated firm (namely, preventing the withdrawal of capital in excess of the firm's regulatory capital requirements), would have created an additional strain on firms which were not liable to redress obligations, leading to further business closures and failures. It is, therefore, unlikely that the imposition of asset retention rules earlier would have made a material difference to the assets that those firms had for the payment of redress in some cases.

9.4.72. That said, I do not have specific evidence to confirm this, but it is most likely the case that the imposition of asset retention rules earlier would have made at least some difference to some BSPS members. This is because at the very least it may have prevented asset dissipation, which was known to occur, with retained assets instead being used to provide additional redress to affected BSPS members. I do not uphold the complaint point that firms which were identified as being of concern were not asked by the FCA to retain assets as there is no evidence to support such an assertion.

#### *Capital requirements*

9.4.73. I have not considered capital adequacy and the FCA has also not investigated this point.

9.4.74. Complainants have noted that capital requirements for the firms offering BSPS advice were inadequately low in proportion to risk. The FCA makes the argument in response, that requiring firms to hold additional capital could strain their financial resources, possibly

leading to business closures and further limiting consumer access to advice thereby reducing competition in the advice market.

9.4.75. The FCA Report fails to provide any data as to whether firms were compliant with SUP 15.12.1 (which requires firms with three upheld redress claims or where redress exceeded £50,000 in any 12 month period to increase their capital); from the evidence the FCA Report presents, it seems that firms were either non-compliant with it, because they did not receive any complaints and so they considered that they did not need to comply with the rule. Moreover, the FCA Report flags that the FCA faced difficulty in getting firms to agree to make the additional capital provision required under the rules to cover potential liabilities (under SUP 15.12.1), as *"firms would insist they did not give unsuitable advice and were not receiving complaints"*.

9.4.76. The FCA has said that a cap on risk accumulation could potentially impact on competition within the advice market, the availability of advice and on consumers' legal right to pension freedoms. I agree that under the Principles for Business, the FCA has to consider competition within the advice market but this should not override the FCA's requirements for firms to have sufficient capital adequacy arrangements for the business they are carrying out. I have made some general observations regarding this in Section 10 below.

## **9.5. *Post-February 2018 – Enforcement / Supervisory Response and Asset Retention in the Context of Enforcement***

### **Description of Section 9.5 (Complaint 2)**

9.5.1. This period relates to the complaint that *"[t]he Financial Conduct Authority has not been sufficiently proactive or timely in using its enforcement powers"*.<sup>273</sup> In this report, I consider FCA supervisory action to be actions taken by the FCA in respect of its regulatory oversight (i.e. informing firms and consumers of its rules and

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<sup>273</sup> Complaint Letter (26 January 2023), page 5.

expectations and ensuring firms are accountable for their actions, including by way of VREQs and OIREQs). I consider FCA enforcement action to encompass the use of the FCA's investigatory powers under Part 11 of FSMA and the taking of disciplinary action against firms and regulated individuals, including by way of the imposition of financial penalties, withdrawing firms' authorisations and prohibiting individuals from performing regulated functions. The unsuitable advice had been given by this point in time and so there was nothing the FCA could do to prevent the harm to BPS members so all actions at this stage would have been to mitigate the harm to BPS members.

### **Summary of the FCA's position and my conclusions**

9.5.2. Overall, the FCA's position in relation to use of its supervisory powers is that it used its supervisory powers in line with its purpose of preventing immediate harm. In respect of its enforcement powers, the FCA position is that it used these powers in remediating past harm, and that the early enforcement and supervision did produce results, including VREQs, some asset retention and redress. The evidence the FCA provides also suggests that, in circumstances where it had little information, the FCA focused on gathering data in order to pursue intervention. A summary of my findings is set out below:

I have seen no indication from the FCA of any undue delay in taking enforcement action against firms it identified as requiring intervention. However, as the FCA has not specifically assessed the overall effectiveness of its actions across all advisory firms, I am unable to make findings on this point.

9.5.3. The Complaint Letter raises allegations about the FCA in connection to two specific firms: Firm 1 and Firm 2. I have not upheld the complaint in respect of the FCA's approach to these firms as I am persuaded that the FCA was reasonable in its supervision of Firm 1 and Firm 2.

## Relevant background in relation to this aspect of the Complaint

9.5.4. The FCA describes its approach to enforcement and supervision as "evidence-based", noting that it "evolved to meet key priorities" as the events relating to the BPS transfers unfolded.<sup>274</sup> The FCA states that it was appropriate to take a phased approach, prioritising allocation of resources and adapting its use of enforcement powers as events were made apparent.<sup>275</sup> The FCA started with supervisory action before enforcement. The FCA relied on the intelligence and data it received in respect of DB transfers, from multiple sources. It states that such information took time to collate and this required a distinct information gathering stage, including visits to firms with high volumes of DB transfers. The FCA suggests that it was initially focused on stopping and preventing further harm through this information gathering work and supervisory action, and once it became aware of serious failings, it subsequently began enforcement action.

9.5.5. The Complainants' position in relation to the FCA's enforcement and supervisory action is that the FCA "was not sufficiently proactive or timely in its enforcement powers" and "failed to take steps to protect those affected by unsuitable advice ... in a timely way", including in its imposition of asset retention rules.<sup>276</sup> This report discusses the FCA's approach to asset retention in more detail at paragraphs 9.4.39 – 9.4.42. First, this report outlines the FCA's approach to enforcement and supervisory action prior to the imposition of asset retention rules, which came into effect on 25 April 2022.<sup>277</sup> The

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<sup>274</sup> FCA Decision Letter (19 April 2024), page 37, paragraph 130.

<sup>275</sup> FCA Report (12 April 2024), page 141, paragraph 10.146.

<sup>276</sup> FCA webpage, FCA announces asset retention rules for British Steel advice firms (25 April 2022), <https://www.fca.org.uk/news/press-releases/fca-announces-asset-retention-rules-british-steel-advice-firms>.

<sup>277</sup> FCA, PS22/4: Temporary asset retention requirement for certain firms subject to the proposed British Steel Pension Scheme consumer redress scheme (25 April 2022).

definitions of supervisory and enforcement action are as noted at paragraph 9.5.1.

9.5.6. The FCA notes that it took a number of steps towards enforcement action, and the FCA Report outlines this approach from Autumn 2017 to the imposition of the asset retention rules in April 2022. The purpose of such steps appears to have been censure; whilst it did not necessarily address the issues at hand, its aim was to appropriately penalise firms' wrongdoing and deter them (and other firms) from similar behaviour in the future. Such steps primarily comprised:

9.5.6.1. formal disciplinary action taken against advisers, including the imposition of public censure and financial penalties; and

9.5.6.2. prohibition orders and/or withdrawal of approval in relation to individuals under sections 56 and 63 FSMA;

9.5.7. Alongside this, the FCA also made use of its supervisory powers to vary permissions or to impose requirements on firms under sections 55J and 55L FSMA. Such supervisory powers aimed to prevent harm.

9.5.8. The FCA Report explains that the FCA's approach to enforcement and supervisory action can be categorised in three phases:

9.5.8.1. Part 1: Autumn 2017 and early 2018 (preventing immediate harm);

9.5.8.2. Part 2: During 2018 and into 2019/2020 (re-starting DB work); and

9.5.8.3. Part 3: 2020/2021 (review and updated approach).

9.5.9. From March 2020, the FCA reviewed its approach "*in light of the high level of unsuitable advice in BSPS compared to other advice*" uncovered in its evidence gathering via its file reviews. With increased evidence of harm, the FCA changed its approach from being focused on evidence gathering to consider alternatives and to

test whether it could impose asset restrictions, which ultimately resulted in the use of its powers under section 404 FSMA to impose a redress scheme. This is discussed in more detail in Section 9.6 below. The FCA also sent a 'Dear CEO' letter to firms in December 2021 to remind them of their responsibilities, including in relation to asset retention. The FCA continued to use its VREQ powers and, between 2019 and 2021, the FCA obtained a total of 25 VREQs, as well as one OIREQ, as noted at paragraph 9.5.14 below.

9.5.10. Operation Branford continued alongside this work, from July 2019 until April 2020, with further enforcement investigations leading to results.<sup>278</sup> The FCA Report references an example of Firm X, where ultimately £23 million was paid out to consumers in redress by April 2023.

9.5.11. The FCA also conducted PBRs from May 2020 onwards, with its enforcement investigations progressing in tandem. The FCA conducted a total of 36 PBRs and covered an estimated 365 BPS cases.<sup>279</sup>

9.5.12. As at March 2023, the FCA had opened 30 ongoing enforcement investigations into firms relating wholly or partly to BPS, involving analysis of "*significant volumes of evidence*" alongside interviews and file reviews.<sup>280</sup> Given that such investigations are generally private until their conclusion, there is limited evidence as to their scope and process. The FCA has, however, published information relating to the concluded enforcement actions against 18 firms and/or

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<sup>278</sup> FCA Report (12 April 2024), page 110, paragraph 10.10.

<sup>279</sup> FCA Report (12 April 2024), page 26, paragraph 6.60. This appears to have been the total as at July 2021, see FT webpage, FCA orders 36 BPS firms to carry out past business reviews (19 July 2021), <https://www.ftadviser.com/pensions/2021/07/19/fca-orders-36-bsps-firms-to-carry-out-past-business-reviews/>.

<sup>280</sup> Government response to the Committee of Public Accounts on the Fourteenth Report from Session 2022-23 (14 October 2022), page 4, paragraphs 3.2-3.8.

associated individuals, where the FCA has imposed fines and/or prohibition orders.<sup>281</sup>

*Nature of and context to steps taken in relation to asset retention*

9.5.13. The FCA introduced emergency temporary asset retention rules on 25 April 2022, which applied until 31 January 2023, as noted at paragraphs to above.<sup>282</sup>

9.5.14. As noted at paragraph 9.5.9 above, after completing its early work in Parts 1 and 2, the FCA states that increased evidence of harm became apparent in 2020/21, through its evidence gathering via DB4 and Operation Branford. This led to the FCA imposing its first OIREQ on Firm 2 in early 2022. The FCA noted "*phoenixing*" concerns (further described at paragraph 9.5.28 below), describing the issue as "*particularly obvious and egregious*", as Firm 2 was found to be disposing of assets via dividends without the FCA's permission. The FCA has not provided further details as to whether it analysed the number of firms dissipating assets, and what action it took, if any, to recoup the assets.

9.5.15. Before imposing VREQs and OIREQs, the FCA conducted the PBRs to ascertain and monitor firms' financial positions.<sup>283</sup> On June 2020, the FCA published a DB update on its website, noting that it had seen "*evidence of owners reducing the financial resources of their firms*" and that it would take action where it had concerns that firms would not have the required financial resources to provide redress, in the

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<sup>281</sup> FCA webpage, British Steel Pension Scheme – our approach to enforcement (24 June 2023), <https://www.fca.org.uk/firms/british-steel-pension-scheme-our-approach-enforcement>.

<sup>282</sup> FCA webpage, FCA announces asset retention rules for British Steel advice firms (25 April 2022) <https://www.fca.org.uk/news/press-releases/fca-announces-asset-retention-rules-british-steel-advice-firms>.

<sup>283</sup> FCA Report (12 April 2024), page 111, paragraph 10.14.

forms of VREQs and OIREQs.<sup>284</sup> It did not propose blanket asset retention rules at this stage.

9.5.16. The FCA's letter to the Parliamentary Work and Pensions Committee in December 2017 clarified the FCA's position that a blanket ban or suspension of DB transfer advice was not warranted, as this could interfere with a consumer's legal right to transfer a DB pension if they so wish, would have to be as a result of considerable evidence of consumer harm and would carry with it a high probability of legal challenge.<sup>285</sup> The FCA therefore considered the use of VREQs to be a faster way to intervene in the (then) current legislative climate.<sup>286</sup>

#### *Passing clients to other unsuitable advisers*

9.5.17. The Complaint Letter also makes a specific complaint that the FCA failed to "*prevent firms who had been identified as a risk to BSPS members*" from passing on clients to other unsuitable advisers. The Complaint Letter uses two firms as an example, which I refer to as the Firm 1 and Firm 2.<sup>287</sup> The FCA responds to this allegation in the FCA Decision Letter, noting that Firm 1 had the authorisation required to carry out DB transfer advice, so the FCA could not stop consumers from seeking advice from a regulated firm with the required authorisation.<sup>288</sup> The FCA also notes that once it was aware of high levels of unsuitable advice at the Firm 1, it agreed a VREQ with the firm on 6 February 2018 and it took eventual enforcement action against the directors of the Firm 1 and the Firm 2 in June<sup>289</sup>

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<sup>284</sup> FCA webpage, Defined Benefit (DB) transfers – further update on our work (5 June 2020), <https://www.fca.org.uk/publications/multi-firm-reviews/defined-benefit-db-transfers-further-update-our-work>.

<sup>285</sup> FCA, Letter to the Rt. Hon. Frank Field MP (21 December 2017), pages 1-2.

<sup>286</sup> FCA, Letter to the Rt. Hon. Frank Field MP (21 December 2017), pages 3-4.

<sup>287</sup> Complaint Letter (26 January 2023), page 5.

<sup>288</sup> FCA Decision Letter (19 April 2024), page 36, paragraph 125.

<sup>289</sup> FCA Final Notice to Mark Antony Abley (CCWM) (22 June 2023) and FCA webpage, Adviser Mark Abley pays £106k for poor pension transfer advice (26 June 2023), <https://www.fca.org.uk/news/press-releases/adviser-mark-abley-pays-106k-poor-pension-transfer-advice>.

and November<sup>290</sup> 2023.<sup>291</sup> Therefore, the FCA's position is that it could not stop firms providing advice if they were authorised to do so, and once it became aware of unsuitable advice, it took steps to use supervisory and enforcement tools to mitigate risk.<sup>292</sup>

## Analysis

### *Enforcement and supervision*

9.5.18. The FCA used a range of supervisory and enforcement tools after the conclusion of the TtC period on 11 December 2017 onwards, including VREQs, OIREQs, prohibition orders and investigations as noted in this report at 9.5.6. In my view, these were the appropriate enforcement tools and it was reasonable and appropriate for the FCA to use them in relation to BSPS advisers. The key question is whether those tools were used in the most effective and timely manner, based on the information available to the FCA at the relevant times.

9.5.19. In an enforcement context, the FCA's reactive approach is less surprising. The FCA needed actionable intelligence in order to be able to take specific investigative and enforcement action against advisers. It was necessary for the FCA to understand which firms should be the subject of any action and there are limitations as to how swiftly such action could be taken, with the FCA's own initiative powers in urgent cases being based on "*the information available to it*", as well as what the circumstances indicated.<sup>293</sup>

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<sup>290</sup> FCA Final Notices to David Nigel Lewis and Susan Mary Jones (WWFS) (24 November 2023) and FCA webpage, FCA bans Nigel Lewis and Susan Jones for incompetent British Steel Pension Scheme advice (27 November 2023), <https://www.fca.org.uk/news/press-releases/fca-bans-nigel-lewis-and-susan-jones-incompetent-british-steel-pension-scheme-advice>.

<sup>291</sup> FCA Decision Letter (19 April 2024), page 37, paragraphs 126-128.

<sup>292</sup> FCA Decision Letter (19 April 2024), page 37, paragraph 129.

<sup>293</sup> FCA, The Enforcement Guide (January 2016), page 64, paragraph 8.7(1).

## VREQs and OIREQs

9.5.20. VREQs and OIREQs are tools that enable the FCA to agree consensually with a firm or require a firm (respectively) to take or refrain from taking action where the FCA has concerns that the firm is not meeting the FCA's standards. The action can include varying the firm's permissions to stop firms from providing certain services that they are otherwise permitted to provide. Section 55L(5) FSMA does not set out any specific test or standard for when the FCA can accept an application by a regulated firm for a VREQ, as it only relies on the agreement of the firm. As such, they are a useful tool for the FCA to deploy quickly and achieve the same ends as an OIREQ, which does have an evidential threshold. However, in practice, it is reasonable for the FCA to consider that it should have reliable evidence that the firm subject to the proposed VREQ caused harm to consumers, so that the FCA can be confident in its ability to impose an OIREQ if the firm refuses to agree.

9.5.21. As regards OIREQs, in order for the FCA to use its own initiative powers under sections 55J and 55L FSMA to vary a permission or impose a requirement, it is necessary that:

9.5.21.1. the FCA should have information available to it that indicates serious concerns about the firm or its business that need to be addressed immediately; and

9.5.21.2. the circumstances should 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.<sup>294</sup>

9.5.22. Imposing an OIREQ (and, in practice, a VREQ) therefore requires that the FCA has information available on which to base a "*serious concern*" and that the FCA can evidence the circumstances that

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<sup>294</sup> FCA, The Enforcement Guide (January 2016), page 64, paragraph 8.7(2).

warrant the use of the FCA's statutory powers. The FCA's "*evidence-based*" approach seems justified with this in mind.

9.5.23. The FCA clearly considered and used these powers from an early juncture. For example, VREQs had been used as part of the FCA's earlier work in relation to DB transfers in DB1 and DB2. The FCA introduced VREQs from as early as December 2017, and this resulted in eight firms agreeing to VREQs by 22 December 2017. The evidence does not provide information from which I could conclude that there are firms in respect of which the FCA could have utilised VREQs or OIREQs but did not.

9.5.24. Blanket asset retention rules are arguably a larger market intervention and I can understand why they would require a higher evidential threshold, which could take time to meet.

#### *Specific enforcement action*

9.5.25. The FCA considers that it took appropriate action and reviewed and changed its approach as it became apparent that BSPS transfer advice had high levels of potential mis-selling, but this could only happen once it had gathered enough evidence. Once the FCA became aware of the high potential for mis-selling, it states that it "*acted quickly in the limited period to prevent harm*".

9.5.26. The FCA undertook "*significant work subsequent to the initial interventions*" and it was able to "*build an evidence base*" to open around 30 enforcement investigations as at March 2023, resulting in around £9m in fines and payments to the FSCS.<sup>295</sup> The FCA notes that each investigation has been "*complex and required analysis of large volumes of evidence, interviews and file reviews*".<sup>296</sup> It is therefore unsurprising that this action has taken time and is continuing over six years after the conclusion of the TtC period.

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<sup>295</sup> FCA Report (12 April 2024), page 141, paragraph 10.147 and FCA webpage, British Steel Pension Scheme – our approach to enforcement (24 June 2023), <https://www.fca.org.uk/firms/british-steel-pension-scheme-our-approach-enforcement#section-completed-enforcement-actions>.

<sup>296</sup> FCA Decision Letter (19 April 2024), page 10, paragraph t.

9.5.27. In respect of enforcement action, although I have information about what enforcement action the FCA did take, I do not have the evidence to assess whether or not there are more firms or individuals where investigations should have been opened or sanctions imposed; I consider that if this was the case and the FCA did not investigate firms when they could have, this would have been made clear in the FCA Report. In this regard, I also note that the FCA has limited resources, that enforcement investigations are time-consuming and resource intensive and against this background the FCA has to make difficult decisions about what to investigate and when those investigations should be conducted. The fact that the FCA has taken some time to conclude the open investigations does not itself mean that the FCA has not acted fast enough.

#### *FCA supervision of Firm 1 and Firm 2*

9.5.28. In respect of phoenixing, the practice where companies carry out the same business through a series of companies as each becomes insolvent, the Complaint Letter refers specifically to the FCA's response to two firms, which are referred to in this report as Firm 1 and Firm 2.<sup>297</sup> The FCA Report notes that both Firm 1 and Firm 2 were reviewed, and the FCA investigated each of the firms on several occasions as new evidence and intelligence became apparent.<sup>298</sup> Due to confidentiality reasons, I am unable to provide further details in relation to this complaint, save that I am unable to uphold the complaint that the FCA acted unreasonably with respect to these two firms. From the evidence I have reviewed, I conclude that the FCA acted reasonably and appropriately in respect of asset retention and its supervision of Firm 1 and Firm 2.

9.5.29. There may be a case to be made that the FCA did not use its enforcement powers effectively with respect to other firms it identified as being of concern, or even generally across the population of firms

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<sup>297</sup> Complaint Letter (26 January 2023), pages 5-6.

<sup>298</sup> FCA Report (12 April 2024), page 118, paragraph 10.52.

offering advice during the period. However, such a complaint was neither made by the Complainants or reviewed by the FCA, and therefore it is also not the subject of my review.

9.5.30. With respect to Supervision and Enforcement, the FCA undertook 30 enforcement investigations as at March 2023, resulting in around £9m in fines and payments to the FSCS. The FCA notes that each investigation has been *"complex and required analysis of large volumes of evidence, interviews, and file reviews"*. It is therefore unsurprising that this action has taken time and is continuing over six years after the conclusion of the TtC period. I also note that the FCA has limited resources, that enforcement investigations are time-consuming and resource intensive, and that against this background the FCA has to make difficult decisions about what to investigate and when those investigations should be conducted. The fact that the FCA has taken some time to conclude the open investigations does not itself mean that the FCA has not acted fast enough.

9.5.31. However, I do not have the evidence to assess whether or not there are more firms or individuals where investigations should have been opened or sanctions imposed. Ultimately, I do not have the evidence to assess whether there were missed opportunities for efficiencies or an otherwise different approach that could have led to supervision and enforcement action being swifter across the population. I have not been presented with evidence from the FCA to suggest that the FCA was too slow in its approach to supervision and enforcement, taking into account the range of tools that it deployed and the inherently time-consuming nature of investigations in complex cases like these. In addition, whilst the FCA has explained the actions it took generally during the period, there has been no concentrated investigation into the effectiveness of these. I can therefore make no finding on this element.

## 9.6. *Post-February 2018 – Redress (Complaint 3)*

### Description of Section 9.6 (Complaint 3)

9.6.1. The third complaint of the Complainants relates to the FCA's actions post-February 2018 in relation to compensation. The complaint alleges that "[t]he way that compensation has been provided in the *British Steel Pension scheme case has been slow and unfair*".<sup>299</sup> This complaint, which relates to the FCA's approach to redress, will be considered in this report in relation to the broad categories set out below:

9.6.1.1. **Complaints-led approach:** why did the FCA initially adopt a complaints-led approach?;

9.6.1.2. **s404 Scheme:** should the s404 Scheme have been implemented earlier?;

9.6.1.3. **Inconsistent compensation:** did the various forms of redress lead to an inconsistent approach?;

9.6.1.4. **Alternative redress solutions to the s404 Scheme:** Complainants allege that a bulk annuity that would have put them back in the position they would have been had they remained in the BSPS DB Scheme was blocked by the FCA. The FCA has set out in PS22/14 why it did not consider that alternative redress options, such as a bulk annuity or a deferred annuity, were viable in PS22/14. I invited Complainants and the FCA to comment on whether alternative redress options to the s404 Scheme were formally proposed and have analysed the evidence I have received to check that the FCA gave fair consideration to any proposals received and did not reject them without good reason.

9.6.1.5. **IFAs took advantage of falling annuity rates:** Complainants allege advisers were required to make a

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<sup>299</sup> Complaint Letter (26 January 2023), page 7.

redress offer promptly following the calculation date and within 3 months of the valuation date. Complainants alleged that IFAs postponed making redress offers until the market conditions had dramatically reduced the sums due to Complainants. The FCA says that it has asked FOS about this issue and there does not appear to be any evidence of a spike in redress offers once the annuity rates had fallen or of firms purposely delaying calculations without valid reasons why. I did not receive conclusive evidence that there was a spike in redress offers following the mini-budget. But I note that many Complainants did not receive their redress offers promptly within 3 months of the valuation date. I recommend that the FCA look into these delays where Complainants pass this information to the FCA. The FCA has said that it will investigate such matters and consider any evidence Complainants have of this in the first instance (this may or may not lead to compensation for affected former BPS members).

### **Summary of the FCA position and my conclusions**

9.6.2. The FCA had initially considered the complaints-led approach to be the fastest way to secure redress for consumers. The FCA acknowledges that it could have identified earlier than April 2021 that the complaints-led approach was not working to the extent needed (particularly because of the relatively low number of complaints) and that it should have responded sooner by diverting more resource to gather the high level of evidence required to enable it to implement a statutory redress scheme. The FCA's position on the redress methodology is that it is not within its remit nor within the remit of the Complaints Scheme and therefore excluded this aspect of the complaint. The FCA's position is that it took considerable steps to ensure the adequacy of the s404 Scheme before it was finalised. Specifically, it had consulted on how redress should be calculated for

non-compliant transfer advice in August 2022 through CP22/15<sup>300</sup>. PS22/13<sup>301</sup> was the corresponding Policy Statement for calculating redress for non-compliant pension transfer advice. The FCA published a technical report<sup>302</sup> carried out by Deloitte in July 2022 as well as Deloitte's technical manual<sup>303</sup> which provides worked examples of the calculation process using the proposed methodology as set out in CP22/15. In addition, the FCA obtained external legal advice<sup>304</sup>, which focused primarily on how the current and proposed methodology compared with the approach a court would take to awarding damages for non-compliant DB pension transfer advice. The FCA has also highlighted that it produced a calculator<sup>305</sup> that firms, or third parties acting on their behalf were required to use to calculate redress owed under the s404 Scheme which aimed to ensure that calculations were fair, quick and consistent. The FCA has highlighted that it also took action<sup>306</sup> against firms who were making unsolicited settlement offers to former BSPS members who were likely to be part of the s404 Scheme.

9.6.3. A summary of my conclusions are as follows:

- The FCA has not provided clear evidence of the internal decision making around whether to continue with the complaints-led approach or to pursue the s404 Scheme, or any other approach. I am therefore not persuaded that its approach was efficient and timely. In particular:
  - The FCA should have realised the complaints-led approach was not working sufficiently well sooner.

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<sup>300</sup> CP22/15: <https://www.fca.org.uk/publication/consultation/cp22-15.pdf>

<sup>301</sup> PS22/13: <https://www.fca.org.uk/publication/policy/ps22-14.pdf>

<sup>302</sup> Deloitte, July 2022: [Periodic Review of Defined Benefit Pension Transfer Redress Guidance: Technical Report](#)

<sup>303</sup> Deloitte, July 2022 [Periodic Review of Defined Benefit Pension Transfer Redress Guidance - Technical Manual](#)

<sup>304</sup> [Legal Opinion by Michael Furness QC](#)

<sup>305</sup> [British Steel Pension Scheme redress calculations | FCA](#)

<sup>306</sup> [FCA forces firms to stop making misleading British Steel Pension Scheme offers | FCA](#)

- The FCA should have implemented the s404 Scheme sooner.
- I am persuaded by the FCA's argument that the redress methodology and consequent inconsistent outcomes it produced are not within the remit of the Complaints Scheme. Nevertheless, I have made observations regarding this matter below.

### Relevant background in relation to this aspect of the complaint

9.6.4. Following its CP22/6 consultation which had opened on 31 March 2022, the FCA implemented the BSPS consumer redress scheme in November 2022 (PS22/14), pursuant to its powers under section 404 FSMA, which commenced on 28 February 2023. The Complainants note that "[d]espite gathering information since 2018, the FCA only began considering the potential use of a scheme and analysing its impacts in early 2021".<sup>307</sup> As explained further at paragraph 9.6.26 below, the Complaint Letter goes on to suggest that such delays increased inequality in compensation between BSPS members, and that this contributed to distress, anger, and, for some BSPS members, mental health issues.<sup>308</sup> Similarly, the PAC Report of July 2022 stated that: (i) only 25% of BSPS members who had received unsuitable advice had raised complaints with redress organisations, yet the FCA had five years to propose the s404 Scheme; and (ii) the FCA had been evidence gathering since 2018, but only considered the potential use of the s404 Scheme in early 2021.<sup>309</sup>

9.6.5. Prior to the s404 Scheme, the FCA had considered alternative redress options.<sup>310</sup> In particular, the FCA Report notes that, between

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<sup>307</sup> Complaint Letter (26 January 2023), page 8.

<sup>308</sup> *Ibid.*

<sup>309</sup> PAC Report (21 July 2022), page 6, paragraph 4.

<sup>310</sup> As the FCA Report notes, at paragraph 6.159, there are several ways in which firms or the FCA can deliver redress to consumers, including a complaints-led approach, voluntary firm-led approaches, or a more formal redress scheme imposed by the FCA on a statutory basis (such as section 404 multi-firm redress schemes and single firm redress schemes).

December 2017 and December 2021, the FCA focused on a complaints-led approach, as a common approach to redress in light of the general principle under FSMA that consumers should take responsibility for their decisions.<sup>311</sup> A complaints-led approach is an approach which encourages consumers to consider their own circumstances and take a view on whether they should complain; the FCA encouraged consumers to do this through its complaints-led approach by making BSPS members aware that they may have cause to complain. As explained further at paragraph 9.6.10 below, the FCA's early focus on the complaints-led approach appears to have been, at least in part, driven by the evidential burden required to meet the legal tests in order to introduce a redress scheme. Ultimately, the FCA implemented the s404 Scheme due to low levels of engagement with the complaints process by former BSPS members.<sup>312</sup> The FCA considered that moving to the s404 Scheme would seem most effective in circumstances where carrying on with the complaints-led approach would likely result in a continued low level of complaints.<sup>313</sup>

9.6.6. The FCA Report also considers other alternative forms of redress, including bulk annuity and deferred annuity. In respect of bulk annuity, the FCA notes that it met with a pension super fund, in respect of a possible bulk annuity solution, but the proposal was not progressed because little detail had been provided by TPR, the lead regulator for the approach.<sup>314</sup> The FCA concludes that it is not for the FCA or TPR to come up with the alternative solution, but for the market to do so. The FCA further states that its rules allowed for a bulk annuity approach, but practically, this would have been complicated and required work from the regulators as well as

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<sup>311</sup> FCA Decision Letter (19 April 2024), paragraph 41.

<sup>312</sup> FCA Report (12 April 2024), page 154, paragraph 11.33.

<sup>313</sup> FCA, British Steel Pension Scheme (BSPS) – options for further work (8 July 2021), page 4, paragraph 2.1.

<sup>314</sup> FCA Report (12 April 2024), pages 148-149, paragraphs 11.13-11.15.

agreement from consumers. The FCA notes that the lack of detail and lack of further proposals suggests that a viable bulk annuity solution was not present in the market.<sup>315</sup> PS22/14<sup>316</sup> also notes that the FCA spoke with several insurers about a BSPS bulk annuity purchase. The FCA said that *“We understand that even if all consumers agree to use their redress monies (estimated at £71.2m under an opt-out s.404 scheme), it appears it is not viable for insurers to offer a BSPS specific annuity product, unless consumers also agree to move their transferred pension pot. As we said in CP22/15, we have no power to direct consumers to move their transferred pot to another provider or product. So it is unlikely that we would have enough interest from BSPS consumers for an insurer to offer a BSPS insured solution. Our rules do not prevent firms from offering an annuity purchase as a redress solution if they can overcome the practicalities discussed in PS22/13.”*

9.6.7. In respect of deferred annuities, the FCA notes that a third party technical report that it commissioned concluded that this was not an appropriate solution given that it would potentially put consumers in a better position than they would have been in as compared to their original DB scheme.<sup>317</sup> The technical report also suggested that this would not be a viable solution due to the significant practical limitations of the nature of the deferred annuity market itself, noting that the option would not be feasible *“without significant changes to the insurance market”*.<sup>318</sup>

9.6.8. During his appearance before the PAC in April 2022, Nikhil Rathi suggested that the FCA had initially considered the complaints-led approach to be the fastest way to secure redress for consumers.<sup>319</sup>

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<sup>315</sup> FCA Report (12 April 2024), page 149, paragraph 11.15.

<sup>316</sup> PS22/14 <https://www.fca.org.uk/publication/policy/ps22-14.pdf>

<sup>317</sup> FCA Report (12 April 2024), page 147.

<sup>318</sup> FCA Report (12 April 2024), page 148.

<sup>319</sup> PAC, Oral Evidence, HC 1216 (27 April 2022), page 35, Q81.

The FCA appeared to take a number of actions to support the complaints-led approach. In his letter to the PAC in September 2022, Mr Rathi noted that the FCA: (i) wrote directly to former BSPS members in 2018, 2019, 2020; (ii) ran local events for former BSPS members to raise awareness of potentially unsuitable DB transfer advice in 2017, 2019 and 2021; and (iii) communicated with former BSPS members via trade unions and other trusted bodies.<sup>320</sup> Mr Rathi further noted that this engagement led to some constructive communication, as 272 former BSPS members attended the local events in South Wales and Scunthorpe, and 86% of attendees surveyed noted they were "*now clearer about their next steps*", resulting in an increase in complaints to the FOS.<sup>321</sup> The letter also noted that, despite this early engagement, overall there were low levels of complaints.<sup>322</sup> In his oral evidence, Mr Rathi reiterated that the complaints-led approach resulted in little engagement, despite the steps taken to raise awareness among former BSPS members of their right to complain (to the FOS or, for firms in default, to the FSCS), which led the FCA to consider the BSPS-specific redress scheme in late 2020/early 2021.<sup>323</sup> The NAO Report also referred to the fact that only 25% of former BSPS scheme members who had transferred out of their DB pensions had raised a complaint by around March 2022.<sup>324</sup>

9.6.9. The FCA Report further states that, during this four-year period from December 2017 to December 2021, the FCA took a number of steps alongside the FOS and FSCS, to ensure BSPS members were well-informed about their right to complain and seek redress.<sup>325</sup> The FCA

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<sup>320</sup> FCA, Letter to Chair of Public Accounts Committee (28 September 2022), page 5.

<sup>321</sup> *Ibid.*

<sup>322</sup> FCA, letter to Chair of Public Accounts Committee (28 September 2022), pages 1 and 2.

<sup>323</sup> PAC, Oral Evidence, HC 1216 (27 April 2022), page 19.

<sup>324</sup> NAO Report (18 March 2022), pages 9 and 18, paragraphs 18 and 3.8.

<sup>325</sup> FCA Report (12 April 2024), page 39, paragraph 6.123 and Government response to the Committee of Public Accounts on the Fourteenth report from Session 2022-23 (14 October 2022), page 20, paragraph 5.3.

Report includes a chronology setting out the FCA webpage updates that were made in this regard. These updates include, but were not limited to, the following:

- 9.6.9.1. On 11 December 2017, the FCA published its first update on its website, which made BSPS members aware of their right to complain. On 15 December 2017, the page was updated to provide details of firms that could no longer provide DB pension advice as a result of FCA intervention.<sup>326</sup>
- 9.6.9.2. On 1 August 2019, the FCA published an update on its website to make former BPS members aware that the FCA was running events to make former BPS members aware that they may have been misadvised, and to inform them of their right to complain. The events were also attended by the FOS and FSCS.<sup>327</sup>
- 9.6.9.3. On 3 June 2020, the FCA published an advice checker, to allow consumers, including BPS members, to ascertain whether they may have been misadvised in relation to DB pension transfers. The webpage also provides guidance on how to complain to the FOS and other steps to take.<sup>328</sup>
- 9.6.9.4. On 30 May 2021, the FCA published a webpage entitled the "*British Steel pension redress scheme*", with information noting that former BPS members may have

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<sup>326</sup> FCA webpage, FCA updates on its work on financial advice given to member of the British Steel Pension Scheme (BSPS) (11 December 2017) <https://www.fca.org.uk/news/statements/fca-updates-work-financial-advice-given-members-british-steel-pension-scheme>.

<sup>327</sup> FCA webpage, FCA announces August and September events for former members of the British Steel Pension Scheme (1 August 2019) <https://www.fca.org.uk/news/news-stories/fca-august-and-september-events-former-members-bsps>.

<sup>328</sup> FCA webpage, Advice checker: defined benefit pension transfers (3 June 2020) <https://www.fca.org.uk/consumers/pension-transfer-defined-benefit/advice-checker>.

been misadvised and noting the process to obtain redress.<sup>329</sup>

*The FCA's information as to the efficacy of its complaints-led approach*

9.6.10. The FCA Report provides further detail as to why the FCA focussed on a complaints-led approach, noting that the s404 Scheme could not have been implemented until the FCA had reviewed enough files to ascertain whether there was "*widespread failure in relation to BSPS advice*".<sup>330</sup> The FCA's early concerns related to whether it had gathered "*sufficient evidence of harm to meet the legal test*" under FSMA to warrant implementing the s404 Scheme.<sup>331</sup> The FCA also needed to consider the wider impact of these powers, acknowledging that the s404 Scheme would represent "*a significant intervention in a market*".<sup>332</sup>

9.6.11. The FCA Report refers to an ERPC Paper from January 2019, in which the FCA requested approval to establish a common evidence base in order to identify those firms where failings may be most serious and harm may be most significant.<sup>333</sup> In the January 2019 ERPC Paper, the FCA noted that gathering such evidence would also aid in assessing whether the FCA should consider using its section 404 powers to implement a redress scheme.<sup>334</sup> In a later ExCo Paper from July 2021, where the FCA noted that its complaints-led approach had resulted in only a 4% uptake in complaints from the total population of potential complainants, the

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<sup>329</sup> FCA webpage, British Steel pension redress scheme (30 May 2021)  
<https://www.fca.org.uk/consumers/british-steel-pension-redress-scheme>.

<sup>330</sup> FCA Report (12 April 2024), page 154, paragraph 11.31.

<sup>331</sup> FCA Decision Letter (19 April 2024), page 23, paragraph 60.

<sup>332</sup> FCA Decision Letter (19 April 2024), page 21, paragraph 51.

<sup>333</sup> FCA Report (12 April 2024), page 149, paragraphs 11.17.

<sup>334</sup> ERPC Paper, Our approach to Defined Benefit pension transfer advice firms (28 January 2019), page 11, paragraph 3.31.

FCA confirmed the need for further evidence and file reviews in order to implement a redress scheme.<sup>335</sup>

### *The FCA's reconsideration of the complaints-led approach and commencement of the s404 Scheme*

9.6.12. That initial decision to focus on a complaints-led approach was reassessed in 2020, when the FCA "*determined that the costs of a market wide redress scheme were seen to outweigh the benefits at that point in time*", after the FCA had assessed the evidential requirements to satisfy the legal test for the s404 Scheme, as well as the potential market impact and costs to the firms, the FCA, the FOS and the FSCS.<sup>336</sup>

9.6.13. The FCA Report states that as early as January 2020, the FCA was considering whether it was able/appropriate to implement a redress scheme, along with the evidential requirements for this.<sup>337</sup> In an ERPC Paper from January 2020, the FCA considered that a redress scheme was not appropriate at that time and it was "*unlikely to work as intended, given the proportion of firms that would be rendered insolvent, by the costs of the review work*", as well as any redress payments.<sup>338</sup> The ERPC Paper further noted that the FCA would, in this context, "*wish instead to give further consideration to a campaign to educate firms and consumers, and encourage meritorious complaints from the latter*".<sup>339</sup> In this ERPC Paper, the FCA considered the advantages and disadvantages of a redress scheme. Some key disadvantages noted by the FCA included: (i) the lack of evidence of widespread mis-advice at the time; (ii) insolvency for a

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<sup>335</sup> FCA ExCo Paper, British Steel Pension Scheme (BSPS) – options for further work (8 July 2021), pages 3-6.

<sup>336</sup> FCA Decision Letter (19 April 2024), page 33, paragraph 113.

<sup>337</sup> FCA Report (12 April 2024), page 150, paragraphs 11.20-11.21.

<sup>338</sup> ERPC Paper, Next steps on DB4/Branford and related issues (27 January 2020), page 4, paragraph 1.6.

<sup>339</sup> ERPC Paper, Next steps on DB4/Branford and related issues (27 January 2020), page 4, paragraph 1.7.

number of firms; (iii) severe market impact; (iv) the additional costs of establishing further evidence; and (v) the resources and supervisory oversight that would be required.<sup>340</sup> In view of these factors, the FCA did not consider a redress scheme to be the best option at that time.

9.6.14. The FCA Report suggests that the FCA started to again reconsider a redress scheme in early February 2021.<sup>341</sup> An ExCo Paper from July 2021 summarised the then current position:

*"On 27 January and 21 April 2020 ERPC considered a s404 scheme covering all DB advice but decided that other options should be pursued instead. On 21 April 2020 ERPC considered the advice given to BSPS members and the results from the Operation Branford/DB4 file reviews. ERPC agreed to further supervision of firms which conducted BSPS transfers. We collected data on BSPS, as part of our data collection programme for all firms with DB transfer Permissions in July and November 2020. On 8 February 2021 ERPC considered the data on BSPS advice. ERPC discussed a s404 scheme covering BSPS advice but agreed our recommendation to pursue further enhanced supervision of BSPS firms when resource was available. On 11 June 2021 ExCo agreed, subject to Board approval that we should accelerate engagement with impacted consumers and consider options to ensure that affected consumers received redress."<sup>342</sup>*

#### *Evidential burden to establish the s404 Scheme*

9.6.15. The FCA Report outlines the steps the FCA took in the lead up to implementing the s404 Scheme to ensure it met the legislative requirements set out in FSMA. As noted in paragraph 9.6.11, the FCA states that in January 2019, it asked the ERPC to consider establishing a common evidence base, through detriment analysis

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<sup>340</sup> FCA Report (12 April 2024), pages 151-153, paragraph 11.26.

<sup>341</sup> FCA Report (12 April 2024), page 153, paragraph 11.28.

<sup>342</sup> FCA ExCo Paper, British Steel Pension Scheme (BSPS) – options for further work (July 2021), page 10, paragraph 6.1.

"across BSPS, DB2 and DB3 firms".<sup>343</sup> The FCA's position is that in order to consider what intervention was required, it needed to understand the extent of the harm caused by the unsuitable advice, including the breaches that were the *"most serious and significant"*.<sup>344</sup> The FCA states that this informed its approach to DB4, and further DB work, which is discussed in more detail in Section 9.5 above.

9.6.16. Between January and April 2020, the ERPC considered a redress scheme covering all DB advice but decided that other options should be pursued instead.<sup>345</sup> In February 2021, as noted at paragraph 9.6.14. above, the FCA began to consider the use of a redress scheme specific to BSPS.<sup>346</sup> An ERPC Paper from February 2021 notes that the FCA's ExCo reviewed the evidence from Operation Branford and DB4, and agreed to further supervision of firms and to accelerate engagement with BSPS members, but it did not agree to the s404 Scheme at that stage.<sup>347</sup> It was noted that the FCA had: *"completed file reviews for firms' [sic] responsible for over 4000 out of the 7700 transferees and have PBRs in hand for firms who advised around 2000 members. We have communicated with all 7700. A BSPS s404 would duplicate this work, place a substantial cost burden on firms, require significant Policy work as new rules would have to be made, and extensive Supervision oversight to make sure firms implemented the rules correctly"*.<sup>348</sup> The FCA continued to

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<sup>343</sup> ERPC Paper, Our approach to Defined Benefit pension transfer advice firms (28 January 2019), page 3, paragraph 2.1.

<sup>344</sup> ERPC Paper, Our approach to Defined Benefit pension transfer advice firms (28 January 2019), page 8, paragraph 3.24.

<sup>345</sup> FCA ExCo paper, British Steel Pension Scheme (BSPS) – options for further work (8 July 2021), page 10, paragraph 6.1.

<sup>346</sup> FCA Report (12 April 2024), page 153, paragraph 11.28.

<sup>347</sup> ERPC Paper, Defined Benefits Pension transfer strategy 2021 (8 February 2021), page 10, paragraphs 4.1-4.2.

<sup>348</sup> FCA Report (12 April 2024), page 153, paragraph 11.28 and ERPC Paper, Defined Benefits Pension transfer strategy 2021 (8 February 2021), page 10, paragraphs 4.1-4.2.

consider how to provide redress to approximately 46%<sup>349</sup> of the 7,700 BSPS members who had been misadvised following their decision to transfer out of the BSPS scheme, given the low level of complaints in contrast to high levels of transfers.<sup>350</sup>

9.6.17. In the early 2021 period, the FCA also considered the low levels of engagement from BSPS members with the FOS and FSCS complaints processes. In the FCA Report, the FCA notes that by March 2021, only 242 complaints had been made by BSPS members to the FOS, and by April 2021, only 136 complaints had been made by BSPS members to the FSCS.<sup>351</sup> The FCA states that it surveyed 300 BSPS members to seek to understand the lack of engagement, and that over half of those surveyed noted that they would not be complaining despite reported awareness of the potential that they may have received unsuitable advice.<sup>352</sup>

9.6.18. In May 2021, at an FCA ExCo meeting, approval was sought to consult on a redress scheme. The paper for that meeting highlighted the FCA's current approach and the cost benefit analysis of each redress option.<sup>353</sup> The approval was not obtained at this stage.

9.6.19. In June 2021, the ExCo agreed to accelerate engagement with impacted BSPS members and considered options for redress, though it did not recommend a s404 Scheme.<sup>354</sup> In July 2021, the FCA noted that, at the time, it did not have the required information to implement the s404 Scheme, and the FCA set out the further

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<sup>349</sup> <https://www.fca.org.uk/publications/corporate-documents/british-steel-pension-scheme-transfers-action-fca-fos-and-fscs>.

<sup>350</sup> FCA Report (12 April 2024), page 153, paragraph 11.29 and CP22/6: Consumer redress scheme for unsuitable advice to transfer out of the British Steel Pension Scheme (31 March 2022), page 11, paragraph 2.10 and page 30, paragraph 5.15.

<sup>351</sup> FCA Report (12 April 2024), page 154, paragraph 11.30.

<sup>352</sup> *Ibid.*

<sup>353</sup> FCA ExCo Meeting Paper, British Steel Pension Scheme (BSPS) – Options for further work (11 May 2021) and FCA Report (12 April 2024), page 154, paragraph 11.32.

<sup>354</sup> FCA ExCo Paper, British Steel Pension Scheme (BSPS) – options for further work (8 July 2021), page 10, paragraph 6.1.

information required to meet the evidential burden.<sup>355</sup> The FCA made an IGB data request on 20 July 2021, to conduct further file reviews to gather evidence in order to determine if the potential s404 Scheme should be put into place, ensuring that the legal tests were met.<sup>356</sup> It is unclear whether this proposal was ultimately accepted from the information provided.

9.6.20. By November 2021, the ExCo meeting minutes stated that two out of three strands of the s404 Scheme requirements had been met, but the "*desirability of the scheme*<sup>357</sup>, was a more challenging and subjective decision".<sup>358</sup>

9.6.21. In December 2021, FCA Supervision shared the results of its additional file reviews with the FCA Board and asked it to consider the implementation of the s404 Scheme.<sup>359</sup> The minutes of the meeting of the FCA Board, held 21 December 2021, note that the FCA was "*minded to*" consult on the s404 Scheme, and it would commence a consultation by Q1 2022.<sup>360</sup>

9.6.22. Between December 2021 and the end of March 2022, the FCA states that it conducted further cost benefit analysis on implementation of the s404 Scheme. The FCA notes that its rules require this prior to implementing a redress scheme, together with a formal consultation to allow consultees enough time to submit their views.<sup>361</sup> The

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<sup>355</sup> FCA ExCo Paper, British Steel Pension Scheme (BSPS) – options for further work (8 July 2021), page 8, paragraph 3.

<sup>356</sup> FCA Report (12 April 2024), page 155, paragraph 11.34.

<sup>357</sup> The "desirability" test to implement a s404 redress scheme under the Financial Services and Markets Act 2000 s.404(1)(c) requires the FCA to be satisfied that "it is desirable to make rules for the purpose of securing that redress is made to the consumers in respect of the failure", to ensure a redress scheme is the most appropriate and effective way to address the harm caused.

<sup>358</sup> FCA ExCo, Minutes of the Meeting (24 November 2021), page 1, paragraph 4.2.

<sup>359</sup> FCA Report (12 April 2024), page 156, paragraph 11.39.

<sup>360</sup> FCA Board Minutes (21 December 2021), pages 1-2, paragraph 2.2.

<sup>361</sup> FCA Report (12 April 2024), paragraph 11.47, page 157.

eventual consultation period took place between March and June 2022 (CP22/6).<sup>362</sup>

### *Speed of implementation*

9.6.23. The FCA's cost benefit analysis indicated that the s404 Scheme could result in significant costs and industry impact, with the FCA's estimated costs to the firms, professionally indemnity insurers, the FSCS and the FCA being £41.8 million, excluding redress payments made by firms.<sup>363</sup> The FCA considered that, as a result of this and the evidence that it needed to gather, the process for introducing the s404 Scheme would take some time to implement.<sup>364</sup> It is not clear how the cost benefit compares to the complaints-led approach, which presumably also had high costs for payment of compensation, if complaints were made, minus the costs of the actual implementation of a s404 Scheme.

9.6.24. The FCA reviewed the feedback to CP22/6, which was requested by 30 June 2022, and published its Policy Statement (PS22/14) in November 2022. In reference to this in the FCA Report, the FCA states that its "*initial concerns... were valid*", noting that there was pushback during the consultation period. The concerns raised by respondents to the consultation broadly related to whether there was enough evidence to enact the s404 Scheme, the FCA's sampling methodology, the evidence base in relation to firms with fewer than 10 transfers, the reliability of the FCA's suitability assessment tool used for file reviews, and general concerns around the costs of the s404 Scheme.<sup>365</sup>

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<sup>362</sup> CP22/6: Consumer redress scheme for unsuitable advice to transfer out of the British Steel Pension Scheme (March 2022).

<sup>363</sup> CP22/6, page 59.

<sup>364</sup> FCA Report (12 April 2024), page 158, paragraph 11.55.

<sup>365</sup> PS22/14: consumer redress scheme for unsuitable advice to transfer out of the British Steel Pension Scheme (14 November 2022), page 15, paragraph 2.7 onwards and FCA Report (12 April 2024), page 158, paragraph 11.57.

9.6.25. Despite a legal challenge from a number of pension advisory firms in January 2023,<sup>366</sup> which was subsequently dropped in April 2023,<sup>367</sup> the FCA set the commencement date for the s404 Scheme to be 20 February 2023 and set a deadline for firms to write to all BSPS members within and outside scope by 20 March 2023. The legal challenge did not cause any significant delays in the introduction of the s404 Scheme, but the FCA noted that this was evidence that the s404 Scheme could be open to such challenge.<sup>368</sup>

### *Inconsistent compensation*

9.6.26. The Complainants state that compensation was unequal and inconsistent due to:

9.6.26.1. the increase in the FSCS compensation limit (the limit was formerly £50,000, but on 1 April 2019, the limit was increased to £85,000); and

9.6.26.2. changes in the redress methodology when the FCA implemented a rule change following a letter it sent on 22 June 2020. The Complainants suggest that this resulted in higher compensation for those BSPS members who complained from 1 January 2021 onwards, as from that point the FCA applied the Consumer Price Index ("**CPI**") measure in loss calculations.<sup>369</sup> The FCA explains that the redress methodology from this point changed the CPI assumption; as a direct result of the Government change in the way the RPI is calculated, the redress methodology from 1 January 2021 changed the CPI assumption to

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<sup>366</sup> FCA webpage, British Steel pension redress scheme legal challenge (20 January 2023), <https://www.fca.org.uk/news/news-stories/british-steel-pension-redress-scheme-legal-challenge>.

<sup>367</sup> FCA webpage, British Steel pension redress scheme legal challenge dropped (12 April 2023), <https://www.fca.org.uk/news/statements/british-steel-pension-redress-scheme-legal-challenge-dropped>.

<sup>368</sup> FCA Report (12 April 2024), page 159, paragraph 11.60.

<sup>369</sup> Complaint Letter (26 January 2023), page 8.

ensure it "*reflected the assumed difference between RPI and CPI*".<sup>370</sup>

9.6.27. The FCA emphasises that the purpose of redress is to "*put the consumer, so far as possible, back into the position they would have been in, had they received compliant advice and remained a member of the DB scheme*".<sup>371</sup> The FCA notes that redress calculations are not a blanket approach; they depend on an individual's circumstances, which include, but are not limited to, factors such as age, marital status, defined benefits and when they were accrued, and the time and date of the redress calculation.<sup>372</sup> The FCA also notes that it published information on the methodology for calculation of redress on its website.<sup>373</sup>

#### *FSCS limit increase*

9.6.28. The Complainants argue that the higher FSCS compensation limit, which applied to claims against firms declared to be in default after 1 April 2019, meant that it was "*objectively unfair*" for Complainants to be penalised with lower compensation for being proactive.<sup>374</sup> The Complainants note that the FCA's letter to former BPS members dated 22 June 2020, encouraging them to make complaints, was dated after this uplift.<sup>375</sup> There does not appear to be evidence of the FCA having encouraged complainants to come forward earlier, with the effect that the lower cap would have applied. This letter from the FCA informed former BPS members that they may be entitled to compensation due to unsuitable advice, and stated that doing

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<sup>370</sup> FCA Decision Letter (19 April 2024), page 25, paragraph 70 and FCA webpage, Retail Price Index changes and DB pension transfer redress (3 March 2021), <https://www.fca.org.uk/news/statements/retail-prices-index-changes-db-pension-transfer-redress>.

<sup>371</sup> FCA Decision Letter (19 April 2024), page 23, paragraph 62.

<sup>372</sup> FCA Report (12 April 2024), page 145, paragraph 11.5.

<sup>373</sup> FCA webpage, British Steel Pension Scheme redress calculations (28 February 2023) <https://www.fca.org.uk/consumers/british-steel-pension-redress-scheme/redress-calculations>.

<sup>374</sup> Complaint Letter (26 January 2023), page 8.

<sup>375</sup> *Ibid.*

"nothing" may leave such members with "less money during [their] retirement than [they] should have done".<sup>376</sup> The NAO Report states that by March 2022, 1,878 former BPS members had made complaints due to the FCA's letter.<sup>377</sup> It further notes that the FSCS compensation limit itself had led to a collective shortfall of £18 million in redress payments as of March 2022.<sup>378</sup> BPS members were therefore disadvantaged by compensation caps. In other words, they did not recover any losses which were above the amount of the cap.

9.6.29. The FCA notes that it liaised with the FSCS about the compensation limit, and once raised, it would not be "*fair or workable*" to apply such changes to the compensation limit retrospectively.<sup>379</sup> This is also reiterated in the FCA Report, where the FCA states that the change in the limit was not intended to apply (and has not been applied) retrospectively, and notes that all consumers generally who had made complaints prior to the limit increase would also have had their compensation capped to £50,000, not just former BPS members.<sup>380</sup> The FCA further notes that the changes in the compensation limit were being reviewed as early as December 2016.<sup>381</sup> Whilst affected BPS members who complained before the FSCS limit was increased could not rely on increased compensation due to the higher limit, the FCA suggests that the only way they could envisage this being "*fair*" to such early complainants would have been to "*not review and raise the limits and for the limit to always stay at the lower level*".<sup>382</sup>

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<sup>376</sup> FCA, Letter to former members of the BPS regarding urgent action being required (June 2020).

<sup>377</sup> Complaint Letter (26 January 2023), page 8.

<sup>378</sup> NAO Report (18 March 2022), page 10, paragraph 20.

<sup>379</sup> FCA Decision Letter (19 April 2024), page 40, paragraph 149.

<sup>380</sup> FCA Report (12 April 2024), page 161, paragraph 11.70.

<sup>381</sup> FCA Report (12 April 2024), page 169, paragraph 11.98.

<sup>382</sup> *Ibid.*

9.6.30. The FCA also provides background information in the lead up to the FSCS limit increase. The FCA notes that:

9.6.30.1. A consultation paper (CP12/16) was published before the BSPS Issues, in July 2012, and the paper sought views on the FSCS funding model and proposed changes.<sup>383</sup>

9.6.30.2. A further review occurred in January 2013 (CP13/16).

9.6.30.3. In March 2013, a Policy Statement (PS13/4) was published to set out the FSCS funding model rules.<sup>384</sup> The FCA committed to reviewing the funding model again in 2016.<sup>385</sup>

9.6.30.4. The FSCS compensation limit was discussed and reviewed in December 2016 as part of a consultation (CP16/42), prior to commencement of the TtC exercise.<sup>386</sup>

9.6.30.5. A further consultation then took place in October 2017 (CP17/36).<sup>387</sup>

9.6.30.6. As noted in paragraph 9.6.26.1, the increase was confirmed to be in place from 1 April 2019, by way of CP18/11 (published in May 2018).<sup>388</sup>

9.6.31. The FCA notes that it "*reviews, and where appropriate, raises the FSCS limits to ensure an appropriate balance is struck*", for example, by way of Discussion Paper DP21/5 (published in December 2021), and that reviewing such limits is part of "*an ongoing piece of work*".<sup>389</sup>

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<sup>383</sup> FCA Report (12 April 2024), page 160, paragraph 11.63 and CP12/16: FSCS Funding Model Review (3 July 2012).

<sup>384</sup> FCA Report (12 April 2024), page 160, paragraphs 11.64-11.65.

<sup>385</sup> CP16/42: Reviewing the funding of the Financial Services Compensation Scheme (FSCS) (1 December 2016), page 6, paragraph 1.3.

<sup>386</sup> FCA Report (12 April 2024), page 161, paragraph 11.67.

<sup>387</sup> FCA Report (12 April 2024), page 161, paragraph 11.68.

<sup>388</sup> CP18/11: Reviewing the funding of the Financial Services Compensation Scheme (FSCS): feedback from CP17/36, final rules and new proposals for consultation (1 May 2018), page 7, paragraph 1.23.

<sup>389</sup> FCA Decision Letter (19 April 2024), page 28, paragraph 81.

DP21/5 also reiterates that the purpose of such reviews is to ensure that the FCA's framework "*continues to provide appropriate and proportionate consumer protection*" and that costs are "*distributed across levy payers in a fair and sustainable way*".<sup>390</sup>

9.6.32. The FCA's position therefore appears to be that the FSCS limit was subject to ongoing review, and an increase had been under consideration prior to the BSPS Issues arising. The FCA considers the increase in the limit to be separate to the BSPS Issues, and, ultimately, outside of the scope of the s404 Scheme.

#### *Change to redress methodology*

9.6.33. The Complainants allege that changes over time to the FCA's redress methodology for remediating unsuitable DB pensions transfer advice,<sup>391</sup> in particular changes to the CPI measures in loss calculations because of changes to the way the RPI inflation measure is calculated from 2030, resulted in higher compensation payments for those compensated from 1 January 2021. The FCA notes there were three sets of changes to redress methodology, following Government changes to the way the RPI measure is calculated by aligning it to the CPI, an alternative inflation measure:

9.6.33.1. March 2021, effective 1 January 2021: changes to ensure the CPI assumption remained appropriate following the Government's future changes to the RPI (i.e. that it reflected the assumed difference between RPI and CPI);

9.6.33.2. March 2022, effective 1 April 2022: changes to update the above to account for future changes to RPI being one year closer; and

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<sup>390</sup> DP21/5: Compensation framework review (5 December 2021) page 3, paragraph 1.3.

<sup>391</sup> In October 2017, the FCA finalised guidance for firms on how to calculate redress for unsuitable DB pension transfers: FG17/9: Guidance for firms on how to calculate redress for unsuitable defined benefit transfers. This followed a review of the methodology by PWC which was finalised in March 2017: <https://www.fca.org.uk/publication/research/pwc-new-redress-methodology-pensions-transfer-advice-cases.pdf>. The methodology was then subject to further changes over time, as set out in paragraphs 4.5.32.1 to 3.

9.6.33.3. November 2022, effective 1 April 2023: updated rules to the redress methodology, which the FCA states was mostly unchanged, save as in relation to certain assumptions.<sup>392</sup>

9.6.34. The FCA published the periodic review of the redress methodology on its website. The website update in September 2021 noted that the FCA would be reviewing how firms calculate redress in the DB transfer space, and the webpage was further updated to reflect the final guidance issued in March 2022.<sup>393</sup> The FCA notes that the CP22/6 consultation also included detailed rules on redress calculations as part of the periodic redress methodology review.<sup>394</sup> CP22/6 stated that the FCA was "*currently reviewing [its] guidance for firms on how to calculate redress for unsuitable DB pension transfers*".<sup>395</sup> The FCA's confirmed changes to the redress methodology were published in November 2022, taking effect from 1 April 2023, by way of PS22/13.<sup>396</sup> The FCA states that these final rules were included in the Policy Statement, PS22/13.<sup>397</sup> This information was included in the section on calculating redress, which noted that the general redress methodology had changed, and included the FCA's "*final position for how firms should calculate and pay redress under the BSPS scheme rules*".<sup>398</sup>

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<sup>392</sup> FCA Report (12 April 2024), page 163, paragraphs 11.78-11.80.

<sup>393</sup> FCA webpage, We confirm periodic review of pension transfers redress guidance (1 September 2021) <https://www.fca.org.uk/news/statements/confirm-periodic-review-pension-transfers-redress-guidance>.

<sup>394</sup> FCA Report (12 April 2024), page 164, paragraph 11.87 and FCA, CP22/6, Consumer redress scheme for unsuitable advice to transfer out of the British Steel Pension Scheme (31 March 2022), page 41, paragraph 6.4.

<sup>395</sup> CP22/6: Consumer redress scheme for unsuitable advice to transfer out of the British Steel Pension Scheme (31 March 2022), page 41, paragraph 6.1.

<sup>396</sup> FCA Report (12 April 2024), page 164, paragraph 11.88.

<sup>397</sup> *Ibid.*

<sup>398</sup> PS22/14: Consumer redress scheme for unsuitable advice to transfer out of the British Steel Pension Scheme (November 2022), page 5, paragraph 5.2.

9.6.35. The FCA's position points to the fact that the FCA made the general public aware that it would be updating its redress methodology, as noted in the BSPS-specific consultation (CP22/6) and Policy Statement (PS22/14). The methodology itself was part of ongoing redress calculation changes, a separate and distinct area from the BSPS Issues. The FCA notes that it had consistently communicated with former BSPS members, as discussed above at paragraphs 9.6.4 to 9.6.9, and that its letter on 22 June 2020 encouraging complaints was not the only communication it had with former BSPS members as to their right to seek redress and/or make a complaint.<sup>399</sup> The FCA further suggests that this complaint is not upheld as it is outside the remit of the s404 Scheme.

9.6.36. The FCA considers that the complaints relating to the FSCS limit increase and change in redress methodology are out of scope of the s404 Scheme, as these matters relate to the FCA's rule-making powers and exercise of its legislative functions.<sup>400</sup> The s404 Scheme states that any complaint as to "*the performance of the regulators' legislative functions*" is excluded from the scheme.<sup>401</sup> However, the FCA does still comment on these issues in the FCA Report, noting that:

9.6.36.1. In relation to the FSCS limit increase, the increase was contemplated before the BSPS Issues arose and was not a product of the BSPS Issues; the change impacts any consumer claiming compensation, not just former BSPS members specifically.<sup>402</sup>

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<sup>399</sup> FCA Report (12 April 2024), page 162, paragraph 11.74.

<sup>400</sup> FCA Report (12 April 2024), page 160, paragraph 11.62 and page 162, paragraph 11.76.

<sup>401</sup> FCA, Complaints against the Regulators: The Scheme (updated March 2016), section 3.4(c).

<sup>402</sup> FCA Report (12 April 2024), page 162, paragraphs 11.73.

9.6.36.2. In relation to the changes to the redress methodology, such changes were a product of periodic review of the redress methodology.<sup>403</sup>

## Analysis

### *Complaints-led approach*

9.6.37. As noted above, the FCA's broad position at the outset was that a complaints-led approach, alongside supervisory and enforcement work, was considered the "*quickest and most efficient way for BSPS members to access redress*".<sup>404</sup> This view was particularly due to the time and costs associated with building the evidence base for a redress scheme. That initial decision was reassessed in 2020 and the FCA "*determined that the costs of a market wide redress scheme were seen to outweigh the benefits at that point in time*", when the FCA "*analysed the evidential requirements needed to satisfy the legal test of a s404 scheme vs the evidence held, potential market impacts, the effectiveness of a scheme and the potential cost to firms, the FCA, the Financial Ombudsman and FSCS (and ultimately the FSCS levy)*".<sup>405</sup> I understand that in general, redress in the financial services market is achieved for the most part via a complaints led approach, and therefore following this in the first instance with respect to BPS is not inconsistent with standard practice. The question however is whether the FCA has sufficient measures in place to determine in a timely manner whether a different approach (as in this case, the instigation of a s404 scheme) would be a more appropriate approach. I do not consider that the FCA acted reasonably in continuing with the complaints-led approach. The FCA should have been aware of the low levels of complaints, and the factors impacting this, and it should have pushed to implement a s404 Scheme sooner.

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<sup>403</sup> FCA Report (12 April 2024), page 164, paragraph 11.87.

<sup>404</sup> FCA Decision Letter (19 April 2024), page 34, paragraph 116.

<sup>405</sup> FCA Decision Letter (19 April 2024), page 33, paragraph 113.

## S404 Scheme

9.6.38. The FCA comments on the s404 Scheme and its implementation but has not provided clear evidence of the internal decision making around whether to continue with the complaints-led approach or to pursue the s404 Scheme, or any other approach, and I would need this to fully assess the reasonableness of the FCA's position in adopting a complaints-led approach up until 2021/2022. Whilst the FCA has provided some evidence in relation to its consideration of the s404 Scheme in this period, this does not point to what had changed for the FCA to ultimately take steps to implement the s404 Scheme. The ERPC Papers from 2020 and 2021, for example, show that the s404 Scheme was still not the solution the FCA was looking to implement, and it remained focused on a complaints-led approach. Little had changed in the later period when the approach shifted; complaints were still low, and the FCA still appeared to have the same concerns about implementing a s404 Scheme.

9.6.39. The FCA states in its Policy Statement announcing the s404 Scheme (PS22/14) that the alternative (i.e. complaints-led) approach generally relies on consumers coming forward. However, *"implementing a scheme will 'stop the clock' on the relevant limitation period (if the consumer does not opt-out) and put the onus on firms to review the suitability of their advice"*.<sup>406</sup>

9.6.40. The impression I get is that the FCA eventually made what seemed to be an inevitable decision in implementing the s404 Scheme that could, and probably should, have been made sooner. An earlier implementation of the s404 Scheme is likely to have made a difference to some affected BSPS members, for example firms may still have had PII cover in the earlier period. This could have saved some firms from failing which meant that eligible complainants would not have had a cap on redress as they did under FSCS rules. As is

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<sup>406</sup> PS22/14: Consumer redress scheme for unsuitable advice to transfer out of the British Steel Pension Scheme (November 2022), page 8, paragraph 1.18.

clear from this report, the FCA has, throughout, taken a reactive approach. Its approach has also been incremental and in stages rather than a holistic approach. This approach resulted in delays which, in my view, did not need to happen.

9.6.41. The FCA considered that firms may be rendered insolvent due to the costs of the s404 Scheme, as discussed further at paragraph 9.6.12 above. I do not consider that this was a reason for the FCA to delay the s404 Scheme. If there was an uptake in complaints, firms would have had to bear the costs of compensation in any event. Instead, firms were overly reliant on the FSCS to consider these complaints, leading to BSPS members being subject to the FSCS caps. The FCA should have considered the inherent issues with the DB advice market as a whole. It did so, in part, through DB1-DB4, but it seems that the reviews were futile if the FCA concluded that firms would fail when subject to payments of compensation.

9.6.42. In the absence of a s404 Scheme, the July 2021 paper recommended “*further supervision of firms*”, as discussed at paragraph 9.6.14 above. It is unclear to me what this meant or what it would have achieved. Supervision is discussed further at section 9.2.24, but generally, I am not persuaded that after July 2021, the FCA changed its approach; it seemed to continue to do what it was already doing.

#### *Inconsistent compensation*

9.6.43. The Complainants note that those former BSPS members who made early complaints were disadvantaged by the delay in redress due to: (i) the change in the FSCS limit in April 2019; and (ii) the FCA's change to the redress methodology in April 2022. Whether, in fact, former BSPS scheme members were disadvantaged by the delay in financial terms (if that delay was unreasonable) or even advantaged, through later complaints, is likely to be case-specific. My view is that the calculations of compensation are dependent on market forces which fluctuate over time. I therefore consider that this is not

necessarily an inconsistency, and such differences in compensation were to some extent inevitable, rather than resulting from inequitable application or outcome of the rules put in place.

9.6.44. The FCA acknowledges in the FCA Report that there were some variations in the outcomes for consumers. This was, in part, due to market variation (alongside the change in the FSCS limit increase and changes to redress calculation methodology). In the FCA Report, the FCA notes that market conditions "*affect both the calculation of the amount a consumer needs to put them back in the position they would have been in, and the value of their transferred pension pot. In such circumstances, it is common actuarial practice to value both elements on the same day. These changes in market conditions mean that compensation payments vary such that they always reflect the market's most recent expectations of future financial conditions*".<sup>407</sup> The FCA was therefore aware that certain factors would mean that there would be disparities in the outcomes for former BPS scheme members, and I believe there is evidence that the FCA took steps to try and reduce discrepancies in compensation by, for example, putting in place a timeframe for providing an offer to a BPS member within three months of the valuation date, to avoid market variation having a significant impact.<sup>408</sup>

9.6.45. In terms of specific detriment to those who did complain early and did not benefit from the increase to the FSCS compensation cap, to the extent that an exception had been made to the general limit for BPS members such that those who received an outcome earlier were "topped up", I believe that this would have led to an inconsistent approach when compared against complaints raised in the relevant period (i.e. from circa February 2017 to 1 April 2019) in relation to

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<sup>407</sup> FCA Report (12 April 2024), page 146, paragraph 11.6.

<sup>408</sup> FCA Report (12 April 2024), page 145, paragraph 11.7 and PS22/13: Calculating redress for non-compliant pensions transfer advice (November 2022), page 18, paragraph 2.16.

matters unrelated to BSPS. In this regard, I consider that some inconsistency is unavoidable, either amongst BSPS members or by virtue of BSPS members being treated as a special class of complainant.

9.6.46. In terms of the changes in the rules by which the redress scheme was calculated, the FCA sets out in the FCA Report that there were certain amendments that were required (for example, around the calculation of RPI). The method of calculation for scheme members did not change over the life of the scheme, other than in relation to changes to RPI. Whilst this may have affected the redress available to former BSPS members, resulting in higher compensation payments for those compensated from 1 January 2021, I do not think it would be reasonable to consider this an inconsistency based on the FCA's approach or setting of the rules.

9.6.47. The Complainants also note that compensation itself was provided slowly by firms and the FOS.<sup>409</sup> The FCA does not deal with this aspect of the complaint and I consider that this element of the complaint is excluded.

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<sup>409</sup> Complaint Letter (26 January 2023), pages 7-8.

## 10. **Observations**

- 10.1. I make the following observations in respect of the complaints, particularly the general policy issues they highlight in respect of the position of the pensions advice market. For the avoidance of doubt, these are my observations only and do not form part of the findings set out in this report.
- 10.2. The Complainants allege that firms providing advice to BSPS members did not maintain adequate capital in order to deal with complaints. I note that requirements as to adequate capital do not appear to be designed to cover unsuitable advice of the degree found in the advice to BSPS members, and firms in general would not be expected to maintain additional capital to such levels. The Complainants also note that firms did not have adequate insurance to cover the cost of the claims from the mis-selling. I note that the FCA has said that the reliance on PII to provide compensation for loss in such circumstances is challenging, insofar as PII is principally designed for one-off risks and insurers have very specific requirements as to the timing of claims. The FSCS is designed to address provide a safety net including in this situation where claims are in the numbers seen for BSPS. The systemic risk is therefore always prevalent and difficult to mitigate; where firms fail, the FSCS will provide compensation, with the likelihood that a significant portion of claims will be subject to the FSCS cap. The NAO Report noted that some £18m had been lost as a result of the application of this cap. Some of these issues might be ameliorated by robust action to encourage claims during the relevant insurance period or the early imposition of a s404 Scheme (which does not necessarily have a cap).
- 10.3. Whilst it is not within my remit under the Complaints Scheme, to review rule making, I note the weakness, as identified by the FCA, in relying on PII and capital requirements to deal with systemic mis-selling situations such as occurred with BSPS. I am pleased that the FCA has identified this problem and I invite them to consider whether any improvements to the regime, for example in relation to the threshold for the imposition of a s404 Scheme would help them.

10.4. The FCA explains that its redress methodology aims to put consumers back into the position they would have been if they had not been misadvised to transfer from their DB pension, as far as practically possible. I am sympathetic with the Complainants as any remedy provided to them in respect of the BSPS Issues is a 'best guess' of what they could have had at retirement in the future and where provided by the FSCS, it is subject to a cap. This is not dissimilar to how a court handles cases in the context of a typical complaint process, where compensation is determined by calculation of the present value of future cash flows, based on uncertain factors. There may therefore be little that can be done to predict what position they would have been in had they not been misadvised. I understand that there is little that can be done to emulate the advantages of a DB scheme but Complainants allege that alternative proposals were presented to the FCA that would have been more effective in putting Complainants back into the position they would have been in had they not transferred out of the DB scheme. I remain of the view that the redress arrangements did not put the Complainants in the position that they would have been in had they not transferred but having reviewed the evidence there does not appear to have been an alternative redress method, which would have produced fairer results than the s404 Scheme, that was proposed to the FCA which the FCA unreasonably rejected.

10.5. I am unable to review complaints about the actions or inactions of the FOS and FSCS under the Complaints Scheme. Therefore, I have not reviewed allegations of delays at the FOS or FSCS. However, the FCA does have an oversight role with respect to the FOS and the FSCS, albeit limited, and it is within my remit to review whether the FCA is discharging its functions appropriately with respect to that role. Allegations of delays at the FOS are a common feature of many complaints I receive and it is not clear to me what the FCA's responsibility is with respect to this.

I am separately engaged in discussions with the FCA to determine whether its powers extend to overseeing such matters at the FOS and if so if it is exercising its powers appropriately. Although I should note this will not have a direct bearing on the current complaint.

*The Complaints Commissioner*

Complaints Commissioner

26 March 2026

**APPENDIX 1**  
**COMPLAINT LETTER DATED 26 JANUARY 2023**



[REDACTED]  
The Chief Executive  
The Financial Conduct Authority  
12 Endeavour Square  
London  
E20 1JN

Our ref: [REDACTED]

26 January 2023

By email only

Dear [REDACTED]

**The British Steel Pension Scheme (“BSPS”)**

I write this letter on behalf of my clients who have been affected by transferring out of the BSPS to complain about the conduct of the FCA and to request payment of compensation to those individuals for the FCA’s failure of supervision and delay, and for distress and inconvenience.

**Background**

You will be aware of the issues leading up to the transfer of 7,834 steelworkers out of the BSPS and the debacle which ensued. The House of Commons Work and Pensions Committee Report summarised what happened like this:

*“During our ongoing inquiry into pension freedom and choice we received worrying evidence regarding financial advice provided to members of the British Steel Pension Scheme (BSPS). BSPS members have, over the past year, been exploited for cynical personal gain by dubious financial advisers in tandem with parasitical so-called “introducers”. Steelworkers yet to reach pension age were encouraged to transfer their defined benefit pension rights into a defined contribution pension, known as a DB transfer. Anyone intending to take a DB transfer with a value over £30,000 is required to take financial advice. This is because, despite the attractive sums on offer (the average BSPS transfer value taken out was £400,000), a DB transfer is not usually in someone’s interests. It means giving up generous, indexed and stable benefits in favour of a riskier investment. Many BSPS members were shamelessly bamboozled into signing up to ongoing adviser fees and unsuitable funds characterised by high investment risk, high management charges and punitive exit fees.”*



And the Public Accounts Committee described it as follows in their report dated 21 July 2022 (the PAC Report):

*"The regulated financial advice market is designed to safeguard consumers from making poor financial decisions. However, for members of the British Steel Pension Scheme (BSPS) the advice market failed to protect them and caused serious financial harm. Advisers were financially incentivised to provide unsuitable advice, which led to approximately 7,800 steelworkers transferring out of their defined benefit (DB) pension scheme and as a result, losing an average of £82,600 in life savings."*

In that report the PAC criticised the actions of the FCA:

*"The FCA has consistently been behind the curve in responding to unsuitable pension transfer advice. Despite being aware of the potential risks to consumers caused by new legislation in 2015, it failed to take preventative action to protect consumers. In 2017, the FCA had limited insight into the risks to members from transferring out of DB schemes. It did not know what was happening in the DB pension transfer market or the BSPS case, and failed to identify the scale of the issue. It had inadequate oversight of the firms involved, and later found out that in 47% of cases the advice provided was unsuitable. The FCA's response involved a light touch regulatory approach failing to take swift action and adequately protect consumers. Focussed on gathering further evidence and issuing letters to firms, rather than enforcing against non-compliance, to date it has issued only one fine. To remedy the financial detriment caused, the FCA adopted a standard complaints-based redress process which proved ineffective for BSPS members, with only 25% of BSPS members raising complaints. Many have not been compensated fully, and for those whose advice firms have entered insolvency, £21 million in compensation has been lost due to financial limits. The FCA has proposed a redress scheme, which the FCA estimates would cost around £71.2 million in compensation to those who received bad advice. However, there are concerns that this figure may end up being significantly higher."*

I believe the FCA became aware of the issues surrounding the BSPS transfers in at least late 2017 during the time around 44,000 steelworkers were being asked to make a potentially life-changing decision about their pension. It is inexcusable that the FCA was not more prepared for this potential scandal.

The wrong advice to transfer out of DB schemes was the subject of an industry wide review under the previous regime; the Securities and Investments Board "Pensions Review". This required all firms to identify investors who may have been mis-sold personal pension plans between 1988 and 1994 and, where such sales were not compliant, to calculate and pay redress. It is estimated that during the Pensions Review £13-14 billion was paid by way of redress. The importance of this is that the BSPS scandal was not even the first time there had been widespread mis-selling of DB pension transfers.

Some years after the Pensions Review the Pensions Schemes Act was implemented and, presumably cognisant of the potential for harm to consumers who received unsuitable transfer advice, the FCA implemented a supervisory project to analyse the DB pension transfer advice market. This review took place in 2015 and 2016 and it found that 17% of transfer advice recommendations were unsuitable and, in 36% of cases, it was unclear whether the advice was unsuitable or not (para 1.13 National Audit Office report dated 22 March 2022 ("the NAO Report")). When compared to the circa



4% unsuitability rate in other advice sectors a quadrupling of this rate must surely have been a red flag. It ought also to have been apparent that unsuitable advice to transfer out of a DB pension had the capacity to cause catastrophic losses for those badly advised. The FCA website itself claims that "Addressing unsuitable defined benefit (DB) transfers has been a key priority for us since the pension reforms, commonly known as the 'pension freedoms', were introduced in 2015." [Retail Prices Index changes and DB pension transfer redress | FCA](#)

In 2017 the FCA published its Finalised Guidance for firms on how to calculate redress for unsuitable defined benefit pension transfers.

In light of the above, the FCA ought to have been prepared for the "Time to Choose" period which ran from September 2017 until the end of December 2017 during which 44,000 members of the BSPS were asked to make a decision about their pension. This process had been the subject of a Regulatory Apportionment Arrangement approved by The Pensions Regulator in August 2017 and which itself had been the subject of a public consultation in May and June 2016.

### Complaints

I refer in particular to the criticisms made by the PAC of the FCA's handling of the BSPS scandal.

#### 1 "The Financial Conduct Authority has consistently been behind the curve in responding to the catastrophic impact on British Steel Pension Scheme members"

The FCA took steps in late 2017 to investigate the issues which had come to its attention. From November 2017 it diverted staff to work on the issues arising from the BSPS, including 10 staff from its supervision department (NAO Report para 14) and there was sufficient concern for it to create a bespoke BSPS webpage on 11 December 2017 [FCA updates on its work on financial advice given to members of the British Steel Pension Scheme \(BSPS\) | FCA](#)

The 15 December 2017 update states:

*"As a result of the FCA's ongoing work related to financial advice that BSPS members are receiving, a total of six firms have chosen to stop advising consumers on pension transfers.*

*In response to concerns about the financial advice BSPS members were receiving, the FCA held four seminars in Swansea and Doncaster for advisers who specialise in pension transfers. 151 advisers attended these seminars, in which the FCA set out the standards it expects when pension transfer advice is given to consumers and the responsibilities firms have when dealing with unregulated introducers. The FCA also wrote to 148 authorised financial advisers in these locations explaining its expectations when advisers refer their clients to pension specialists.*

*The FCA has undertaken a significant information gathering exercise in order to identify which firms have been most active in advising consumers to transfer out of the BSPS. This included gathering information from 50 financial advice firms, 12 SIPP operators, and the BSPS scheme administrators. Based on the data received the FCA has visited seven advice firms and requested files from a further four advice firms. As a result of this work three firms have stopped advising consumers on pension transfers. The FCA plans to visit a further six firms this week."*

And the 19 December 2017 update stated:

*"The FCA is aware that some members may be in the process of transferring out of the British Steel Pension Scheme, and could have concerns about whether the advice they received was suitable. The FCA along with The Pensions Regulator, which regulates the trustees and the British Steel Pension Scheme, recommends that members who have a pending transfer and are concerned about their decision, contact the scheme administrators who may be able to stop the transfer.*

*If a member has already transferred their pension and is concerned about the advice they have received, they should make a complaint to the firm and if they are still not happy, speak to the [Financial Ombudsman Service](#)."*

In December 2017 the FCA also worked with the BPS trusts to send a joint letter to 12,000 members who had requested a transfer quotation to urge them to be careful if considering this option (NAO Report, para 14). By 12 March 2018 ten firms had stopped providing DB pension transfer advice because of the FCA's actions.

The FCA was undeniably aware that there were significant issues with BPS transfers, and it had the opportunity to obtain information from the trustees of the BPS about the number of people seeking to transfer, their names and addresses and the identity of the advisers at this time. The FCA was also aware that its own rules provided for financial advice firms to have professional indemnity insurance to cover the advice (IPRU-INV 13.1.5 and IPRU-INV 13.1.9). The very same rules provided that the professional indemnity insurance could not exclude liability for any type of business or activity that had been carried out by the firm in the past, or will be carried out by the firm during the time for which the policy is in force "unless the firm holds additional capital resources" (IPRU-INV 13.1.21). For a firm with revenue of £500,000 to £600,000 this required additional capital resource was a paltry £25,000 and for a firm with revenue of £900,000 to £1,000,000 it was a woeful £31,000 (IPRU-INV 13.1.23). In the face of this knowledge and the knowledge that there had been unsuitable advice sufficient for it to create a bespoke webpage, for firms to give up their DB pension transfer permissions and for it to instigate a "significant information gathering exercise", no steps appear to have been taken to preserve the professional indemnity insurance which would have been available to those consumers had the firms notified the existence of any complaints.

At the time of the initial investigation by the FCA into the actions of those firms involved in advising members of the BPS to transfer out, we believe those firms benefitted from professional indemnity insurance which would answer to any claims made within that insurance year relating to DB pension transfer advice. Therefore had our clients been aware, as the FCA was at that time, that the advice they had received was unsuitable, or likely to be unsuitable, and either encouraged to complain or the firm asked to inform them that, in the event of a complaint made after the insurance term ended there may not be any insurance, they would have made complaints and benefitted from the available insurance. Instead, as at today's date, 34 firms have fallen insolvent and the majority of our clients have had to rely on the Financial Services Compensation Scheme for compensation. This has meant that many have been subject to the cap on compensation and, according to the NAO Report as at 18

March 2022, those complainants had suffered a collective shortfall in redress of £18 million, a number which is only worsening as more firms are declared insolvent.

IPRU-INV 13.1.24(G) states that firms “*should hold additional capital resources in excess of those minimum amounts set out in the table in 13.1.23R where the required amounts of additional capital resources provide insufficient cover, taking into account the firm’s individual circumstances*”. The FCA appears to have taken no steps to ensure that those firms which had advised on BSPS transfers maintained additional capital resources in the face of potential of action and a reduction in their professional indemnity insurance.

The first *Dear CEO letter* addressed to BSPS advisers was dated 22 December 2021 which coincidentally falls on the fourth anniversary of the Time to Choose deadline (22 December 2017). This was the FCA’s first letter specifically to BSPS advisers reminding them of their responsibilities under PRIN, COND, DISP and the Threshold Conditions. By this point in time, many firms would have already disposed of assets, sold on client books, entered a solvent liquidation or applied to dissolve their business.

In addition, the FCA failed to prevent firms who had been identified as a risk to BSPS members, and which gave up their DB transfer permissions as a result of investigation by the FCA, from passing on their clients to other unsuitable advisers (often for a shared fee). One advice firm that voluntarily gave up their permissions in December 2017 was [REDACTED]. However, by this point in time [REDACTED] had transfer work in the pipeline. They referred most, if not all, of this work to [REDACTED] who by March 2018 also voluntarily gave up their permissions. Both [REDACTED] and [REDACTED] have gone on to be declared in default by the FSCS.

## Complaint

The FCA failed to take steps to protect the consumers in accordance with its operational objective of consumer protection when it knew them to have been missold or were likely to be missold.

### 2 “The Financial Conduct Authority has not been sufficiently proactive or timely in using its enforcement powers”

By 12 March 2018 ten firms had agreed with the FCA to stop providing DB pension transfer advice. However, the FCA did not require any of those firms, nor any other firms later identified as being of concern, to retain their assets until April 2022 – only days before the PAC hearing. This is despite the FCA deciding in May 2020 that 45 firms should conduct past business reviews. By 25 April 2022, when the asset retention rules were announced for BSPS advice firms, we believe most firms no longer had professional indemnity insurance for BSPS pension transfers, companies had been stripped of assets and 31 firms had been declared in default.

By way of example of one firm, [REDACTED] ([REDACTED]) previously called [REDACTED] its accounts show:

[REDACTED]

Financial Year	Net Assets
February 2017	£89,165
February 2018	£361,775
February 2019	£437,290
February 2020	(£10,715)

On 1 May 2020 a voluntary liquidator was appointed.

This firm's communications with [REDACTED] on behalf of those misadvised by the firm began in April 2019, please note the reduction in net assets of the company after that date which was not due to the payment of compensation to our clients. We know from the liquidator's statement of affairs that 154 people were advised by [REDACTED] in relation to their BPS pension. This firm notified the FCA of concerns over [REDACTED] on 8 November 2019, those concerns related to the veracity of one of our client's signature on documents held on [REDACTED] files. We wrote again on 2 April 2020 where we identified poor practice on the part of the firm and a potential joint venture with an introducer firm, and we had cause to write a third time on 3 April 2020 after our clients received a letter from [REDACTED] notifying them of the proposed liquidation, and to inform the FCA that the owners and directors of [REDACTED] were continuing to practice under a new firm [REDACTED] [REDACTED] (please note the similarity of name to the previous name of [REDACTED] – [REDACTED]).

[REDACTED] is another example. The FCA will be familiar with the business having visited it in December 2017 as *part of its supervisory work*. The liquidator's papers confirm that this business advised on 234 BPS transfers. It is unclear if all these clients received a positive recommendation to transfer but the liquidators concede claims from all 234 are possible. In the years immediately preceding the liquidation, the business had paid substantial dividends to its owners of £760,930 (2017) on profit of £975,392 and £492,500 (2018) on profit of £374,493. In 2016 its dividends sat at £183,192 on profit of £239,924. This business entered a solvent liquidation in November 2020 after the directors signed a statement of solvency. In December 2021 the joint liquidators subsequently paid a dividend of £159,377.23 to the owner/directors meaning the owners took around £1.4m out of the business between 2017-2021.

Some of these owner directors continue to be authorised by the FCA under other entities

- [REDACTED] of [REDACTED] which was incorporated on 14 March 2019
- [REDACTED] at [REDACTED] which was an established [REDACTED] based IFA practice. [REDACTED] joined the business on 17 Dec 2019
- [REDACTED] was not a director but he held a small shareholding in [REDACTED] and he has gone on to [REDACTED] which was incorporated on 24 January 2019. [REDACTED] set up [REDACTED] with [REDACTED] who was an owner director of [REDACTED].

[REDACTED]

In December 2021 the joint liquidators had been notified by this firm of complaints from steelworkers, but, as losses had not been quantified and the complaints were being referred to the Financial Ombudsman Service, the £159,377.23 dividend was paid. This firm has very recently been notified that the Financial Ombudsman Service has upheld a complaint against the business and that the joint liquidators have now formed the view that the business is insolvent. Discussions have started between the business and the Financial Services Compensation Scheme regarding the future destination of claims

It is worth noting that [REDACTED] submitted written evidence to the PAC enquiry in April 2022. He gave the following account to MPs:

*"Having been investigated by the FCA on the 12<sup>th</sup> of December 2017, at the height of the transfers and all our transfers were allowed to proceed. [REDACTED] retained all their permissions and were allowed to continue offering DB transfer advice. The FCA made only two minor observations and where (were) happy with our process and advice. The FCA had the opportunity to prevent our transfers.*

(...)

*[REDACTED] is currently in voluntary liquidation as I have retired but will enter insolvency should these complaints be upheld. The FCA de-authorized [REDACTED] in September 2020, which they would not have done if they believed we had acted incorrectly".*

The 234 transfers (if that is the total number that eventually transferred after receiving advice), the solvent liquidation and the subsequent dividend payment all happened on the FCA's watch. Again, no effort was made to ensure that the firm's assets were retained and PI insurance preserved.

When the asset retention rules were finally announced on 25 April 2022, at least four and half years after the FCA became aware that there was a systemic issue with the transfer of members from the BSPS, the policy statement explained *"This will help make sure the firms responsible for redress liabilities meet the cost of those liabilities, rather than the costs falling to other Financial Services Compensation Scheme (FSCS) levy payers, and ultimately being passed on to consumers"*. This was far too late.

### **Complaint**

The FCA failed to take steps to protect those affected by unsuitable advice to transfer out of the BSPS in a timely way, in particular by not imposing asset retention rules until April 2022.

### **3 "The way that compensation has been provided in the British Steel Pension Scheme case has been slow and unfair."**

The PAC Report details this failing saying:

*"BSPS members face significant delays in receiving compensation. Complaints made to the Financial Ombudsman Service take on average eight months to be completed with many taking significantly longer. Many BSPS members have not received the full amount of compensation owed to them and members who have sought redress through the Financial Services Compensation Scheme (FSCS) have lost £21 million in compensation due to FCA imposed financial limits. There are also significant variations in the amount of compensation*

*awarded to BSPS members based on when redress is calculated. Due to changes in the way redress is calculated, members who sought compensation early have received significantly less than those who claimed compensation after 2021. Only 25% of all BSPS members who received unsuitable advice have raised claims with redress organisations, yet the FCA has taken five years to propose a consumer redress scheme for members. Despite gathering evidence on the case since 2018, the FCA only began considering the potential use of a scheme and analysing its impacts in early 2021."*

Those delays have increased and the inequality of the compensation awards continue to beleaguer an already fragile group causing anger, distress and, in some cases, mental health difficulties.

On 01 April 2019, following an FCA consultation on FSCS' funding arrangements, the FSCS limit was raised to £85,000 from £50,000. The higher limit applies for claims against any firm which was declared in default after 01 April 2019.

Several steelworkers had their claims decided by the FSCS before the limit was raised and therefore have lost out in comparison to their colleagues who brought claims later or against firms who had entered default after 01 April 2019.

It seems objectively unfair that steelworkers should be penalised by virtue of pro-actively progressing their claim earlier than others.

One of the steps taken by the FCA was to write to the former members of the BSPS who had transferred out. That letter was dated 22 June 2020 and headed "**ACTION NEEDED: for former members of the British Steel Pension Scheme**". The letter went on to say: "We encourage you to act, if you do nothing, you may end up with less money during your retirement than you should have done." The National Audit Office report confirms that, by March 2022, 1,878 members had sought redress through individual complaints at least in part because of encouragement from the FCA itself.

After this date the FCA changed how the redress methodology applied the CPI measure in loss calculations because of changes to the way the RPI inflation measure is calculated from 2030. This resulted in far higher compensation payments for those compensated from 01 January 2021.

This means that those steelworkers who took the initiative to make complaints early have received far less compensation than those who sought compensation later.

### **Complaint**

The FCA's actions have resulted in inconsistent outcomes for consumers entitled to compensation.

### **Distress and inconvenience**

The impact of the distress caused to these complainants cannot be underestimated. Our clients have suffered mental and physical distress.



In light of the clear regulatory failings, I ask you to offer ex-gratia payments to those affected by the BPS pension transfer scandal and, where the FCA was the primary cause of the loss i.e. where you were aware that a firm had misadvised our clients but you failed to take any steps to ensure that consumers were warned that they had been misadvised until after the insurance had lapsed, you pay compensation for the losses suffered.

Yours sincerely

[Redacted]

[Redacted]

Managing Director

[Redacted]

[Redacted]

Privacy notice: Details of how we use your information can be found on our website at [Redacted] by writing to our Data Protection Officer or by [Redacted]

[Redacted]

**APPENDIX 2**  
**FCA DECISION LETTER DATED 19 April 2024**

Helpline: 020 7066 9870  
Email: [complaints.scheme@fca.org.uk](mailto:complaints.scheme@fca.org.uk)  
Website: [www.fca.org.uk/about/complain-about-regulators](http://www.fca.org.uk/about/complain-about-regulators)



12 Endeavour Square  
London  
E20 1JN

Tel: +44 (0)20 7066 1000  
Fax: +44 (0)20 7066 1099  
[www.fca.org.uk](http://www.fca.org.uk)

19 April 2024

**Sent by email**

[Redacted]

[Redacted]

Dear [Redacted],

We are writing to you following the completion of our complaint investigation into the allegations made by [Redacted] members of the British Steel Pension Scheme (the BPS) who instructed your firm to act on their behalf.

We recognise that members of the BPS worked hard during their employment and have experienced significant worry regarding their financial security in retirement.

We also recognise that the FCA's work around the BPS has been subject to independent reviews and external scrutiny. The FCA has sought to learn lessons following these reviews and has accepted several recommendations.

We are sorry for the length of time it has taken to respond to your complaint. The allegations raised were complex and covered a significant period of time. It is important that we investigated matters fully and thoroughly. We acknowledge the delay and offer each complainant party to this complaint an ex-gratia payment of £150 in relation to this delay.

**Your complaint**

[Redacted]

[Redacted]



*Part One*

You allege that the FCA has consistently been behind the curve in responding to the catastrophic impact on members of the BPS. You believe that the FCA became aware of the issues surrounding the BPS transfers in at least late 2017 during the time around 44,000 steelworkers were being asked to make a potentially life-changing decision about their pension. You consider that it is inexcusable that the FCA was not more prepared for this potential scandal. You quote the Securities and Investments Board "Pensions Review" as an example that the BPS scandal was not the first time there had been widespread mis-selling of Defined Benefit pension transfers.

*Part Two*

You allege the FCA failed to take steps to protect consumers in accordance with its operational objective of consumer protection when it knew them to have been mis-sold or were likely to be mis-sold. This includes not taking steps to:

- a. Preserve the professional indemnity insurance which would have been available to consumers had the firms notified the existence of any complaints. You believe firms benefitted from professional indemnity insurance which would answer to any claims made within that insurance year in relation to Defined Benefit pension transfer advice. Therefore, if your clients had been aware that the advice, they had received was unsuitable, or likely to be unsuitable, and either encouraged to complain or the firm asked to inform them that, in the event of a complaint made after the insurance term ended there may not be any insurance, they would have made complaints and benefitted from the available insurance.
- b. Prevent firms who had been identified as a risk to the BPS members, and which gave up their DB transfer permissions as a result of investigation by the FCA, from passing on their clients to other unsuitable advisers (often for a shared fee).

*Part Three*

You allege the FCA was not sufficiently proactive or timely in using its enforcement powers. You believe the FCA failed to take steps to protect those affected by unsuitable advice to transfer out of the BPS in a timely way, in

particular by not imposing asset retention rules until April 2022.

#### *Part Four*

You allege the FCA's actions have resulted in inconsistent outcomes for consumers entitled to compensation.

#### **Remedy sought**

To remedy this complaint, you have asked the FCA to make ex-gratia payments to those affected and pay compensation for losses suffered where you believe that the FCA was the primary cause of the loss.

#### **Decision**

Following a detailed investigation in accordance with the relevant Complaints Scheme (the Scheme)<sup>1</sup>, including careful consideration of the FCA's actions and the wider circumstances of BSPS, we have not upheld your allegations.

We know this will come as a disappointment to you and we explain our decision and rationale in this letter.

#### **Information we can share**

It's important to let you know that there are limits to the information that the FCA can, and cannot, share through its responses to complainants. We take a view on what we can share with complainants having regard to the circumstances of each complaint investigation.

If we cannot disclose certain information to you, it is because restrictions under the Financial Services and Markets Act 2000 (FSMA), the UK General Data Protection Regulation (GDPR) and the Data Protection Act 2018 prevent us disclosing non-public information about the firms and individuals we regulate, except in certain circumstances.

The Information we can share<sup>2</sup> page on the FCA's website contains a good explanation of what we can disclose.

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<sup>1</sup> <https://www.fca.org.uk/publication/corporate/complaints-scheme.pdf>

<sup>2</sup> <https://www.fca.org.uk/freedom-information/information-we-can-share>

## **The Complaints Scheme (the Scheme)**

The basis of the Scheme is set out in Part 6 of the Financial Services Act 2012 (FSA), under which the FCA, along with the other Regulators,<sup>3</sup> must make arrangements for the investigation of complaints arising in connection with the exercise of, or failure to exercise, any of their relevant functions.

The relevant functions of the FCA exclude the FCA's legislative functions including making rules under FSMA and issuing general guidance.

We have therefore not investigated the following parts of the complaint, which relate to our rule-making powers or powers to issue general guidance because they are excluded under the Scheme:

- rules around the capital that firms must hold;
- rules and guidance relating to how redress should be calculated for unsuitable pension transfer advice; and
- rules around the financial limits of compensation of the Financial Ombudsman Service (Financial Ombudsman) or the Financial Services Compensation Scheme (FSCS).

## **Our investigation**

1. To determine this complaint, we have considered:
  - a. the work of the FCA across a range of Divisions, to understand our specific role and actions in relation to the BPS;
  - b. the Independent Reports and publications relating to the BPS, namely:
    - i. the House of Commons Work and Pensions Committee's report following its inquiry into financial advice provided to members of the BPS (February 2018);<sup>4</sup>
    - ii. the Independent Review of communications and support given to British Steel Pension Scheme members (the 'Rookes Review') (January 2019);<sup>5</sup>

<sup>3</sup> The Prudential Regulation Authority (PRA) and the Bank of England.

<sup>4</sup> Sixth Report of Session 2017 – 2019,

<https://publications.parliament.uk/pa/cm201719/cmselect/cmworkpen/828/828.pdf>, 7 February 2018.

<sup>5</sup> The independent review of communications and support given to BPS members. Caroline Rookes was asked by The Pensions Regulator (tPR) to conduct an independent review of the communications and support provided to members of the BPS during the pensions restructuring exercise in 2017 to 2018 and the 'Time to Choose' exercise, January 2019

- iii. the National Audit Office's (NAO) Investigation into the British Steel Pension Scheme (March 2022);<sup>6</sup> and
  - iv. the Investigation into the British Steel Pension Scheme by the House of Commons Public Accounts Committee (PAC) (May 2022 and July 2022);<sup>7</sup>
- c. the responses from the FCA and Government to the PAC report.<sup>8</sup>

## Background

### ***Pensions and relevant regulatory action***

#### *Defined Benefit (DB) pension schemes*

2. A DB pension scheme (like the BSPS) is commonly known as a "final salary" pension scheme. It typically pays members an income on retirement based on their length of service and salary. Unlike a defined contribution (DC) pension scheme, income during retirement is not based on the investment performance of the scheme (pre or post-retirement), the rate of inflation (pre-retirement) or the length of time the member and/or their spouse lives. For these reasons, DB pension schemes can offer consumers more certainty about their retirement income.

#### *Securities and Investment Board Pension Review (SIB Review)*

3. The Securities and Investment Board (a regulator of pensions before the FCA assumed that responsibility) conducted a pensions review in October 1994 in response to previous widespread unsuitable DB pension transfer advice.<sup>9</sup>

<sup>6</sup> The NAO's investigation focused on how DB pension transfer advisors were regulated in the BSPS case and the extent to which compensation is being delivered to members who were affected. <https://www.nao.org.uk/wp-content/uploads/2022/03/Investigation-into-the-British-Steel-pension-scheme.pdf>, (The 'NAO Report') March 2022.

<sup>7</sup> HC 1216, <https://committees.parliament.uk/oralevidence/10196/default/>, 12 May 2022; *Investigation into the British Steel Pension Scheme*, 19 July 2022 HC 1216, <https://committees.parliament.uk/oralevidence/10196/default/>, 12 May 2022; *Investigation into the British Steel Pension Scheme* <https://committees.parliament.uk/publications/23164/documents/169426/default/>, 19 July 2022

<sup>8</sup> Letter from Nikhil Rathi to Dame Meg Hillier MP, Chair of the PAC, dated 28 September 2022; [FCA's response](#) to this report; Government [response](#). Letter from Nikhil Rathi to Dame Meg Hillier MP, Chair of the PAC, <https://committees.parliament.uk/publications/30285/documents/175251/default/> from Nikhil Rathi to Dame Meg Hillier MP, Chair of the PAC, dated 28 September 2022; , dated 28 September 2022; FCA's response to this report, [FCA's response](https://committees.parliament.uk/publications/30266/documents/175189/default/) <https://committees.parliament.uk/publications/30266/documents/175189/default/> to this report;; Government response, [response](https://committees.parliament.uk/publications/30266/documents/175189/default/) <https://committees.parliament.uk/publications/30266/documents/175189/default/>.

<sup>9</sup> Pension Transfers and Opt-outs - Review of Past Business - Part I: Statement of Policy, October 1994 and Part II: Specification of Standards and Procedures, October 1994

4. The SIB review addressed 1.6 million cases of personal pension mis-selling that happened between 1988 and 1994.<sup>10</sup>
5. The review was limited to people who joined, or were eligible to join, an occupational pension scheme. The review covered transfers, opt-outs and non-joiners. This review identified that up to 500,000 people may have received unsuitable advice on transfers and opt-outs from occupational pension schemes. Some of the transfers and opt-outs were transacted in a materially non-compliant way, and some consumers suffered loss as a result of unsuitable advice.

*The FCA's role in relation to the BSPS*

6. The FCA regulates financial advisors who provided pension transfer advice to steelworkers on transferring out of the BSPS. The FCA also supervises firms offering personal pension schemes and who received transfer payments from those who opted out of the BSPS.

*The Pensions Regulator and Trustees' Role*

7. The Pensions Regulator (tPR) is the UK regulator of workplace occupational pension schemes (including DB schemes like the BSPS). The scheme trustees oversee the administration of the scheme and communication with members.

*2015 Pension Freedoms*

8. The Pension Schemes Act 2015 set out a new legislative framework for private pensions to give people with DC pensions more flexibility in how and when they could access their savings.
9. Some members of a DB scheme have the option to transfer to a DC scheme. The Government put in place a mandatory advice requirement for those with a DB pension value greater than £30,000 to seek advice from a qualified pension transfer specialist. This was to ensure members of DB schemes fully understood the benefits they may be giving up if they transferred to a DC scheme, as well as the risks involved, and could make an informed decision.
10. The FCA undertook significant work in relation to pensions transfer advice following the introduction of Pensions Freedoms in 2015.

<sup>10</sup> [The Pension mis-selling review](https://researchbriefings.files.parliament.uk/documents/SN00429/SN00429.pdf), 9 July 2002 [The Pension mis-selling review](https://researchbriefings.files.parliament.uk/documents/SN00429/SN00429.pdf)<https://researchbriefings.files.parliament.uk/documents/SN00429/SN00429.pdf>, 9 July 2002

11. Data and intelligence the FCA held around the quality of pension transfer advice at the time was limited. Therefore, the FCA commenced supervisory activity to increase its understanding of what was happening in the market and to assess the risk posed by the legislative change. The FCA took a risk-based supervisory approach, and initially focused on assessing a small number of firms which were assessed to pose higher risk. As shown by the updates published on the FCA's website, the concerns regarding the quality of advice grew over time with the more data the FCA received. Therefore, the FCA's regulatory strategy to mitigate the increasing level of risk evolved, using supervisory, policy and enforcement tools. Oversight of key decisions and strategy developments was provided by the Executive Committee and FCA Board and the matter became a top priority for the organisation as demonstrated by the 2018/19 Business Plan.<sup>11</sup>

12. The FCA carried out four phases of work which are detailed below.

**Phase 1: October 2015 to March 2016**

- a. The FCA looked at a small sample of high-risk firms (based on factors including those most active in the pension transfer market with a high number of transfers). The firms were selected based on available data and intelligence. The FCA initially took a desk-based approach, focussing on assessment of business models and DB pension transfer advice. The FCA obtained information from 6 firms, leading to 29 detailed file reviews from four of those firms. The FCA visited 3 of those firms as part of their assessment process.<sup>12</sup>
- b. The results of these assessments raised concern, but given the limited sample of firms assessed, the FCA considered the appropriate response was to continue its risk-based supervisory strategy. The FCA therefore extended the sample size to determine if issues were evident in a larger population, continuing to focus on high-risk firms.

**Phase 2: December 2016 to July 2017**

- c. This consisted of business model assessments and 71 file reviews from an additional 16 firms. The FCA visited 9 of those firms. The aim was

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<sup>11</sup> <https://www.fca.org.uk/publication/business-plans/business-plan-2018-19.pdf>

<sup>12</sup> 'File reviews' involved a substantive review of the evidence gathered, the calculations and methodology used, and the resulting advice that would outline whether a transfer would be in the client's best interest or not to enable an informed choice.

to assess the advice consumers received from firms and whether they were at risk of harm.

- d. The combined results of the file reviews conducted during phases 1 and 2 showed 17% of advice was unsuitable and a further 36% of files had material gaps in the information necessary to provide suitable advice. This meant that it was unclear whether the advice was suitable or not in these cases.
- e. The FCA's concerns were further heightened upon comparison of these results with results of the FCA's assessment of the wider advisory market for pensions advice, which found that 90% of pensions accumulation advice and 91% of retirement income advice was suitable.
- f. In response to the growing concern, the FCA bolstered its regulatory strategy by deploying policy tools. In June 2017, it launched a consultation to strengthen the rules and guidance on pension transfer advice. The FCA's proposals were informed by the findings from its supervisory work.<sup>13</sup>
- g. In October 2017 the FCA published an update<sup>14</sup> about the work from phases 1 and 2. By this time, the number of DB pension transfers had increased significantly.
- h. During phases 1 and 2, through supervisory intervention, 4 firms chose to stop advising on DB transfers. The FCA also continued its work on scams, particularly those that targeted consumers' pensions. Between January 2016 and October 2017, 32 firms chose to stop providing advice or decided to limit their pension transfer activity.
- i. In addition, the FCA continued its supervisory strategy with a further phase of supervisory assessments.

### **Phase 3: June 2017 to February 2019**

- j. The FCA continued to look at high-risk firms in this phase, characterised by those most active in the market or where it had received intelligence (for example whistleblowing). The FCA's work was targeted and not representative of the whole market, but it was designed to inform whether a market-wide intervention was necessary.

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<sup>13</sup> <https://www.fca.org.uk/publication/consultation/cp17-16.pdf>

<sup>14</sup> <https://www.fca.org.uk/news/news-stories/our-work-defined-benefit-pension-transfers>

- k. During this phase, the FCA collected information from an additional 45 firms, following which the FCA conducted further assessment work, including visits to 18 firms and 154 file reviews. Between June 2017 and February 2019, the 18 firms visited by the FCA gave advice to 48,248 clients on their DB pension schemes, which resulted in 24,919 actual pension transfers. Results of the file reviews identified that 29.2% of advice was unsuitable and 22.7% of advice was unclear.
- l. In late 2017, the FCA received intelligence about potential poor transfer advice being given to BSPS members. Therefore, it paused its work on phase 3, redirecting resources to focus on BSPS in November 2017. Additional resources were also allocated at this time, specifically focused on BSPS. Work recommenced on phase 3 in March 2018.
- m. In the FCA's update published in December 2018<sup>15</sup>, the FCA set out its disappointment to have found that less than 50% of the advice reviewed was suitable. Adding it was particularly concerning that, despite feedback to the sector, firms were still failing to give consistently suitable advice and that it was unacceptable that pension transfer advice should persistently remain at such a low level of suitability in comparison to investment advice. The FCA outlined strong messages around its expectation for pension transfer advice to reach the same standard as the wider financial advice market where the FCA found advice was suitable in around 90% of cases.
- n. The FCA also continued with policy interventions, in March 2018 finalising new rules aimed to improve the quality of pension transfer advice to help consumers make informed decisions for their individual circumstances.<sup>16</sup>
- o. In March 2018 the FCA also launched an additional consultation to improve the quality of pension transfer advice<sup>17</sup>, including changes to require pension transfer specialists to hold the same qualifications as investment advisers. New rules and guidance were finalised in October 2018.<sup>18</sup>
- p. In its 2018/19 business plan, the FCA outlined the concern it had about pension transfer advice and identified this as a key priority for the FCA.<sup>19</sup>

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<sup>15</sup> <https://www.fca.org.uk/publications/multi-firm-reviews/key-findings-our-recent-work-pension-transfer-advice>

<sup>16</sup> <https://www.fca.org.uk/publication/policy/ps18-06.pdf>

<sup>17</sup> <https://www.fca.org.uk/publication/consultation/cp18-07.pdf>

<sup>18</sup> <https://www.fca.org.uk/publication/policy/ps18-20.pdf>

<sup>19</sup> <https://www.fca.org.uk/publication/business-plans/business-plan-2018-19.pdf>

- q. Following the results of the 3 phases of work on specific high-risk firms and the data gathered from firms with pension transfer permissions between April 2015 and September 2018, the FCA concluded the data was sufficiently concerning to justify a market-wide intervention.

**Phase 4: From May 2019**

- r. To deliver the market-wide intervention, the FCA further developed its regulatory response, deploying a joint Enforcement and Supervisory strategy. This included a wide range of work, including file reviews, to support a significant number of enforcement investigations which had already commenced (including those with links to BSPS), with the aim of achieving redress for consumers. This included Skilled Persons Reviews and a total of 36 Past Business Reviews and covered an estimated 365 BSPS cases. The extensive volume of work required during this phase required the FCA to utilise external resource.
- s. This phase involved the review of c.1,500 pension transfer advice transactions (both BSPS and non-BSPS) across a further 85 firms. The work was then augmented by a redress scheme workstream. In total the FCA has incurred external costs of approximately £8.2m, along with over 118,000 hours spent by the FCA on the issues.
- t. The scale of enforcement investigations commenced by the FCA, involving around 30 investigations into firms or individuals, has been unprecedented. These investigations were complex and required analysis of large volumes of evidence, interviews and file reviews. Applying the rules and guidance around pension transfers and suitability, the FCA has held firms and advisers to account, imposing financial penalties, banning unsuitable advisers from the industry and securing redress from firms. To date, this has resulted in 15 prohibitions and fines or payments to the FSCS totalling £8.87m, though some matters have been referred to the Upper Tribunal. Where possible the FCA have sought payments to be made to the FSCS in lieu of a financial penalty, ensuring that the parties responsible for the wrongdoing pay redress.<sup>20</sup> Further investigations are progressing and information will be published in due course.

*The BSPS*

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<sup>20</sup><https://www.fca.org.uk/firms/british-steel-pension-scheme-our-approach-enforcement>

13. The BSPS was a DB pension scheme for employees of British Steel, with assets worth approximately £13.3 billion and approximately 130,000 members in 2017.
14. British Steel was formed in 1967 and was eventually acquired by Tata Steel UK Limited (TSUK), which was part of the Tata Steel Group, in 2010.
15. By March 2016, TSUK was experiencing financial difficulties, reportedly having lost £2 billion in five years, and Tata Steel Group announced that it was examining options to restructure TSUK.
16. As part of this process, in May 2016, the Department for Work & Pensions launched a public consultation on options for the BSPS to ensure the Trustees' proposal was workable, that members interests were properly protected, and the wider DB system was not undermined. This included consulting on potential changes to legislation around reducing the scheme's liabilities by allowing the trustee to reduce indexation and revaluation on future payment of accrued pension rights; and permitting a bulk transfer without member consent to a new scheme with benefits equal to or greater than compensation paid by the Pension Protection Fund (PPF).<sup>21</sup>
17. A restructure of the BSPS was considered as part of a range of options. The FCA was not involved in the work to restructure the pension scheme, as this falls within the remit of tPR, the regulator for UK occupational pension schemes.
18. If a firm faces insolvency due to the costs of a DB pension scheme, it can apply to tPR to support the continuation of the scheme for its members. This process is called a Regulated Apportionment Arrangement (RAA). These are relatively rare and involves the pension scheme being separated from its sponsoring employer and usually involves the PPF taking over the pension scheme from the firm. The PPF pays compensation to members of pension schemes and typically pays around 90% of their expected pension benefits.<sup>22</sup>

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<sup>21</sup> <https://assets.publishing.service.gov.uk/media/5aaf79cee5274a7fbb4d68f2/british-steel-pension-scheme-government-response.pdf>

<sup>22</sup> Already retired members, ill-health pensions and survivor's pensions get 100% of their expected pension, with an upper cap that the PPF can pay per year of £41,461.07 as set by the Government.

19. The Department for Work and Pensions ultimately concluded that the agreement to separate BPS from TSUK (its sponsoring employer) through a RAA was a good outcome and that no changes to the legislative framework were necessary.
20. In August 2017, tPR agreed the BPS pension scheme could enter the PPF. In addition, Tata Steel established a new pension scheme, (BPS2), which would provide similar benefits to members as the existing BPS, but with lower future pension increases.
21. Between October and December 2017, members of the BPS were given a choice to stay with the BPS, which would in effect be the PPF, or move into the new BPS2. This exercise was called 'Time to Choose'.
22. In addition, members who were not pensioners (and were not within one year of their normal retirement date) could also transfer out of the pension scheme completely into a new personal pension should they so wish. If they wanted to transfer out of the BPS, there were a number of steps to complete, including obtaining a transfer value, seeking advice, setting up a DC pension and transferring the pension, before 29 March 2018.
23. During the 'Time to Choose' exercise there was a significant increase in demand for DB pension transfer advice in a short space of time from BPS members. Between April 2017 and March 2018, some 5,517 members transferred out. A further 2,317 who requested a transfer out prior to the February 2018 deadline transferred out after this date. In total 7,834 members of the BPS transferred into a DC scheme.<sup>23</sup>
24. Although, as noted above, the FCA was not involved in the restructure of the BPS pension scheme, DB pension transfer advice is a regulated activity requiring FCA permission. The FCA was therefore responsible for regulating this activity.
25. Due to the high demand for DB pension advice from BPS members, an opportunity arose for advisers to take advantage of the situation as they were incentivised to recommend transfer. At the time, DB pension advisers were paid once a pension transfer completed.<sup>24</sup> Many advisers

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<sup>23</sup> NAO Report, paragraph 2.3, page 19

<sup>24</sup> This practice, known as contingent charging, was banned by the FCA in October 2020

took on more cases than they were able to manage competently, which also resulted in unsuitable advice.

#### *During the Time to Choose exercise*

26. The BSPS trustees alerted tPR to the level of interest in transferring out of the scheme in late 2017. tPR did not collect real-time data from the scheme trustees on the number of DB pension transfer requests.<sup>25</sup> tPR, Community Union (a trade union) and the BSPS scheme administrators told the NAO that they did not anticipate such a large volume of members to transfer out of the scheme. These organisations expected that the relevant safeguards introduced following the pension freedoms in 2015 would be effective at preventing consumer detriment.<sup>26</sup>
27. Rookes, in her review, noted the unique circumstances surrounding this period.<sup>27</sup> The Time to Choose exercise was an extremely short timeframe for members to make difficult, long-term financial decisions. Not only was the FCA not involved in the restructure of the BSPS, but there was also no clear information sharing arrangement with tPR on such events at the time. As such, the FCA was reliant on intelligence from other sources. It did not receive clear, actionable intelligence until late 2017, when it started to receive information around unsuitable advice to BSPS members.

#### *Obtaining information from the scheme administrators and trustees*

28. The FCA did not have the power to compel information from either the scheme trustees or the scheme administrators, as it did not authorise or regulate either of them. There were also concerns around data protection legislation, which was also an issue identified by the Rookes Review.<sup>28</sup>
29. Therefore, there were significant limitations on the information and intelligence that could be gathered (and delay in obtaining it). Few financial advice firms met the threshold for regular engagement with the FCA and the typical supervisory approach at that time to smaller firms was undertaking thematic work and responding to intelligence. This meant the

<sup>25</sup> The NAO Investigation into BPS, page 26.

<sup>26</sup> The NAO Investigation into BPS, page 22.

<sup>27</sup> Rookes Review, pages 18 to 20. Further detail on what happened leading up to it can be found from page 13 in the Rookes report.

<sup>28</sup> See page 5 of the Rookes Review – "I have based the findings of this report on conversations with individuals who were involved in or affected by Time to Choose. The most significant concerns related to those who had transferred out but, due to data protection concerns, it was much harder to reach this group of people. As a result, my research among this group was restricted."

FCA did not have complete data on the number of transfer requests or the advisory firms involved in them.

30. The FCA tried unsuccessfully to gather details of advisers involved in transfers for BPS members internally and from the scheme administrators in November 2017. The BPS administrators were overwhelmed with the number of transfer requests being received at the time and their data was updated manually and not kept in an accessible format.
31. The FCA attended the offices of the scheme administrators on two separate occasions in November and December 2017 but were ultimately unsuccessful in obtaining full records as the information could not be easily extracted and required manual review. Additionally, there was a backlog of applications, which were yet to be reviewed by the administrators.
32. Whilst the FCA was attempting to gather data from the administrators, the relevant FCA supervisory team was pulling together the information the FCA had internally, issuing information requests to firms known to be providing advice to BPS members, and getting in touch with the trade unions involved. The FCA subsequently contacted all local adviser firms to remind them of its expectations and held local seminars in Swansea and Doncaster with regulated advisers<sup>29</sup> where further information was also shared with the FCA.

*FCA's actions in relation to unsuitable pension transfer advice to BPS members*

33. In late 2017, the FCA received intelligence about potential poor pension transfer advice being given to BPS members. As stated above, resources were redirected to focus on BPS in November 2017.
34. The FCA adopted a supervisory-led approach commencing an information gathering exercise in December 2017, involving 50 financial advice firms, and 12 SIPP operators. 7 firms were visited and files were requested from a further 4 firms.
35. Between December 2017 and March 2018, 10 firms stopped providing pension transfer advice.

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<sup>29</sup> Rookes Review, page 20.

36. In addition to the actions taken with firms, the FCA also provided information to steelworkers, including making them aware that the advice they had received was potentially unsuitable and suggesting that they may wish to make a complaint. The FCA also corresponded extensively with TSUK, trade unions, and others, issued communications, visited firms and held meetings in person. This is set out in more detail in the table at paragraph 42.
37. Once the Time to Choose exercise had begun, there was limited opportunity to prevent harm from occurring given the short window of the exercise and the limited period for BPS members to transfer their pension if that is what they wanted to do, ahead of the BPS transferring into the PPF in March 2018.
38. The issue quickly became one of ensuring appropriate redress was secured where necessary for BPS members who had transferred out of the BPS scheme. Although a DB pension transfer was, and is still, considered unlikely to be in a scheme-member's interest, the FCA recognised that members did have a choice regarding their pension and a right to transfer should they so wish and that some were happy with their pension transfers.
39. Unfortunately, under the BPS rules, former BPS members could not re-enter the pension scheme following transfer. Therefore, in the limited window available afforded by the transfer time before the BPS entered the PPF, the FCA sought to prevent harm through its firm-led work and by raising awareness of the potential for poor advice and encouraging BPS members to think carefully before transferring.
40. For those members who had already transferred out of the BPS between November 2017 and March 2018, namely during the 'Time to Choose' period and before the BPS entered the PPF, the FCA's focus was on raising members' awareness of the possibility that they had received unsuitable advice to transfer and encouraging them to complain if they were concerned about the advice they had received.

*Complaints-led approach between December 2017 and December 2021*

41. A general principle under FSMA is that consumers should take responsibility for their decisions.<sup>30</sup> Given this, a complaints-led approach is a common approach to redress. Namely, if a consumer has a concern or complaint about the service they have received from a regulated firm, the first step should be to complain to the firm. If they are dissatisfied with the firm’s response, they can often refer matters to the Financial Ombudsman Service. This was the case for BPS DB pension transfers.
42. From 2017 the FCA, alongside regulatory partners, carried out the actions described in the table below to support this complaints-led approach.

Date	Events
December 2017	<p>An <a href="#">update</a> was published on the FCA’s website, explaining that if members had concerns they could contact the scheme administrators who may be able to stop the transfer. For those who may have already transferred, they should make a complaint to the firm and the Financial Ombudsman Service. The update also refers to the dedicated helpline set up by The Pensions Advisory Service for BPS members.</p> <p>The FCA worked with tPR and the Money and Pensions Service to enable the BPS’s trustees to send a joint letter to around 12,000 BPS members who had requested a transfer quotation, to urge them to be careful if considering this option.</p> <p>In response to concerns about the financial advice BPS members were receiving, the FCA held four seminars in Swansea and Doncaster for advisers specialising in pension transfers. 151 advisers attended these seminars, in which the FCA set out the standards it expects when pension transfer advice is given to consumers and the responsibilities firms have when dealing with unregulated introducers.</p>

<sup>30</sup> The FCA’s consumer protection objective is: securing an appropriate degree of protection for consumers. One of the factors that the FCA must have regard to in determining what degree of protection for consumers may be appropriate is the general principle that consumers should take responsibility for their decisions: section 1C(2)(d) FSMA 2000.

Date	Events
	The FCA also wrote to 148 authorised financial advisers located near the steel plants who did not hold DB pension advice permissions explaining its expectations when referring their clients to DB pension advisers.
January 2018	<p>The FCA worked with tPR, and The Pensions Advisory Service and followed up with a further joint letter, sent by the trustees, to members who had already transferred out of the scheme, providing information on how to make a complaint and referring to the role of the Financial Ombudsman Service. This letter also references a helpline set up with the Pensions Advisory Service.</p> <p>The FCA also sent a letter to all advice firms setting out its expectations on pension advice.</p>
February 2018	A further update <sup>31</sup> was published on the FCA's website for BSPS members who had already made the decision to transfer, referring again to the complaints process / Financial Ombudsman Service.
March 2018 onwards	Meetings were held with steelworkers and representatives, at which the FCA provided information to former BSPS members and referred to their right to make a complaint.
March 2019	A statement published on the FCA website <sup>32</sup> to confirm the FCA were looking into the advice provided on the BSPS transfers and provided information on how to complain if they felt they had received unsuitable advice.
June to December 2019	The FCA held 6 events for steelworkers in South Wales. They also wrote to 3,800 steelworkers in the geographical area, who had transferred inviting them to

<sup>31</sup> <https://www.fca.org.uk/news/statements/fca-updates-work-financial-advice-given-members-british-steel-pension-scheme>

<sup>32</sup> Ibid

Date	Events
	the events and explaining what they should do if they were concerned.
June 2020	<p>The advice checker<sup>33</sup> was published on the FCA website to help people who had transferred out of a DB scheme to identify if they had received incorrect advice, and details of the complaints process was highlighted.</p> <p>The FCA also wrote to 7,700 former members of the BPS, informing them that many people who had transferred out of the BPS had received unsuitable advice. The letter confirmed that in 79% of cases reviewed, advice was either unsuitable or unclear. This letter encouraged members to take action, including considering making a complaint. This letter also explained the role of relevant various organisations in the process, together with their contact information, namely the FCA's contact centre, the Money Advice &amp; Pensions Service, the Financial Ombudsman and the FSCS.<sup>34</sup></p>
April 2021	BPS communications toolkit was sent to MPs, representatives and trade unions which increased traffic on the Financial Ombudsman webpage relating to BPS complaints.
June 2021	BPS consumer page published on the FCA website.
July 2021	An updated BPS communications toolkit was issued to MPs.
September – December 2021	<p>Further events held for steelworkers in Swansea and Scunthorpe.</p> <p>A "Dear CEO" letter was sent to firms to explain that a consultation for a statutory redress scheme was being</p>

<sup>33</sup> <https://www.fca.org.uk/consumers/pension-transfer-defined-benefit/advice-checker>

<sup>34</sup> <https://www.fca.org.uk/publication/correspondence/letter-to-former-members-of-the-british-steel-pension-scheme-june-2020.pdf>

Date	Events
	considered and reminding them of PRIN <sup>35</sup> and COND <sup>36</sup> rules. <sup>37</sup>

43. As highlighted above, as more evidence of unsuitable advice emerged as a result of the extensive work undertaken, the FCA strengthened its message encouraging steelworkers to make a complaint if they felt the advice they received was unsuitable.
44. Despite the significant work the FCA undertook, and the support of other stakeholders including MPs, trade unions, the FSCS and the Financial Ombudsman, to inform BPS members of their ability to complain about advice they had received, the level of complaints was low. In total, only 1,878 members out of 7,834 members who received advice to transfer out in the relevant period had complained to the Financial Ombudsman or FSCS by March 2022.<sup>38</sup>
45. The NAO report identified several potential reasons as to why steelworkers were reluctant to complain.<sup>39</sup> These included:
- a. Personal relationships with advisers – where financial advice firms were part of the local community, steelworkers were reluctant to raise complaints against them due to their close personal relationships;
  - b. Acceptance of fault – steelworkers who believed the losses incurred by transferring out was their own fault and did not want to place the blame on their advisers;
  - c. Unwillingness to accept financial loss – steelworkers who did not want to consider that the advice they received may be unsuitable were reluctant to complain or admit that they have potentially lost money;
  - d. Uncertainty over the suitability of advice – BPS members who were unsure if the advice they received was unsuitable were hesitant to make a complaint;

<sup>35</sup> <https://www.handbook.fca.org.uk/handbook/PRIN/>

<sup>36</sup> <https://www.handbook.fca.org.uk/handbook/COND/>

<sup>37</sup> <https://www.fca.org.uk/publication/correspondence/british-steel-pension-scheme-consideration-redress-scheme.pdf>

<sup>38</sup> NAO Report, paragraph 3.8, page 36

<sup>39</sup> NAO Report, Figure 14, page 37

- e. Satisfaction with their transfer – steelworkers who were happy with their decision to transfer out did not want to seek compensation; and
- f. Waiting to see if others are successful – steelworkers who were unsure if they should raise a complaint were waiting to see the outcome of their colleagues' complaints before making their own.

*Consideration of a DB transfer advice redress scheme from 2019*

46. The evidential threshold to be met for a statutory redress scheme under section 404 (1) of FSMA 2000 is high. The FCA needs to demonstrate:
  - a. that there may have been a widespread or regular failure by relevant firms to comply with requirements applicable to the carrying on by them of any activity;
  - b. as a result, consumers have suffered (or may suffer) loss or damage in respect of which, if they brought legal proceedings, a remedy or relief would be available in the proceedings; and
  - c. it is desirable to make rules for the purpose of securing that redress is made to the consumers in respect of the failure (having regard to other ways in which consumers may obtain redress).
47. In January 2019, the FCA's priority was to develop a sufficiently robust evidence base to understand the scale and nature of failings by firms identified through the initial phases of DB and BSPS work. The FCA considered that this was necessary to aid consideration of the right powers to use and the evidence required to exercise them.
48. The FCA also considered a market-wide redress scheme under s.404 in January 2020. The FCA analysed the advantages and disadvantages of a market wide s.404 redress scheme including the evidence required for a s.404 redress scheme vs. the evidence held, the effectiveness of a redress scheme, potential impacts on the market and the time and costs of implementing a scheme. Having completed its analysis, the FCA decided that a complaints-led approach combined with supervisory and enforcement action was the most appropriate avenue to deliver redress at that point. The evidence gathered through the FCA's work by this point only related to the 'higher risk' DB and BSPS firms. It was not considered representative of the wider population across the market and might not be sufficient to demonstrate 'widespread' or 'regular' failing to comply with statutory requirements.

*Consideration of a redress scheme specific to BPS*

49. In April 2020, the FCA considered the results of the Phase 4 work described above and determined that further information on firms undertaking BPS transfer work was necessary. The FCA gathered further evidence on firms who had provided advice on BPS transfers as part of a wider data collection programme in July and November 2020.
50. Further consideration of a s.404 redress scheme specific to the BPS took place in February 2021, with recognition in April 2021 that an insufficient number of BPS members were complaining and acknowledgement that complainants were at risk of being time-barred by 2023.
51. Between May and July 2021, the FCA proceeded to gather further evidence to assess if the conditions allowing the FCA to make a s.404 redress scheme were met. In particular if a s.404 redress scheme could be a more effective, straightforward and cost-effective tool to ensure BPS members who received unsuitable advice had the opportunity to obtain redress, and identified the further work that would support such a scheme. This was necessary because s.404 represents a significant intervention in the market, with potentially wide-ranging consequences, which is reflected in the stringent conditions the FCA has to satisfy to be able to make such a scheme under s.404 of FSMA. However, by July 2021 the FCA still did not have sufficient evidence that the legal test was met, especially as to the desirability of such a scheme.<sup>40</sup> Therefore, the FCA undertook further information gathering including more file reviews to improve the data held, its analysis and further develop a Cost Benefit Analysis (CBA) required as part of a compulsory consultation process applicable to s.404 redress schemes.
52. Following further necessary evidence gathering, by December 2021 the FCA had reviewed a statistically significant sample of transfer advice from the firms that had provided advice to BPS members in the period from 1 March 2017 to 31 March 2018. The decision was reached by the FCA Board that some further work was required to conclude clearly on whether the legal tests for establishing a redress scheme were likely to be met. On 22 December 2021, the FCA made a public statement<sup>41</sup> confirming that

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<sup>40</sup> Letter from Nikhil Rathil to Mel Stride MP, Chair of the TSC, 12 July 2021

<sup>41</sup> <https://www.fca.org.uk/news/statements/british-steel-pension-scheme-redress>

the FCA's Board expected the FCA to consult on a s.404 redress scheme for BPS by the end of March 2022.

53. After this public statement, the FCA prepared for an extensive consultation which was launched in March 2022<sup>42</sup>. This also included substantial and complex work to publish a CBA (in Annex 2 of CP22/6) which was required under s.138I of the FSMA.
54. Within the consultation, the FCA referenced that, subject to further analysis, the scheme would cover advice provided between 26 May 2016 to 29 May 2018. The FCA stated '*26 May 2016 is when the Department for Work and Pensions (DWP) launched a consultation on BPS and 29 March 2018 is when BPS entered Pension Protection Fund (PPF) assessment and was closed to transfers. During this time BPS members went through a set of unique events, which caused harms to those who transferred their pension*'.<sup>43</sup> The FCA was concerned that BPS members may have been misadvised from this date. The FCA therefore requested data in April 2022 to review whether there was widespread unsuitable pension transfer advice from May 2016 until February 2017.
55. In the consultation, the FCA outlined that it had appointed external file reviewers to assess the suitability of pension transfer advice provided to BPS members between 1 March 2017 and 31 March 2018. They were also used to review the additional files from May 2016 to February 2017.
56. In total, 365 files had been reviewed from 89 firms and the FCA found that in 46% of cases the advice was unsuitable, and that, of the 89 firms, cases of unsuitable advice were found in 51 of them.
57. At 46% the proportion of advice unsuitable for BPS members was significantly higher than was found in higher-risk firms in non-BPS pension transfer cases where 17% of advice was unsuitable.
58. The FCA also found that complaint volumes were low – only 800 BPS members had complained to the Financial Ombudsman by March 2022 (estimated at around 11% who transferred their pension after receiving advice).<sup>44</sup>

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<sup>42</sup> <https://www.fca.org.uk/publication/consultation/cp22-6.pdf>

<sup>43</sup> <https://www.fca.org.uk/publication/consultation/cp22-6.pdf>

<sup>44</sup> <https://www.fca.org.uk/publication/consultation/cp22-6.pdf>

59. Further, 98% of BPS complaints about the suitability of pension transfer advice considered by the Financial Ombudsman and 95% of FSCS cases until March 2022 had been found in favour of the consumer<sup>45</sup>.
60. The FCA concluded that there was strong evidence that unsuitable advice was widespread among the firms who had advised BPS customers. However, as the FCA stated in its letter to the Treasury Select Committee dated 12 July 2021, a s.404 redress scheme represents a significant intervention in a market and can have far-reaching consequences when used. In the BPS context, the FCA had concerns regarding professional indemnity insurers further restricting or significantly raising the price of their cover, increasing costs for firms, and firms exiting the market and avoiding redress. As demonstrated by the FCA's CBA in CP22/6,<sup>46</sup> a s.404 redress scheme carried significant costs and industry impact. For example, the FCA's CBA estimated that the cost to firms, PI insurers, the FSCS and the FCA was £41.8m. The FCA was required to gather sufficient evidence of harm to meet the legal test as well as consider the wider impact of using its s.404 power to demonstrate that it was overall "desirable". The evidence gathering was complex and required time to complete to the appropriate evidential and legal standard.
61. Following the closure of the consultation, feedback was gathered and assessed, and a Policy Statement was issued in November 2022.<sup>47</sup> The scheme commenced in February 2023, and firms were instructed to write to members of the BPS by 28 March 2023.

### *Redress Scheme*

62. Where a consumer has received non-compliant advice and has transferred out of their DB pension scheme as a result, the basic objective of redress is to put the consumer, so far as possible, back in the position they would have been in, had they received compliant advice and remained a member of the DB scheme. As part of considering the merits of implementing a statutory redress scheme, the FCA considered alternative methods of achieving the objective of providing steelworkers with redress. Options such as requiring an adviser firm to provide a guarantee or buy an annuity for the steelworker to match the pension they would have received from the DB pension scheme at retirement were considered as

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<sup>45</sup> NAO Report, page 36.

<sup>46</sup> <https://www.fca.org.uk/publication/consultation/cp22-6.pdf>

<sup>47</sup> <https://www.fca.org.uk/publication/policy/ps22-14.pdf>

detailed in the consultation paper published in August 2022.<sup>48</sup> The FCA determined that the alternatives were not deliverable and proceeded to implement the statutory redress scheme.

63. Ideally, redress would result in the consumer being reinstated in their DB scheme, but this was not possible in the case of BSPS. The trustees of the BSPS ceding schemes (into which members of the BSPS would have gone if they hadn't transferred out) confirmed that the scheme rules did not permit them to reinstate former members of the BSPS.
64. The redress scheme applies to former members of the BSPS who had transferred out after being given advice between 26 May 2016 and 29 March 2018 and where their firm remains in business and the individual has not already had a full and final settlement (for example if they have previously complained to the Financial Ombudsman Service). It is intended, as far practically possible, to put BSPS members who suffered loss as a result of poor advice, back into the position they would have been had they not transferred.
65. The rules require firms to work out how much money a consumer should have in their DC pension as at the date of calculation so that when they retire, they can buy an annuity which would provide a guaranteed income similar to what steelworkers would have received from their DB pension scheme.
66. Redress calculations are individual. These reflect the factors considered in any calculation of retirement income and include:
  - a. personal circumstances including age, marital status, the defined benefits accrued and when they were accrued;
  - b. the rules and benefits of the DB scheme;
  - c. the value of the DC fund at the time of the calculation;
  - d. the calculation date, as calculations rely on the market's expectations of future economic conditions (such as future inflation and future interest rates and investment performance) and mortality expectations at the time they are undertaken; and
  - e. additional factors such as advice charges and charges associated with DC pension pots.

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<sup>48</sup> <https://www.fca.org.uk/publication/consultation/cp22-15.pdf>

67. In December 2022, a group of financial advisors launched an unsuccessful challenge to the redress scheme via judicial review, which was abandoned in April 2023 with a substantial contribution paid by the applicants to the FCA's costs.

*Changes to redress methodology*

68. As part of the SIB Pensions Review in 1994, a redress methodology was developed to remediate unsuitable DB pensions transfer advice.
69. In August 2016, the FCA recognised that the redress methodology may no longer achieve the objective of returning consumers to the position they would have been in, had they remained members of the DB scheme. The FCA committed to undertake a review of the approach, and subsequently review it every circa four years. As a result, in October 2017, the FCA finalised guidance for firms on how to calculate redress for unsuitable DB pension transfers, FG17/19.<sup>49</sup> This followed an extensive review of the methodology<sup>50</sup> by PwC which was finalised in March 2017.
70. Further changes to the redress methodology have been made over time. Notably:
- a. In November 2020, the Government changed the way the Retail Prices Index (RPI) inflation measure is calculated by aligning it to the Consumer Prices Index (CPI), an alternative inflation measure. As a result, in March 2021 the FCA changed the CPI assumption in the redress methodology to ensure that it reflected the assumed difference between RPI and the CPI,<sup>51</sup> and
  - b. In November 2022, following consultation, the FCA made some further changes to the general methodology.<sup>52</sup> The preceding consultation, CP22/15<sup>53</sup>, was accompanied by a range of supporting material produced for the FCA by external parties. This included a Technical Report and a Technical Manual both produced by Deloitte setting out their analysis and recommendations to the FCA on the methodology and some worked examples, and a summary of a legal opinion from Michael Furness KC of Wilberforce Chambers, focusing primarily on

<sup>49</sup> <https://www.fca.org.uk/publication/finalised-guidance/fg17-9.pdf>

<sup>50</sup> <https://www.fca.org.uk/publication/research/pwc-new-redress-methodology-pensions-transfer-advice-cases.pdf>

<sup>51</sup> <https://www.fca.org.uk/news/statements/retail-prices-index-changes-db-pension-transfer-redress>

<sup>52</sup> <https://www.fca.org.uk/publication/policy/ps22-13.pdf>

<sup>53</sup> <https://www.fca.org.uk/publication/consultation/cp22-15.pdf>

how the current and proposed methodology compared with the approach a court would take to awarding damages for non-compliant DB pension transfer advice.

71. Calculations under the s.404 redress scheme broadly followed this methodology.

#### *Asset retention*

72. Crucial to the success of any redress approach is that firms hold sufficient assets to meet their redress liabilities. All firms authorised and regulated by the FCA are required to meet their responsibilities under PRIN, COND, DISP and Threshold conditions.
73. Before the s.404 redress scheme was implemented, requirements were placed on individual firms who had provided unsuitable pension transfer advice to BSPS members to prevent the dissipation of assets where there was clear evidence of firms attempting to do so.
74. Prior to introducing emergency rules in April 2022, the FCA worked with individual firms to establish whether asset retention was required and used existing regulatory powers to put requirements in place where necessary. Where there was clear evidence of firms attempting to dissipate their assets, the FCA did act to stop this, for example the action taken against AJH Financial Services Limited.<sup>54</sup> The FCA also forced firms to stop making misleading offers to former members of the BSPS who were likely to be part of the redress scheme in February 2023.<sup>55</sup> The FCA were concerned that unsolicited settlement offers, which were likely to be for less money than they are entitled to under the redress scheme, were a deliberate attempt to exclude former BSPS members from the redress scheme.
75. The FCA issued an update on its website to say it had seen evidence of owners reducing the financial resources of their firms by withdrawing assets or changing corporate structure to avoid liabilities. It set out that it would take action where it was concerned this could leave a firm with

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<sup>54</sup> <https://www.fca.org.uk/news/news-stories/fca-stops-ajh-financial-services-limited-disposing-assets-without-permission>

<sup>55</sup> <https://www.fca.org.uk/news/news-stories/fca-forces-firms-stop-making-misleading-british-steel-pension-scheme-offers>

inadequate financial resources and unable to rectify instances of poor advice.<sup>56</sup>

76. Most firms involved in BSPS were small with assets that reflected their size. However, the FCA recognised that consulting on a redress scheme heightened the risk of both assets being diminished and firms seeking to avoid liabilities and felt that emergency asset restriction rules were required.
77. To impose an asset retention requirement, an evidential burden must be met. By 2022, the FCA had gathered sufficient evidence of harm relating to pension transfers for members of the BSPS which meant it was appropriate to bring in temporary asset retention rules. It introduced temporary rules in April 2022, on an emergency basis to prevent firms dissipating assets ahead of a redress scheme being implemented, because it had concern that firms could potentially try to avoid liabilities.
78. In November 2022, a consultation paper was published which proposed an extension to the temporary asset retention requirement.<sup>57</sup> Following this, a policy statement was issued confirming this in January 2023.<sup>58</sup>

#### ***Other matters relevant to the complaint***

##### *Financial Services Compensation Scheme (FSCS) compensation limits increase*

79. In March 2013, prior to matters relating to BSPS unfolding, as part of a wider funding review, the FCA made a commitment to reviewing the FSCS funding model in 2016.
80. The review commenced in December 2016 which reviewed broader matters relating to the FSCS funding model.<sup>59</sup> As this was a fundamental review of how the FSCS was operated and funded, there were many factors to consider. In October 2017, the FCA consulted on increasing the compensation limit from £50,000 to £85,000 for certain activities.<sup>60</sup> This was responded to in May 2018<sup>61</sup> with the rules to take effect by April 2019.<sup>62</sup>

<sup>56</sup> <https://www.fca.org.uk/publications/multi-firm-reviews/defined-benefit-db-transfers-further-update-our-work>

<sup>57</sup> <https://www.fca.org.uk/publication/consultation/cp22-22.pdf>

<sup>58</sup> <https://www.fca.org.uk/publication/policy/ps23-1.pdf>

<sup>59</sup> <https://www.fca.org.uk/publication/consultation/cp16-42.pdf>

<sup>60</sup> <https://www.fca.org.uk/publication/consultation/cp17-36.pdf>

<sup>61</sup> <https://www.fca.org.uk/publication/consultation/cp18-11.pdf>

81. It is important that the FCA reviews and, where appropriate, raises the FSCS limits to ensure an appropriate balance is struck between consumer protection and the costs to levy payers in the financial services industry.
82. The limit was reviewed again in December 2021 and remained unchanged.

*Professional Indemnity Insurance (PII)*

83. PII insurance is designed to protect firms against the cost of compensating clients for loss or damage resulting from negligent service or advice. The FCA's rules require advisers to maintain capital resources at least equal to its capital resources requirement and be able to meet liabilities as they fall due.<sup>63</sup> Advisers are also required to hold adequate PII cover at all times. Firms also need to consider their circumstances to identify whether they should hold additional capital to cover potential liabilities.<sup>64</sup> Where firms made the FCA aware PII was not available, the FCA told firms to hold additional capital so they were able to meet their liabilities and, where appropriate, used supervisory tools to stop them doing business.
84. In 2018, the FCA also introduced new rules intended to increase the number of claims paid by insurers by requiring Personal Investment Firms to have PII which do not limit cover where the policyholder is insolvent or a person other than the policyholder (e.g. the FSCS) makes a claim under the policy.<sup>65</sup>
85. PII works on a 'claims made' basis (i.e. it covers eligible claims made to insurers in the period of insurance). This means that to successfully claim on PII in relation to advice provided in previous years, a firm would need to have successfully renewed their insurance in the intervening years. In the case of BSPS, this means that for a claim to be eligible for cover under PII, the firm would need to have renewed its PII in the years which followed the Time to Choose exercise to the date of complaint.
86. PII would end automatically for firms which had failed unless the insurers were notified of the claim prior to these events.

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<sup>63</sup> FCA Handbook: IPRU-INV 13.1 Application, general requirements and professional indemnity insurance requirements; IPRU-INV 13.1.21R.

<sup>64</sup> IPRU-INV 13.1.24G

<sup>65</sup> <https://www.fca.org.uk/publication/consultation/cp18-11.pdf>



BSPS members were passed on to other unsuitable advisers and that the FCA failed to protect consumers.

94. Unfortunately, we are limited in the information we can share regarding the FCA's action in respect of these firms as we are prevented from doing so under our policy on sharing information and section 348 of FSMA.
  95. [REDACTED], following supervisory action,<sup>66</sup> [REDACTED] agreed to stop providing DB pension transfer advice. [REDACTED] existing clients whose advice had not concluded obtained advice from other firms, including [REDACTED].
  96. The FCA had engaged with [REDACTED] previously as part of the Phase 2 reviews between February and August 2017 which did not result in significant action against the firm.
  97. Following further supervisory work as part of the FCA's response on BSPS, [REDACTED], [REDACTED] agreed a voluntary requirement to stop its DB pension transfer activities while it addressed the FCA's concerns.
- [REDACTED] and [REDACTED]
98. You say that [REDACTED] net assets decreased considerably between 2019 and 2020 and [REDACTED] to raise concerns of poor practice at the firm and potential "phoenixing".<sup>67</sup>
  99. Separately, you also say that [REDACTED] took significant sums out of the business between 2017 and 2021.
  100. You say that these examples support your complaint that the FCA was not sufficiently proactive or timely in using enforcement powers.
  101. Unfortunately, we are limited in the information we can share regarding the FCA's action in respect of these firms as we are prevented from doing so under our policy on sharing information and section 348 of FSMA.

<sup>66</sup> [REDACTED]

<sup>67</sup> Phoenixing means setting up businesses multiple times to avoid liabilities. Each time the company becomes insolvent, its business and assets are transferred to a new, similar company, so the same directors can carry on trading.

102. However, file reviews were conducted at different times over several years at both firms and did not reveal any systemic problems. The FCA had also requested further files from [REDACTED] to review prior to [REDACTED], showing a tenacious approach to its supervision of the firm.

103. Based on the information we have reviewed, we consider that the FCA acted appropriately in this instance. The FCA can only take enforcement action where there is sufficient evidence.

104. In respect of the money taken out of [REDACTED] between 2017 and 2021, firms are entitled to pay dividends if they wish to benefit shareholders from the profits received. The FCA can potentially stop dividends being paid, however, it must have sufficient evidence to do so. The FCA took no enforcement action against this firm and [REDACTED].

### **Complaint allegations**

*Part One: you complain the FCA has consistently been behind the curve in responding to the issues related to BSPS.*

105. We have not upheld this part of the complaint.

106. The FCA expended significant time and resource in relation to pensions advice following the introduction of pension freedoms in 2015. Notably:

- a. There was a clear and appropriate regulatory framework around pension transfers at that time. The FCA's Conduct of Business Rules (in particular COBS 9 and COBS 19) specified the steps for firms to take when giving advice on pension transfers. The FCA had recognised potential harm could result from a pension transfer and had appropriate rules and guidance in place for firms to follow, including a presumption that a transfer from a DB to a DC pension scheme would not be suitable unless a firm could demonstrate, on contemporary evidence, that a transfer is in the client's best interests;
- b. The FCA anticipated a likely increase in pension transfers and commenced supervisory activity in 2015 to understand what was happening in the pension advice market due to the new regime and to identify and analyse any risks. The FCA followed a proportionate risk-based approach. The approach evolved over time as concerns heightened;

- c. The FCA conducted four phases of regulatory activity, deploying supervisory, policy and enforcement tools.
107. The FCA was not involved in the restructure of the BPS and, without a clear information sharing arrangement with tPR, relied on intelligence from other sources. Further, as highlighted by the various independent reviews, the circumstances were unique and the timescale was very short for members to determine which option to choose. Given this short timescale, and the fact that the FCA did not have timely knowledge, the FCA could not have reasonably prevented the harm from occurring.
108. However, when the FCA received actionable intelligence in Q4 2017, it acted promptly and effectively to prevent and remediate harm, pivoting resources from phase 3 of the pension transfer advice work to look specifically at the circumstances surrounding BPS. In particular, from November 2017, it took a range of steps including, but not limited to:
- a. Undertaking an extensive and proactive intelligence gathering exercise to ensure all relevant intelligence it could generate or receive was provided to the Supervision Team. This led to detailed assessments of 26 firms, with 10 firms agreeing to stop advising on transfers following the FCA's intervention, 9 of these stopped before the end of December 2017.
  - b. In December 2017, for members of the BPS – publishing an update on the FCA's website telling members about their right to complain; and writing a joint letter with its regulatory partners and the BPS's trustees to around 12,000 BPS members who had requested a transfer quotation, to urge them to be careful if considering this option. This was followed in January 2018 with a further joint letter, sent by the trustees, to members who had already transferred out of the scheme, providing information on how to make a complaint and referring to the role of the Financial Ombudsman and organising a dedicated helpline for members seeking further guidance;
  - c. In December 2017 in relation to firms – holding 4 seminars for advisors in Swansea and Doncaster clearly setting out the standards expected; and writing to 148 authorised financial advisers located near the steel plants who did not hold DB pension advice permissions explaining its expectations when referring their clients to DB pension advisers. This was followed in January 2018 by a further letter to all advice firms setting out the FCA's expectations on pension advice; and

- d. March 2018 onwards – meetings were held with steelworkers and representatives, at which the FCA encouraged former BSPS members to consider making a complaint if they felt they had received unsuitable advice. This included holding 6 events for steelworkers in South Wales between June and December 2019 and subsequent written communication and in person events through to Q4 2021.
109. We accept that the FCA could have been better joined up with its regulatory partners during the BSPS restructure and accepted a recommendation from the Rookes Review related to this. The FCA was not involved in the restructure of BSPS or the Time to Choose exercise. However, once the FCA became aware of adverse information regarding pension transfers for BSPS members, it took swift and wide-ranging action.
110. We also accept that, had data sharing with tPR been in place for the BSPS, the FCA may have been able to start its assessments of firms sooner. However, we have considered the findings in the Rookes Review and NAO Report that tPR was first alerted to members' interest in transferring out of the Scheme in late 2017. We have concluded that this improvement in our data sharing does not take away from the swift actions the FCA took when it was made aware of the situation. As set out above, the FCA started phase 1 work in 2015, which focused on identifying and assessing firms most active in the DB market. The circumstances surrounding the BSPS were unique and, without the benefit of hindsight, it is difficult to see how the FCA could have identified this very specific risk sooner.
111. In terms of remediating harm, broadly the FCA had two main routes as a regulator: a complaints-led approach alongside regulatory intervention and a s.404 redress scheme.
112. In 2019, the FCA considered what was required in order to establish a common evidence base which would aid the FCA in deciding a future regulatory response, including the use of a statutory redress scheme. A complaints-led approach continued alongside using regulatory tools in Supervision and Enforcement whilst this work was ongoing.
113. In 2020, the FCA considered the options for redress in the market. The FCA determined that the costs of a market wide redress scheme were seen to outweigh the benefits at that point in time. As detailed above, the

FCA analysed the evidential requirements needed to satisfy the legal test of a s.404 scheme vs the evidence held, potential market impacts, the effectiveness of a scheme and the potential cost to firms, the FCA, the Financial Ombudsman and FSCS (and ultimately the FSCS levy). Having done so, the FCA decided to continue with the complaint-led approach, which was judged to be the quickest route to redress. Having reviewed the FCA's decision making at the time, we believe this was a reasonable and proportionate approach to take to achieve the FCA's objectives. There was appropriate oversight and governance including by the FCA Board who were kept updated throughout 2020 on the progress of the DB pension transfer work.

114. Using s.404 powers represent a substantial market intervention as reflected by the conditions set out in legislation to enable the FCA to exercise this power. The FCA was required to gather sufficient evidence to meet the legal test required for a statutory redress scheme specific to BPS. This involved the development of an assessment tool (the Defined Benefit Advice Assessment Tool, DBAAT, first published in 2021 and later adapted for the BPS scheme) which could be used to review a significant volume of pension transfer cases (some 365 files from 89 firms who advised BPS clients over the period 1 March 2017 to 31 March 2018) and produce consistent and measurable output. The volume of cases to be reviewed necessitated the use of external resources to support the FCA. The FCA sought advice from a statistician to ensure the sample of file reviews was statistically significant across the population, and obtained Counsel's advice on whether the proposed scheme complied with the requirements of s.404. This took time and considerable resource.
115. The FCA became more aware of the rate of unsuitable advice, particularly in the case of BPS, as file review exercises progressed. By December 2021, there was sufficiently strong evidence that the unsuitable advice given to BPS members was widespread across the market – not just at the higher risk firms that the FCA initially focused on in the aftermath of the BPS Time to Choose. Once this was determined, the FCA Board announced its intention to consult on a consumer redress scheme.
116. We note that there are arguments that the FCA could have identified earlier than April 2021 that the complaints-led approach was not working to the extent needed (particularly because of the relatively low number of complaints) and responded by diverting more resource to gather the high level of evidence required to enable it to implement a statutory redress

scheme. However, the complaints-led approach, combined with the joint supervisory and enforcement work in Phase 4, was considered the quickest and most efficient way for BSPS members to access redress, especially given the time and cost required to gather the high level of evidence required to meet the tests under s.404 and to implement a statutory redress scheme. The analysis of the outcome of these alternative redress options also proved useful to demonstrate that a s.404 redress scheme was desirable to improve consumer redress in this case, a condition the FCA was required to meet under s.404 of FSMA.

*Part Two: you allege the FCA failed to take steps to protect consumers when it knew them to have been mis-sold or were likely to have been mis-sold. This includes not taking steps to: (a) preserve professional indemnity cover; and (b) prevent firms who had been identified as a risk from passing their clients to other unsuitable advisers.*

117. Having carefully considered this allegation we have not upheld this part of your complaint. We do not agree that the FCA failed to take steps to secure an appropriate degree of protection for consumers in accordance with the FCA's operational objective. The FCA is not a zero-failure regulator, and must carefully balance competing factors in determining what is an appropriate degree of protection for consumers.

118. Despite the actions the FCA took to raise awareness and encourage BSPS members to make a complaint, levels of complaints were low. Nevertheless, we note your comments regarding preserving PII.

119. The FCA cannot control the PII market by forcing insurers to provide cover or to do so at reduced cost. Insurers assess the risks inherent in firms' business models when they set the price for the insurance they offer. In some cases, including BSPS, Keydata and Arch Cru, insurers decided to withdraw cover. PII could not be preserved for firms due to limits on the FCA's remit as explained in paragraph 92 and a hardening of the market as explained at paragraph 90, resulted in firms finding it increasingly difficult to get cover at an affordable price.

120. FCA rules in place at the time required firms to ensure they maintained adequate resources to meet their liabilities. This included holding appropriate ongoing PII cover, and they were expected to hold additional capital resources where this was necessary to meet their liabilities. As set



consumers from seeking pension transfer advice from regulated firms with the right permissions. However, it is the FCA's responsibility to mitigate the risk of unsuitable advice.

126. The FCA took swift action upon finding a high rate of unsuitable advice in the firm and on [REDACTED] agreed a voluntary requirement to stop pension transfer activity while it addressed the FCA concerns.

127. Therefore, we do not agree that the FCA failed to protect consumers where BSPS members moved from one adviser to another and consider that the FCA acted swiftly to protect consumers where it had sufficient evidence of unsuitable advice.

128. In addition, [REDACTED]

129. We consider the appropriate regulatory tools were used to mitigate risk (in this case voluntary requirements) efficiently and quickly.

*Part Three: you allege the FCA was not sufficiently proactive or timely in using its enforcement powers*

*Enforcement and supervisory action*

130. We do not agree that the FCA was not sufficiently proactive or timely in using its enforcement powers. Therefore, we have not upheld this part of your complaint. The FCA's approach to enforcement was evidence-based and evolved to meet key priorities as the events surrounding the BPS unfolded.

131. The FCA's phased approach, described at paragraph 12 above, was timely and proportionate. The FCA appropriately prioritised the allocation of resources based on the information available at the time as events unfolded, initially focusing on stopping and remediating harm, including using enforcement/intervention powers where firms would not voluntarily give up providing pension advice.

132. There was significant work subsequent to the initial interventions during the Time to Choose and transfer periods (before the BPS moved into the PPF/BSPS2 commenced), to build the evidence base necessary for the FCA to open c.30 enforcement investigations against firms and individuals involved in BPS transfer advice which have resulted in £8.87m in

finances/payments to the FSCS to date representing the worst breaches observed.<sup>68</sup>

133. This work included undertaking a wide range of file reviews for each enforcement action (beyond the initial dip samples conducted by Supervision to justify the immediate interventions), interviews and review of evidence. This work required appropriate time and resource to progress. Throughout the process there was also a joined-up approach to inform ongoing supervisory work and the redress scheme.

██████ and ██████

134. As described at paragraphs 98 to 104 above, we consider that the FCA acted appropriately in relation to these firms.

135. Enforcement is one of a range of regulatory tools the FCA has at its disposal. Whilst we are limited in being able to share the details of the FCA's actions, the FCA took appropriate action in response to actionable intelligence and available evidence. We therefore do not agree that the ██████ and ██████ examples show that the FCA was not sufficiently proactive in using enforcement powers.

#### *Asset retention*

136. You allege that the FCA did not require firms to retain their assets until April 2022, which you consider was too late. We do not agree.

137. As described in paragraph 72, the FCA had in place prudential capital requirements for advice firms and took steps during the relevant period to remind firms of them, including the interaction with wider redress liabilities. The FCA's approach of working with individual firms described at paragraph 73 was appropriate at the time until the introduction of the redress scheme.

138. The FCA's approach to asset retention evolved appropriately as the evidence of unsuitable advice increased, with the implementation of emergency rules in April 2022, as described at paragraph 74 above.

139. Further, many of the firms who provided advice were small, therefore it is unlikely that imposing asset retention rules sooner would have preserved

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<sup>68</sup> <https://www.fca.org.uk/firms/british-steel-pension-scheme-our-approach-enforcement#section-completed-enforcement-actions>

sufficient assets to cover all of the redress liabilities, given that the capital required to be held by the smallest firms was only £5,000, potentially insufficient to meet even 1 complaint about pension transfer advice.

*Dear CEO letter*

140. The complaint alleges that the 'Dear CEO letter' sent in December 2021 was the first time the FCA had written to BSPS advise firms. The FCA wrote to all firms holding the pension transfer and opt out permission in January 2018 and on other occasions, as well as holding events with advisers to inform them of its expectations.

141. The letter sent in January 2018 reminded firms of relevant rules relating to advice and contained warnings of accepting business from unauthorised introducers. This would have been appropriate guidance to remind firms at the time as high levels of advice was taking place during this period.

142. Firms must have adequate capital resources to meet their responsibilities under PRIN, COND, DISP and Threshold conditions. This is made clear during the authorisation process and in the communications when new rules are introduced. The Dear CEO letter sent in December 2021 was sent to prepare firms for the redress scheme. We do not consider that sending it any earlier would have changed the situation with PII or prevented firms from failing.

*Part Four: You allege the FCA's actions have resulted in inconsistent outcomes for consumers entitled to compensation*

143. After considering the complaint relating to the delay in introducing the redress scheme and inconsistent outcomes for consumers entitled to compensation, we have not upheld this element of the complaint.

144. Complaints about the FCA's legislative functions cannot be investigated under the Scheme. This means that complaints about the redress scheme itself, the changes to the way redress is calculated, and the changes regarding the FSCS limits are outside the scope of the Scheme.

145. Redress calculations are complex and individual. They result in people receiving different sums of money. This difference is a result of individual circumstances, when the calculation is made, market fluctuations, changes in the future expected economic environment (future investment returns, inflation rates), changes in mortality rates, the changing cost of

annuities (which in turn will depend on the current and expected future economic environment and other factors) and differences in the historical investment performance of the DC schemes into which the transfer values from the BPS were paid.

146. Therefore, we would expect redress calculations to result in different values depending on a whole range of circumstances connected with the individual, the current and expected future economic environment at the time of the calculation and the historical performance of the DC scheme into which the BPS member paid their transfer value. The FCA explained the intricacies and variation in redress calculations to members in roadshows and by providing illustrative case studies. We have included these illustrative case studies at Appendix 1 to this letter, which we hope you find useful.

147. We are satisfied that, applying the calculation set out in the redress scheme is designed, as far as possible, to put BPS members back in the position they would have been in, and enable BPS members to purchase an income at the same level. This is supported by a legal opinion from Michael Furness KC of Wilberforce Chambers, which supported the approach being adopted by the FCA in its general pension transfer redress guidance.

#### *FSCS compensation limits increase*

148. The changes to the FSCS compensation limits were taken separately to the redress scheme.

149. The maximum amount paid by the FSCS is based on the limit applicable at the time. Claims to the FSCS about firms which failed on or after 1 April 2019 were subject to the higher limit of £85,000. The change did not act retrospectively. While we note your comments that this is unfair on BPS members whose claims fell under the previous limit of £50,000, it would not be fair or workable for it to be retrospective.

#### *Changes to redress methodology*

150. The changes to the way redress is calculated is based on the approach a court would take to calculating damages in a case like this.

151. Historical changes in the redress methodology are explained in paragraphs 68 to 71 above. These were as a result of a range of factors, including the

impact of changes in pension freedoms and how individuals changed their habits in accessing their DC pension pots, the Government's decision to change how RPI is calculated and other factors. Each time the redress methodology changed, the FCA utilised external experts to assess the approach, consulted on the changes, considered the feedback and then implemented the methodology through rules or guidance.

152. The only time this approach was not followed was in respect of the RPI change which, as noted, was as a result of a specific change by Government over which the FCA had no control. The FCA had no choice but to reflect this change in its redress methodology.

*Improvements made since the events of the BPS*

153. We recognise events as a result of the restructure of the BPS have been distressing for many members of the BPS. The FCA has sought to support members in respect of the pension transfer advice they received.

154. The FCA has learned lessons from its intervention and engagement on BPS. In response to a recommendation in the Rookes Review, tPR and the FCA now operate in a more collaborative, joined-up way. There is now a clear Memorandum of Understanding between the regulators, and was used successfully in subsequent DB pension transfers such as the Rolls Royce pension scheme in October 2020 and P&O in April 2022 with actions including issuing joint proactive statements setting out concerns and actions each organisation will take.

155. The FCA has also made changes to internal processes. From April 2018, to improve market intelligence, the FCA began collecting more data regularly from all firms providing pension and retirement income products who were required to complete two returns, one annually and one every 6 months. Information collected includes the number of DB transfers conducted.

156. In 2018, the FCA also updated the qualifications that advisers are required to hold to be approved as pension transfer specialists. Additionally, in October 2020, charges for advice where consumers pay only when a transfer proceeds (contingent advice charges) were banned, except in certain circumstances.

157. The FCA accepted several recommendations from the Public Accounts Committee. The FCA responded to each recommendation in September

2022<sup>69</sup>. For example, the FCA agreed that it would need to improve data and insight, provide further updates on enforcement action and consider how further redress mechanisms can be implemented more quickly and provide fair compensation.

158. Addressing harm is a key focus of the FCA's ongoing supervision as well as enforcement action. Personal advice firms are subject to prudential regulation by the FCA. Therefore, in order to strengthen existing prudential requirements, in November 2023, the FCA commenced a consultation around proposals to require personal investment firms to be more prudent and set aside capital for potential redress liabilities at an early stage. This supports the FCA's commitments to ensure the polluter pays when consumers are harmed.

159. The FCA is committed to continuous improvement and in addition to the improvements already made we will also consider further improvement as a result of the findings of this complaint investigation.

#### **The delay in considering your complaint**

We are sorry for the length of time it has taken us to respond to your complaint. To recognise the delay, we offer each complainant party to this complaint £150 ex gratia payment in line with our published approach.



#### **The role of the Complaints Commissioner**

The Complaints Commissioner is an independent person appointed by HM Treasury to be responsible for the conduct of investigations in accordance with the Scheme. If you are dissatisfied with how we have dealt with your complaint, you can contact the Complaints Commissioner requesting a review of my decision. You must contact the Complaints Commissioner within three months of the date of this letter. If you contact the Complaints Commissioner

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<sup>69</sup> <https://committees.parliament.uk/publications/30266/documents/175189/default/>

later than three months, the Commissioner will decide whether there is good reason to consider your complaint.

The contact details for referring your complaint to the Complaints Commissioner are:

Office of the Complaints Commissioner  
16 Old Queen Street  
London  
SW1H 9HP

Telephone: 020 3786 7926

Website: <https://frccommissioner.org.uk/making-a-complaint/>

Email: [info@frccommissioner.org.uk](mailto:info@frccommissioner.org.uk)

Yours sincerely





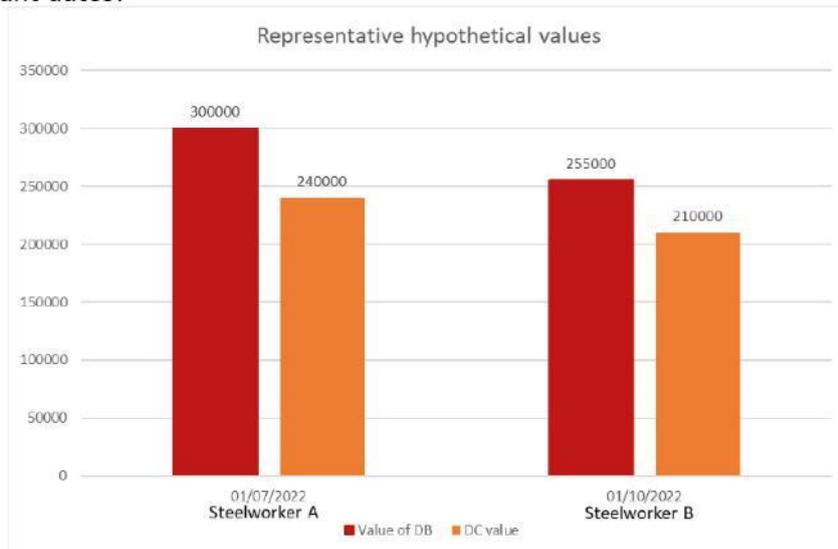
Risk & Compliance Oversight Division

## Appendix 1

### Redress calculations

Illustrative case studies (actual or hypothetical) which explain why – and how it is fair – that Steelworker A who was awarded a pay-out on 1st September 2022 can receive so more compensation compared to Steelworker B who is of a similar age and with a similar professional and pensions experience but received their award on 1st December 2022.

We have provided illustrative figures for comparable steelworkers who were made offers on 1 September 2022 (Steelworker A) and 1 December 2022 (Steelworker B), i.e., either side of the mini-budget in September 2022. You should note that all calculations within a calendar quarter are carried out with an effective date at the start of the quarter, using economic information and DC pot values, as at the same date. Many of the assumptions used in the calculation are updated quarterly, to balance the need to ensure that calculations are based on the most up to date information available, against the burden of updating relevant systems at regular intervals, to incorporate the latest assumptions. However, the use of the DC pot values at the same date means the calculations are internally consistent. We have prepared an example, based on the methodology at the time, using monetary amounts which were not untypical for steelworkers at the time. The following chart shows hypothetical representative figures for Steelworkers A and B at the relevant dates:



Steelworker A would have received an offer of £60,000 to top up their DC pension to £300,000.

The redress calculation methodology assumes that a consumer would add any redress payable to their DC pension pot and invest the entire pot in a lower risk investment portfolio, with a higher proportion of corporate and government bonds, than a typical DC investor. This is because we consider that consumers who have received unsuitable advice to transfer are likely to have a relatively cautious attitude to risk, but should also be able to make returns on their investments. We require firms making redress offers to explain this and offer to adjust the investment strategy accordingly. Where a consumer invests in a higher proportion of corporate and government bonds, it also means their DC pot value should be more closely aligned with movements in annuity pricing. In other words, when bond yields rise and annuities become cheaper to buy, their pot is also more likely to fall (as bond prices have fallen), but the annuity income they can purchase remains similar.

Following the calculation of Steelworker A's redress, DC pots invested in bond-type assets fell in value. So, if Steelworker A invested their £300,000, as intended by the calculation, it may have fallen to around £255,000 by 1 October 2022.

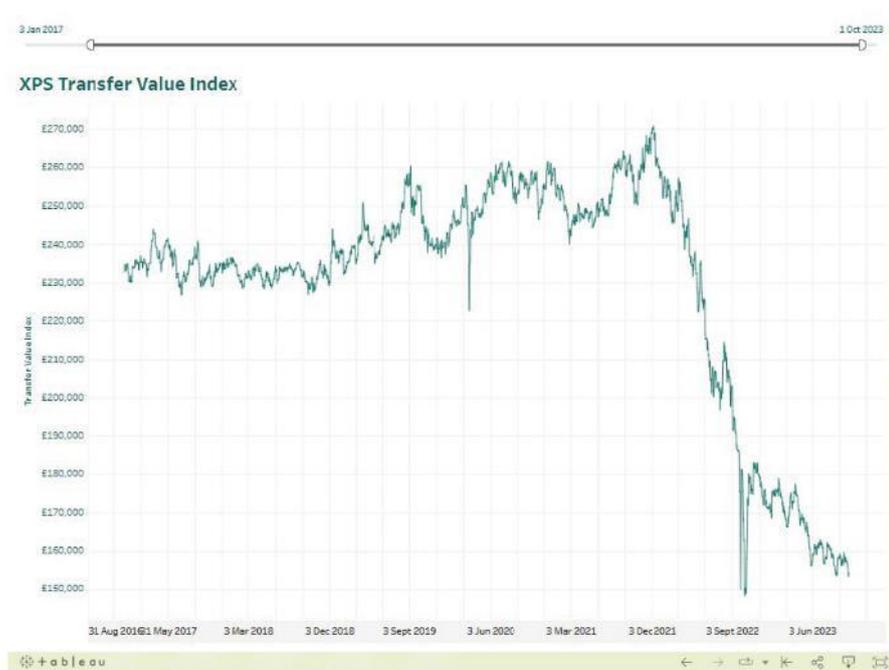
On 1 October 2022, Steelworker B's redress calculation would have been based on lower DB and DC values due to the change in market conditions, which affected both the actuarial calculation of DB scheme benefits given up and their DC pension pot. At that date, Steelworker B would likely have suffered a lower percentage fall in their DC pot than Steelworker A, over the same period. This is because, prior to a redress calculation, consumers typically don't invest in bond-type assets to the same extent as assumed after the redress calculation but will generally invest more in equities. Steelworker B would, therefore, have been offered £45,000 to augment their DC pension to £255,000. This is the same DC pot value as Steelworker A may have had at the same date, following the likely fall in the value of the investments. So, although Steelworker A would have received more redress than Steelworker B, once the relative values of their DC pots, including redress are taken into account, they end up in the same position, in this particular example.

These hypothetical figures have been prepared by us, based on estimates of typical changes in value of the benefits given up, and potential changes in pension pots invested, in typical investment assets, before and after a redress calculation, for the specific dates given. They are not based on actual

calculations. They assume a consumer invests their redress in their DC pension, as intended, to aim

to put themselves back in the position they would have been in if they had not received unsuitable advice to transfer out, including adjusting their investment strategy at that date to be more heavily weighted in lower risk bonds. Where a consumer does not invest their redress, they take a greater risk of not achieving that goal, e.g., if the money is not invested as intended, their DC pot may be lower than it should be by retirement and any uninvested redress is at risk of value-erosion from inflation or being used prematurely for pre-retirement spending, both of which would result in less cash available for retirement.

The method used for valuing benefits for the purposes of the redress calculation is similar to the method used to determine transfer values prior to a transfer. The chart below illustrates how transfer values have changed over time:

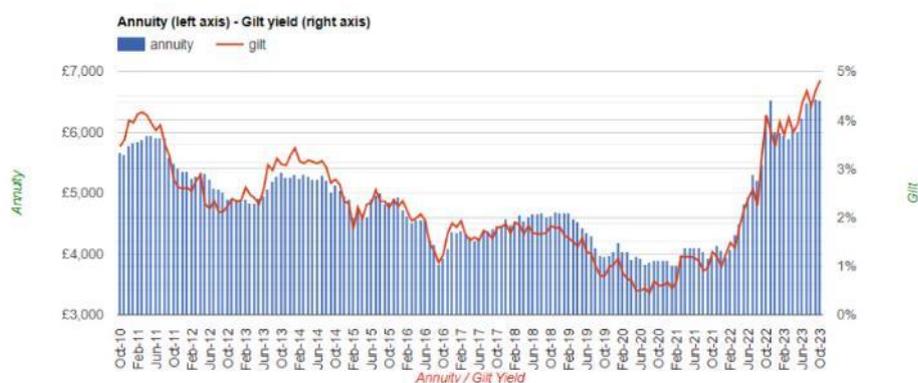


Source: <https://www.xpsgroup.com/what-we-do/technology-and-trackers/xps-transfer-watch/xps-transfer-value-tracker/>

The chart above shows that former members of the BPS transferred out when transfer values were higher than they would be now. Similarly, for redress purposes, the value placed on benefits given up has typically fallen since former members of the BPS transferred. The fall in value is primarily due to increases in gilt yields, which means that annuity prices are cheaper and expected to remain so.

The chart below shows how gilt yields have moved over time, resulting in changes in the level of annuity income that can be purchased by a fixed sum:

## Annuity Chart



Annuity income - Ages 65 and 60, £100,000 purchase, joint life 2/3rds and level payments

15 Year gilt yield taken from FT

Source: <https://www.williamburrows.com/calculators/annuity-chart/>

Steelworkers transferred when transfer values were higher than the value placed on benefits now. Typically, their transferred pension pots haven't fallen in the same way, based on the way they are invested, prior to a redress calculation, which means that the difference in value has gradually reduced over time, resulting in different redress offers.

## APPENDIX 3

### METHODOLOGY AND DOCUMENTS REVIEWED AND RELIED UPON

1. For the purposes of analysing the Complaints and producing this report, I have reviewed all of the evidence available to me, which comprises:
  - 1.1. the Complaint Letter on behalf of the Complainants who have been affected by the BSPS Issues;
  - 1.2. the FCA's Stage 1 Investigation Report in relation to the BSPS 'Group' Complaint dated 12 April 2024;
  - 1.3. the FCA's Decision Letter in response to the Complaint Letter, dated 19 April 2024;
  - 1.4. the publicly available documents which the FCA relied upon and referenced in the FCA Report;
  - 1.5. the further documents provided to me by the FCA which it relied upon for the purposes of the FCA Report; and
  - 1.6. the written and oral evidence provided to me by Complainants.
2. A full list of the documents which I have reviewed and relied upon for the purposes of this report, other than the Complaint Letter, the FCA Report and the FCA Decision Letter is set out in this Appendix. These documents broadly fall into the following categories:
  - 2.1. *FCA documents*
    - 2.1.1. consultation papers from between July 2012 and November 2022;
    - 2.1.2. a thematic review from July 2014;
    - 2.1.3. policy documents, such as business plans and protocols, from between March 2016 and October 2020;
    - 2.1.4. ExCo minutes and papers from between October 2017 and November 2021;
    - 2.1.5. letters and email correspondence to and from the FCA from between November 2017 and September 2022;
    - 2.1.6. ERPC papers from between April 2018 and June 2022;

- 2.1.7. policy statements from between June 2015 and January 2023;
- 2.1.8. a discussion paper from December 2021;
- 2.1.9. board minutes from December 2021;
- 2.1.10. a supervisory notice from March 2022;
- 2.1.11. internal FCA documents, such as a document produced by the FCA and fed into by FCA stakeholders to gather evidence relevant to the complaints raised by the Complainants, dated 31 July; and
- 2.1.12. FCA webpages.

## 2.2. *Other documents*

- 2.2.1. the HM Treasury final report titled "*Financial Advice Market Review*" dated March 2016;
- 2.2.2. the DWP public consultation paper in relation to BSPS dated 26 May 2016;
- 2.2.3. oral evidence to the Work and Pensions Committee;
- 2.2.4. TPR regulatory intervention report issued under section 89 of the Pensions Act 2004 in relation to the BSPS dated February 2018;
- 2.2.5. the NAO framing document for the BSPS investigation dated 8 November 2021;
- 2.2.6. the NAO Report;
- 2.2.7. the PAC Report;
- 2.2.8. the report prepared by Grant Thornton LLP on instruction from the FCA titled "*Pension Transfer Advice to British Steel Pension Scheme ("BSPS") members by FCA-authorized firms*" dated 18 March 2022;
- 2.2.9. the Rookes Report;
- 2.2.10. oral evidence to PAC; and
- 2.2.11. other webpages.

3. In order to obtain the documents relied upon by the FCA which were not publicly available, I issued requests for information to the FCA. In particular:
  - 3.1. I requested documents from the FCA on 24 May 2024.
  - 3.2. I received 174 documents from the FCA on 12 June 2024.
  - 3.3. I received 12 further documents from the FCA on 16 August 2024.
4. In addition to reviewing the evidence available to me, I have taken the following steps to understand the issues relevant to the complaints in question:
  - 4.1. I have engaged with the FCA on certain issues where I felt that this was appropriate.
  - 4.2. At the request of steelworkers and MPs who represent them, I have met with the affected steelworkers where possible in order to hear from them directly. In particular, I visited Port Talbot and Ebbw Vale on 10 and 11 October 2024 and attended virtual meetings with steelworkers from locations more broadly in November 2024.