

Chapter 4

British Steel Consumer Redress Scheme

4.3 Consumer redress scheme: case review

Deadline to complete the steps in this section

- 4.3.1 **R** No later than *7 months* from the scheme effective date, a *firm* must take the steps set out in this section.

First step: case review

- 4.3.2 **R**
- (1) The first step is for a *firm* to carry out a review of each scheme case ('a case review').
 - (2) A case review must be carried out by:
 - (a) completing the BSPS DBAAT at ■ CONRED 4 Annex 20R, in accordance with the instructions set out in ■ CONRED 4 Annex 21R; or
 - (b) using a FCA DBAAT that was completed by the *firm* prior to the scheme effective date.
 - (3) Where a BSPS DBAAT is used:
 - (a) it must be accompanied by an attestation in the form specified in the BSPS DBAAT; and
 - (b) the attestation in (a) must be made by an *individual* approved to perform the SMF16 (Compliance oversight) *FCA controlled function* for the *firm* or by an *individual* approved to perform another appropriate *senior management function* within the *firm*.
 - (4) If a FCA DBAAT is used to carry out a case review:
 - (a) it must be accompanied by an attestation in the form specified in ■ CONRED 4 Annex 19R; and
 - (b) the attestation in (a) must be made by an *individual* approved to perform the SMF16 (Compliance oversight) *FCA controlled function* for the *firm* or by an *individual* approved to perform another appropriate *senior management function* within the *firm* in accordance with the instructions set out at ■ CONRED 4 Annex 21R 12.2 and 12.3.
- 4.3.3 **E** Non-compliance with any of the evidential provisions set out in the instructions at ■ CONRED 4 Annex 21R may be relied upon as tending to establish contravention of ■ CONRED 4.3.2R.

4.3.4 **G** In complying with ■ CONRED 4.3.2R, a *firm* should have regard to the guidance set out in the instructions at ■ CONRED 4 Annex 21R.

Second step: cases of insufficient information

- 4.3.5 **R**
- (1) The second step applies only in respect of a scheme case where a *firm* has attempted to comply with the first step (case review) but does not have sufficient information to determine:
 - (a) whether it has failed to comply with any of the suitability requirements;
 - (b) the causation question; or
 - (c) both (a) and (b).
 - (2) To complete the second step, a *firm* must take the following actions:
 - (a) within 5 *business days* of determining that a scheme case falls within (1), send a letter in the form set out in ■ CONRED 4 Annex 4R to the *consumer* including, where necessary, a request that the *consumer* completes a letter of authority to authorise the *firm* to obtain further information on their behalf;
 - (b) within 5 *business days* of receiving any completed letter of authority from the *consumer* or at the same time as sending the letter in (a) if the *firm* already has such authority, send a letter requesting the information in ■ CONRED 4 Annex 4R to one of the following and allow at least 2 weeks to respond:
 - (i) in a scheme case involving a two-adviser model, the *firm* which provided the advice on the *proposed arrangement*; or
 - (ii) in all other cases, any other *firm* that was involved in the BSPS pension transfer;
 - (c) if no reply is received by the *firm* within 2 weeks of a letter in (a) being sent:
 - (i) within 5 *business days* of the 2 weeks expiring, send a further letter to the *consumer* in the form set out in ■ CONRED 4 Annex 5R and allow the *consumer* at least 2 weeks to respond; and
 - (ii) within 5 *business days* of receiving the completed letter of authority from the *consumer*, where relevant, send a letter to the *firms* in (b)(i) or (ii) requesting the necessary information and allow the *firms* at least 2 weeks to respond;
 - (d) if no reply is received by a *firm* within 2 weeks of a letter in (b) or (c)(ii) being sent, within 5 *business days* of the 2 weeks expiring, send a further letter to the applicable *firms* requesting the necessary information and allow the *firms* at least 2 weeks to respond;
 - (e) if no reply is received by a *firm* to the letters in (c)(i) or (d), take all reasonable steps to contact the *consumer* or, where applicable, any other *firm* by other means; and
 - (f) if a reply is received from the *consumer* or a *firm* to whom a letter was sent in accordance with this *rule* but that reply contains insufficient information to determine the matters in (1), the *firm* must take all reasonable steps to obtain further

information from the *consumer* or, where applicable, any other *firm* in (b).

4.3.6 **R** A *firm* which, having carried out the second step, has acquired sufficient information to determine the matters in ■ CONRED 4.3.5R(1) must proceed to complete the first step (case review) in accordance with ■ CONRED 4.3.2R.

4.3.7 **R** A *firm* may determine a scheme case no longer falls within the subject matter of the *consumer redress scheme* created by this chapter if the *firm*:

- (1) has carried out the second step in relation to a scheme case; and
- (2) still does not have sufficient information to complete the first step.

4.3.8 **R** Where ■ CONRED 4.3.7R applies, a *firm* must:

- (1) rate the case ‘non-compliant – material information gap’ in the BPS DBAAT or ‘not-compliant-unclear’ in the FCA DBAAT (as appropriate);
- (2) complete the attestation in ■ CONRED 4.3.2R(3) or (4) (as appropriate); and
- (3) promptly send the *consumer* a *redress determination* in the form set out in ■ CONRED 4 Annex 6R.

4.3.9 **G** Where a *firm* has sent a *consumer* a *redress determination* pursuant to ■ CONRED 4.3.8R(3), the *firm* should handle any subsequent *complaint* from a *consumer* in relation to advice about a BPS pension transfer other than in respect of a *redress determination* in accordance with the complaint handling rules in *DISP*.

Obligation on firms connected with transfer advice

4.3.10 **R** A *firm* receiving a request for information pursuant to ■ CONRED 4.3.5R(2)(b), ■ CONRED 4.3.5R (2)(c)(ii) or ■ CONRED 4.3.5R(2)(d) must take all reasonable steps to locate and provide the information requested within any reasonable time periods requested and, in any case, no later than 4 weeks after receiving the request.

Obligation to notify FCA of any failures to elicit response

4.3.11 **R** A *firm* that has sent a further letter to another *firm* in accordance with ■ CONRED 4.3.5R(2)(d) and has not received a response to that letter within 4 weeks must notify the *FCA* of this failure at BSPSnotifications@fca.org.uk promptly and, in any case, within 5 *business days* of the 4 weeks elapsing.

General guidance on second step

4.3.12 **G** Scheme cases to which the second step (in ■ CONRED 4.3.5R (cases of insufficient information)) applies are likely to be exceptional, having regard to the record-keeping requirements applicable to *authorised persons* under *FCA rules* (notably ■ COBS 9.5, which requires *firms* to retain records relating

to the suitability of *pension transfers* indefinitely and record keeping requirements in *SYSC*).

4.3.13

G

- (1) A *firm* should not refuse to consider a scheme case if there is sufficient information to conclude that it was likely that the advice did not comply with the suitability requirements (but there is insufficient information to conclude that the advice complied with the suitability requirements).
- (2) A *firm* that has sufficient information to assess whether it complied with the suitability requirements should not refuse to answer the causation question unless there are reasonable grounds for requiring further information from the *consumer* to identify what they would have done if the advice met the suitability requirements.

Third step: case review letters to consumers

4.3.14

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- (1) Where a *firm* concludes that the advice provided to a *consumer* did not comply with the suitability requirements and has answered 'yes' to the causation question in the BSPS DBAAT or FCA DBAAT, it must:
 - (a) send the *consumer* a letter in the form set out in
 - CONRED 4 Annex 7R; and
 - (b) send the *consumer* a letter in the form set out in
 - CONRED 4 Annex 10R, including:
 - (i) a list of any of the information set out in paragraph 13.30R of ■ CONRED 4 Annex 21R which is required to complete the redress calculation using the BSPS calculator and which the *firm* does not already have;
 - (ii) if the *consumer* has not already provided the *firm* with authority to enable the *firm* to collect information from third parties on the *consumer's* behalf, a request that the *consumer* provide such authority;
 - (iii) a request that the *consumer* respond to the *firm* to:
 - (A) confirm whether they require the *firm* to calculate the redress sum that would be payable by full or partial augmentation;
 - (B) where the *consumer* requires the *firm* to calculate the redress sum at (A), provide any information set out at (2) which the *firm* does not already have;
 - (C) confirm whether they wish to claim as part of a secondary compensation sum any other consequential losses as described in ■ CONRED 4 Annex 10R; and
 - (D) where the *consumer* does wish to claim an amount described in (C), provide the necessary information as set out in ■ CONRED 4 Annex 10R;
 - (c) where a *firm* already has authority from the *consumer*, at the same time as sending the letter in (b), as necessary, send one or more letters requesting the information in (b)(i) to:

in a scheme case involving a two-adviser model, the *firm* which provided the advice on the *proposed arrangement*;

any other *firm* that was involved in the BSPS pension transfer or which may hold relevant information (including the provider of the *consumer's* DC pension arrangement and *defined benefit occupational pension scheme*); and

HMRC and DWP; and

- (d) where a *firm* does not have authority at the time of sending the letter at (b) but subsequently receives a letter of authority, send an information request to any of the applicable parties as required by (c)(i) to (iii) within 5 *business days* of receipt of the letter of authority.
- (2) The information to calculate the redress sum that would be payable by full or partial augmentation is:
- (a) the *consumer's* relevant earnings in the current tax year;
 - (b) the value of all pension contributions already made in the current tax year;
 - (c) whether the redress payment would result in the *consumer's* unused annual allowance in the current and previous 3 tax years being exceeded;
 - (d) the expected value of all pensions held by the *consumer* up to the age of 75;
 - (e) any lifetime allowance protections secured by the *consumer*;
 - (f) any applicable lifetime allowance protection enhancement factors;
 - (g) any benefit crystallisation events; and
 - (h) whether the *consumer's* money purchase annual allowance has been triggered.
- (3) Where a *firm* concludes that the advice provided to a *consumer* did not comply with the suitability requirements, but has answered 'no' to the causation question in the BSPS DBAAT or FCA DBAAT, the *firm* must send the *consumer* a *redress determination* in the form set out in ■ CONRED 4 Annex 8R.
- (4) Where a *firm* concludes that the advice provided to a *consumer* complied with the suitability requirements, it must:
- (a) send the *consumer* a *redress determination* in the form set out in ■ CONRED 4 Annex 9R; and
 - (b) take the steps in ■ CONRED 4.3.15R to notify the FCA.

Suitable redress determinations: notification to the FCA

4.3.15

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- (1) Where a *firm* concludes that its advice to a *consumer* was suitable, it must notify the FCA of the following information:
- (a) the outcome of the *firm's* *redress determination*; and
 - (b) the *consumer's* name, address, telephone number(s) and, where available, email address.

- (2) A *firm* must comply with the requirement in (1) to notify the *FCA* in the next progress report required under ■ CONRED 4.8.2R(2), which is due following the 'opt-out deadline' in (3).
- (3) The opt-out deadline is the date which falls 2 weeks after the date when the *redress determination* required by ■ CONRED 4.3.14R(4)(a) is sent by the *firm* to the *consumer*.
- (4) The requirement in (1) does not apply if the *consumer* has informed the *firm* in writing that they do not wish for their details to be passed to the *FCA*.