

Chapter 4

British Steel Consumer Redress Scheme

4.5 Taking steps by or on behalf of FCA

- 4.5.1** **G** (1) If the conditions in (2) are satisfied, the *FCA* may:
- (a) instead of the *firm*, take any of the steps at ■ CONRED 4.2 to ■ CONRED 4.4; or
 - (b) appoint one or more competent persons to take any of the steps at ■ CONRED 4.2 to ■ CONRED 4.4.
- (2) The conditions are:
- (a) there has been a material failure by the *firm* to take any of the actions required under this chapter; or
 - (b) the *firm* has informed the *FCA* that it is unable or unwilling to take any of the actions required under this chapter because:
 - (i) to do so would be in breach of a condition of the *firm's* professional indemnity insurance policy; and
 - (ii) the *firm's* insurer has not elected to take such actions on its behalf.
- (3) The *FCA* must give a *firm* prior notice before taking any of the steps under this *rule*.
- 4.5.2** **R** If the *FCA* gives notice in the circumstances described in ■ CONRED 4.5.1R, the *firm* must:
- (1) not carry out (or, as the case may be, continue to carry out) any of the steps to be taken by the *FCA* or the competent person, unless so directed in writing by the *FCA* or competent person (as applicable); and
 - (2) render all reasonable assistance to the *FCA* or competent person (but any assistance, the rendering of which would invalidate the *firm's* professional indemnity insurance policy, is not reasonable for the purposes of this *rule*).
- 4.5.3** **G** A *firm* is expected to make reasonable efforts to obtain the consent of its professional indemnity insurer to take the relevant steps in relation to this redress scheme, in line with its obligations under *Principle 11* (Relations with regulators).

- 4.5.4 **G** Where permitted under the *firm's* professional indemnity insurance policy, a *firm's* insurer can take any of the steps at ■ CONRED 4.2 to ■ CONRED 4.4 acting on the *firm's* behalf.
- 4.5.5 **R** (1) If, where the *FCA* or a competent person takes any steps in accordance with ■ CONRED 4.5.1R, the *FCA* proposes to make a determination of:
- (a) whether a failure by a *firm* has caused loss to a *consumer*; and
 - (b) what the provisional redress sum should be in respect of any failure,
- the *FCA* must give the *firm* a *warning notice* that specifies the proposed determination.
- (2) The provisional redress sum in (1) must be the amount that would be owed to a *consumer* if a *redress determination* were made pursuant to ■ CONRED 4.4.2R on the same date as the *warning notice*.
- 4.5.6 **G** If the *FCA* decides to make a determination of the matters in ■ CONRED 4.5.5R, the *FCA* must give a *firm* a *decision notice* specifying the determination.
- If the *FCA* decides to make such a determination, a *firm* may refer the matter to the *Tribunal*.
- 4.5.7 **G** Part XXVI of the *Act* (including the provisions as to *final notices*) applies in respect of notices given under ■ CONRED 4.5.5R and ■ CONRED 4.5.6R.
- 4.5.8 **G** Where, instead of a *firm*, the *FCA* or, where applicable, a competent person:
- (1) communicates with a *consumer*:
 - (a) they will do so in their own name, making clear in the case of a competent person its authority from the *FCA* to do so; and
 - (b) they may make such amendments to the letters in the forms set out in the Annexes in ■ CONRED 4 as are appropriate to reflect that they are being sent in the name of the *FCA* or competent person; or
 - (2) makes the *redress determination* in the letter at ■ CONRED 4 Annex 13R, the *FCA* or competent person will:
 - (a) update the provisional redress sum no later than 14 *days* after the issue of a final notice in respect of the *FCA's* decision to make a determination of the matters in ■ CONRED 4.5.5(1)R to reflect the amount that is owed at the time such *redress determination* is made; and
 - (b) send the *firm* a copy of the *consumer's* response to the *redress determination*.

4.5.9 **G** A fee is payable by the *firm* (or *person* falling within ■ CONRED 4.1.5(1)R in any case where the *FCA* exercises its powers under ■ CONRED 4.5.1R: see the table at ■ FEES 3.2.7R.

4.5.10 **G** The completion of steps in ■ CONRED 4.2 to ■ CONRED 4.4 by, or on behalf of, the *FCA* does not affect the ability of the *Financial Ombudsman Service* to consider a *complaint*, in particular where the *firm* has not sent a *redress determination* in accordance with the time limits specified under the *consumer redress scheme* created by this chapter.