

Chapter 2

Arch cru Consumer Redress Scheme

CF Arch cru funds template instructions

1 Limitations on use of template and instructions

- 1.1 G The Arch cru advice suitability assessment template reproduced at CONRED 2 Annex 12 R (referred to in these instructions as the "template") and the instructions in this Annex are only to be used for the purpose of complying with the requirements under CONRED 2 to assess sales of the Arch cru funds identified at CONRED 2.1.1R (2). They should not be used for any other purpose.

2 Using the template

- 2.1 G The template contains factors to take into account to determine whether there has been a failure to comply with the suitability requirements (specified at 5.1R, below) in an opted-in scheme case.
- 2.2 R The template is divided into sections which must be completed in full, except where indicated in these instructions.
- 2.3 R Before completing the template you must familiarise yourself with the features and risks of the Arch cru funds that a reasonably competent *firm* should have identified, as specified in CONRED 2 Annex 15 R.
- 2.4 R Answer the questions in the template and complete your assessment by reference to the available evidence (information on the *consumer* file and any information received from a *consumer*), and the features and risks of the Arch cru funds that a reasonably competent *firm* should have identified, as specified in CONRED 2 Annex 15 R.

3 Admission of failure to comply with suitability requirements

- 3.1 R Where you admit that the *firm* has failed to comply with a suitability requirement (specified at 5.1R, below) in an opted-in scheme case complete the following sections of the template:
- (1) *firm* and case details;
 - (2) *consumer* details;
 - (3) transaction input;
 - (4) admission of failure in an opted-in scheme case;
 - (5) causation; and
 - (6) redress.

4 Completing the template

- 4.1 R Fill in the following sections of the template as follows:
- (1) **Firm and case details:** enter the *firm*-specific information as it appears on the *Financial Services Register*.
 - (2) **Consumer details:** enter the *consumer* details and the date of the advice to the *consumer*. Advice was given on a joint basis if it was given to two people where the *personal recommendation* relates to a "joint" portfolio. This includes cases where the advice is directed at a couple but where the investment is in one spouse's name for tax purposes.
 - (3) **Transaction input:** take the following steps:
 - (a) Select the date of investment in the "transaction date" box. If you cannot identify the date of investment from the *consumer* file, insert the date of advice as the approximate date of the investment.

- (b) Select the Arch cru fund(s) invested in.
- (c) Select the transaction type from the drop-down menu. The transaction types to select from are:
 - **Investment:** an investment into an Arch cru fund. Enter the amount invested, the share class, and the wrapper (if applicable).
 - **Partial withdrawal:** the sale of part of the *consumer's* share capital in the *consumer's* investment, excluding interim hardship withdrawals.
 - **Final withdrawal:** the sale of all of the *consumer's* share capital in the *consumer's* investment, excluding final hardship withdrawals.
 - **Income distribution:** any income distribution received by the *consumer* in respect of their shares in the *consumer's* investment prior to the date of suspension of the Arch cru funds.
 - **Capital distribution:** any capital distribution received by the *consumer* in respect of their shares in the *consumer's* investment after the date of the suspension.
 - **Capita offer:** the amount offered to the *consumer* under the *CF Arch cru payment scheme*.
 - **Interim hardship withdrawal:** interim distributions received by the *consumer* from the Capita Hardship Scheme (ie, the hardship scheme for investors in Arch cru funds as set out by Capita Financial Managers Ltd in a letter to investors of 7 December 2009) after the date of the suspension.
 - **Final hardship withdrawal:** the amount received by the *consumer* for any full surrender of the investment from the Capita Hardship Scheme (as described above) after the date of the suspension.
- (d) Input the amount corresponding to the transaction type.
- (4) **Admission of failure to comply with a suitability requirement in the opted-in scheme case:** Select "yes" or "no" and proceed with the steps outlined at 3.1R, above.
- (5) **Consumer investment objectives:** take the following steps:
 - (a) Identify and select whether any of the objectives listed on the template is recorded (yes/no) and override the "yes" with "priority" if the *consumer* says, or the firm recorded that, this objective was a priority.
 - (b) If a *consumer* was investing a lump sum to obtain an income, identify and record what level of annual income the *consumer* wanted from the recommended Arch cru fund.
 - (c) The objective 'Realignment of portfolio' must be used when the *consumer's* circumstances or overall investment objective has changed.
 - (d) If the *consumer* had other investment objectives not identified in the list above, record these objectives in the box provided and identify whether they were a priority.
 - (e) Complete the "Comments on consumer investment objectives" box where you have further comments on the *consumer's* investment objectives relevant to your assessment.
- (6) **Consumer attitude to risk ("ATR"):** take the following steps:
 - (a) In the "Consumer's attitude to risk" box record the *firm's* short description of the *consumer's* ATR, using the headline description used on their risk scale (eg, "balanced", "medium", "5/10").

- (b) In the "Firm's description of the consumer's ATR" box record the *firm's* description of the *consumer's* ATR, using the *firm's* own wording (eg, "balanced means the *consumer* will invest in x, y types of assets and wants to take x risk with their capital").
 - (c) In the "Comments on the firm's assessment of the consumer's ATR" box record any comments you have on the *firm's* assessment of the *consumer's* attitude to risk and whether the firm's assessment was, in your view, a reasonable representation of the *consumer's* ATR. You should also include any information about the *consumer's* ATR in relation to this particular investment.
 - (d) This section does not record information on the *consumer's* capacity for loss (which is different to a *consumer's* ATR). This information must be noted in the "Comments on the consumer's capacity for loss" box in the "Consumer's financial situation" section of the template.
 - (e) Where there is evidence that the *consumer's* ATR was wrongly assessed by the *firm*, complete the suitability section based on your assessment of the *consumer's* ATR.
- (7) **Consumer financial situation:** take the following steps:
- (a) Record information on the *consumer's* savings and investments portfolio before and after the *consumer's* investment in the Arch cru funds in the boxes provided.
 - (b) The template provides the following categories:
 - Cash (including cash ISAs)
 - Investments
 - Arch cru funds (this is a drop-down menu).
 - (c) When completing the table of the *consumer's* investments, take into account the following:
 - Where advice is being provided on a "joint" basis (see 4.1R(2), above), record the combined total of, for example, a married couple's investments. Where advice is on a 'single' basis but the *consumer* is married or in a relationship include the value of the proportion of investments owned by the *consumer* (these will usually be in the *consumer's* name). Where the *consumer's* share of investments is unclear from the file you can assume the proportion owned by the *consumer* is 50%.
 - Only include pension policy values where the fund is held in a pension wrapper (eg a self-invested personal pension (*SIPP*) or a small self-administered scheme (*SASS*)).
 - Where the source of funds is existing investments, use the surrender value of the investments.
 - (d) In the "Comments on portfolio before and after sale" box record your observations about the level of diversification within the portfolio and how the advice to invest in the selected Arch cru fund has met the *consumer's* investment objectives for their portfolio.

Your comments must include whether the evidence supports an assessment that the risk profile of the *consumer's* overall portfolio was suitable given the *consumer's* personal and financial circumstances and objectives before and after the advice to invest in an Arch cru fund. This information will be relevant later in the template.
 - (e) In the "Comments on consumer's capacity for loss" box, record the *firm's* comments on the *consumer's* capacity for loss (also referred to as the level of risk the *consumer* is able to take). This is different

to the level of risk that the *consumer* was willing or would have preferred to take. In doing so, consider whether, in the light of the available evidence:

- the *consumer* was able to take any risk with the *consumer's* capital or income;
- there would have been an impact on the *consumer* of a total or partial loss of capital;
- the *consumer* could, considering his personal and financial circumstances, afford to take this level of risk.

(8) **Suitability requirements:** take the steps set out at 5.1 to 5.4, below.

(9) **Causation:** take the steps set out at 9.1 to 9.5, below.

(10) **Redress:** take the steps set out at 10.1 to 10.15, below.

5 Suitability requirements

5.1 R The following requirements are specified:

- (1) for a *personal recommendation* made on or before 31 October 2007, COB 5.3.5 R (1);
- (2) for a *personal recommendation* made on or after 1 November 2007, COBS 9.2.1 R (1);
- (3) the common law duty in contract or tort to exercise reasonable skill and care in advising the *consumer* on investments.

5.2 G The contract between the *firm* and the *consumer* may have included a specific term providing that the *firm* would exercise reasonable skill and care in advising the *consumer* on investments. If it did not do so, such a duty is likely to have been implied into the contract.

5.3 G The standard of care under the *FCA rules* and the common law is that of a reasonably competent *firm* carrying on a similar business to that of the *firm* assessed.

5.4 G COB 5.2 and COBS 9.2.1 R (2), COBS 9.2.2 R and COBS 9.2.3 R indicate particular matters of which you should take account when assessing whether the *firm* failed to comply with the suitability requirements at 5.1R, above. In summary, these are the *consumer's*:

- (1) investment objectives;
- (2) financial situation; and
- (3) experience and knowledge of investments similar to the recommended Arch cru fund.

6 Assessing opted-in scheme cases

General

6.1 G The "Suitability section" in the template and associated additional provisions in these instructions contain examples which tend to show failure to comply or compliance with the suitability requirements ("example").

6.2 G The suitability requirements arise from *FCA rules* and the common law. For the requirements specified, the standards required of the *firm* are broadly the same whether their origin is a *rule* or the common law.

6.3 R You must in each opted-in scheme case falling within CONRED 2.4.2 R:

- (1) fairly consider and give appropriate weight to all information on the *consumer* file and any information received from a *consumer* of the *firm's* compliance or non-compliance with applicable suitability requirements at 5.1R, above; and
- (2) decide, with reference to the examples in the suitability requirements section of the template, whether it is more likely than not that the *firm* failed to comply with the suitability requirements specified at 5.1R, above.

- 6.4 R In considering the information on the *consumer* file and any information received from a *consumer*, you must:
- (1) not assume that a *firm* complied with a suitability requirement (specified at 5.1R, above) solely on the basis that:
 - (a) the *consumer* signed documentation that records his understanding or agreement to matters set out in that documentation;
 - (b) the *personal recommendation* was given to a *consumer* who had already invested in an Arch cru fund or a predecessor of that fund;
 - (2) give more weight to evidence of the particular circumstances of a *personal recommendation* than to general evidence of the selling practices of the *firm* or its advisers at the relevant time;
 - (3) determine that an example in the suitability requirements section of the template is present on the "balance of probabilities" when it is more likely than not to have occurred.
- Reliance on others
- 6.5 R You must take into account that:
- (1) the duty of a *firm* to advise on the suitability of investments cannot be delegated to, or discharged by reliance on, another;
 - (2) where the *firm* made a *personal recommendation* in reliance on the advice or opinions of *persons* other than the *firm*, a *firm* must not be regarded as complying with the suitability requirements at 5.1R, above, because of that reliance; and
 - (3) the suitability requirements at 5.1R, above, require a *firm* in all cases to form its own view of the suitability of the recommended Arch cru fund for the particular *consumer*, based on the information that the *firm* had, or ought reasonably to have obtained, regarding that Arch cru fund and its suitability for the *consumer's* circumstances.
- 6.6 R If, in relation to any rating, before coming to a view that the *firm* came to a reasonable, albeit erroneous, conclusion on the risks of the recommended Arch cru fund and sold the Arch cru fund on this basis, you must take into account:
- (1) that the FCA's guidance on the Responsibilities of Providers and Distributors for the Fair Treatment of Consumers (*RPPD*) says that a *firm* distributing products:
 - (a) should consider, when passing provider materials to *consumers*, whether it understands the information provided;
 - (b) should ask the provider to supply additional information or training where that seems necessary to understand the product or service adequately; and
 - (c) should not distribute the product or service if it does not understand it sufficiently, especially if it intends to provide advice;
 - (2) any due diligence: a *firm* providing a *personal recommendation* should have formed its own view on the risks of investing in an Arch cru fund, based on the information that it had or ought to have gathered about the fund;
 - (3) that the reliance on other *rules* ([COB 2.3.3 R](#) and [COBS 2.4.6 R](#)) enable a *firm* to place reasonable reliance for some purposes on factual (ie, not opinion-based) information provided by an unconnected *authorised person*; but that these *rules* do not absolve a *firm* from forming its own view on the risks of investing in an Arch cru fund;
 - (4) the features and risks of the recommended Arch cru fund set out in [CON-RED 2 Annex 15 R](#); and
 - (5) that [COBS 2.4.8 G](#) states that "it will generally be reasonable... for a firm to rely on information provided to it in writing by an unconnected *authorised person* ... unless it is aware or ought reasonably to be aware of any fact

that would give reasonable grounds to question the accuracy of that information". In the absence of those grounds, it will generally have been reasonable for a *firm* to have relied on factual statements provided by Arch or Cru on the Arch cru funds, such as information about the funds' underlying assets.

7 Assessing compliance with the suitability requirements

- 7.1 R When assessing whether a *firm* complied with the suitability requirements specified at 5.1R, above, you must take into account the following:
- (1) the *consumer's* investment objectives, including his willingness to bear the risks associated with the recommended Arch cru fund;
 - (2) the *consumer's* financial situation, including his financial ability to bear the risks associated with the recommended Arch cru fund consistent with his investment objectives;
 - (3) the *consumer's* ability, in the light of the following, to understand the risks associated with the recommended Arch cru fund:
 - (a) the experience and knowledge of the *consumer* relevant to an investment in the recommended Arch cru fund; and
 - (b) any correspondence between the *firm* and the *consumer* (which may include references to promotional materials, such as fund factsheets or offer documents or prospectuses) regarding the recommended Arch cru fund.

- 7.2 R When assessing the reasonableness of a *firm's* conduct in relation to a *personal recommendation*, you must:
- (1) assess the *firm's* conduct against what was reasonable at the time when the *firm* made the *personal recommendation*; and
 - (2) conclude that the conduct of the *firm* assessed was reasonable only where that *firm* displayed the degree of skill, care and diligence that would at that time have been exercised in the ordinary and proper course of a similar business to that of the *firm*.

Consumer instructions

- 7.3 R In all cases, you must take into account any specific instructions the *consumer* gave the *firm* about the sale.
- 7.4 G Specific instructions include, for example, where the *consumer* asked the *firm* to advise only on the sum to be invested and not on the *consumer's* pension arrangements.
- 7.5 G As the Arch cru funds are high-risk investments, the *firm* should have asked for further information about the *consumer's* wider portfolio, and have taken this into account when making its *personal recommendation* to the *consumer* to invest in an Arch cru fund.
- 7.6 G If there is clear evidence on file that the *consumer* has given specific instructions that the *firm* is not to review the *consumer's* entire portfolio, but to advise on this investment only, the suitability assessment could involve a narrower review, focusing on the *consumer's* objectives in relation to the specific amount to be invested. However, any *personal recommendation* should still have taken into account how the specific investment would fit within the *consumer's* overall savings and investments portfolio.

8 Suitability section

Filling in the suitability requirements section

- 8.1 G The suitability requirements section is used to record your assessment of whether or not the *firm* complied with the suitability requirements specified at 5.1R, above.
- 8.2 R To complete the suitability requirements section you must take the following steps for an opted-in case falling within CONRED 2.5.1 R (an "opted-in scheme case"):

- (1) review the information on the *consumer* file, any information received from a *consumer* and the information recorded in the data section of the template ("the available evidence");
 - (2) determine whether the available evidence shows overall that any or all of examples (1) to (7) is present or not;
 - (3) indicate whether any or all of examples (1) to (7) is present, or not, by selecting "yes" or "no";
 - (4) conclude, taking into account the available evidence, whether the *firm* complied with the suitability requirements specified at 5.1R, above; and
 - (5) insert your commentary on whether or not the *firm* complied with the suitability requirements specified at 5.1R, above, with reference to the example(s) that support your conclusion. Your comments can refer to relevant sections of the fund summary in [CONRED 2 Annex 15 R](#).
- 8.3 G If an example is present, this will tend to show the *firm's* compliance or non-compliance with the suitability requirements. The presence of the example is not definitive as to whether a *firm* has complied with the suitability requirements. There may be other factors which mean that the *firm* has, despite the presence of the example, complied, or not complied, with the suitability requirements at 5.1R, above.
- 8.4 G The template sale rating will automatically default to "Compliant" or "Non-compliant" depending on your answer to the example questions in the template. The "Non-compliant" rating indicates that the *personal recommendation* does not comply with the suitability requirements at 5.1R, above.
- 8.5 G This table contains *rules, evidential provisions, and guidance* for determining whether the available evidence shows overall that an example is present, or not:
- (1) The consumer was willing to take a high degree of risk with the sum invested**
- R Compare:
- (1) the information on the *consumer* file, and any information received from the *consumer* and, in particular, the information recorded in the template on the *firm's* assessment of the *consumer's* attitude to risk (ATR), focusing on the degree of risk the *consumer* was willing to take with this investment (not, for the purposes of this question, the degree of risk the *consumer* was able to take); with
 - (2) the high degree of risk a *consumer* must have been willing to take for a *personal recommendation* to invest in an Arch cru fund to be suitable.
- E Answer "no" to this question where:
- (1) the *consumer* was not willing to take a high degree of risk with the sum invested (by reference to the risk scale used by the *firm*); or
 - (2) the *consumer* was not willing to put his capital at risk for the potential of a higher return and had expressed a preference for lower-risk investments.
- G This question relates to the level of risk a client is willing to take with the sum invested.
- (2) The risk profile of the consumer's overall savings and investment portfolio after the sale was suitable for the level of risk he was willing to take to meet his investment objectives**
- R Take the following steps:
- (1) refer to the information recorded on the *consumer's* stated attitude to risk in the template;
 - (2) with reference to the *firm's* risk scale, identify the risk level in the *consumer's* portfolio after the sale; and
 - (3) compare the level of risk in the *consumer's* overall portfolio after the sale with the level of risk the *consumer* was willing to take to meet his investment objectives.
- E Answer "no" where the risk profile of the *consumer's* portfolio was higher than the level of risk he was willing to take to meet his investment objectives.

G This question relates to how the investment fits into the client's portfolio of investments.

(3) The consumer's portfolio was sufficiently diversified after the sale to meet his investment objectives

R Take the following steps:

- (1) refer to the information on the *consumer* file, any information received from a *consumer* and the information recorded on the *consumer's* investment objectives section of the template;
- (2) identify the concentration of Arch cru funds in the *consumer's* portfolio after the sale; and
- (3) taking into account in particular:
 - (a) the concentration of Arch cru funds;
 - (b) the liquidity in the *consumer's* portfolio;
 - (c) the exposure to different asset classes; and
 - (d) the level of stability of returns or security of invested capital in the portfolio;

determine whether the *consumer's* portfolio was sufficiently diversified to meet his investment objectives.

- E (1) Answer "no" where the *consumer* has a large portfolio of savings and investments but his preferences regarding risk-taking indicate that he would prefer to diversify and invest in a wide range of assets and he has invested a high concentration of his assets in Arch cru funds and the risk of this investment is not offset by the potential return offered by the Arch cru funds.
- (2) Answer "yes" where the *consumer* wanted a significant portion of his capital to be invested in higher-risk or alternative investments and has a low proportion of Arch cru funds. This may be recorded in specific instructions the *consumer* gave the *firm*.

(4) The consumer was reliant on income from this investment

- E (1) Answer "yes" where a *consumer* needed a minimum level of income from this fund (for example, to pay household bills and expenses).
- (2) Answer "no" where a *consumer* did not need a specific level of income from the fund, for example, because it was not essential to maintain his standard of living.

- G (1) Whether a *consumer* had a need for income from this investment may be reflected in the information on the *consumer* file and any information received from a *consumer* about the *consumer's* household income and whether the income from this investment was necessary for household expenses and personal outlays or whether it was "disposable income" (which is money left over after bills and household expenses are paid).
- (2) The Arch cru funds that offered income shares are the Investment Portfolio, Specialist Portfolio and Income Fund. These funds aimed to pay income on a half-yearly basis but did not provide a set level of income.

(5) The consumer had the capacity to bear the risk of investing [x%] of his savings and investments in the selected Arch cru fund

R (1) Take the following steps:

- (a) refer to the information on the *consumer* file, any information received from a *consumer* and the information recorded on the *consumer's* financial situation in the data section of the template;
- (b) identify the concentration of Arch cru funds in the *consumer* portfolio after the sale; and

- (c) taking into account in particular:
 - (i) the concentration of Arch cru funds;
 - (ii) the source and extent of the *consumer's* assets;
 - (iii) the liquidity in the *consumer's* portfolio;
 - (iv) the exposure to different asset classes;
 - (v) the level of stability of returns or security of invested capital in the portfolio; and
 - (vi) the impact the loss of the capital invested would have on his standard of living overall;

determine whether the concentration of Arch cru funds in the *consumer's* portfolio was suitable for his financial situation.

- E (1) Answer "no" where any loss of the investment would have had a materially detrimental effect on the *consumer's* standard of living.
- (2) Answer "yes" where the investment was speculative: the consumer had no need for the capital and would not be using it to maintain his standard of living.

(6) The firm took reasonable steps to ensure the consumer had the necessary experience and knowledge to invest in the selected Arch cru fund

R Take the following steps:

- (1) refer to the information on the *consumer* file, any information received from a *consumer* and the information recorded on the template;
- (2) identify the *consumer's* level of investment experience and knowledge of investments both:
 - (a) in relation to investments similar to Arch cru funds; and
 - (b) generally;
- (3) identify the steps that the *firm* took to establish that the *consumer* could appreciate the nature of the risks they were taking with his investment in the Arch cru fund;
- (4) taking into account, in particular:
 - (a) information about the *consumer's* existing portfolio and the nature, volume, and frequency of the *consumer's* transactions in investments;
 - (b) how long the *consumer* had been an investor;
 - (c) the *consumer's* experience with, and knowledge of, high-risk investments similar to Arch cru funds;
 - (d) the *consumer's* profession (if any);
 - (e) insofar as it was clear, fair and not misleading, information the *firm* gave the *consumer* over and above any Capita Financial Managers Limited, Arch Financial Products LLP or Cru Investment Managers Limited produced documentation (if that was provided);
 - (f) how the *firm* communicated the risks of investing and the underlying assets in the selected Arch cru fund listed in CONRED 2 Annex 15 R; and
 - (g) the overall impression that the *consumer* would reasonably have had of those features and risks, particularly in the light of:
 - (i) the entirety of the communications referred to in (1);
 - (ii) the extent to which such communications were consistent in their presentation of those features and risks; and
 - (iii) the *consumer's* relevant experience and knowledge;

conclude whether the *firm* had a reasonable basis for believing that the *consumer* had the necessary experience and knowledge to understand the risks involved in investing in Arch cru funds.

- E Answer "no" where:
- (1) the *firm* did not communicate in substance the risks and features of the selected Arch cru fund listed in CONRED 2 Annex 15 R; and
 - (2) one or more of the following is present:
 - (a) prior to the *personal recommendation*, the *consumer* had experience and knowledge of investing in capital protected products only;
 - (b) prior to the *personal recommendation*, the *consumer* had no experience and knowledge of investments in bonds or shares traded on public markets;
 - (c) prior to the *personal recommendation*, the *consumer* had no experience and knowledge of investing in high-risk investments.

- G A *firm* may rely on the simplified prospectus to disclose the risks in CONRED 2 Annex 15 R, but disclosure will not be "clear" if, in particular:
- (1) the information was contradicted by the *firm* in correspondence between the firm and the consumer (which may include references to promotional materials, such as monthly reports, fund factsheets or offer documents or prospectuses); or
 - (2) given the *consumer's* experience and knowledge, it is unlikely that the *consumer* would have understood the risks as disclosed in the prospectus without further explanation from the *firm*.

(7) The recommendation is not suitable for the consumer's investment objectives or financial situation for some other reason

- R Take the following steps:
- (1) refer to the information on the *consumer* file, any information received from a *consumer* and the information recorded on the *consumer's* financial situation in the template;
 - (2) refer to the risks and features of the Arch cru funds in CONRED 2 Annex 15 R; and
 - (3) consider whether there is any reason, other than the reasons at questions (1) to (6) why the *personal recommendation* to invest in an Arch cru fund was unsuitable for the *consumer's* investment objectives or financial situation.

- E Answer "yes" where:
- (1) the *consumer's* financial situation was likely to change in the near future so that he would not be able to bear the risks of this investment; or
 - (2) the *consumer* had existing debts which it would have been in his best interests to repay before making this investment; or
 - (3) following the *personal recommendation*, the *consumer* did not have an adequate emergency fund and cash reserve; or
 - (4) the *consumer* would need the money invested within five years of investment in the fund; or
 - (5) any of the risks or features of the Arch cru fund set out in CONRED 2 Annex 15 R were unsuitable for the *consumer's* financial situation; or
 - (6) an existing product in the *consumer's* portfolio could have been changed to meet the *consumer's* investment objective with less cost or less risk.

- G (1) The features and risks of the Arch cru fund may have been unsuitable for the *consumer's* investment objectives if any of the following applies:
- (a) the *consumer* did not want to invest through an offshore vehicle or in non-UK assets;

- (b) the *consumer* did not want an investment that did not have a transparent secondary market for its underlying assets;
 - (c) the *consumer* did not want to invest through *collective investment schemes*;
 - (d) the *consumer* was not prepared to put capital at risk in stock markets;
 - (e) the *consumer* did not want to be exposed to risks associated with *commodities or derivatives*;
 - (f) the *consumer* did not want an investment that invested in *illiquid assets*;
 - (g) the *consumer* did not want an investment that was exposed to non-traditional asset classes;
 - (h) the *consumer* did not want an investment where the investment manager employed investment techniques such as gearing, that would not normally have been used in more commonly encountered *UCITS*.
- (2) In relation to whether the *consumer's* financial situation was likely to change in the near future so that the *consumer* would not be able to bear the risks of this investment, consider whether the *consumer* was expecting a change in his personal circumstances, such as the birth of a child, redundancy or retirement and the impact this was likely to have on his financial situation.
- (3) In relation to whether the *consumer* had existing debts which it would have been in his best interests to repay before making this investment, consider the particular circumstances of the debt, including:
- (a) the size of the debt (excluding mortgage debt);
 - (b) whether the debt had an early repayment penalty or fixed repayment schedule;
 - (c) the interest rate on the debt in relation to what they could reasonably expect in relation to the performance of the investment.
- (4) An adequate emergency fund should be at least three times monthly outgoings but, depending on the *consumer's* circumstances, this could be more. The *consumer* should also have held sufficient 'cash reserves' to meet known or reasonably anticipated future expenses, such as the payment of care fees, or spending on home improvements, or a new car or dependents.
- Outcome: overall assessment on suitability requirements
- 8.6 R Take the following steps to determine whether the *firm* complied with the suitability requirements:
- (1) review the information on the *consumer* file, any information received from a *consumer* and the features and risks of the Arch cru fund in [CONRED 2 Annex 15 R](#);
 - (2) determine whether the *firm* took reasonable steps to ensure that the *personal recommendation* was suitable, and select the appropriate outcome in the Firm sale rating box "Compliant" or "Non-Compliant"; and
 - (3) in all cases, insert your commentary on whether or not the *firm* complied with the suitability requirements specified at 5.1R, above, with reference to the example(s) that support your conclusion. Your comments can refer to relevant sections of the fund summary in [CONRED 2 Annex 15 R](#).
- 8.7 E For the purposes of 8.2R(2) above, in any case where you have answered:
- (1) "no" to any of the questions in sub-paragraphs (1), (2), (3), (5) or (6) of paragraph 8.5; and/or
 - (2) "yes" to either of the questions in sub-paragraphs (4) and (7) of paragraph 8.5;

		this will tend to indicate that the <i>personal recommendation</i> was "Non-Compliant".
8.8	G	The presence of an example in the suitability section of the template is not determinative as to whether a <i>firm</i> has complied with the suitability requirements. There may be other factors which mean that the <i>firm</i> has, despite the presence of the example, complied, or not complied, with the suitability requirements.
8.9	G	Where the <i>personal recommendation</i> is to invest in more than one Arch cru fund and one investment is suitable but the other is not suitable, the <i>firm</i> should conclude overall that the <i>personal recommendation</i> does not comply with the suitability requirements. The template will take into account the suitable part of the investment in the redress section.
9		Causation section
9.1	G	The causation section is used to record your assessment of whether or not the <i>consumer's</i> loss was caused by the <i>firm's</i> failure to comply with the suitability requirements specified at 5.1R, above. The causation section proceeds on an assumption that the <i>consumer</i> suffered a loss. Whether or not there was actually a loss is dealt with in the redress section.
9.2	G	Complete the causation section where you have concluded that the <i>firm</i> has failed to comply with the suitability requirements specified at 5.1R, above.
9.3	R	To fill in the causation section you must: <ol style="list-style-type: none"> (1) review the information on the <i>consumer</i> file, any information received from a <i>consumer</i> and the information recorded in the template ("available evidence"); (2) determine whether the <i>firm's</i> failure to comply with the suitability requirements caused the <i>consumer's</i> loss; and (3) explain your conclusion on causation with reference to the available evidence.
9.4	R	In assessing the available evidence, you must have regard to: <ol style="list-style-type: none"> (1) the impact of the <i>firm</i> failure(s) on the <i>consumer's</i> decision to invest in the Arch cru fund(s) in all the circumstances of the <i>consumer's</i> case; (2) the position at law that, irrespective of the actions of third parties, the <i>firm</i> is responsible for all losses that flow from its failure to comply with the suitability requirements; and (3) the position at law that no actions of Capita Financial Managers Limited; Arch Financial Products LLP; cru Investment Management Limited; HSBC Bank plc and BNY Mellon Trust and Depository (UK) Limited break the chain of causation, so that the <i>firm</i> is still responsible for all losses that flow from its failure to comply with the suitability requirements.
9.5	E	You should conclude "yes" (that the <i>firm's</i> failure caused the <i>consumer's</i> loss) unless you are satisfied on the basis of the available evidence that the <i>consumer</i> did not rely on the <i>personal recommendation</i> in making the decision to invest.
10		Redress Section
10.1	R	Complete the redress section in each opted-in scheme case where you have determined that the <i>consumer's</i> loss was caused by the <i>firm's</i> failure to comply with any of the suitability requirements at 5.1R, above.
10.2	G	The redress section is used to identify and record an investment benchmark to compare the position the <i>consumer</i> is in with the position they would have been in if the <i>firm</i> had complied with the suitability requirements.
10.3	R	For a redress case where a <i>personal recommendation</i> resulted in more than one investment in one or more Arch cru funds, complete the redress section for each of the <i>consumer's</i> investments in Arch cru funds.
10.4	R	Take the following steps in each redress case: <ol style="list-style-type: none"> (1) select the Arch cru fund that the consumer invested in;

- (2) having regard to what investment the *consumer* would have invested if the *firm* had complied with the suitability requirements at 5.1R above, and other requirements applicable to it at the time (referred to in this chapter as a "suitable investment"), either:
 - (a) select investment benchmark "1", "2", or "3"; or
 - (b) select investment benchmark "4" (suitable investment); or
 - (c) select investment benchmark "5" (other);
 - (3) where investment benchmark 4 or 5 is selected:
 - (a) determine what would have been a suitable investment in accordance with the instructions at (for investment benchmark 4) 10.6R, below, and (for investment benchmark 5) 10.7R and 10.8R, below; and
 - (b) record the suitable investment identified and the reasons for selecting it in the 'SI selection justification' box (for investment benchmark 4, this will be the selected Arch cru fund); and
 - (4) submit a redress calculation request to the *FCA* following the instructions at 10.13R, below.
- 10.5 E For the purposes of paragraph 10.4R(2), above:
- (1) have regard to the investment benchmarks in [CONRED 2 Annex 14 R](#);
 - (2) consider which investment benchmark best reflects the risks and features of a suitable investment;
 - (3) subject to 10.7R, above, select that investment benchmark; and
 - (4) record your reasons for the selection of that investment benchmark in the Comments box.
- 10.6 R You may select investment 4 (suitable investment) only if you are satisfied on the basis of the information on the *consumer* file, and information received from the *consumer*, that the *consumer* would have made an investment in the Arch cru fund if the *firm* had complied with the suitability requirements.
- 10.7 R You may select investment benchmark 5 (other) only where you are able to identify a specific investment:
- (1) which would have been a suitable investment; and
 - (2) in which a *consumer* could have made an investment at all times from the date on which the *consumer's* investment was made to the date of calculation.
- 10.8 G For the purposes of 10.7R, above, a *firm* might be able to identify a specific investment in circumstances where:
- (1) at the time when the *firm* made the *personal recommendation* to the *consumer* to invest in Arch cru funds, the *firm* also recommended other specific investments which would have been suitable for the *consumer*; or
 - (2) the *firm* recommended that a *consumer* disinvest from a specific investment, which was suitable for the *Consumer*, in order to invest in Arch cru funds.
- 10.9 R In cases where you have selected investment benchmark 5 (other) you must, following the instructions at 10.12R, below, and determine and record the value which sums initially invested by the *consumer* in the *consumer's* investment would have had at the date of calculation if such sums had been invested in investment benchmark 5.
- 10.10 R In a redress case where the *consumer* retained any shares in the *consumer's* investment at the date of suspension, redress is equal to the sum of A - B - C - D where:
- (1) "A" is the value of sums initially invested by the *consumer* at the date of calculation if they had been invested in a suitable investment;

		(2)	"B" is the net asset value of the <i>consumer's</i> investment in the Arch cru fund at the date of calculation;
		(3)	"C" is the value of income distributions received by the <i>consumer</i> by the date of suspension; and
		(4)	"D" is the value of sums under the <i>CF Arch cru payment scheme</i> that the <i>consumer</i> is, or was, eligible to receive (whether or not it has been received) where the <i>consumer</i> has retained shares in the <i>consumer's</i> investment.
10.11	R		In a redress case where the <i>consumer</i> has sold all of the shares in the <i>consumer's</i> investment prior to the date of suspension, redress is equal to the sum of A - C - E + I where:
		(1)	"A" is the value of sums initially invested by the <i>consumer</i> at the date of the sale of the <i>consumer's</i> share capital if they had been invested in a suitable investment;
		(2)	"C" is the value of income distributions received by the <i>consumer</i> prior to the date of sale;
		(3)	"E" is the capital realised on the sale of the <i>consumer's</i> share capital; and
		(4)	"I" is simple interest on the result of A - C - E at the Bank of England base rate prevailing from time to time over the relevant period + 1%/365 for each day between the date of the sale of the <i>consumer's</i> share capital and the date of the <i>redress determination</i> .
10.12	R		When calculating the value of "A", "D" and "E" to take into account the net effect of any partial sale of the <i>consumer's</i> share capital during the term of the <i>consumer's</i> investment:
		(1)	deduct the amount of any sale of shares or distribution (including interim or final hardship withdrawals) in respect of the <i>consumer's</i> investment at the date that the sale or capital distribution is made; and
		(2)	for each sale or capital distribution, account for:
		(a)	the growth rate from the time of the original investment, or previous sale or capital distribution, until the time of sale or capital distribution;
		(b)	the value of the residual investment after any sale or capital distribution; and
		(c)	the growth rate from the time of sale or capital distribution up to the date of calculation.
10.13	R		To submit a redress calculation request, send a completed copy of the template to the <i>FCA</i> by email to archcrureview@fca.org.uk or (if the email is encrypted) archcru-reviewpgp@fca.org.uk .
10.14	G		If the <i>firm</i> is to send an encrypted email to the <i>FCA</i> it will need to download the public PGP key from the <i>FCA</i> website and import the key into its email client software.
10.15	G		Following receipt of the redress calculation request the <i>FCA</i> will send the <i>firm</i> a summary detailing the redress payable for each <i>consumer's</i> investment and the total redress payable to the <i>consumer</i> in the redress case.