

Chapter 3

British Steel Pension Scheme Financial Resilience Requirements

3.1 Interpretation and application

Interpretation

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In this chapter, the following definitions apply:

- (1) 'asset restriction' means the restriction in ■ CONRED 3.3.3R;
- (2) 'BSPS' means the Old British Steel Pension Scheme (known during the relevant period as the British Steel Pension Scheme) that entered a Pension Protection Fund assessment period on 29 March 2018;
- (3) 'BSPS advice' means advice in relation to which all of the following conditions are met:
 - the advice was given to a *consumer* during the relevant period;
 - the advice was to transfer the *consumer's* BSPS pension benefits;
 - the advice was subject to the suitability requirements; and
 - the *consumer* subsequently transferred their BSPS pension benefits;
- (4) 'BSPS claims' means potential liability that a *firm* may incur for BSPS advice, determined in accordance with ■ CONRED 3.2.2R(1);
- (4A) 'BSPS DBAAT' means the British Steel Pension Scheme Defined Benefit Advice Assessment Tool in the form of the document at ■ CONRED 4 Annex 20R;
- (4B) 'causation question' is whether the *firm's* failure to comply with the suitability requirements is the effective cause of the *consumer's* loss;
- (4C) 'FCA DBAAT' means the FCA Defined Benefit Advice Assessment Tool;
[Editor's note: the FCA DBAAT is available at <https://www.fca.org.uk/firms/defined-benefit-pension-transfers>]
- (5) 'financial resilience assessment' has the meaning in ■ CONRED 3.2.2R(3);
- (6) 'relevant period' means 26 May 2016 to 29 March 2018 (inclusive of both dates);
- (6A) (a) 'scheme case' is a case that meets the conditions in ■ CONRED 4.2.2R, as modified by ■ CONRED 4.2.3R;
(b) for the purposes of (a), ■ CONRED 4.2.2R(5) must be read as follows:

(5) the *consumer* had not, prior to the scheme effective date, accepted an offer of redress from the *firm* or other *person* that was:

- (a) calculated in accordance with the applicable *rules* and *guidance*; and
- (b) in full and final settlement of all potential claims arising out of the advice in (1).

(6B) 'non-scheme case' is a case that would be a scheme case if it were not for the condition in:

- (a) ■ CONRED 4.2.2R(6); or
- (b) ■ CONRED 4.2.2R(7);

(7) 'suitability requirements' are the requirements in ■ COBS 9.2.1R(1) and the common law duty in contract or tort to exercise reasonable skill and care in advising the *consumer* on *pension transfers*; and

(8) 'unsuitable BSPS advice' is BSPS advice that does not comply with the suitability requirements that were in force during the relevant period.

3.1.1A G The effect of ■ CONRED 3.1.1R(6A) is that a *firm* which has settled a potential case prior to the *consumer redress scheme* may only cease to count the case towards the Financial Resilience Assessment in ■ CONRED 3.2 if the settlement amount has been calculated in accordance with the applicable *rules* and *guidance*. The *FCA* reminds all *firms* that they are required to calculate any offer of redress in accordance with applicable regulatory requirements.

Purpose

3.1.2 G The provisions in this chapter are intended to secure the payment of redress to *consumers* by ensuring that a *firm* does not inappropriately dissipate assets that could otherwise be used to fund redress payments. This chapter is not made using the power in section 404 of the *Act*. However, it is intended to complement the *consumer redress scheme* in ■ CONRED 4.

Scope of application

3.1.3 R ■ CONRED 3 applies to any *firm* (including a *TP firm*) that provided BSPS advice in the relevant period, except in the cases specified in ■ CONRED 3.1.4R.

3.1.4 R ■ CONRED 3 does not apply to any of the following:

- (1) a *PRA-authorized person*;
- (2) a *firm* that is a natural person or a *partnership* involving one or more natural persons;
- (3) a *firm* that is subject to an *insolvency order*;
- (3A) a *firm* that is in a creditors' voluntary winding up under Chapter IV of Part IV of the *Insolvency Act 1986*;

- 3.1.5 **G**
- (4) a *firm* that has provided BSPS advice to a total of fewer than 3 members of the BSPS; or
 - (5) a *firm* that is subject to an asset *requirement* that has comparable effect to ■ CONRED 3.3.
- (1) ■ CONRED 3.1.4R disapplies the requirements in ■ CONRED 3 for certain categories of *firm* where the *FCA* has concluded that:
- (a) due to the legal structure or status of the *firms* concerned, the requirements would be inappropriate, disproportionate or unnecessary; or
 - (b) the relevant *firms* pose a lower relative risk of harm in relation to potential BSPS redress payments.
- (2) However, the *FCA* reiterates the expectations set out in its Dear CEO Letter dated 31 March 2022 for these *firms*. To ensure that they have adequate financial resources, out-of-scope *firms* should continue to retain assets so that they can meet costs arising in connection with any BSPS redress. A copy of the *FCA*'s Dear CEO Letter is available here: <https://www.fca.org.uk/publication/correspondence/british-steel-pension-scheme-consultation-redress-scheme.pdf>
- (3) The *FCA* reminds *SMF managers* at out-of-scope *firms* that they are personally accountable for breach of the conduct rules in *COCON*. For example, Senior Manager Conduct Rule 2 requires an *SMF manager* to take reasonable steps to ensure that the business of the *firm* for which they are responsible complies with the relevant requirements and standards of the *regulatory system*. *SMF managers* should take account of the expectations in the *FCA*'s Dear CEO Letter when complying with their regulatory obligations.
- 3.1.6 **R**
- For the purposes of this chapter, when determining whether it has provided BSPS advice, a *firm* must treat both of the following as having been provided by the *firm*:
- (1) any BSPS advice given by an *appointed representative* for which the *firm* has responsibility as principal; and
 - (2) any BSPS advice given by another *person* for which the *firm* is liable (including any BSPS advice that gives rise to a contingent liability on the part of the *firm*).
- 3.1.7 **G**
- Under ■ CONRED 3.1.6R(2), a *firm* will be treated as having provided BSPS advice if the *firm* has assumed liability for potentially unsuitable advice given by another *person* in relation to transfers of interests in the BSPS. This could arise, for example, where there has been a sale or other transfer of a client book to the *firm* and the terms of that sale or transfer have resulted in the *firm* assuming liability for the provision of BSPS advice by the original transferor.
- 3.1.7A **R**
- Where a *firm* has advised one BSPS member on transferring multiple BSPS pension benefits (for example, pension benefits deriving from different periods of service), it must:

- (1) treat this as one instance of BSPS advice when calculating N in accordance with ■ CONRED 3.2.4AR; and
- (2) aggregate the cash equivalent transfer values for that member when calculating 'AL' in accordance with ■ CONRED 3.2.5R.

Duration of application

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■ CONRED 3 has no end date. However, as a *firm* deals with potential redress cases (normally under ■ CONRED 4), the cases will cease to count towards N or CL under the Financial Resilience Assessment in ■ CONRED 3.2. Once N and CL are zero and a *firm* has notified the FCA accordingly, the obligations in ■ CONRED 3 cease to be of any continuing relevance to the *firm*.