

**BRITISH STEEL PENSION SCHEME (FINANCIAL RESILIENCE) (No 2)
INSTRUMENT 2023**

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
 - (2) section 137T (General supplementary powers); and
 - (3) section 139A (Power of the FCA to give guidance).
- B. The rule-making provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force at 11:59pm on 31 January 2023.

Amendments to the Handbook

- D. The Consumer Redress Schemes sourcebook (CONRED) is amended in accordance with the Annex to this instrument.

Notes

- E. In this instrument, the “notes” (indicated by “**Note:**” or “*Editor’s note:*”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- F. This instrument may be cited as the British Steel Pension Scheme (Financial Resilience) (No 2) Instrument 2023.

By order of the Board
26 January 2023

Annex

Consumer Redress Schemes sourcebook (CONRED)

In this Annex, underlining indicates new text and striking through indicates deleted text.

3 British Steel Pension Scheme Financial Resilience Requirements

3.1 Interpretation and application

Interpretation

3.1.1 R In this chapter, the following definitions apply:

...

(4) ‘BSPS claims’ means potential liability that a *firm* may incur for BSPS advice, determined as ~~the product of $N \times L \times AL$ (as defined in accordance with *CONRED 3.2.2R*)~~ 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>]

...

(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:

<p><u>(5) <i>the consumer had not, prior to the scheme effective date, accepted an offer of redress from the <i>firm</i> or other <i>person</i> that was:</i></u></p>

<p><u>(a) <i>calculated in accordance with the applicable rules and guidance; and</i></u></p>

(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);

...

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 ~~ultimately~~ 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. ~~However, they do not relate directly to a consumer redress scheme and are~~ 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

...

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

...

(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;

...

...

3.1.7 G ...

- 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 BPS 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

- 3.1.8 R ~~CONRED 3 applies until the end of 31 January 2023.~~ has no end date.
 G 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*.

3.2 Financial resilience assessment

Purpose

...

- 3.2.2 R (1) A *firm* must assess its ability to meet BPS claims for the relevant period using the following methodology:

$$C - (N \times L \times AL) - CL$$

where:

...

- (b) N is the ~~total number of BPS members to whom the *firm* gave BPS advice, less:~~ number of cases calculated in accordance with CONRED 3.2.4AR;
 - (i) ~~the number of BPS members to whom the *firm* has paid redress in full and final settlement; and [deleted]~~
 - (ii) ~~the number of BPS members who have made a complaint to the Ombudsman, and the Ombudsman has determined the complaint without making a money award in favour of the BPS member under DISP 3.7.1R; [deleted]~~
- (c) L is the likelihood that the *firm's* BPS advice was unsuitable, which a *firm* must estimate at 46%; ~~and~~

- (d) AL is the average liability that a *firm* incurs for unsuitable BPS advice, which must be calculated in accordance with CONRED 3.2.5R; and
- (e) CL is the confirmed liabilities that a *firm* has, calculated in accordance with CONRED 3.2.6AR.

...

Regulatory capital

- 3.2.3 R (1) A *firm's* regulatory capital must be calculated in accordance with the prudential requirements applicable to it.
- (2) If a *firm* has made a provision on its balance sheet for liabilities connected to unsuitable advice on scheme cases that has reduced its regulatory capital, it may disregard the provision when calculating its regulatory capital for the purposes of this chapter.
- 3.2.4 G (1) A *personal investment firm's* regulatory capital is its capital resources calculated in accordance with *IPRU-INV* 13.15.
- (2) A *MIFIDPRU investment firm's* regulatory capital is its own *funds* calculated in accordance with *MIFIDPRU* 3.
- (3) CONRED 3.2.3R(2) addresses the scenario where a *firm* makes a provision on its balance sheet to cover anticipated losses arising from unsuitable BPS advice. The *FCA* encourages *firms* to consider making provision for redress liabilities on their balance sheets, in accordance with the relevant accounting standards.
- (4) When making a provision leads to a reduction of a *firm's* regulatory capital, this could result in 'double counting' of potential BPS liabilities when a *firm* performs the financial resilience assessment. As a result, the *FCA* is allowing a *firm* to disregard a provision that it has made which meets the relevant conditions. A *firm* may only disregard a provision to the extent it covers liabilities connected to unsuitable advice on scheme cases. Other provisions (for example, for liabilities for unsuitable advice that are not related to BPS) must not be disregarded. A provision may also only be disregarded when it has led to a reduction of a *firm's* regulatory capital.
- 3.2.4A R (1) N is the total number of scheme cases and non-scheme cases, less any cases falling within (2) or (3).
- (2) A *firm* may exclude the following scheme cases from N:
- (a) a case where the *firm* has sent the *consumer* the redress determination in CONRED 4 Annex 3R (Redress

determination: confirmation of consumer opt-out) in accordance with the requirements in CONRED 4;

(b) a case where:

(i) one of the following conditions is met:

(A) the firm has sent the consumer the redress determination letter in CONRED 4 Annex 6R (Redress determination: further information not provided) in accordance with the requirements in CONRED 4;

(B) the firm has sent the consumer the redress determination letter in CONRED 4 Annex 8R (Redress determination: unsuitable advice, no causation) in accordance with the requirements in CONRED 4; or

(C) the firm has sent the consumer the redress determination letter in CONRED 4 Annex 9R (Redress determination: suitable advice) in accordance with the requirements in CONRED 4;

(ii) 6 months have expired since the date of the letter in (i); and

(iii) a complaint relating to the letter in (i) has not been made to the Ombudsman;

(c) a case where a complaint has been made to the Ombudsman relating to the letter in CONRED 3.2.4AR(2)(b)(i), and the Ombudsman has dismissed the complaint; or

(d) a case where the firm, the Ombudsman or a skilled person has concluded that the advice provided to the consumer did not comply with the suitability requirements and has answered 'yes' to the causation question in the BSPS DBAAT or FCA DBAAT.

(3) A firm may exclude a non-scheme case in scenarios analogous to those in (2).

(4) If a firm is unsure whether a case falls within any of the exclusions in CONRED 3.2.4AR (2) or (3), it must include the case in N.

3.2.4B G (1) N is intended to be a dynamic number that reflects the total number of cases that could give rise to a redress liability. As a firm makes progress in resolving cases, we expect this number to fall as

cases are either recognised as ‘confirmed liabilities’ (‘CL’) or resolved in a way that confirms there is no liability.

- (2) CONRED 3.2.4AR(2) explains when a firm may cease counting a scheme case towards N. It works by referring to stages of the consumer redress scheme in CONRED 4, and certain letters required to be sent under the scheme.
- (3) Non-scheme cases are cases which are not required to be resolved through the consumer redress scheme, but which pose similar risks. As these cases are not required to be resolved in accordance with the prescriptive rules in CONRED 4, we are permitting a firm to exclude non-scheme cases in analogous scenarios to those in CONRED 3.2.4AR(2). For example, where a case has been excluded from the redress scheme because the firm appointed a skilled person to carry out a past business review and the firm has communicated to the consumer that the advice was suitable, a firm may exclude this case from N if 6 months have expired without a complaint to the Ombudsman, or if the Ombudsman dismisses the complaint.

Average liability for unsuitable BPS advice

- 3.2.5 R (1) A firm must calculate AL as ~~46%~~ 11% of the mean cash equivalent transfer value for BPS advice (excluding any advice given to BPS members falling within ~~CONRED 3.2.2R(1)(b)(i) or (ii)~~ CONRED 3.2.4AR (2) or (3)) that the firm provided in the relevant period, subject to (2).
- ...
- 3.2.6 G ...
- 3.2.6A R (1) CL must be calculated in accordance with this rule.
- (2) A firm has a confirmed liability where the firm, Ombudsman or a skilled person has concluded that the advice provided to a consumer did not comply with the suitability requirements and has answered ‘yes’ to the causation question in the BPS DBAAT or FCA DBAAT.
- (3) A firm may cease to treat a scheme case as a confirmed liability in the following scenarios:
- (a) the firm has paid redress to the consumer in full and final settlement; or
- (b) (i) one of the following applies:
- (A) the firm has sent the consumer the redress determination letter in CONRED 4 Annex 12R (Redress determination: Redress

calculation – information not provided) in accordance with the requirements in CONRED 4;

(B) the firm has calculated the amount of redress owed to the consumer in accordance with CONRED 4.4.2R, decided that no redress is owed, and has sent the consumer the redress determination letter in CONRED 4 Annex 13R (Redress determination: Result of redress calculation) in accordance with the requirements in CONRED 4; or

(C) the firm has sent the consumer the redress determination letter in CONRED 4 Annex 17R (Redress Determination: payment acceptance not provided) in accordance with the requirements in CONRED 4;

(ii) 6 months have expired since the date of the letter in (i); and

(iii) a complaint relating to the letter in (i) has not been made to the Ombudsman; or

(c) a case where a complaint has been made to the Ombudsman relating to the letter in CONRED 3.2.6AR(3)(b)(i), and the Ombudsman has dismissed the complaint.

(4) A firm may cease to treat a non-scheme case as a confirmed liability in scenarios analogous to those in (3).

(5) If a firm is unsure whether a case falls within any of the exclusions in CONRED 3.2.6AR(3) or (4), it must include the case in CL.

(6) A firm must quantify each confirmed liability as 11% of the mean cash equivalent transfer value for that case.

(7) CL is the aggregate amount of all confirmed liabilities.

(8) A firm may reduce the value of CL to reflect the impact of professional indemnity insurance where the conditions in CONRED 3.2.5R(2) to (4) are met (and applying the conditions and obligations in CONRED 3.2.5R(2) to (4) as if references to AL were to CL).

Notification ~~requirement~~ requirements

- 3.2.7 R (1) A firm must ~~notify~~ (save in the circumstances in (1A)) have notified the FCA of the outcome of the financial resilience assessment in CONRED 3.2.2R before the end of 27 May 2022.

- (1A) A firm that has only provided BSPS advice to a total of 3 or 4 members of the BSPS must notify the FCA of the outcome of the financial resilience assessment in CONRED 3.2.2R before the end of 28 February 2023.
- (2) If a *firm* has relied on professional indemnity insurance to reduce the value of its potential liability for BSPS advice in accordance with CONRED 3.2.5R(2), the notification in (1) must contain:
- (a) a statement of the value of the reduction that the *firm* has applied in connection with the professional indemnity insurance; and
 - (b) an explanation of why the *firm* has concluded that the potential liability is covered by professional indemnity insurance.
- (3) A *firm* must update its financial resilience assessment referred to in (1) or (1A):
- (a) immediately following any change in the *firm's* circumstances that could materially reduce its ability to meet BSPS claims; and
 - (b) in any case, at least once a *month*.
- (4) A *firm* must immediately notify the FCA if the *firm* has updated its financial resilience assessment and the outcome previously notified to the FCA has changed.
- (5) Any notification made under ~~(1) or (4)~~ (1), (1A), (4) or (7) must:
- (a) be submitted as follows:
 - (i) where an electronic system has been made available by the FCA for the purposes of the notification, the notification must be submitted using that electronic system; and
 - (ii) in any other case, the notification must be submitted by email to the FCA at BSPSredress@fca.org.uk; and
 - (b) be approved and signed by an individual approved to perform the *compliance oversight function* for the *firm* or, if that is not possible, by an individual approved to perform another appropriate *senior management function* within the *firm*.
- (6) For the purposes of (5)(b), a notification is to be treated as signed where any of the following apply:

- (a) it contains an image of a ‘wet ink’ signature applied by the appropriate individual;
- (b) it contains an electronic signature applied by the appropriate individual; or
- (c) it contains a typed name applied by, or with the express consent of, the appropriate individual.

(7) A firm must promptly notify the FCA once N and CL, as calculated under CONRED 3.2.4AR and CONRED 3.2.6AR, are both zero.

(8) This rule ceases to apply to a firm once N and CL, as calculated under CONRED 3.2.4AR and CONRED 3.2.6AR, are both zero and the firm has notified under (7).

3.3 Asset restriction

...

The asset restriction

...

- 3.3.4 G (1) CONRED 3.3.3R contains a restriction (the ‘asset restriction’) that prevents a *firm* from undertaking transactions that could have the effect of dissipating the value of the *firm*’s assets, except to the extent that an exception in CONRED 3.3.3R(1) or (2) applies.
- (2) Under CONRED 3.3.3R(1), the asset restriction does not apply to a transaction that a *firm* undertakes in the ordinary course of business. CONRED 3.3.5R contains a non-exhaustive list of transactions that a *firm* may treat as being undertaken in the ordinary course of business for these purposes. ~~CONRED 3.3.6R~~ 3.3.8R contains a list of transactions that a *firm* must not treat as being undertaken in the ordinary course of business.

...

...

Payment of dividends and LLP members’ drawings

- 3.3.6 R (1) A *firm* may treat a dividend as being paid in the ordinary course of business for the purposes of CONRED 3.3.3R(1) if the *firm* has obtained prior express consent from the FCA.
- (2) To obtain the consent in (1), a *firm* must:

- (a) notify the *FCA* by email to BSPSredress@fca.org.uk, including the following information:
 - (i) the value of the proposed dividend(s);
 - (ii) the date on which the *firm* intends to pay the proposed dividend(s);
 - (iii) the recipients of the proposed dividend(s);
 - (iv) a clear statement of the quantified effect of the payment of the proposed dividend(s) on the *firm*'s regulatory capital position;
 - (v) a copy of the *firm*'s latest management accounts; and
 - (vi) an express confirmation that the payment of the proposed dividend(s) is lawful under applicable company or partnership law and insolvency law; and
- (b) as part of the notification in (1), demonstrate both of the following to the reasonable satisfaction of the *FCA*:
 - (i) the dividend(s) will be paid in connection with services provided for or on behalf of the *firm* by a natural person; and
 - (ii) the timing of the proposed payment and the value of the dividend(s) are consistent with the historical pattern of the payment of dividends for equivalent purposes over the immediately preceding 12 *months*.
- (3) For the purposes of this *rule*, a reference to a 'dividend' includes drawings paid to a member of a *limited liability partnership*.

3.3.7 G The purpose of *CONRED* 3.3.6R is to permit a *firm* that is subject to the asset restriction to pay dividends or drawings to individual shareholders or members where those individuals perform services for the *firm* and have historically been paid through similar dividends or drawings and prior *FCA* consent to the dividends or drawings has been obtained. Any dividends or drawings paid must be consistent in terms of both their value and their timing with previous dividends or drawings paid by the *firm* for that purpose. The *firm* must also confirm to the *FCA* that the payment of the dividend or drawings would be lawful, having regard to any relevant restrictions that may apply in areas such as company law or insolvency law. A *firm* may wish to obtain professional advice to confirm its analysis before giving the required confirmation.

3.3.7A G (1) As part of the notification in *CONRED* 3.3.6R, a *firm* is required to include a clear statement of the quantified effect of the payment

of the proposed dividend(s) on the *firm's* regulatory capital position. A *firm* should provide this information by:

- (a) providing financial forecasts which show the expected change in the *firm's* regulatory capital over time; and
- (b) explaining the impact of proposed dividend payments on these financial forecasts.

- (2) When quantifying a proposed dividend payment, we expect a *firm* to consider its regulatory obligations under the *threshold conditions* and the *principles*. Dividend payments which allow a *firm* to increase its regulatory capital over time, and which support the *firm* in passing the financial resilience assessment in *CONRED 3.2.2R* over a reasonable time horizon, would support compliance with these obligations.

...

Sch 2 Notification requirements

...

After Sch 2.1G, insert the following table as Sch 2.1AG. The text is all new and is not underlined.

Handbook reference	Matters to be notified	Contents of notification		Time allowed
<i>CONRED 3.2.7R(1), (1A) and (4)</i>	Outcome of the financial resilience assessment in <i>CONRED 3.2.2R</i>	Outcome of the financial resilience assessment in <i>CONRED 3.2.2R</i>		Before the end of 27 May 2022 or 28 February 2023, and immediately if the outcome changes
<i>CONRED 3.2.7R(7)</i>	That N and CL, as calculated under <i>CONRED 3.2.4AR</i> and <i>CONRED 3.2.6AR</i> , are both zero	That N and CL, as calculated under <i>CONRED 3.2.4AR</i> and <i>CONRED 3.2.6AR</i> , are both zero		Promptly
<i>CONRED 3.3.6R</i>	Where the <i>firm</i> wishes to obtain prior express consent from the <i>FCA</i> for payment of dividends or	(a)	the value of the proposed dividend(s);	In advance (express consent required)
		(b)	the date on which the <i>firm</i> intends to pay the proposed dividend(s);	

	LLP members drawings	(c)	the recipients of the proposed dividend(s);	
		(d)	a clear statement of the quantified effect of the payment of the proposed dividend(s) on the <i>firm's</i> regulatory capital position;	
		(e)	a copy of the <i>firm's</i> latest management accounts;	
		(f)	an express confirmation that the payment of the proposed dividend(s) is lawful under applicable company or partnership law and insolvency law;	
		(g)	demonstration that the dividend(s) will be paid in connection with services provided for or on behalf of the <i>firm</i> by a natural person; and	
		(h)	demonstration that the timing of the proposed payment and the value of the dividend(s) are consistent with the historical pattern of the payment of dividends for equivalent purposes over the immediately preceding 12 months.	
<i>CONRED</i> 3.3.10R	Transactions in the ordinary course of business which do not fall within <i>CONRED</i> 3.3.5R Any contract change with <i>connected persons</i> which could result in payments above	(a)	an explanation of the transaction or contract change;	At least 15 <i>business days</i> in advance, unless urgent situation
		(b)	an explanation of the quantifiable impact on the <i>firm's</i> financial resilience assessment under <i>CONRED</i> 3.2.2R;	
		(c)	an explanation of why the <i>firm</i> considers that the transaction or contract	

	<p>the de minimis threshold</p>		<p>change occurs in the ordinary course of business and is therefore permitted;</p>	
(d)		<p>reference to any comparable historic payments or contract changes which support the <i>firm's</i> view that this occurs in the ordinary course of business; and</p>		
(e)		<p>in the case of a notification on an urgent basis under <i>CONRED</i> 3.3.10R(2), an explanation of the nature of the urgency and why it has not been possible to comply with the normal 15-<i>business day</i> notification requirement in <i>CONRED</i> 3.3.10R(1).</p>		