

Consumer Redress Schemes sourcebook

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Chapter 1

General

1.1 Introduction

- 1.1.1** **G** This part of the *FCA Handbook* relates principally to *consumer redress schemes*. For these purposes, a *consumer redress scheme* is a set of *rules* under which a firm is required to take one or more of the following steps:
- (1) investigate whether, on or after a specified date, the firm has failed to comply with particular requirements that are applicable to an activity it has been carrying on;
 - (2) determine whether the failure has caused (or may cause) loss or damage to consumers; and
 - (3) if the firm determines that the failure has caused (or may cause) loss or damage to consumers, the firm must:
 - (a) determine what the redress should be in respect of the failure; and
 - (b) make the redress to the consumers.
- 1.1.2** **G** Chapter 1 contains *guidance* on *consumer redress schemes* in general and explains what they are and the circumstances in which the *FCA* may impose a requirement to establish and operate a *consumer redress scheme*. The *rules* and *guidance* relating to particular *consumer redress schemes* are set out in the remainder of the sourcebook.
- 1.1.3** **G** Chapter 1 is relevant to current and former *authorised persons*, *electronic money issuers* and *payment service providers*. Except where otherwise specified, it uses "firm" to refer to all such persons.
- 1.1.4** **G** ■ CONRED 1.2 to 1.7 explain the power in section 404 of the *Act* which enables the *FCA* to make *rules* requiring firms to establish and operate *consumer redress schemes*. Unless the context otherwise requires, references to *consumer redress scheme* in ■ CONRED 1.2 to 1.7 are references to a scheme established under section 404 of the *Act* (that is, a scheme falling within paragraph (a) of the *Glossary* definition) and references to a "scheme" in those sections should be read accordingly.
- 1.1.5** **G** ■ CONRED 1.8 explains the circumstances in which the *FCA* can impose a requirement on a firm under section 404F(7) to establish and operate a scheme that corresponds to or is similar to a scheme under section 404 of the *Act*. Unless the context otherwise requires, references to *consumer redress scheme* in ■ CONRED 1.8 are to a scheme established under section 404F(7) of

the *Act* (that is, a scheme falling within paragraph (b) of the *Glossary* definition) and references to a “scheme” in that section should be read accordingly.

1.1.6**G**

The term “consumer” has a number of different meanings both in the *Glossary* and in the *Act*. For this reason, except where indicated, *CONRED* does not use the term as defined in the *Glossary*. However, ■ **CONRED 1.4.6G** to 1.4.14G explains which consumers can be covered by a *consumer redress scheme* established under section 404 of the *Act*.

1.2 Process for making a consumer redress scheme

Consultation

- 1.2.1 **G** The power in section 404 of the *Act* is a *rule-making* power. *Rules* made by the *FCA* under this power will be subject to a formal public consultation, including a cost benefit analysis (CBA). The consultation paper will fully and clearly explain the *rules* of the scheme and set out the sources of evidence upon which the scheme is based. The consultation period will usually be three *months* long. There is, however, an exemption from the *FCA* consultation requirements for cases where the *FCA* considers that the delay would be prejudicial to the interests of consumers. This exemption is unlikely to be applicable in relation to *consumer redress schemes* because the importance of consulting to ensure a scheme is appropriate and workable in practice would be likely to outweigh any prejudice that the delay from the consultation process may bring.
- 1.2.2 **G** The *FCA* must have regard to any representations made to it during the consultation process. The *FCA* will issue a statement following the consultation which will explain how it has taken these into account in formulating the final *rules*. A further cost benefit analysis will be provided if the final *rules* differ significantly from the consultation draft. In addition, an explanation of any differences between the rules consulted on and the final *rules* made will be provided.
- 1.2.3 **G** All *FCA rules* are made by the *FCA* Board. The Treasury appoints the *FCA* Board and a majority of the Board are non-executive members.

Pre-consultation

- 1.2.4 **G** The *FCA* will actively seek to engage in discussions with the industry and consumer groups about the issue. This process will assist in the consideration of all the available options and, if it is ultimately decided that a scheme to address the issue should be pursued, it will ensure the *FCA* has a clear understanding of the matters that will need to be addressed in the formal consultation.
- 1.2.5 **G** This discussion process will allow the particular nature of the issue in relation to which a scheme is proposed to already be visible to key stakeholders. In addition, the issue may have been publicised more widely through comment and action by the *FCA* (e.g. the *FCA* may have published the findings of thematic projects, mystery shopping exercises or enforcement actions).

1.2.6

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The FCA will also consult with the Financial Services Practitioner Panel, the Smaller Businesses Practitioner Panel, the Financial Services Consumer Panel, the *Financial Services Compensation Scheme Limited* and the *Financial Ombudsman Service Limited* before issuing a formal consultation.

1.3 Trigger for making a consumer redress scheme

1.3.1 **G** The trigger is set out in section 404(1) of the Act. It states that the power can be used if:

- (1) it appears to the FCA that there may have been a widespread or regular failure by relevant firms to comply with requirements applicable to the carrying on by them of any activity;
- (2) it appears to the FCA that, as a result, consumers have suffered (or may suffer) loss or damage in respect of which, if they brought legal proceedings, a remedy or relief would be available in the proceedings; and
- (3) the FCA considers that it is desirable to make *rules* for the purpose of securing that redress is made to consumers in respect of the failure (having regard to the other ways in which consumers may obtain redress).

Meaning of “widespread or regular” failure

1.3.2 **G** There is no further explanation in the Act of what is meant by “widespread or regular”. The FCA’s view is that the phrase is primarily directed at the volume of failings that have occurred. However, we do not think the test is subject to further precise definition. Rather, we think the test is a matter for regulatory judgement, to be interpreted in the round with reference to all the relevant evidence.

1.3.3 **G** The FCA will not need to have specific evidence of failure by each of the firms subject to the scheme. The FCA will be entitled to extrapolate reasonably from the evidence it has to determine whether the failure appears to be “widespread or regular”.

1.3.4 **G** Section 404(1)(a) of the Act refers to “failure...to comply with requirements”. The reference to “requirements” rather than “requirement” means that there does not have to be evidence of widespread or regular failure for each requirement covered by a scheme. Rather, the failure may exist in relation to different requirements affecting the same type of activity.

1.3.5 **G** The FCA will only proceed if it has robust evidence to support its view that it appears there may have been a widespread or regular failure. Sources of evidence which the FCA might use and extrapolate from include the results

of the *FCA's* thematic work, enforcement investigations, mystery shopping, complaints to the *FCA*, firms or to the *Financial Ombudsman Service*, and information from consumer groups and reports from *skilled persons*.

1.3.6 **G** However, it is important to understand that the purpose of section 404(1)(a) is to require the *FCA* to establish whether there may have been a widespread or regular failure. The purpose is not to prove that all or most relevant firms have failed (or may have failed) to comply with requirements in respect of all or most relevant consumers.

Failures that can be dealt with under a consumer redress scheme

1.3.7 **G** The requirements that can be included in a *consumer redress scheme* include both *FCA rules* and the general law (e.g. the tort of negligence or the *Unfair Terms Regulations* – see section 404F(3) and (4) of the *Act*).

1.3.8 **G** The failures that the *FCA* can take into account in deciding if the trigger is satisfied are those where, as a result of the failure, consumers have suffered (or may suffer) loss or damage in respect of which, if they brought legal proceedings, a remedy or relief would be available in the proceedings (see section 404(1)(b) of the *Act*). The relevance of the “may suffer” wording is that it makes clear that schemes may cover cases where loss is foreseeable but may not yet have crystallised (e.g. pensions mis-selling cases where the loss may not crystallise until retirement).

1.3.9 **G** The *FCA* will be able to give examples of things done or omitted to be done that are to be regarded as constituting a failure to comply with a requirement. However, the *FCA* can only give examples that have been, or would be, held by a court or tribunal to constitute a failure (see section 404A(2) of the *Act*).

1.3.10 **G** So in other words, the section 404 power is limited so that the only failures a *consumer redress scheme* can address are those that a court or tribunal would find to have been failures at the time the activities were carried on. Consumers will not need to have actually brought an action forward for the *FCA* to be able to make a scheme.

1.3.11 **G** Deciding whether a particular act or omission constitutes a failure will necessarily involve the *FCA* interpreting its *rules* and the general law. If the law is unclear in a particular area, the *FCA* will have two broad options available to it. It may decide either:

- (1) not to develop a scheme, having regard to the other ways in which consumers can seek redress, including through the courts; or
- (2) to take steps to clarify the law.

1.3.12 **G** The *FCA* will seek an opinion from a Queen’s Counsel for any *consumer redress scheme* it proposes in relation to the question of whether the failures proposed to be addressed by a scheme are those that a court or tribunal

would find to constitute as failures to comply with a requirement. If stakeholders disagree with the *FCA's* interpretation of the law as expressed in the draft scheme *rules*, they will be able to say so during the consultation process. Any representations made will be carefully considered by the *FCA* as set out in ■ CONRED 1.2.

1.3.13 **G** In addition, the *FCA* has the option of seeking a court declaration to clarify the law (the bank charges test case brought by the Office of Fair Trading which the *FCA* supported with a *waiver* of certain *DISP rules* is an example of this sort of approach).

1.3.14 **G** The process of interpreting what the *FCA's rules* require will involve the usual process of analysing relevant surrounding materials (e.g. consultation papers) as is the practice when interpreting any piece of legislation. Other *FCA rules* and *guidance* may also be relevant to interpreting what a particular *rule* requires. The *FCA's rules* are given a purposive interpretation (see ■ GEN 2.2.1R). The purpose of a *rule* is gathered predominantly from the text of the *rule* itself as well as its context among other relevant *rules*.

1.3.15 **G** The *FCA* will not be able to impose higher requirements on firms retrospectively. The requirements to be applied by the *FCA* will be those in force at the time of the relevant act or omission, not current or later requirements.

1.3.16 **G** *Consumer redress schemes* can only be used to require redress in relation to those failures in respect of which a remedy or relief would be available in legal proceedings. A *consumer redress scheme* could not, therefore, be used to require redress for:

- (1) breaches of the *Principles* (*FCA rules* currently provide that breaches of the *Principles* do not give rise to a right of action in court under section 138D of the *Act* – a change to this would be subject to the consultation requirements under the *Act* in the usual way); or
- (2) breaches of any other *FCA rules* where the right of action under section 138D of the *Act* has been switched off in the *rules* (e.g. the *rules* in the *SYSC* sourcebook); or
- (3) departure from *FCA guidance*; or
- (4) non-compliance with any non-binding code of practice (e.g. industry guidance confirmed by the *FCA*).

1.3.17 **G** The fact that a *consumer redress scheme* cannot be used to require redress in relation to breaches of the *Principles* would not prohibit a consideration of the *Principles* for the purposes of interpreting one of the *FCA's* more detailed *rules*. This is because the *FCA* believes that a court would also take into account surrounding legislative provisions when seeking to interpret a particular piece of law. However, this does not mean that the scheme could be based on the *Principles*: there always needs to be a legally-actionable failure.

1.3.18 **G** Finally, it is necessary that the loss or damage which was suffered (or may be suffered) is as a result of the failure. As part of this, the *FCA* will need to consider whether any indirect or consequential loss is recoverable under the applicable law.

‘Desirability’ of making a consumer redress scheme.....

1.3.19 **G** The *FCA* will be required to make an objective, evidence-based judgement on the overall appropriateness of a *consumer redress scheme* as a remedial tool. Cost benefit analysis (CBA) is likely to be a key part of this decision. An important characteristic of a *consumer redress scheme* is that it can ensure consumers obtain redress without the *FCA* having to first identify every individual firm specifically involved. CBA will necessarily rely in part upon the *FCA*’s judgement as to how widespread or regular the failure is.

1.3.20 **G** A comparison of the advantages and disadvantages of a *consumer redress scheme* against other available tools will form part of the decision-making process. The *Act* provides a range of other tools (e.g. imposition of requirements on a firm under section 55L to take remedial action in respect of past conduct) and the *FCA* will need to consider which power is most appropriate in the circumstances.

1.3.21 **G** As a public body, the *FCA* will also have regard to general administrative law principles such as proportionality and reasonableness. For example, the extent to which firms have already provided redress will be a factor to which the *FCA* will have regard (e.g. following enforcement action or the implementation of a voluntary industry redress scheme). See also ■ CONRED 1.5.25G.

1.3.22 **G** Lastly, the *FCA*’s *operational objectives* (particularly its *consumer protection objective*), together with the regulatory principles in section 3B of the *Act*, will also be relevant. For example, the *Act* requires the *FCA* to have regard to the principle that a burden or restriction which is imposed on a person should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction.

1.4 Scope of a consumer redress scheme

The services that a consumer redress scheme can apply to.....

- 1.4.1** G In accordance with section 404E(2) of the *Act*, a *consumer redress scheme* can secure redress for consumers of services provided by:
- (1) *authorised persons* in carrying on *regulated activities*;
 - (2) *authorised persons* in carrying on a consumer credit business in connection with the accepting of deposits (insofar as section 404E relates to, or applies for the purposes of, anything done under the *Act* concerning things done (or not done) before 1 April 2014);
 - (3) *authorised persons* in communicating, or approving the communications by others of, invitations or inducements:
 - (a) to engage in investment activity; or
 - (b) to enter into or offer to enter into an agreement the making or performance of which by either party constitutes a *controlled claims management activity*.
 - (4) *authorised persons* who are *investment firms*, or *credit institutions*, in providing relevant ancillary services;
 - (5) *persons* acting as *appointed representatives*;
 - (6) *payment service providers* in providing *payment services*; and
 - (7) *electronic money issuers* in issuing *electronic money*.
- 1.4.2** G A *consumer redress scheme* could apply to all *authorised persons*, *electronic money issuers* or *payment service providers* or to a specified description of *authorised person*, *electronic money issuer* or *payment service provider*. This means the *FCA* could create a scheme that applied to a named list of firms.
- 1.4.3** G The *FCA* will be able to determine, on reasonable grounds, how to characterise the particular activity that a scheme applies to. This will enable the *FCA* to ensure that a scheme is appropriately focused (e.g. limited to activities carried on in relation to particular products or sectors of the market in question, during specified periods of time). It is possible that a scheme

could be combined with the use of other regulatory tools (i.e. a package of measures would be put in place to ensure an issue was addressed comprehensively). Should this be the case, the *FCA* will clearly set out in its consultation paper how the different elements of the package inter-relate.

1.4.4 **G** Where the services to which a scheme applies are those provided by *authorised persons* in carrying on *regulated activities*, the limitation to '*regulated activities*' means that a *consumer redress scheme* cannot apply to services that were provided before the activity in question first became regulated by the *FSA* or *FCA* (e.g. the start date of a scheme applying to general insurance mediation could not be earlier than 14 January 2005, which was the commencement of regulation of general insurance mediation).

1.4.5 **G** That said, it would be possible for the Treasury by order to widen the type of services that a *consumer redress scheme* can cover in order to encompass pre-regulation activities (see section 404G of the *Act*).

Consumers that can be covered by a consumer redress scheme

1.4.6 **G** (1) For the purposes of a scheme, a consumer can be any person:

- (a) who has used, or may have contemplated using, any of the services listed in section 404E(2) of the *Act* (see CONRED 1.4.1G);
- (b) who has relevant rights or interests in relation to any of those services; or
- (c) in respect of whom a person carries on the *regulated activity* of *seeking out, referrals and identification of claims or potential claims* whether that activity, as carried on by that person, is a *regulated activity* or is, by reason of an exclusion provided for under the *Regulated Activities Order* or the *Act*, not a *regulated activity*.

(2) As such, the section 404 power is not limited to retail customers only.

1.4.7 **G** That said, a *consumer redress scheme* can only be used to secure redress for consumers who have a legal cause of action. In some cases, the cause of action is limited to private persons in any event. For example, rights of action in respect of breaches of *FCA rules* are generally limited to *private persons*, and the *Unfair Terms Regulations* are limited to individuals acting outside their trade, business or profession. In contrast, claims for misrepresentation can be brought under the general law by all types of *person*.

1.4.8 **G** In addition, the *FCA* may choose to focus a scheme on retail customers, having regard in particular to the fact that they tend to have less experience and expertise. However, the *FCA* will also have regard to the fact that many retail customers are also investors in, or beneficiaries of, funds and pension schemes which may have incurred loss from the failure. It may be that the inclusion of such funds or pension schemes amongst those to whom redress ought to be given will bring benefit to the underlying retail customers.

1.4.9 **G** The section 404 power could be used in relation to non-UK consumers if they are protected by the underlying law.

1.4.10 **G** The fact that a consumer “who may have contemplated using” a relevant service can be covered by a *consumer redress scheme* is unlikely to catch many cases in practice. One example of a case where it might be used is where there has been widespread discrimination: the section 404 power could be used to ensure redress for consumers who were unlawfully denied access to a service contrary to any relevant equality legislation. All the restrictions and evidence requirements explained in ■ CONRED 1 would apply equally to any scheme developed in this sort of area.

1.4.11 **G** The Treasury may by order widen (or cut back) the type of consumers that a *consumer redress scheme* can cover (see section 404G of the Act).

Applicability of a scheme to other situations

1.4.12 **G** The limits of a *consumer redress scheme's* application will be clearly defined within the scheme *rules* and a scheme will only bind those firms to which it applies. Firms that are unsure whether or not a scheme applies to their activities are encouraged to raise the issue with their supervisory contact in the normal way.

1.4.13 **G** It is possible that the approach taken by the *FCA* in a particular scheme could influence its approach to other situations. The *FCA* will aim to be consistent in its regulatory approach where possible.

1.4.14 **G** For example, the *FCA* could put in place a scheme in relation to unfair variation terms in *regulated mortgage contracts*. The underlying reasons for the *FCA's* decision that a variation term in a *regulated mortgage contract* is unfair could potentially apply to a variation term in an insurance contract that fell outside the scope of the scheme. However, the *Unfair Terms Regulations* expressly state that all the circumstances attending the conclusion of the contract must be taken into account when assessing the unfairness of a contractual term. Therefore, if the *FCA* wanted to take action in relation to the term in the insurance contract using its other regulatory powers, it would need to ensure that it had considered all the relevant issues separately to those considered as part of the scheme for *regulated mortgage contracts*.

1.5 Operation of a consumer redress scheme

Investigation of cases under a consumer redress scheme

- 1.5.1 **G** Firms will be responsible for investigating individual cases, within the framework set out by the *FCA*. The *FCA* will have a number of options when formulating a scheme. For example, the *FCA* could:
- (1) require firms to undertake a proactive file review of all cases falling within the period covered by the scheme; or
 - (2) require firms to contact their customers individually to ask whether they wish their cases to be investigated under the scheme and only investigate the cases of those customers who opt-in; or
 - (3) require firms to publicise the existence of the scheme (e.g. through newspaper advertisements) and only investigate the cases of those customers who opt-in; or
 - (4) publicise the existence of the scheme through an *FCA* publicity campaign and require firms to investigate the cases of those customers who subsequently opt-in.
- 1.5.2 **G** It would also be possible to require a combination of these methods within a scheme (e.g. for different types of case). The choice of investigation method would be one of the issues on which the *FCA* would consult and perform cost benefit analysis (CBA). In doing so, the *FCA* will have to consider the likely effectiveness of consumer contact exercises.
- 1.5.3 **G** In the event that a scheme required customers to 'opt-in' by a specified date, the *FCA* would ensure that the scheme covered how to deal with customers who nevertheless contacted firms after that date.
- 1.5.4 **G** In some cases, the *FCA* (or someone acting on its behalf) may carry out the investigation under the scheme instead of the relevant firm (see section 404A(1)(k) of the *Act*). The scheme rules may provide for this in relation to, for instance, a firm which was refusing to operate a scheme. Another example is provided in ■ CONRED 1.5.6G in relation to formerly *authorised persons*.
- 1.5.5 **G** The *FCA* will be mindful of issues relating to professional indemnity insurance when making *rules* in this area. For example, the *FCA* is aware that

certain policies prohibit admissions of liability without the written consent of the *insurer*.

Firms that are no longer authorised by the FCA or have transferred their business to another firm

1.5.6 **G** The *FCA* has a number of options for dealing with firms that have ceased to be authorised. For example:

- (1) Where the firm continues to exist and still has assets, the scheme could still apply to that firm (see section 404F(5)(a) of the *Act*). Alternatively, the scheme *rules* could provide for the *FCA* itself (or a third party acting on its behalf) to investigate the cases of formerly *authorised persons*.
- (2) Where the firm has ceased to exist, cannot readily be traced or has no assets, the *FSCS* could declare the firm in default. See **CONRED 1.6.23G** for details of how the *FSCS* will deal with cases that fall within a scheme.

1.5.7 **G** Where there has been a transfer of business, the *FCA* can apply the scheme to the successor firm if it has assumed liability (e.g. where there has been a transfer of a banking business under Part VII of the *Act* or a firm is otherwise legally liable for the failures of another firm – see section 404F(5)(b) of the *Act*). Where the successor firm has no legal liability for the failures, the scheme itself could not apply to the successor firm (and so redress would need to be obtained through the options set out above). It may be the case, however, that the successor firm has access to information that may assist in the investigation of *persons* who have ceased to be authorised. The *FCA* will be mindful of this.

1.5.8 **G** In these sorts of cases it would be for either the *FCA*, the third party acting on its behalf, the *FSCS* or the successor firm (as relevant) to contact affected consumers. The *FCA* and the *FSCS* will work together closely to ensure all relevant firms are captured.

Other matters that may be included in the rules of a consumer redress scheme

1.5.9 **G** Section 404A of the *Act* sets out an illustrative list of particular matters that the *FCA* may cover in the *rules* of a scheme.

1.5.10 **G** One of the most important areas where the *FCA* may be likely to make *rules* is to set out examples of things done or omitted to be done that are to be regarded as constituting a failure to comply with a requirement (see section 404A(1)(b) of the *Act*). However, as explained in **CONRED 1.3.7G** to **1.3.18G**, the *FCA* can only give examples that have been, or would be, held by a court or tribunal to constitute a failure.

1.5.11 **G** Giving examples that are clear and sufficiently comprehensive will be an area to which the *FCA* pays particular attention, both in its work leading up to a consultation and during the consultation process itself. The *FCA* will work with relevant stakeholders to ensure the final scheme *rules* give examples

which provide clarity and certainty as to how a firm is expected to operate under the scheme.

1.5.12 **G** Another important area where the *FCA* can make *rules* concerns setting out matters to be taken into account, or steps to be taken, by firms for the purpose of:

- (1) assessing evidence as to a failure to comply with a requirement; or
- (2) determining whether such a failure has caused (or may cause) loss or damage to consumers (see section 404A(1)(c) of the *Act*).

Again, the *FCA* will only be able to do this if the matters set out have been, or would be, taken into account by a court or tribunal for the purpose mentioned. In particular, the *FCA* cannot disregard the normal legal rules on causation or remoteness of loss. The reference to 'matters' is to legally relevant considerations, not to any procedural steps which firms may be required to take. For example, firms may be required to gather certain categories of evidence. Examples of 'steps' would be requiring firms to gather evidence by specified methods or to record their decision making in a certain form.

1.5.13 **G** A third significant area relates to the period under review. The *consumer redress scheme rules* will specify a start date (referred to as the 'specified date' in section 404(3) of the *Act*) and most likely also an end date (see section 404A(1)(f) of the *Act*) for the activities and sales to be reviewed. This will limit the scope of a firm's investigations under a scheme.

1.5.14 **G** A fourth area that could be covered in *consumer redress scheme rules* is the content of a firm's communication to consumers about the outcome of their investigation under a scheme. Detailing the content of the communications that consumers can expect to receive will ensure consistency across firms as well as clarity for consumers. It will also be of benefit to firms should *complaints* subsequently be referred to the *Financial Ombudsman Service*. This is because a comprehensive communication may help to make it apparent to the *Ombudsman* at the outset that a firm has undertaken its investigation in accordance with the scheme. Firms may also be required to draw the scheme to the attention of the *Financial Ombudsman Service* in any individual cases that are referred to it. As such, the *FCA* will consult the *Financial Ombudsman Service* on the content of such communications.

1.5.15 **G** Fifthly, the *scheme rules* could require firms to provide information to the *FCA* (e.g. information about how they are conducting their investigations under the scheme, how many consumers have opted to have their cases reviewed, etc.).

Issues that come to light during the period in which the scheme is running

1.5.16 **G** The *FCA* will monitor schemes while they are running. If it became apparent during the operation of a scheme that it would be desirable for the *scheme rules* to cover other issues (e.g. if firms or consumer groups informed the *FCA* that it would be helpful if further examples of failures pursuant to section

404A(1)(b) of the *Act* were given), the *FCA* would be able to amend the *rules* accordingly. Any such amendments would be subject to the usual consultation process as set out in ■ CONRED 1.2.

1.5.17 **G** Alternatively, the *FCA* could give general or individual *guidance* to firms on issues that arise during the operation of a scheme. General *guidance* would also be subject to the consultation process.

Types of redress a firm can be required to make under a consumer redress scheme

1.5.18 **G** The *FCA* is able to set out in scheme *rules* the kinds of redress that are to be made to consumers. The only kinds of redress the *FCA* can secure in this way are those which it considers to be just (see section 404A(4) and section 404F(1) of the *Act*). For example, instead of providing cash compensation, the *FCA* could require firms to top up pensions or offer to alter the terms of a contract.

1.5.19 **G** That said, the *FCA* is required to have regard to the nature and extent of the losses or damage in question (see section 404A(5) of the *Act*) and so will take into account the type of relief that a court would grant.

1.5.20 **G** Redress made under a *consumer redress scheme* may include interest (see section 404F(1) of the *Act*). Decisions regarding the rate of interest and the basis for calculation will be made on a scheme-by-scheme basis and will be subject to the consultation process.

1.5.21 **G** A *consumer redress scheme* cannot extend normal limitation periods. Under the Limitation Act 1980, the general position regarding time limits for bringing a claim in England and Wales is as follows:

- (1) 6 years from the event for claims in contract and claims in tort concerning non-latent damages; and
- (2) 3 years from actual or constructive awareness for claims in tort concerning latent damages until 15 years from the event at which point (for most cases) the right to claim expires irrespective of any awareness considerations.

[**Note:** This is only a summary of the position and the legislation itself should be consulted when determining the limitation period applicable to any particular case. It should also be noted that the position under the law in Scotland and Northern Ireland is different.]

1.5.22 **G** Firms may only be required to make redress to consumers who are within the limitation period for bringing their case to court at the time the *FCA* makes the *rules* (see section 404(8) of the *Act*). In other words, once a scheme has been made the 'clock will stop' on the relevant limitation period. For example, if a scheme began in July 2015 and the limitation period for a consumer to take their case to court would have expired in September 2015, the firm would still need to deal with the consumer's case under the scheme,

even if it did not investigate that consumer’s particular case until, for example, November 2015.

1.5.23 G The FCA will endeavour to provide as much direction as possible in the scheme rules as to how redress is to be calculated (e.g. by setting out a formula or other methodology) in order to assist both firms and the Ombudsman.

1.5.24 G The section 404 power does not in itself remove a consumer’s right to take a case to the courts. However, any redress received in court proceedings would be discounted from compensation payable under a consumer redress scheme and vice versa. Scheme rules would also deal with the situation where a consumer had previously received redress from the Financial Ombudsman Service.

Waivers or modifications of the scheme rules

1.5.25 G Firms can apply for a waiver or modification of the scheme rules. For example, if a firm believes that it has already provided redress to relevant customers through a voluntary past business review it can apply to the FCA for a waiver from, or modification of, the rules in the usual way (see section 138A of the Act).

1.5.26 G The FCA may not give a waiver or modification unless it is satisfied that:
(1) compliance by the firm with the rules, or with the rules as unmodified, would be unduly burdensome, or would not achieve the purpose for which the rules were made; and
(2) the waiver or modification would not adversely affect the advancement of any of the FCA’s operational objectives.

1.5.27 G The FCA may impose conditions on a waiver or modification (e.g. additional reporting requirements).

Dealing with complaints when a consumer redress scheme is in place

1.5.28 G To avoid the risk of potential overlaps between the rules in DISP and the operation of any consumer redress scheme, the FCA has switched off the complaints resolution rules, the complaints time limits rules, the complaints record rules and the complaints reporting rules in relation to complaints where the subject matter falls to be dealt with (or has been dealt with) under a consumer redress scheme. Complaints which fall outside the scope of a scheme will continue to be subject to DISP in the usual way.

1.5.29 G The FCA will also consider whether it is appropriate to grant a waiver or modification of the DISP rules whilst a scheme is being consulted on. As set out in CONRED 1.5.27G, the FCA may impose conditions on a waiver or modification (e.g. conditions relating to handling complaints from complainants who claim to be in financial difficulty).

Non-compliance with the consumer redress scheme rules

- 1.5.30 **G** The *FCA* has a variety of tools at its disposal if a firm does not comply with a scheme. For example, the *FCA* will be able to take disciplinary action if a firm is failing to operate a scheme properly (see Part XIV and section 404C of the *Act*). The *FCA* is also able to take over the conduct of the investigation required under the scheme, or appoint a third party to do so (see section 404A(1)(k) of the *Act*).

Publication of the existence of a scheme

- 1.5.31 **G** The *FCA* will apply the approach to transparency it has set out in its 'Transparency discussion paper: Summary of feedback and our response' (FS13/1) at <https://www.fca.org.uk/your-fca/documents/feedback-statements/transparency-framework>. The *FCA* has a presumption in favour of transparency, unless there are compelling regulatory, legal or other reasons to the contrary, when considering whether, when and how to publicise a scheme or proposed scheme, over and above its publicity obligations under the *Act*.
- 1.5.32 **G** As set out in ■ CONRED 1.2.4G, the *FCA* would be likely to publicise the work it has been doing in the run up to the launch of a formal consultation paper. The consultation paper itself will be available on the *FCA*'s website.
- 1.5.33 **G** Assuming the scheme *rules* are made following consultation, the final *rules* will also be available on the *FCA*'s website. The *rules* will clearly set out the type of firms and activities to which the scheme applies. The information available on the website will enable third parties such as consumer groups to disseminate information about the scheme.
- 1.5.34 **G** The *FCA* will also be able to go further than this in appropriate cases and run its own publicity campaign. This might include newspaper or radio advertisements designed to increase awareness of the scheme amongst consumers. Such advertisements would aim to make clear the scope of the scheme (e.g. the types of products and services the scheme covers) and any action that consumers need to take (e.g. the extent to which they need to contact their firm directly or whether their case will automatically be investigated by the firm without the need for any action on their part).
- 1.5.35 **G** In addition, the *FCA* has the option to include in the scheme *rules* a requirement on firms to publicise the scheme themselves.
- 1.5.36 **G** In considering whether to publish the names of individual firms that are subject to a scheme, the *FCA* will also have regard to the *FCA*'s transparency framework, and in particular its confidentiality restrictions, the extent to which naming firms will enable consumers to make informed judgements (e.g. it may not always be possible to ensure that the list of firms subject to a scheme is exhaustive), as well as relevance and timeliness (e.g. the extent to which consumers will be made aware of the firms involved in a scheme through any customer contact exercise prescribed in the scheme).

1.6 Role of the Financial Ombudsman Service and the Financial Services Compensation Scheme

How the Financial Ombudsman Service will deal with complaints where there is a relevant consumer redress scheme

- 1.6.1 **G** *Complaints about:*
- (1) an act or omission of a firm where the subject matter of the *complaint* falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*; or
 - (2) a determination made by a firm under a *consumer redress scheme*; or
 - (3) a failure by a firm to make a determination under a *consumer redress scheme*;
- will all fall within the compulsory jurisdiction of the *Financial Ombudsman Service* (see section 404B(11) of the *Act*).
- 1.6.2 **G** Whether the *Ombudsman* will, or will not, consider a complaint and, if so, on what basis will depend on the circumstances of the complaint, including in particular on when the complaint is received by the *Financial Ombudsman Service* and also on whether the firm and consumer agree that the *complaint* should not be determined by reference to what, in the opinion of the *Ombudsman*, the determination under the consumer redress scheme should be or should have been (see section 404B(1A) and (2B) of the *Act*).
- ### Complaints received by the Financial Ombudsman Service before a scheme comes into effect
- 1.6.3 **G** A scheme must be established by the *FCA* in accordance with the *FCA's* rule-making processes, including consultation and cost benefit analysis (CBA). Publicity in the run up to formal consultation may lead to a rapid rise in the number of *complaints* to the *Financial Ombudsman Service* about the issue in question. Alternatively, the *Financial Ombudsman Service* may already have received a number of *complaints* about the issue for which a scheme is being developed to address.
- 1.6.4 **G** As these are *complaints* that were referred to the *Financial Ombudsman Service* before the scheme came into effect, the *Ombudsman* would have to determine the *complaint* on the usual fair and reasonable basis under section 228 of the *Act*.

Complaints received by the Financial Ombudsman Service while a consumer redress scheme is in effect

1.6.5 **G** Where the *complaint* is about the subject matter of a scheme or a failure by a firm to make a determination under a scheme (where the firm has not yet dealt with it because the time limit for the firm to deal with cases under the scheme has not expired) under **■ DISP 3** the *Ombudsman* will (unless **■ DISP 2.8.1R(4)** applies) refer the *complaint* back to the firm to be dealt with in accordance with the scheme.

1.6.6 **G** In other cases the *Ombudsman* may have to consider the merits of the *complaint*. However, the *complaint* will be determined by reference to what, in the opinion of the *Ombudsman*, the determination under the *consumer redress scheme* should be or should have been (unless the firm and consumer agree that the *complaint* should not be so determined – see **■ CONRED 1.6.7G**). Examples would be where:

- (1) the firm does not offer redress in the determination, or makes no determination within the time limit for doing so, and the consumer claims that (under the terms of the scheme) the firm should have done so; or
- (2) the scheme provides for different forms of redress depending on the circumstances of the case, but the firm has offered one form of redress and the consumer claims that (under the terms of the scheme) the firm should have offered another form of redress.

1.6.7 **G** Where the firm and the consumer agree that the *complaint* should not be determined by reference to what, in the opinion of the *Ombudsman*, the determination under the *consumer redress scheme* should be or should have been (see section 404B(1A) and (2B) of the Act), the *Ombudsman* will determine the *complaint* by reference to what is fair and reasonable in all the circumstances of the case (see **■ DISP 3.6**).

Complaints received by the Financial Ombudsman Service after a consumer redress scheme has ended

1.6.8 **G** If a *complaint* is about:

- (1) a firm’s determination under the scheme (or failure to make a determination in accordance with the scheme); or
- (2) an act or omission the subject matter of which has been dealt with under the scheme;

the *complaint* will be determined by reference to what, in the opinion of the *Ombudsman*, the *redress determination* under the *consumer redress scheme* should have been, rather than by reference to what is ‘fair and reasonable’ (unless the firm and the consumer agree otherwise – see **■ CONRED 1.6.7G**).

1.6.9 **G** The point at which a scheme ends will be set out in the scheme and some schemes may be of indefinite duration. In relation to an ‘opt-in’ scheme, the FCA would ensure that the scheme covers how to deal with customers who nevertheless contacted firms after that date.

1.6.10 **G** The *Financial Ombudsman Service* may also receive *complaints* about cases that have been dealt with by a firm under a *consumer redress scheme* when the firm should have dealt with the issue under the normal *complaints* process in *DISP*. In such cases the *Ombudsman* will determine the *complaint* in accordance with its usual ‘fair and reasonable’ jurisdiction and the usual *DISP* rules will apply. *DISP* seeks to clarify this point by referring (in appropriate places) to *complaints* that have properly been dealt with under a *consumer redress scheme*. It is important to note that “properly” here refers to the scope of the scheme (i.e. should the *complaint* have been dealt with under the scheme at all?) rather than the way in which the scheme has been applied in a particular case (i.e. the *complaint* did fall within the scheme but the firm applied the scheme incorrectly).

Non-consideration and dismissal of complaints by the Ombudsman

1.6.11 **G** The relevant *DISP* provisions provide that the *Ombudsman* can usually (unless the firm and the consumer consent) only consider a *complaint* which falls to be dealt with under a *consumer redress scheme* if the firm has already provided a *redress determination* (akin to a *final response*) or failed to do so within the time limits specified in the scheme (see ■ **DISP 2.8.1R**).

1.6.12 **G** *DISP* sets out the circumstances in which the *Ombudsman* may dismiss a *complaint*. There are no express rules which allow the *Ombudsman* to dismiss a *complaint* which falls to be dealt with (or has been dealt with) under a *consumer redress scheme* (see ■ **DISP 3.3.4AR**). Whether a *complaint* which falls to be dealt with (or has been dealt with) under a *consumer redress scheme* should be dismissed is a matter for the *Ombudsman* to decide.

Case fees

1.6.13 **G** The definition of *chargeable case* contains an exception which provides that a case fee may not be charged where the *Ombudsman* considers it apparent from the *complaint* when it is received, and from any *redress determination* issued by the firm, that the firm has reviewed the subject matter of the *complaint* and issued a *redress determination* in accordance with the terms of the *consumer redress scheme*. However, this exception does not apply where the complainant and the firm agree that the *complaint* should not be dealt with by the *Ombudsman* in accordance with the *consumer redress scheme*.

1.6.14 **G** If it is not apparent to the *Ombudsman* from the *complaint* when it is received, and from any *redress determination* issued by the firm, that the firm has reviewed the subject matter of the *complaint* and issued a *redress determination* in accordance with the terms of the *consumer redress scheme*, a case fee will be chargeable. It will therefore be in firms’ interests to ensure that a *redress determination* clearly sets out the outcome of their investigation under the scheme as well as the basis for it.

Time limits

1.6.15 **G** Similar time limits will apply to *complaints* to the *Financial Ombudsman Service* about the outcome of a firm’s investigation under a scheme as

currently apply to other complaints referred to the *Financial Ombudsman Service*.

- 1.6.16 G Consumers will have six months from the date on which the firm sent them a *redress determination* to complain to the *Financial Ombudsman Service*. If a firm has failed to provide a *redress determination* (e.g. because it omitted to deal with a particular consumer's case under the scheme), consumers will have the longer of six years from the event complained of and three years from the date on which the consumer became aware (or ought reasonably to have become aware) that they had cause for complaint, to complain to the *Financial Ombudsman Service* (in accordance with the existing standard time limits in ■ DISP 2.8). A firm cannot consent to the *Ombudsman* considering the complaint outside these standard time limits where the complaint is a "relevant complaint" within the meaning of section 404B(3) of the *Act*. However, the *Ombudsman* can consider complaints outside of these standard time limits where, in the view of the *Ombudsman*, the consumer's failure to comply with the time limits was as a result of exceptional circumstances.

Awards

- 1.6.17 G Where a *consumer redress scheme* is in place, money awards and directions will reflect what, in the opinion of the *Ombudsman*, the outcome of the firm's investigation should be (or should have been) under the *consumer redress scheme* (see section 404B(5) and (8) of the *Act*). This applies unless the firm and the consumer agree that the *complaint* should not be determined in this way (see section 404B(1A), (2B) and (3) of the *Act*).
- 1.6.18 G The money award may specify the date by which the amount awarded is to be paid and may provide for interest to be payable, at a rate specified in the award, on any amount not paid by that date (see section 404B(7) of the *Act*).
- 1.6.19 G The cap on the maximum money award the *Ombudsman* can make will also apply in relation to *consumer redress schemes* (see section 404B(5) of the *Act*). Even so, when making *scheme rules*, the *FCA* may decide to specify a different monetary limit in relation to *complaints* falling within the scope of the scheme (see section 229(7) of the *Act*). Such a *rule* would normally be subject to consultation before the scheme takes effect (see ■ CONRED 1.2.1G). As is usual practice, the *Ombudsman* will be able to recommend that the firm pay a larger amount than the cap (but this will not be binding on firms in any way). This does not mean that the *Ombudsman* can recommend a larger amount than should be paid under the scheme.

Firm-by-firm past business reviews that have already been agreed by a firm before a consumer redress scheme is made

- 1.6.20 G If a firm had fairly reached a voluntary settlement with its consumers on a full and final settlement basis, the *Financial Ombudsman Service* would not usually look to re-open this.

Waivers of the scheme rules for particular firms

- 1.6.21 G If a firm is granted a *waiver* of the scheme *rules* as a whole, the *consumer redress scheme* will not apply to that firm. Consequently, any *complaints*

about the firm that are referred to the *Financial Ombudsman Service* will be dealt with in accordance with the *Ombudsman’s* usual approach of determining what is, in their view, fair and reasonable in all the circumstances of the case.

Failures by firms that span the period before and after an activity became regulated by the FCA

1.6.22 **G** In this situation, the *Act* would require the *Financial Ombudsman Service* to decide *complaints* within the scope of a scheme by applying the scheme (unless the relevant firm and consumer otherwise agreed – see section 404B of the *Act*) and *complaints* outside the scope of a scheme on the basis of its usual approach (see section 228 of the *Act*). However, as explained in ■ CONRED 1.4.5G, it would be possible for the Treasury by order to widen the type of services that *consumer redress schemes* can cover in order to encompass the pre-regulation activities (see section 404G of the *Act*).

The FSCS

1.6.23 **G** The *FSCS* will consider claims that fall within the scope of a *consumer redress scheme* in accordance with the scheme (see ■ COMP 12.4.22R). However, the *FSCS* has discretion to depart from the terms of the scheme where it considers it essential in order to provide the claimant with fair compensation. An example might be the *FSCS* paying compensation in cash rather than augmenting a consumer’s current pension plan (as the *FSCS* is not in a position to advise the consumer to set up a new, or amend an existing, pension plan in the way that a firm may be able to).

1.6.24 **G** The *FSCS’s* limits on the amount of compensation it can pay in the event of a claim will apply.

1.7 Challenging a consumer redress scheme

Method of challenge

1.7.1 **G** Any *person* (e.g. firms, consumers or their representatives) may apply to the Upper Tribunal for a review of any *rules* made (see section 404D of the *Act*). The contact details for the Upper Tribunal are as follows:

The Upper Tribunal (Tax and Chancery Chamber)

5th Floor, Rolls Building

7 Rolls Buildings

Fetter Lane

London EC4A 1NL Tel: 020 7612 9730

Email: uttc@hmcts.gsi.gov.uk

1.7.2 **G** The Upper Tribunal is independent of the *FCA*. Its usual role in relation to financial services is to hear references arising from *decision notices* or *supervisory notices* issued by the *FCA*. However, it has also been given a special role in relation to *consumer redress schemes*.

1.7.3 **G** The judge presiding at *consumer redress scheme* proceedings in the Upper Tribunal will be a judge of the High Court, the Court of Appeal or Court of Session (or such other person as may be agreed by the Lord Chief Justice, the Lord President or the Lord Chief Justice of Northern Ireland; and the Senior President of Tribunals) (see section 404D(12) of the *Act*).

Dealing with consumer redress scheme cases

1.7.4 **G** The general rule is that, in determining an application, the Upper Tribunal will apply the principles applicable on an application for judicial review (see section 404D(5) of the *Act*). Therefore, the Tribunal will consider issues such as:

- (1) whether the *FCA* has acted within its powers;
- (2) whether the *FCA* has followed a fair process;
- (3) whether the *FCA* has specified kinds of redress that are 'just'; and
- (4) whether the *FCA* has acted irrationally or unreasonably (e.g. is the amount of time in which firms are given to conduct an investigation unreasonable?).

1.7.5 **G** Nonetheless, in relation to two particular aspects of a *consumer redress scheme*, the Upper Tribunal will be able to conduct a full merits review to consider whether the *FCA's* interpretation of the law was correct (see section 404D(6) and (7) of the *Act*). These two aspects are:

- (1) any examples that the *FCA* has set out in the scheme *rules* of things done, or omitted to be done, that are to be regarded as constituting a failure to comply with a requirement; and
- (2) any matters to be taken into account, or steps to be taken, that the *FCA* has set out in the scheme *rules* for the purposes of:
 - (a) assessing evidence as to a failure to comply with a requirement; or
 - (b) determining whether such a failure has caused (or may cause) loss or damage to consumers.

1.7.6 **G** In relation to these two aspects, the *FCA* is restricted to what a court or Tribunal would do. As such, the Upper Tribunal's role will be to check whether the *FCA* came to the correct view.

Procedure in the Upper Tribunal

1.7.7 **G** The detailed rules that govern the practice and procedure to be followed in the Upper Tribunal are available on the Government's website (<https://www.gov.uk/government/publications/upper-tribunal-procedure-rules>) and are subject to periodic revision.

Possible outcomes of an application to the Upper Tribunal

1.7.8 **G** The Upper Tribunal may:

- (1) dismiss the application (so that the scheme *rules* will stand); or
- (2) make an order quashing any rules made under section 404 or any provision of those *rules* (see section 404D(2) of the *Act*).

1.7.9 **G** The Upper Tribunal may also award damages to the applicant (see section 404D(10) of the *Act*).

1.7.10 **G** It is possible to appeal an Upper Tribunal decision to the Court of Appeal on a point of law.

1.8 Imposing a consumer redress scheme on a firm under section 404F(7) of the Act

Triggers that must be met before the FCA can impose a consumer redress scheme under section 404F(7)

- 1.8.1 **G** Section 404F(7) of the *Act* empowers the *FCA* to require a firm “to establish and operate a scheme which corresponds to, or is similar to, a consumer redress scheme” established under section 404 of the *Act* (see ■ CONRED 1.2 to 1.7).
- 1.8.2 **G** The process by which the *FCA* may vary the authorisation of a *payment service provider* or *electronic money issuer* is not specifically addressed in this *guidance*.
- 1.8.3 **G** The relevant triggers for determining whether the *FCA* can require an *authorised person* with a *permission* to establish and operate a scheme which corresponds to, or is similar to, a *consumer redress scheme* are different to those that apply for an ‘industry wide’ *consumer redress scheme* established under section 404 of the *Act*. Rather than considering the test set out in section 404(1) of the *Act*, the *FCA* has to consider the relevant legal triggers for varying a *permission* or varying or imposing a *requirement* on a firm (see sections 55H, 55J and 55L of the *Act*).
- 1.8.4 **G** However, before the *FCA* varies a firm’s *permission* under section 55J(2) of the *Act* on its own initiative, or imposes a *requirement* on a firm under section 55L of the *Act*, the *FCA* must consider whether it would be ‘more appropriate’ to proceed under the Competition Act 1998. If the *FCA* considers that it would be more appropriate to proceed under the Competition Act 1998, the *FCA* must not exercise its powers under sections 55J(2) or 55L of the *Act* (see section 234K of the *Act*). In the remainder of this section, it is assumed that the *FCA* considers that it is able to exercise its powers under the *Act* rather than under the Competition Act 1998.
- 1.8.5 **G** The *FCA* may vary a firm’s *permission* under section 55J of the *Act* or impose or vary a *requirement* under section 55L of the *Act*, on its own initiative, if it appears to the *FCA* that:
 - (1) the firm is failing, or likely to fail, to satisfy the *threshold conditions* for which the *FCA* is responsible; or

- (2) the firm has failed, for at least a year, to carry on a *regulated activity* to which its *permission* relates; or
- (3) it is desirable to exercise the power in order to advance one or more of the *FCA’s operational objectives*, for example, its *consumer protection objective* of securing an appropriate degree of protection for *consumers*.

1.8.6 **G** Further information about varying a firm’s *permission* or varying or imposing *requirements* on the *FCA’s own initiative* under section 55J or section 55L of the Act is set out in EG 8.

1.8.7 **G** The *FCA* has no power to accept an application from an *authorised person* to vary its *permission* where the *authorised person* is a *PRA-authorised person* (see sections 55H and 55I of the Act). For all other firms, an *authorised person* with a *permission* can voluntarily apply to the *FCA* to vary its *permission* under section 55H of the Act. The *FCA* may refuse the application if it appears to the *FCA* that it is desirable to do so in order to advance any of its *operational objectives*, for example, its *consumer protection objective* (see section 55H(4) of the Act). The *FCA* also has the power to impose or vary a *requirement* under section 55L of the Act, in order to establish and operate a scheme which corresponds to, or is similar to, a scheme established under section 404 of the Act. However, where the *authorised person* is a *PRA-authorised person* (or is a member of a group which includes a *PRA-authorised person*), the *FCA* must consult the *PRA* (see section 55L(7) of the Act). As with voluntary applications to vary a *permission*, the *FCA* may refuse an application to voluntarily impose, vary or cancel a requirement if it appears to the *FCA* that it is desirable to do so in order to advance any of its *operational objectives* (see section 55L(5) of the Act).

1.8.8 **G** Further information about the voluntary variation of a *permission* or the voluntary imposition or variation of a *requirement* is set out in ■ SUP 6.

Consultation

1.8.9 **G** The decision to require a firm to establish and operate a scheme pursuant to section 404F(7) affects a firm, or a small number of firms, each individually rather than the whole industry or sector of the industry. As with any supervisory or enforcement action it takes against a specific firm, the *FCA* is not obliged to consult before deciding to vary a firm’s *permission* or impose or vary a *requirement*.

Circumstances in which the FCA will engage section 404B

1.8.10 **G** As already explained, when determining whether to vary a firm’s *permission* under sections 55H or 55J or to impose a *requirement* under section 55L to establish and operate a scheme pursuant to section 404F(7), the *FCA* will need to consider whether the statutory tests referred to in ■ CONRED 1.8.5G (for own initiative action) and ■ CONRED 1.8.7G (where a firm applies voluntarily) have been met. This will often involve a consideration of the *FCA’s operational objectives* and, in particular, the *consumer protection objective*. The *FCA* will also consider the regulatory principles in section 3B of the Act and follow the normal principles of administrative law.

- 1.8.11** **G** This exercise will be undertaken on a case-by-case basis and in the round by looking at all of the proposed terms, including any terms which have been included to make provision corresponding to section 404B (under section 404F(7)(b)). It is important to note that engaging section 404B will not automatically or always advance one or more of the *FCA's operational objectives*, for example its *consumer protection objective*, even if the other terms of the proposed scheme do.
- 1.8.12** **G** If section 404B is engaged then broadly the *Ombudsman* is normally required to decide a *complaint* referred to the *Financial Ombudsman Service* after the scheme comes into effect on the basis of what, in the opinion of the *Ombudsman*, the determination under the scheme should be (or should have been). This will mean that the *Ombudsman* will not determine the *complaint* by reference to what, in their view, they consider to be fair and reasonable in all the circumstances of the case. To assist the *Financial Ombudsman Service* in identifying relevant cases, firms may be required to draw the scheme to the attention of the *Financial Ombudsman Service* in any individual cases that are referred to it. However, if the firm and the consumer agree that the *complaint* should not be determined by reference to what, in the opinion of the *Ombudsman*, the determination under the *consumer redress scheme* should be or should have been, or if the subject matter of the *complaint* does not fall to be dealt with under the scheme (or part of it does not) then the *Ombudsman* may determine the *complaint* (or that aspect of the *complaint*) in accordance with what they consider to be fair and reasonable in the usual way.
- 1.8.13** **G** It is likely that many section 404F(7) schemes will be set up because, in the *FCA's* view, it is desirable to advance the *consumer protection objective* of securing an appropriate degree of protection for *consumers*. In determining what is desirable to advance that objective, the *FCA* will have regard to a wide range of factors. Many of these are likely to be interdependent considerations rather than standalone issues. These may include (but are not limited to):
- (1) how many consumers have been (or may be) affected by the act or omission to which the proposed scheme relates. It will normally only be appropriate to consider engaging section 404B where the issue affects a large number of consumers;
 - (2) whether engaging section 404B would result in higher or faster redress for consumers (whether or not they have complained individually) than would otherwise be the case. In other words, the extent of any difference in redress between the proposed scheme and what consumers may receive through the *Financial Ombudsman Service* or the courts;
 - (3) the extent to which the overall effect of the proposed scheme provides a fair and reasonable outcome for individual consumers, having regard to the desired outcome for the group of affected consumers overall; and
 - (4) whether the *Financial Ombudsman Service* has had a material number of *complaints* about the act or omission, has an established approach to dealing with them and the extent to which the proposed scheme aligns with this approach.

Consultation with the Financial Ombudsman Service when the FCA is considering engaging section 404B

- 1.8.14 **G** Where the *FCA* is considering engaging section 404B, it will consult with the *Financial Ombudsman Service* at an early stage and allow time for a fully-considered, written response. The *Financial Ombudsman Service* is in a position to say:
- (1) whether it has already received cases about the particular firm and acts/omissions, whether any cases have been decided and (if so) what the outcomes were;
 - (2) insofar as the acts/omissions are not fact-specific, whether it has previously considered similar cases and has adopted a particular approach;
 - (3) the sorts of *complaints* it can foresee might be made in future by consumers about the firm in relation to the acts/omissions concerned;
 - (4) how the outcomes of cases decided by the *Ombudsman*, or the *Ombudsman's* approach to similar cases, would compare to the outcomes under the proposed scheme; and
 - (5) if the *Financial Ombudsman Service* is likely to encounter any practical issues in implementing the proposed scheme.

- 1.8.15 **G** The *Financial Ombudsman Service* is impartial between *consumers* and firms. The *FCA* will not treat the *Financial Ombudsman Service's* input as a proxy for input on behalf of *consumers*.

- 1.8.16 **G** The *Financial Ombudsman Service* cannot lawfully guarantee how it will decide cases that fall outside the scope of the scheme (e.g. pre-regulation cases or those referred to the *Financial Ombudsman Service* before the scheme came into effect). It may, however, be willing to describe its general approach to such cases.

Internal process to be followed if the FCA proposes to engage section 404B

- 1.8.17 **G** Where the proposal is to engage section 404B, the *FCA* will apply the following governance procedure in addition to its usual processes:
- (1) all decisions to engage section 404B will be taken by the *FCA's* Executive Committee or a sub-committee;
 - (2) the Committee/sub-committee will need to be satisfied that there has been adequate consultation internally to ensure full consideration of consumers' interests;
 - (3) the Committee/sub-committee will consider written views from the *Financial Ombudsman Service* before reaching a decision; and
 - (4) if section 404B is engaged, the document outlining the terms of the scheme will be published on the *FCA's* website, either in the *FCA Register* or (with cross-reference from the *FCA Register*) in a register of such schemes.

Challenging a consumer redress scheme imposed under section 404F(7)

- 1.8.18** G If the firm has voluntarily applied to establish and operate the scheme, it is unlikely to challenge the *FCA* for accepting its application. If the *FCA* proposes to refuse a firm’s application for a section 404F(7) scheme, the *FCA* must give the firm a *warning notice* (section 55X(2)). If, after consideration by the *FCA*’s decision makers, the *FCA* decides to refuse the application, the *FCA* must give the firm a *decision notice* (section 55X(4)). The firm would be able to challenge the *decision notice* by referring the *FCA*’s decision to the Upper Tribunal (section 55Z(3)).

- 1.8.19** G If the *consumer redress scheme* was imposed on the *FCA*’s own initiative, the *FCA* must give the firm a *supervisory notice* (section 55Y). The firm would be able to challenge the *supervisory notice* by referring the *FCA*’s decision to the Upper Tribunal (section 55Z(3)). The Tribunal may dismiss the reference or remit the matter to the *FCA* with a direction to reconsider and reach a decision in accordance with the Tribunal’s findings (section 133(6) of the *Act*).

Chapter 2

Arch cru Consumer Redress Scheme

2.1 Application and subject matter of the scheme

2.1.1

R

Application to firms which made personal recommendations.....

- (1) The whole of this chapter applies to a *firm* which made a *personal recommendation* in relation to an Arch cru fund, after which a *consumer* made an investment in the Arch cru fund, and to which the suitability requirements (specified at paragraph 5.1R of the instructions in ■ CONRED 2 Annex 13) applied.
- (2) The Arch cru funds referred to in *CONRED* are any of the following sub-funds of the CF Arch cru Investment Funds and CF Arch cru Diversified Funds:
 - (a) CF Arch cru Investment Portfolio;
 - (b) CF Arch cru Specialist Portfolio;
 - (c) CF Arch cru Income Fund;
 - (d) CF Arch cru Balanced Fund;
 - (e) CF Arch cru Global Growth Fund; or
 - (f) CF Arch cru Finance Fund.

2.1.2

R

Application to persons who have assumed a firm's liabilities.....

- (1) The whole of this chapter also applies to a *person* who has assumed a liability (including a contingent one) in respect of a failure by a *firm* to whom this chapter applies.
- (2) A *person* in (1) must either:
 - (a) perform such of the obligations as the *firm* is required to perform under this chapter; or
 - (b) ensure that those obligations are performed by the *firm*;

and must notify the *FCA*, by 29 April 2013, by email to ArchCruProject@fca.org.uk, as to whether that *person* or the *firm*, or both, will be performing those obligations.
- (3) References in this chapter to a *firm* are to be interpreted as referring to a *person* in (1) where the context so requires.

Wider application of certain provisions

2.1.3

R

■ CONRED 2.2, ■ CONRED 2.4.1R (1), ■ CONRED 2.8.1 R, ■ CONRED 2.8.2 R, ■ CONRED 2.8.3 R and ■ CONRED 2.8.4 G also apply to any *firm* which has carried out any of the following *regulated activities* for a *customer* in relation to an Arch cru fund:

- (1) *advising on investments*; or
- (2) *arranging (bringing about) deals in investments*; or
- (3) *making arrangements with a view to transactions in investments*; or
- (4) *managing investments*;

except for a *firm* which, at the relevant time, was a platform service provider; meaning it:

- (5) provided a service which involved *arranging* and safeguarding and administering assets;
- (6) distributed *retail investment products* which were offered to *retail clients* by more than one product provider; and
- (7) did not carry on the *regulated activities of advising on investments or managing investments*.

Duration of the scheme

2.1.4

R

The consumer redress scheme created by this chapter comes into force on 1 April 2013 and has no end date.

Subject matter of the scheme

2.1.5

R

The subject matter of the scheme is whether a *firm* complied with the suitability requirements (specified in paragraph 5.1R of ■ CONRED 2 Annex 13 R) in cases where the conditions in ■ CONRED 2.4.2 R are satisfied (these are referred to in this chapter as "scheme cases").

2.1.6

R

A scheme case ceases to be within the subject matter of the scheme if the *firm*:

- (1) did not have sufficient information to determine the scheme case and has taken the required steps to obtain further information from the *consumer* but still does not have sufficient information (as more fully described in ■ CONRED 2.5.9 R); or
- (2) has not received an opt-in from the *consumer* by 22 July 2013 (or later, where the provision in ■ CONRED 2.5.1R (2) in relation to exceptional circumstances applies); or
- (3) is unable to contact a *consumer* (as more fully described in ■ CONRED 2.8.3R (2)).

2.1.7 **G** Where the *firm* has not received, by 22 July 2013, a response from the *consumer* to the letter required by ■ CONRED 2.4.4 R or (where applicable) to the letter required by ■ CONRED 2.4.5R (1) or ■ (2), the *firm* should handle any complaint received from a *consumer* after this date in relation to the sale of Arch cru funds in accordance with the complaint handling rules in *DISP*, unless ■ CONRED 2.5.1R (2) (in relation to exceptional circumstances) applies.

Defined terms

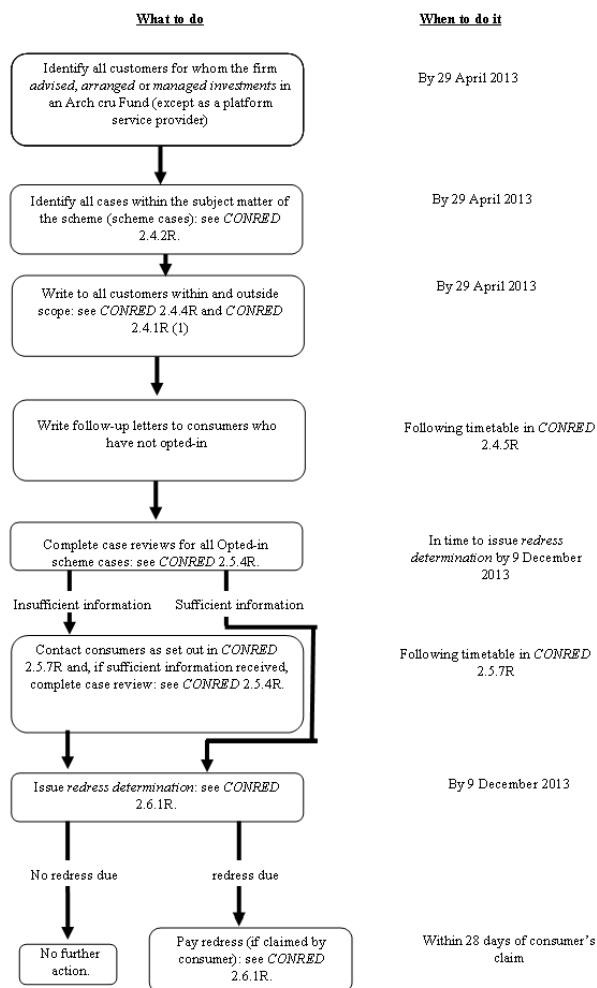
2.1.8 **R** Certain words and phrases specific to CONRED are defined in ■ CONRED App 1 and the *Glossary*. All words in italics are defined in the *Glossary*.



2.2 Summary of the scheme

2.2.1

G



2.3 Notifications and reports to the FCA

2.3.1 **R** Notifications and other reports required by these *rules* to the *FCA* must be sent to the email address specified.

2.3.2 **G** If the *firm* is to send an encrypted email to the *FCA* it will need to download the public PGP key from the *FCA* website and import the key into its email client software.



2.4 Consumer redress scheme: identifying scheme cases and inviting consumers to request a review

Deadlines to complete the steps in this section

2.4.1

R

- (1) By 29 April 2013, a *firm* must take the first and second steps set out in this section and send a *redress determination* in the form set out in ■ CONRED 2 Annex 1 R to any *customer* in ■ CONRED 2.1.3 R who falls outside the subject matter of the scheme.
- (2) A *firm* must, by the deadlines set out in ■ CONRED 2.4.5 R, take the third step set out in this section.

First step: identify cases within subject matter of scheme

2.4.2

R

The first step is to identify all cases within the subject matter of the scheme; ie, where each of the following conditions is satisfied ("scheme cases")

- (1) the *firm* made a *personal recommendation* to a *consumer* to invest in an Arch cru fund specified above at ■ CONRED 2.1.1R (2) and after that recommendation the *consumer* did so invest;
- (2) the suitability requirements (specified at paragraph 5.1R of ■ CONRED 2 Annex 13 R) applied to the recommendation;
- (3) the law applicable to the obligations of the *firm* arising in connection with the *personal recommendation* is that of a UK territory (that is, England, Wales, Scotland or Northern Ireland) (see ■ CONRED 2.4.7 R);
- (4) if the applicable law in (3) is that of England, Wales or Northern Ireland, the *consumer's* investment in Arch cru funds was on or after 13 December 2006;
- (5) if the applicable law in (3) is that of Scotland:
 - (a) the *consumer's* investment in the Arch cru fund was on or after 13 December 2007; or
 - (b) where the *consumer's* investment in the Arch cru fund was before 13 December 2007, the *consumer* did not know, and could not with reasonable diligence have known, before 13 December 2007, that he had suffered loss;

- (6) the *consumer* has not, prior to 1 April 2013, accepted an offer of redress from the *firm* or other *person* in full and final settlement of all potential claims arising out of the recommendation in (1); and
- (7) the *consumer* has not, prior to 1 April 2013, asked the *Financial Ombudsman Service* to deal with a complaint against the *firm* arising out of the recommendation in (1).

2.4.3 **E** The adoption by a *firm* of any date earlier than the date of suspension (13 March 2009) as the date when the *consumer* knew, or could with reasonable diligence have known, that he had suffered loss, may be relied upon as tending to show contravention of ■ CONRED 2.4.2 R.

Second step: send initial letters to consumers

2.4.4 **R** The second step is, for all scheme cases, to send to the *consumer* a letter in the form set out in ■ CONRED 2 Annex 2 R inviting the *consumer* to opt-in to the scheme.

Third step: send follow-up letters to consumers

2.4.5 **R** The third step is to do the following:

- (1) for all scheme cases where the *firm* has not received an opt-in, by 27 May 2013, the *firm* should send the *consumer* an opt-in reminder (in the form set out in ■ CONRED 2 Annex 3 R) by 3 June 2013 (unless the *firm* has received an opt-in in the interim);
- (2) for all scheme cases where the *firm* has not received, by 24 June 2013, an opt-in or (where applicable) by (1), the *firm* should send the *consumer* an opt-in reminder letter (in the form set out in ■ CONRED 2 Annex 4 R) by 1 July 2013 (unless the *firm* has received an opt-in in the interim); and
- (3) for all scheme cases where the *firm* has not received, by 22 July 2013 an opt-in or, where applicable by (1) or (2), the *firm* should send the *consumer* a letter in the form set out in ■ CONRED 2 Annex 5 R by 29 July 2013 (unless the *firm* has received an opt-in in the interim when it must follow the steps in ■ CONRED 2.5.1R (2)).

2.4.6 **R** For the purpose of ■ CONRED 2.4.5 R:

- (1) an 'opt-in' is an indication from, or on behalf of, a *consumer* that he wishes the *firm* to carry out a case review (as detailed in ■ CONRED 2.5); and
- (2) if a *firm* receives a *complaint* relating to the subject matter of the scheme from a *consumer* on or after 1 April 2013 and before 23 July 2013 it must treat the *complaint* as an 'opt in' to the scheme.

Applicable law

2.4.7

R

For the purposes of ■ CONRED 2.4.2R (3), the applicable law is:

- (1) where, in connection with the *personal recommendation*:
 - (a) the *consumer* has agreed to the *firm's terms of business*; and
 - (b) these include a clause providing for the application of the law of a particular UK territory (that is, England, Wales, Scotland or Northern Ireland);
 that UK territory; or
- (2) if (1) does not apply: where the *firm* and the *consumer* are habitually resident in the same UK territory, and the *personal recommendation* is made there, that UK territory; or
- (3) if neither (1) nor (2) applies: where the conditions in ■ CONRED 2.4.8 R apply, the UK territory in which the *consumer* is habitually resident; or
- (4) if none of (1), (2) or (3) applies: the UK territory in which the *firm* made the *personal recommendation*.

2.4.8

R

The conditions referred to in ■ CONRED 2.4.7R (3) are that:

- (1) in the UK territory in which the *consumer* has his habitual residence, either:
 - (a) the contract under which the *personal recommendation* was provided was preceded by a specific invitation addressed to the *consumer*, or by advertising, and the *consumer* took all the steps necessary to engage the *firm*; or
 - (b) the *firm* or its agent received the *consumer's* order; and
- (2) the *personal recommendation* was provided at least in part in that UK territory.

Reporting requirement: opted-in scheme cases

2.4.9

R

By 29 July 2013, a *firm* must report to the FCA by email to archcrureview@fca.org.uk ; or (if the email is encrypted) archcrureviewpgp@fca.org.uk with the following information:

- (1) the total number of scheme cases (cases falling within ■ CONRED 2.4.2 R);
- (2) the total number of investments in Arch cru funds resulting from the *regulated activities* for a *customer* in ■ CONRED 2.1.3 R which fall outside the subject matter of the scheme (see ■ CONRED 2.1.5 R and ■ CONRED 2.4.2 R), with a summary explanation of the reason why in each case; and
- (3) the total number of opted-in scheme cases.

[Note: for details of how to obtain an encryption key see *guidance* above at ■ CONRED 2.3.2 G]

2.5 Consumer redress scheme: case review

Deadline to complete the steps in this section

- 2.5.1** **R** A *firm*:
- (1) in respect of any scheme case where the *firm* has received an opt-in by 22 July 2013, must take the steps set out in this section by 9 December 2013; and
 - (2) in respect of any scheme case where the *firm* has received an opt-in later than 22 July 2013, must take the steps set out in this section if the *consumer's* failure to comply with that time limit was caused by exceptional circumstances; in such a case, the deadline in (1) is extended according to the length of the delay caused by the *consumer's* failure to comply with the time limit.
- 2.5.2** **G** The *guidance* on exceptional circumstances at **CONRED 2.6.3 G** is relevant to **CONRED 2.5.1R (2)**.
- 2.5.3** **R**
- (1) For any scheme case where the *firm* has received an opt-in, but the *firm*, does not consider **CONRED 2.5.1R (2)** requires it to take the steps set out in this section, and does not intend to do so, the *firm* must send the *consumer* a *redress determination* in the form set out in **CONRED 2 Annex 6 R** within 14 days of receiving the opt-in.
 - (2) For any opted-in scheme case, the *firm* must send the *consumer*, within 14 days of receiving the opt-in, a letter in the form set out in **CONRED 2 Annex 7 R**.
- ### First step: case review of each opted-in scheme case
- 2.5.4** **R** The first step is to carry out a review (a case review) of each opted-in scheme case, by completing the template at **CONRED 2 Annex 12 R**, in accordance with the *rules* set out in the instructions at **CONRED 2 Annex 13**.
- 2.5.5** **E** Non-compliance with any of the *evidential provisions* set out in the instructions at **CONRED 2 Annex 13** may be relied upon as tending to show contravention of **CONRED 2.5.4 R**.

2.5.6 **G** In complying with **■ CONRED 2.5.4 R**, *firms* should have regard to the *guidance* set out in the instructions at **■ CONRED 2 Annex 13**.

Second step: cases of insufficient information

2.5.7 **R** (1) The second step applies only in respect of an opted-in scheme case where a *firm* has attempted to comply with the first step (**■ CONRED 2.5.4 R**) but does not have sufficient information to determine all of the following matters:

- (a) whether it has failed to comply with any of the suitability requirements specified at paragraph 5.1R of **■ CONRED 2 Annex 13**;
- (b) if so, whether that failure has caused loss or damage to the *consumer*; and
- (c) if so, what the redress should be in respect of its failure.

(2) The second step is to:

- (a) send the *consumer* a letter in the form set out in **■ CONRED 2 Annex 8 R**;
- (b) if no reply is received by the *firm* within four weeks of a letter in (a) being dispatched, the *firm* must send a letter to the *consumer*, within one further week, in the form set out in **■ CONRED 2 Annex 9 R**, and take all reasonable steps to contact the consumer by other means; and
- (c) if a reply is received from a *consumer* but the information it contains is insufficient to determine all the matters in (1), the *firm* should take all reasonable steps to obtain further information from the *consumer*.

[Note: see also **■ CONRED 2.8.7 R**.]

2.5.8 **R** A *firm* which, having carried out the second step, has acquired sufficient information to determine all of the outstanding matters must then complete the first step (**■ CONRED 2.5.4 R**).

2.5.9 **R** Where a *firm* has carried out the second step in relation to an opted-in scheme case (falling within **■ CONRED 2.4.2 R**) but still does not have sufficient information to determine all of the outstanding matters, the opted-in scheme case no longer falls within the subject matter of the consumer redress scheme created by this chapter. The *firm* must send the *consumer* a letter in the form set out in **■ CONRED 2 Annex 10 R** promptly on completion of the second step.

2.5.10 **G** Opted-in scheme cases to which the second step (**■ CONRED 2.5.7 R**) applies are likely to be exceptional, having regard to the record-keeping requirements applicable to *authorised persons* under *FCA rules* (notably *SYSC*).

Third step: redress determination

2.5.11 **R** The third step is to send the *consumer* a *redress determination* in the form of the letter set out in **■ CONRED 2 Annex 11 R** in respect of each opted-in scheme case.

Taking steps by or on behalf of FCA

- 2.5.12** **R** The *FCA* may (on giving notice to the firm) take any of the steps in ■ CONRED 2.3 to ■ CONRED 2.5, instead of the *firm*, or may appoint one or more competent persons to do so on behalf of the *FCA*, if there is a material failure by the *firm* to take any of the actions required under this chapter, including where the *firm* informs the *FCA* that it is unable or unwilling to take any of those actions because to do so would be in breach of a condition of its professional indemnity insurance. In such a case, the *firm* must:
- (1) not carry out (or, as the case may be, continue) any of the steps to be taken by the *FCA* or competent person, unless so directed by them; 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, is not reasonable for the purposes of this rule).
- 2.5.13** **G** The *FCA* would expect a *firm* to make reasonable efforts to obtain the consent of its professional indemnity insurer to take the relevant steps, in line with its obligations under *Principle 11* (Relations with regulators).
- 2.5.14** **R** If, where the *FCA* or a competent person takes any steps under ■ CONRED 2.5.12 R, the *FCA* proposes to make any determination of:
- (1) whether a failure by a *firm* has caused loss to a *consumer*; or
 - (2) what the redress should be in respect of the failure;
- the *FCA* must give the *firm* a *warning notice* specifying the proposed determination.
- 2.5.15** **R**
- (1) If the *FCA* decides to make a determination of the matters in ■ CONRED 2.5.14 R, the *FCA* must give the *firm* a *decision notice* specifying the determination.
 - (2) If the *FCA* decides to make such a determination, the *firm* may refer the matter to the *Tribunal*.
- 2.5.16** **R** Part 26 of the *Act* (including the provisions as to final notices) applies in respect of notices given under ■ CONRED 2.5.14 R and ■ CONRED 2.5.15 R.
- 2.5.17** **G** Where, under ■ CONRED 2.5.12 R, the *FCA* (or a competent person) communicates with a *customer* (or *consumer*) instead of the *firm*, it will do so in its own name, making clear (in the case of a competent person) its authority from the *FCA* to do so.
- 2.5.18** **G** Where the *FCA* (or a competent person), instead of the *firm*, carries out the third step in ■ CONRED 2.5.11 R, it will do so no earlier than seven *days* after the issue of a final notice in respect of the *FCA's* decision to make a

determination of the matters in ■ CONRED 2.5.14 R, and will send the *firm* a copy of the *consumer's* response to the *redress determination*.

2.5.19 **G** A fee is payable by the *firm* (or *person* falling within ■ CONRED 2.1.2R (1)) in any case where the *FCA* exercises its powers under ■ CONRED 2.5.12 R: see the table at ■ FEES 3.2.7 R.

2.5.20 **G** The completion of the steps in ■ CONRED 2.3 to ■ CONRED 2.5 by, or on behalf of, the *FCA*, as provided in ■ CONRED 2.5.12 R, does not affect the ability of the *Ombudsman* to consider a *complaint*, in particular where the *firm* has not sent a *redress determination* in accordance with the time limits specified under the scheme.

2.6 Consumer redress scheme: paying redress

2.6.1 **R** A *firm* must pay the redress determined to be payable to a *consumer*, calculated in accordance with the requirement in section 10 of the instructions at ■ CONRED 2 Annex 13 :

- (1) within 28 *days* of receiving a claim from the *consumer* for the redress determined to be payable, following the issue of the *redress determination*; and
- (2) in accordance with the instructions set out by the *consumer* in his response to the *redress determination* in which he makes the claim

but a *firm* need not pay redress where the *consumer* did not send a claim for it within six months of the date of the *redress determination*, unless the *consumer's* failure to comply with that time limit was as a result of exceptional circumstances, except where the *consumer* refers a *complaint* in respect of the *redress determination* to the *Financial Ombudsman Service* within the time limits provided in ■ DISP 2.8.2 R (or ■ DISP 2.8.2R (3) applies).

2.6.2 **R** (1) Simple interest is payable on the redress determined to be payable from the end of the 28-*day* period referred to in ■ CONRED 2.6.1R (1) until the date of payment, at a rate of 8% per annum.

- (2) After the expiry of 28 *days* following the *consumer's* claim for the redress, the redress, including interest, may be recovered as a debt due to the *consumer* and, in particular, may:
 - (a) if a county court so orders in England and Wales, be recovered by execution issued from the county court (or otherwise) as if it were payable under an order of that court; or
 - (b) be enforced in Northern Ireland as a money judgment under the Judgments Enforcement (Northern Ireland) Order 1981; or
 - (c) be enforced in Scotland by the sheriff, as if it were a judgment or order of the sheriff and whether or not the sheriff could himself have granted such judgment or order.

[**Note:** This *rule* is imposed by the *FCA* using the powers granted to it under section 404A(1)(m) of the *Act* to make *rules* providing for the enforcement of any redress under a consumer redress scheme.]

2.6.3 **G** (1) An example of exceptional circumstances in ■ CONRED 2.6.1 R might be where the *consumer* has been or is incapacitated.

- (2) In considering whether circumstances are exceptional, *firms* may wish to have regard to the guidance on exceptional circumstances justifying the extension of the time limits, in the online technical resource titled "the six-month time limit" on the website of the *Financial Ombudsman Service*.

2.7 Supervision and delegation of scheme process by firms

- 2.7.1** **R** A *firm* must ensure that the steps required by this chapter are undertaken or supervised by the individual appointed by the *firm* under ■ DISP 1.3.7 R where that *rule* applies. In any other case, those steps must be taken or supervised by a person of appropriate experience and seniority.
- 2.7.2** **G**
- (1) Any *firm* intending to outsource any of the obligations imposed on it under this chapter should have due regard to the *rules* and *guidance* on outsourcing which are applicable to it, notably in SYSC.
 - (2) A *firm* which outsources any of the obligations imposed on it under this chapter in respect of communications with *consumers* should ensure that those communications are clear as to the identity of the *firm*.

2.8 Provisions relating to communications with consumers

- 2.8.1** **R** Whenever a *firm* is required by a provision of this chapter to send a letter in a form set out in an Annex, it must do so enclosing any documents referred to, following the instructions in the standard form set out in the relevant Annex, complying with any instructions in that Annex to insert, delete, select or complete text.
- 2.8.2** **R** All letters to *consumers* required under this chapter must be printed on the letterhead of the *firm* and dispatched by recorded delivery mail.
- 2.8.3** **R**
- (1) Where a *firm* becomes aware that the contact details it holds for a *customer* (or *consumer*) are out of date, it must take all reasonable steps to obtain up-to-date contact details and, where appropriate, resend any letter and repeat the steps to contact the *customer* (or *consumer*) required by this chapter.
 - (2) If, having complied with (1), a *firm* is unable to contact a *customer* (or *consumer*), it need not take any further action pursuant to this chapter in relation to that *customer* (or *consumer*) unless (3) applies.
 - (3) If, in reliance on (2), the *firm* has ceased taking action but subsequently becomes aware of up-to-date contact details for that *customer* (or *consumer*), the *firm* must, where appropriate, resend any letter and repeat the steps to contact the *customer* (or *consumer*) required by this chapter. Each applicable deadline for those actions by the *firm* is extended according to the length of the delay incurred by the application of (2).
- 2.8.4** **G** The reasonable steps in **■ CONRED 2.1.3R (1)** might include checking public sources of information, but without incurring excessive cost.
- 2.8.5** **G** The reasonable steps in **■ CONRED 2.5.7R (2)(b)** might include attempting to contact the *consumer* by telephone (at a reasonable hour when the *consumer* is likely to be available to receive the call) or by email.
- 2.8.6** **R** A *firm* must not make any communication to a *consumer* which seeks to influence, for the benefit of the *firm*, the outcome of the processes undertaken pursuant to this chapter, either by seeking to influence the content of information provided by the *consumer* in response to the *firm's* requests made under **■ CONRED 2.5.7 R** or otherwise.

2.8.7

R

A *firm* must tailor the questionnaire at ■ CONRED 2 Annex 8 R so that it does not request more information than is sufficient for it to determine all of the outstanding matters.

2



2.9 Consumer redress scheme: information requirements

Requests for information by the FCA

2.9.1

R

In relation to any matter concerning or related to the consumer redress scheme created by this chapter, section 165 (Regulator's power to require information: authorised persons etc) of the Act and any provision of Part 11 (Information Gathering and Investigations) of the Act which relates to that section, apply to any *firm* (or person in ■ CONRED 2.1.2 R) which is not an *authorised person* as if it were an *authorised person*.

Reporting requirement: by 9 December 2013

2.9.2

R

A *firm* must, by 9 December 2013, a *firm* must report to the FCA, by email to archcrureview@fca.org.uk or (if the email is encrypted) archcrureviewpgp@fca.org.uk , the following information:

- (1) the total number of opted-in scheme cases (cases falling within ■ CONRED 2.5.1 R);
- (2) the total number of completed templates;
- (3) the total number of incomplete templates, with an explanation as to why the templates have not been completed;
- (4) the total number of redress cases;
- (5) the total number of *redress determinations* sent to *consumers*;
- (6) the total number of *consumers* that have been paid redress to date;
- (7) the total amount of redress paid to date; and
- (8) the total amount of redress unpaid to date.

[Note: for details of how to obtain an encryption key see guidance above at ■ CONRED 2.3.2 G]

2.10 Record-keeping requirements

2.10.1

R

- (1) A *firm* must keep the following records:
 - (a) the certificate of posting for each letter sent in accordance with this chapter;
 - (b) a copy of each letter sent in accordance with this chapter;
 - (c) a record of any attempts to contact the *consumer*, or obtain further information, in accordance with ■ CONRED 2.5.7R (2)(b) or ■ (c);
 - (d) the completed template (■ CONRED 2 Annex 12 R) for each opted-in scheme case; and
 - (e) all information on the *consumer* file and any information received from a *consumer*.
- (2) A *firm* must keep the records required by (1) for a minimum of five years from the date of their creation or (for the records in (1)(e)) the date when the information is located on the *consumer* file or obtained.

Redress determination for customers outside subject matter of Arch cru consumer redress scheme

*Redress determination for customers outside subject matter of Arch cru consumer redress scheme -
CONRED 2 Annex 1 R*

Letter to consumers confirming existence of review and inviting request to opt-in

Letter to consumers confirming existence of review and inviting request to opt-in - CONRED 2 Annex 2
R

First reminder letter to consumers inviting request for review

First reminder letter to consumers inviting request for review - CONRED 2 Annex 3 R

Second reminder letter to consumers inviting request for review

Second reminder letter to consumers inviting request for review - CONRED 2 Annex 4 R

Final letter to consumers who have not sent a request for review

Final letter to consumers who have not sent a request for review - CONRED 2 Annex 5 R

Redress determination where firm considers opt-in ineffective

Redress determination where firm considers opt-in ineffective - CONRED 2 Annex 6 R

Letter to consumers confirming their case will be reviewed

Letter to consumers confirming their case will be reviewed - CONRED 2 Annex 7 R

Initial letter requesting information/enclosing questionnaire

Initial letter requesting information/enclosing questionnaire - CONRED 2 Annex 8 R

Reminder letter

Reminder letter - CONRED 2 Annex 9 R

Redress determination where consumer has not provided requested information

Redress determination where consumer has not provided requested information - CONRED 2 Annex 10 R

Redress determination letter for scheme cases

Redress determination letter for scheme cases - CONRED 2 Annex 11 R

Arch cru product advice suitability assessment template

Arch cru product advice suitability assessment template - CONRED 2 Annex 12 R

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 pre-

ferred 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 CONRED 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 *personal recommendation* 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 *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.
- 8.9 G Where the *personal recommendation* is to invest in more than one Arch cru fund and one investment is suitable but the other is not suitable, the *firm* should conclude overall that the *personal recommendation* 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 *consumer's* loss was caused by the *firm's* failure to comply with the suitability requirements specified at 5.1R, above. The causation section proceeds on an assumption that the *consumer* 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 *firm* has failed to comply with the suitability requirements specified at 5.1R, above.
- 9.3 R To fill in the causation section you must:
- (1) review the information on the *consumer* file, any information received from a *consumer* and the information recorded in the template ("available evidence");
 - (2) determine whether the *firm's* failure to comply with the suitability requirements caused the *consumer's* 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:
- (1) the impact of the *firm* failure(s) on the *consumer's* decision to invest in the Arch cru fund(s) in all the circumstances of the *consumer's* case;
 - (2) the position at law that, irrespective of the actions of third parties, the *firm* 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 *firm* 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 *firm's* failure caused the *consumer's* loss) unless you are satisfied on the basis of the available evidence that the *consumer* did not rely on the *personal recommendation* 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 *consumer's* loss was caused by the *firm's* 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 *consumer* is in with the position they would have been in if the *firm* had complied with the suitability requirements.
- 10.3 R For a redress case where a *personal recommendation* resulted in more than one investment in one or more Arch cru funds, complete the redress section for each of the *consumer's* investments in Arch cru funds.
- 10.4 R Take the following steps in each redress case:
- (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.

Investment benchmarks

() The following investment benchmarks apply:

Comparator 1:	this comparator is a return equal to the Bank of England official Bank Rate (the 'base rate').
Comparator 2:	this comparator is a return equal to a 50/50 combination of the APCIMS Conservative Index and the IMA Mixed Investment 20-60% Shares sector. This comparator has a listed equity exposure of 20-60% (IMA) and 32.5% (APCIMS).
Comparator 3:	this comparator is a return equal to a 50/50 combination of the APCIMS Balanced Index and the IMA Mixed Investment 40-85% Shares sector. This comparator has a listed equity exposure of 40-85% (IMA) and 67.5% (APCIMS).

Further details of the sectors and indices referred to in the *rule* above can be found at the websites of the relevant organisations:

<http://www.apcims.co.uk/private-investor-indices/about-the-indices/>

<http://www.investmentfunds.org.uk/fund-sectors/sector-definitions/>

Risks and features of Arch cru funds

- 1 The Arch cru funds consist of two open-ended investment companies, the CF Arch cru Diversified Funds and the CF Arch cru Investment Funds, and their respective sub-funds, sold to consumers during the following periods:
Investment funds
Investment Portfolio: July 2006 to March 2009
Specialist Portfolio July 2006 to March 2009
Diversified funds
Balanced Fund September 2007 to March 2009
Global Growth Fund: September 2007 to March 2009
Income Fund: September 2007 to March 2009
Finance Fund: October 2008 to March 2009
- 2 Dealings in the Arch cru funds were suspended by the authorised corporate director, Capita Financial Managers Ltd ("Capita"), on 13 March 2009.
- 3 The Arch cru funds aimed to achieve their objectives by investing in a broad range of main-stream and non-mainstream assets.
- 4 The Arch cru funds, through transferable securities, ultimately invested in the following asset classes, in various combinations:
 - (a) unlisted equity;
 - (b) unlisted debt instruments;
 - (c) non-UK investments;
 - (d) venture capital or project finance investments;
 - (e) private markets, private equity, private finance;
 - (f) private and structured finance;
 - (g) asset-backed lending;
 - (h) investments in developing countries;
 - (i) collateralised debt and collateralised cash flow financings;
 - (j) life settlements; and
 - (k) commodities.
- 5 Information about each Arch cru fund and its sub-funds is set out below.
CF Arch cru Diversified Fund
- 6 The Diversified Fund was incorporated in June 2002 and originally named "Insinger de Beaufort Manager Selection ICVC".
- 7 The Diversified Fund was re-named the CF Arch cru Diversified Funds in mid-2007. The firms involved in the diversified fund were:
Authorised corporate director (ACD): Capita
Investment manager: Arch
Depository: HSBC Bank PLC

Marketing and distribution: Cru Investment Management Limited, Arch Financial Products LLP

Income fund

Promotions

8 The Income Fund was promoted to advisers as an investment in the IMA "Cautious Managed" sector and "a strong alternative to cash based investments and bond based investments".

Features

9 The features of the Income Fund as described to advisers are:

- (a) its objective is long-term capital and income growth.
- (b) it offers both net income and net accumulation shares. For income shareholders, net income was to be distributed half-yearly. For net accumulation shareholders, net income was retained and accumulated for the benefit of shareholders and reflected in the price of the shares;
- (c) from October 2007, its aims were to provide returns of cash + 3% per annum from a diversified pool of assets;
- (d) it can invest in a range of assets including:
 - (i) *collective investment schemes* (which invest principally in equities), *transferable securities*, cash, deposits and money market instruments; and
 - (ii) non-mainstream assets including: private equity; private finance; structured finance and commodities;
- (e) from October 2007, the investment classes are described as bonds, equities and other assets to demonstrate low volatility and correlation with equities and bonds to improve diversity;
- (f) Transactions in *derivatives* will only be used for the purposes of hedging and will not affect the risk profile of the fund.

Risks

10 It is the FCA's view that an investment in the income fund is likely to be high risk and, as such, investors must understand and be willing to accept the following investment risks:

- (a) risk to invested capital and return, in general - the risk that the investment may fall in value;
- (b) exchange rate risk - some of the assets are located overseas and would, therefore, be affected by exchange rate movements;
- (c) credit risk - the risk of failure of an entity or counterparty to an underlying investment. For some of the assets, this risk was greater than for more mainstream listed assets;
- (d) governance risk - where equity or debt instruments are not listed on an exchange, then there may be a higher associated corporate governance risk than with listed assets. Similarly, where assets are located in developing countries, the same increased risk may apply;
- (e) liquidity risk - the risk associated with the fund manager being unable to realise assets quickly without significantly affecting the position of investors; and
- (f) valuation risk - assets not traded on a recognised market can be difficult to value accurately.

Balanced fund

Promotions

11 The balanced fund was promoted to advisers as investment in the IMA "Balanced Managed" sector and:

- (a) may be suitable for investors with a low-level risk appetite;
- (b) may be a strong alternative to cash based investments and bond based investments.

Features

- 12 The features of the Balanced Fund, as described to advisers, are:
- (a) its objective is long-term capital growth;
 - (b) it offers net accumulation shares;
 - (c) from May 2008, its aims were to provide returns of cash + 4% per annum particularly over the medium term;
 - (d) it can invest in a range of assets including:
 - (i) *collective investment schemes* (which invest principally in equities), *transferable securities*, cash, deposits and money market instruments; and
 - (ii) non-mainstream assets including: private equity; private finance; structured finance and commodities;
 - (e) it will have a UK overweight portfolio;
 - (f) transactions in *derivatives* will only be used for the purposes of hedging and will not affect the risk profile of the fund.

Risks

- 13 It is the FCA's view that an investment in the balanced fund is likely to be high risk and investors must understand and be willing to accept the following investment risks:
- (a) risk to invested capital and return, in general - the risk that the investment may fall in value;
 - (b) exchange rate risk - some of the assets are located overseas and would, therefore, be affected by exchange rate movements;
 - (c) credit risk - the risk of failure of an entity or counterparty to an underlying investment. For some of the assets, this risk was greater than for more mainstream listed assets;
 - (d) governance risk - where equity or debt instruments are not listed on an exchange, then there may be a higher associated corporate governance risk than with listed assets. Similarly, where assets are located in developing countries, the same increased risk may apply;
 - (e) liquidity risk - the risk associated with the fund manager being unable to realise assets quickly without significantly affecting the position of investors; and
 - (f) valuation risk - assets not traded on a recognised market can be difficult to value accurately.

Global Growth fund

Promotions

- 14 The Global Growth Fund was promoted to advisers as an investment in the IMA "Global Growth" sector and:
- (a) may be suitable for investors with a low-level risk appetite;
 - (b) to deliver decent absolute returns through a broad exposure to the major asset classes;
 - (c) investing in equity and bond funds and also other assets.

Features

- 15 The features of the Global Growth Fund, as described to advisers, are:
- (a) its objective is long-term capital growth;
 - (b) it offers net accumulation shares;
 - (c) from May 2008, its aims were to provide returns of 6% per annum more than cash returns;
 - (d) it can invest in a range of assets including:
 - (i) *collective investment schemes* (which invest principally in equities), *transferable securities*, cash, deposits and money market instruments; and
 - (ii) non-mainstream assets including: private equity; private finance; structured finance and commodities;

- (e) from October 2007, the investment classes are described as bonds, equities and other assets to demonstrate low volatility and correlation with equities and bonds to improve diversity;
- (f) transactions in *derivatives* will only be used for the purposes of hedging and will not affect the risk profile of the fund.

Risks

- 16 It is the FCA's view that an investment in the Global Growth Fund is likely to be high risk and investors must understand and be willing to accept the following investment risks:
- (a) risk to invested capital and return, in general - the risk that the investment may fall in value;
 - (b) exchange rate risk - some of the assets are located overseas and would, therefore, be affected by exchange rate movements;
 - (c) credit risk - the risk of failure of an entity or counterparty to an underlying investment. For some of the assets, this risk was greater than for more mainstream listed assets;
 - (d) governance risk - where equity or debt instruments are not listed on an exchange, then there may be a higher associated corporate governance risk than with listed assets. Similarly, where assets are located in developing countries, the same increased risk may apply;
 - (e) liquidity risk - the risk associated with the fund manager being unable to realise assets quickly without significantly affecting the position of investors; and
 - (f) valuation risk - assets not traded on a recognised market can be difficult to value accurately.

Finance Fund

Promotions

- 17 The Finance Fund was promoted to advisers as an investment in the IMA "Cautious Managed" sector and:
- (a) providing "steady returns, low risk";
 - (b) aiming to beat both cash and bond returns;
 - (c) as a superior investment to cash deposits and bonds.

Features

- 18 The features of the finance fund, as described to advisers, are:
- (a) its objective is steady capital appreciation over the medium to long-term through exposure to a diversified portfolio of private finance-related instruments;
 - (b) it offers net accumulation shares;
 - (c) from November 2008, its aims were to provide returns of cash + 3% per annum;
 - (d) from November 2008, the investment category is defined as private finance, including bridging finance and term lending;
 - (e) it can invest in a range of assets including:
 - (i) *collective investment schemes* (which invest principally in equities), *transferable securities*, cash, deposits and money market instruments; and
 - (ii) non-mainstream assets including: private equity; private finance; structured finance and commodities;
 - (f) transactions in *derivatives* will only be used for the purposes of hedging and will not affect the risk profile of the fund;
 - (g) it will have a UK overweight portfolio.

Risks

- 19 It is the FCA's view that an investment in the Finance Fund is likely to be high risk, and investors must understand and be willing to accept the following investment risks:
- (a) risk to invested capital and return, in general - the risk that the investment may fall in value;

- (b) exchange rate risk - some of the assets are located overseas and would, therefore, be affected by exchange rate movements;
- (c) credit risk - the risk of failure of an entity or counterparty to an underlying investment. For some of the assets, this risk was greater than for more mainstream listed assets;
- (d) governance risk - where equity or debt instruments are not listed on an exchange, then there may be a higher associated corporate governance risk than with listed assets. Similarly, where assets are located in developing countries, the same increased risk may apply;
- (e) liquidity risk - the risk associated with the fund manager being unable to realise assets quickly without significantly affecting the position of investors; and
- (f) valuation risk - assets not traded on a recognised market can be difficult to value accurately.

CF Arch cru investment fund

- 20 The investment fund was incorporated on 29 June 2006. It has two sub-funds: the investment portfolio and specialist portfolio.
- 21 The firms involved in the investment fund were:
 Authorised corporate director (ACD): Capita Financial Managers Limited
 Investment manager: Arch Financial Products LLP
 Depository: Bank of New York Mellon Trust and Depository (UK) Ltd
 Marketing and distribution: Cru Investment Management Limited, Arch Financial Products LLP

Investment Portfolio

Promotions

- 22 The Investment Portfolio was promoted to advisers as an investment in the IMA "Cautious Managed" sector and "an excellent replacement for cash based and bond based investments."

Features

- 23 The features of the Investment Portfolio as described to advisers are:
 - (a) its objective is to generate consistent returns to provide wealth preservation and capital appreciation;
 - (b) it offers net accumulation and net income shares;
 - (c) in March 2007, its aims were to provide consistent returns of LIBOR + 4% with a significant focus on risk management, this was revised to cash + 4% in August 2007;
 - (d) from March 2007, investment classes are stated as being public market securities and private investments. In September 2007 it is stated that the premise since inception of the fund was that public markets did not represent sufficient future reward for the fund.

Risks

- 24 It is the FCA's view that an investment in the Investment Portfolio is likely to be high risk and investors must understand and be willing to accept the following investment risks:
 - (a) risk to invested capital and return, in general - the risk that the investment may fall in value;
 - (b) exchange rate risk - some of the assets are located overseas, and would therefore be affected by exchange rate movements;
 - (c) credit risk - the risk of failure of an entity or counterparty to an underlying investment. For some of the assets, this risk was greater than for more mainstream listed assets;
 - (d) governance risk - where equity or debt instruments are not listed on an exchange, then there may be a higher associated corporate governance risk than with listed assets. Similarly, where assets are located in developing countries, the same increased risk may apply;

- (e) liquidity risk - the risk associated with the fund manager being unable to realise assets quickly without significantly affecting the position of investors; and
- (f) valuation risk - assets not traded on a recognised market can be difficult to value accurately.

Specialist Portfolio

Promotions

- 25 The Specialist Portfolio was promoted to advisers as an investment in the IMA "Active Managed" sector and "an excellent replacement for cash based and bond based investments."

Features

- 26 The features of the Specialist Portfolio as described to advisers are:
- (a) its objective is "to seek capital growth from an aggressively managed portfolio which may take high cash weightings at times when the investment manager lacks confidence in the outlook for equities, bonds and other asset classes. There is a moderate risk to capital";
 - (b) it offers net accumulation and net income shares;
 - (c) in March 2007, its aims were to provide consistent returns of LIBOR + 6% with a significant focus on risk management; this was revised to cash + 6% in August 2007;
 - (d) from March 2007, investment classes are stated as being public market securities and private investments which are leveraged up to 25%. In September 2007, the fund is described as having a low correlation with traditional public investments such as bonds and equities.

Risks

- 27 It is the FCA's view that an investment in the Specialist Portfolio is likely to be high risk and investors must understand and be willing to accept the following investment risks:
- (a) risk to invested capital and return, in general - the risk that the investment may fall in value;
 - (b) exchange rate risk - some of the assets are located overseas and would, therefore, be affected by exchange rate movements;
 - (c) credit risk - the risk of failure of an entity or counterparty to an underlying investment. For some of the assets, this risk was greater than for more mainstream listed assets;
 - (d) governance risk - where equity or debt instruments are not listed on an exchange, then there may be a higher associated corporate governance risk than with listed assets. Similarly, where assets are located in developing countries, the same increased risk may apply;
 - (e) liquidity risk - the risk associated with the fund manager being unable to realise assets quickly without significantly affecting the position of investors; and
 - (f) valuation risk - assets not traded on a recognised market can be difficult to value accurately.

Chapter 3

British Steel Pension Scheme Financial Resilience Requirements

3.1 Interpretation and application

Interpretation

3.1.1

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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

3.1.8

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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*.

3.2 Financial resilience assessment

Purpose

3.2.1

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- (1) The purpose of ■ CONRED 3.2 is to require *firms* to undertake a basic assessment of the adequacy of their financial resources to meet potential liability arising from unsuitable BSPS advice, and to facilitate the FCA's supervision of these *firms*.
- (2) The outcome of the financial resilience assessment determines whether the asset restriction in ■ CONRED 3.3 applies to transactions undertaken by a *firm*.
- (3) The assessment methodology outlined below is based on aggregate data that the FCA has collected during its supervision of *firms* that provided BSPS advice and relates to settled claims.
- (4) The financial impact on a *firm* of having given unsuitable BSPS advice may be higher or lower than this methodology indicates, because (for example) a *firm* may have given more or less unsuitable advice than the methodology assumes or underlying markets may have performed differently in particular cases. However, the methodology is intended to provide the *firm* and the FCA with an estimate of the *firm's* BSPS redress liabilities and the resulting impact on its financial resilience.
- (5) The FCA expects *firms* to have adequate financial resources to be able to provide redress. Further guidance on assessing adequate financial resources is contained in FG20/1. Nothing in this chapter relieves a *firm* of the obligation to have adequate financial resources as required by Principle 4 and the *threshold conditions*.
- (6) For example, if a *firm* expects to have higher redress liabilities than the methodology in this section indicates (e.g. because the *firm* has reason to believe that it has given unsuitable advice in a higher proportion of instances of BSPS advice than the 46% assumed by the FCA's methodology), the FCA would expect the *firm* to ensure that it can meet these liabilities. This would include refraining from undertaking the transactions described in ■ CONRED 3.3.8R.

3.2.2

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

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

where:

- (a) C is the *firm's* regulatory capital calculated in accordance with ■ CONRED 3.2.3R;
 - (b) N is the number of cases calculated in accordance with ■ CONRED 3.2.4AR;
 - (i) [deleted]
 - (ii) [deleted]
 - (c) L is the likelihood that the *firm's* BSPS advice was unsuitable, which a *firm* must estimate at 46%;
 - (d) AL is the average liability that a *firm* incurs for unsuitable BSPS 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.
- (2) Where the result of the calculation in (1):
- (a) is a positive value, the *firm* may conclude for the purposes of this chapter that it is able to meet BSPS claims in full; and
 - (b) is a negative value or is zero, the *firm* must conclude for the purposes of this chapter that it is not able to meet BSPS claims in full.
- (3) For the purposes of this chapter, the result of the calculation in (1) is known as the 'financial resilience assessment'.

Regulatory capital

3.2.3

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- (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

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- (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 BSPS 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 BSPS 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

3.2.4A **R**

advice on scheme cases. Other provisions (for example, for liabilities for unsuitable advice that are not related to BSPS) must not be disregarded. A provision may also only be disregarded when it has led to a reduction of a *firm's* regulatory capital.

- (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:
 - one of the following conditions is met:
 - 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;
 - 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
 - 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;
 - 6 months have expired since the date of the letter in (i); and
 - 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 BSPS advice

3.2.5

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- (1) A *firm* must calculate AL as 11% of the mean cash equivalent transfer value for BSPS advice (excluding any advice given to BSPS members falling within ■ CONRED 3.2.4AR (2) or (3)) that the *firm* provided in the relevant period, subject to (2).
- (2) A *firm* may reduce the value of AL to reflect the impact of professional indemnity insurance if both of the following conditions are met:
 - the relevant insurance policy does not exclude BSPS advice from the scope of coverage; and
 - the relevant insurance policy does not exclude from the scope of coverage any liability that results from a *consumer redress scheme*.
- (3) Any reduction in the value of AL that a *firm* applies under (2) must not exceed the maximum level of coverage in respect of BSPS advice that the *firm* could reasonably expect to rely upon under the policy, taking into account any policy exclusions or conditions.
- (4) Where a *firm* has reduced the value of AL to reflect the impact of professional indemnity insurance, it must immediately recalculate the value of AL and update the outcome of the calculation in ■ CONRED 3.2.2R if:
 - (a) there is a subsequent change in the terms of that insurance that affects its scope or coverage; or
 - (b) the insurance policy lapses or is otherwise terminated.

3.2.6

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- (1) The purpose of ■ CONRED 3.2.5R(2) is to recognise that a *firm* may hold professional indemnity insurance that covers the risk of unsuitable BSPS advice, which can mitigate the impact on the *firm's* financial resources.
- (2) A *firm* must not apply a reduction in relation to professional indemnity insurance if the conditions in ■ CONRED 3.2.5R(2) are not met.

- (3) When considering the impact of professional indemnity insurance on the *firm's* potential liability for BSPS advice, a *firm* must take into account any exclusions or conditions (for example, excesses) under the relevant policy. The *firm* should also consider how these might interact, such as where 2 or more claims may be treated as a single claim for the purposes of the excess or the limit of indemnity.
- (4) If a *firm* has relied upon professional indemnity insurance to cover some of its potential liability for BSPS advice in accordance with ■ CONRED 3.2.5R(2), it is possible that the terms of that insurance may subsequently change. Alternatively, the relevant insurance policy may lapse or may be terminated. In such circumstances, the *firm* must immediately recalculate the value of AL under ■ CONRED 3.2.5R(1) and update the calculation in ■ CONRED 3.2.2R. If the updated calculation indicates that the *firm* is unable to meet all claims for BSPS advice for the purposes of this chapter, the *firm* must immediately notify the FCA under ■ CONRED 3.2.7R.

3.2.6A

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- (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 BSPS 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 requirements

3.2.7

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- (1) A *firm* must (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), (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

3.2.8

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- (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).
- (1) The notification requirements in ■ CONRED 3.2.7R are intended to facilitate the *FCA*'s supervision of relevant *firms*.
- (2) While some inputs into the methodology in ■ CONRED 3.2.2R are static assumptions, the *FCA* expects other inputs (e.g. a *firm*'s calculation of its regulatory capital) to change over time. The *FCA* therefore requires *firms* to notify it if the outcome of their financial resilience assessment changes - i.e. if a *firm* previously calculated that it was able to meet *BSPS* redress liabilities, but now calculates that it cannot do so or vice versa.
- (3) A *firm* must update the outcome of the calculation under ■ CONRED 3.2.2R immediately following any change in the *firm*'s circumstances that might materially reduce its ability to meet *BSPS* claims. In any case, a *firm* must also ensure that it has updated the outcome of the calculation at least once a month to ensure ongoing monitoring of its position.
- (4) A *firm* is not required to notify the *FCA* if, following an update to its financial resilience assessment, the outcome previously notified to the *FCA* has not changed. However, *firms* are reminded of their separate obligations under *Principle 11* to inform the *FCA* of anything of which the *FCA* would reasonably expect notice. Therefore, if a *firm* has already notified the *FCA* that it does not have sufficient regulatory capital to meet *BSPS* claims under ■ CONRED 3.2.2R but there is a further substantial deterioration in the *firm*'s financial position, the *firm* should update the *FCA*. The *FCA* may also engage with *firms* directly to discuss their financial resilience assessments and their broader financial situation as part of the *FCA*'s ongoing supervision work.
- (5) Each notification submitted under ■ CONRED 3.2.7R must be signed by a *person* who holds an appropriate *senior management function*

within the *firm*. The *FCA* would generally expect that this would be the individual approved to perform the *compliance oversight function*, but if that is not possible, this may be a holder of a different *senior management function*.

3.3 Asset restriction

Purpose

3.3.1

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- (1) The purpose of ■ CONRED 3.3 (Asset restriction) is to maximise a *firm's* ability to meet redress liabilities to *consumers*, by limiting its ability to dissipate assets before it has assessed and paid any redress it owes.
- (2) The asset restriction is designed only to interfere with a *firm's* ability to transact in its assets to the extent necessary to protect *consumers* who may be owed redress. The asset restriction therefore permits any transaction, as long as a *firm* calculates, using the methodology in ■ CONRED 3.2, that it will continue to be able to meet its redress liabilities immediately after the transaction.
- (3) If a *firm* calculates, using the methodology in ■ CONRED 3.2, that it will not be able to meet its redress liabilities, then the asset restriction prevents the *firm* from carrying out any transaction unless the transaction is in the ordinary course of business.
- (4) The *FCA* has made *rules* and *guidance* about what the ordinary course of business means. The *FCA* expects that these will generally be sufficient to allow a *firm* to interpret the asset restriction. On occasion, however, a *firm* may feel the need to seek individual *guidance* from the *FCA*. Further information on seeking individual *guidance* is contained in ■ SUP 9. Requests for individual *guidance* on the asset restriction may be directed to BSPSredress@fca.org.uk.
- (5) Where a *firm* wishes to make a transaction that is in the ordinary course of business but is not listed in ■ CONRED 3.3.5R, the *firm* must first notify the *FCA* in accordance with ■ CONRED 3.3.10R.

Responsibilities of SMF managers

3.3.2

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The *FCA* reminds *SMF managers* 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*.

The asset restriction

3.3.3

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A *firm* must not in any way dispose of, withdraw, transfer, deal with or diminish the value of any of its own assets (whether in the *United Kingdom* or elsewhere), unless:

- (1) the relevant transaction occurs in the ordinary course of business of the *firm*; or
- (2) the *firm* satisfies all of the following conditions:
 - (a) the *firm* has previously notified the *FCA* under ■ CONRED 3.2.7R that it is able to meet claims for unsuitable BSPS advice under its financial resilience assessment under ■ CONRED 3.2.2R;
 - (b) since the notification in (a) was submitted, the *firm* has not subsequently notified the *FCA* under ■ CONRED 3.2.7R that it is not able to meet claims for unsuitable BSPS advice under its financial resilience assessment under ■ CONRED 3.2.2R; and
 - (c) the *firm* has calculated, in accordance with ■ CONRED 3.2.2R, that it will continue to be able to meet claims for unsuitable BSPS advice immediately after the relevant transaction.

3.3.4

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- (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 3.3.8R contains a list of transactions that a *firm* must not treat as being undertaken in the ordinary course of business.
- (3) Under ■ CONRED 3.3.3R(2), the asset restriction does not apply to any other transaction undertaken by a *firm* that:
 - (a) has notified the *FCA* that it has calculated (using the methodology in ■ CONRED 3.2.2R) that it can meet its BSPS redress liabilities; and
 - (b) has calculated (using the methodology in ■ CONRED 3.2.2R) that it will continue to be able to meet its BSPS redress liabilities immediately after the relevant transaction occurs.
- (4) In summary, the overall effect of the provisions outlined in (1) to (3) is therefore as follows:
 - (a) a *firm* that has calculated under ■ CONRED 3.2.2R that it has sufficient regulatory capital to meet its BSPS redress liabilities and has notified the *FCA* that this is the case is not subject to the asset restriction at all, provided that the *firm* will continue to hold sufficient regulatory capital after any proposed transaction occurs; and
 - (b) a *firm* that has calculated under ■ CONRED 3.2.2R that it does not hold sufficient capital to meet its BSPS redress liabilities is subject to the asset restriction. However, the *firm* may continue to undertake transactions that are in the ordinary course of its business.

Transactions in the ordinary course of business

3.3.5

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- (1) The following is a non-exhaustive list of transactions that a *firm* may treat as occurring in the ordinary course of business for the purposes of ■ CONRED 3.3.3R(1):
 - (a) transactions giving effect to instructions initiated by customers;
 - (b) payments to or other transactions with the *firm's* counterparties in the ordinary course of operating the *firm's* business and in satisfaction of the *firm's* contractual obligations;
 - (c) usual and proper contractual salary payments and proper payments made in connection with obligations owed to employee pension schemes;
 - (d) payment of dividends or drawings that have been approved by the *FCA* in accordance with ■ CONRED 3.3.6R;
 - (e) payments connected to reasonable legal expenses and other reasonable expenses incurred in relation to obtaining accounting or audit advice; and
 - (f) payments connected to the *firm's* tax or regulatory obligations, including any payments of redress to *consumers*.
- (2) Where a *firm* intends to undertake a transaction that the *firm* considers is in the ordinary course of business, but which is not a type of transaction listed in (1), the *firm* must notify the *FCA* in advance under ■ CONRED 3.3.10R.

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.

Transactions not in the ordinary course of business.....

3.3.8

R

The following transactions must not be regarded as occurring in the ordinary course of business:

- (1) payments to any *connected person*, except to the extent that they fall within a category of transaction listed in ■ CONRED 3.3.5R;
- (2) the making of any capital distributions, dividend payments or payment of drawings, except to the extent expressly permitted by the FCA under ■ CONRED 3.3.5R(1)(d) and ■ CONRED 3.3.6R;
- (3) the making of any gift or loan;

- (4) any payments or transfers made as part of any financial restructuring or reorganisation of the *firm's* business (whether share or asset based) or the acquisition by the *firm* of part or all of another business; and
- (5) the disposal to another *person* of some or all of the *firm's* client files or ongoing income from the client bank.
- 3.3.9** G The effect of ■ CONRED 3.3.3R is that a *firm* that has not notified the *FCA* that it is able to meet all BSPS claims under its financial resilience assessment under ■ CONRED 3.2.2R must not undertake any of the types of transactions listed in ■ CONRED 3.3.8R.
- Prior notification of other transactions in the ordinary course of business**
- 3.3.10** R
- (1) Except where (2) applies, a *firm* that has not assessed that it is able to meet all BSPS claims under its financial resilience assessment under ■ CONRED 3.2.2R must notify the *FCA* at least 15 *business days* in advance of:
- (a) undertaking any transaction that the *firm* considers is in the ordinary course of business, but which is not listed in ■ CONRED 3.3.5R; or
- (b) any change to its contracts with *connected persons* (including both variation of existing contracts and entry into new or replacement contracts) which could result in new or increased payments above the de minimis threshold specified in ■ CONRED 3.3.12R.
- (2) If a *firm* needs to undertake a transaction that falls within (1)(a) in an urgent situation, the *firm* must still notify the *FCA* in advance by giving as much notice as possible, but the 15-*business day* period in (1) does not apply.
- 3.3.11** G The *FCA* expects that a *firm* would make a notification of the type specified in ■ CONRED 3.3.10R(2) only in genuinely urgent cases and where it has not been possible to identify the need for the relevant transaction sufficiently in advance. In such cases, the *firm* must still give the *FCA* as much notice as possible.
- 3.3.12** R
- (1) The de minimis threshold in ■ CONRED 3.3.10R is a percentage amount equal to the latest Consumer Price Index annual rate published by the Office for National Statistics at the time at which the change in contract is proposed to occur.
- (2) In calculating whether the de minimis threshold has been exceeded, a *firm* must aggregate all connected payments.
- 3.3.13** G For the purposes of ■ CONRED 3.3.12R(2), payments may be connected because they are made to the same *person*, or because they are made to separate *persons* who are connected by virtue of being *close relatives*, or through an agent-principal relationship or through a relationship of control.

3.3.14 **R** The notification in ■ CONRED 3.3.10R must:

- (1) be made to BSPSredress@fca.org.uk; and
- (2) contain the following information;
 - (a) an explanation of the transaction or contract change;
 - (b) an explanation of the quantifiable impact on the *firm's* financial resilience assessment under ■ CONRED 3.2.2R;
 - (c) an explanation of why the *firm* considers that the transaction or contract change occurs in the ordinary course of business and is therefore permitted;
 - (d) reference to any comparable historic payments or contract changes which support the *firm's* view that this occurs in the ordinary course of business; and
 - (e) in the case of a notification on an urgent basis under ■ CONRED 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-*business day* notification requirement in ■ CONRED 3.3.10R(1).

Chapter 4

British Steel Consumer Redress Scheme

4.1 Application and subject matter of the scheme

Definitions used in this chapter

4.1.1

R

- (1) 'BSPS' means the Old British Steel Pension Scheme, which entered a PPF assessment period on 29 March 2018;
- (2) 'BSPS2' means the British Steel Pension Scheme in its new format, following the agreement of the Regulated Apportionment Arrangement with Tata Steel UK Limited and the Time to Choose exercise in 2017 under which the BSPS was separated from its sponsor;
- (3) 'BSPS calculator' is the calculator used to complete Step 3 of the pension transfer redress calculation in ■ DISP App 4.3.19R;
- (4) 'BSPS DBAAT' means the British Steel Pension Scheme Defined Benefit Advice Assessment Tool in the form of an Excel spreadsheet at ■ CONRED 4 Annex 20R;
- (5) 'BSPS pension transfer' means a *pension transfer* of the *consumer's* BSPS pension arrangement;
- (6) 'calculation date' has the same meaning as in ■ DISP App 4.1.1R(6);
- (7) 'causation question' is whether the *firm's* failure to comply with the suitability requirements is the effective cause of the *consumer's* loss;
- (8) 'comparator scheme' means, other than as provided by ■ CONRED 4 Annex 21 13.1R(4):
 - (a) if the advice was given in the period on or before 16 May 2017, BSPS;
 - (b) if the advice was given in the period from 17 May 2017 to 11 October 2017, either or both of BSPS and PPF; and
 - (c) if the advice was given in the period on or after 12 October 2017, BSPS2 and PPF;
- (9) 'DC pension arrangement' means any pension arrangement holding the value of the *consumer's* pension benefits which originated from the BSPS, including where the arrangement has been subsequently switched to a new arrangement;
- (10) 'DOL' means the date that the *consumer* left active service in the BSPS;

- (11) '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>]
- (12) 'material information gap' means where there is a failure to collect the necessary information so that the *firm* cannot complete an Information Area in the Information Section of the BSPS DBAAT and, as a result, it is not possible to assess the suitability of the advice;
- (13) 'pension benefits' are the benefits available to a consumer in the named *defined benefit occupational pension scheme(s)* and may include income and lump sum benefits, payable to either a *consumer*, their spouse or dependents, which could commence at specified times;
- (14) 'PPF' means the Pension Protection Fund;
- (15) 'redress offer' has the same meaning as in ■ DISP App 4.1.1R(18);
- (16) 'relevant period' means the period commencing on 26 May 2016 and ending on 29 March 2018;
- (17) 'scheme case' is a case falling within the subject matter of the scheme that satisfies each of the conditions in ■ CONRED 4.2.2R, as modified by ■ CONRED 4.2.3R;
- (18) 'scheme effective date' means 28 February 2023 and is the date that the *consumer redress scheme* created by this chapter comes into force;
- (19) 'secondary compensation sum' has the same meaning as in ■ DISP App 4.1.1R(20);
- (20) 'suitability requirements' means the requirements specified in paragraph 7.1R of ■ CONRED 4 Annex 21R and are:
 - (a) the requirements in ■ COBS 9.2.1R(1); and
 - (b) the common law duty in contract or tort to exercise reasonable skill and care in advising the *consumer on pension transfers*, and that were in force during the relevant period and applicable to a scheme case;
- (21) 'two-adviser model' means an arrangement where one *firm* provides the advice on *pension transfers* and a different *firm* provides the advice on the *proposed arrangement*.

4.1.2 **G** Certain words and phrases specific to CONRED have the meaning set out in the *Glossary*. All words in italics are defined in the *Glossary*.

Application to firms which gave advice about a pension transfer

4.1.3 **R** This chapter applies to a *firm* which gave advice to a *consumer* in relation to a BSPS pension transfer, after which a *consumer* made such a *pension transfer*, and to which advice the suitability requirements applied.

- 4.1.4 **G** This chapter applies:
- (1) regardless of whether a *firm* advised a *consumer* to transfer their BSPS pension benefits to a *pension scheme with flexible benefits* or advised a *consumer* against such a course of action; and
 - (2) to a *firm* even if a *consumer* to whom the advice was given instructed another *firm* to arrange the BSPS pension transfer.
- Application to persons who have assumed a firm’s liabilities**
- 4.1.5 **R**
- (1) This chapter also applies to a *person* that has assumed a liability (including a contingent one) in respect of a failure by a *firm* to whom this chapter applies.
 - (2) A *person* in (1) must either:
 - (a) perform the obligations the *firm* is required to perform under this chapter; or
 - (b) ensure that those obligations are performed by the *firm*, and must notify the *FCA*, by email to BSPSnotifications@fca.org.uk within 1 week of the scheme effective date, as to whether that *person* or the *firm*, or both, will be performing those obligations.
 - (3) References in this chapter to a *firm* are to be interpreted as referring to a *person* in (1) where the context so requires.
- Wider application of certain provisions**
- 4.1.6 **R**
- (1) ■ CONRED 4.3.10R and ■ CONRED 4.4.22R also apply to a *firm* which has carried out any of the following *regulated activities* for a *consumer* in relation to a BSPS *pension transfer*:
 - (a) *advising on investments*;
 - (b) *arranging (bringing about) deals in investments*;
 - (c) *making arrangements with a view to transactions in investments*;
 - or
 - (d) *managing investments*.
- Duration of the scheme**
- 4.1.7 **R** The *consumer redress scheme* created by this chapter comes into force on the scheme effective date and has no end date.
- Subject matter of the scheme**
- 4.1.8 **R** The subject matter of the scheme is whether a *firm* complied with the suitability requirements in scheme cases.
- 4.1.9 **G** Subject to ■ CONRED 4.7.2R(4) and ■ CONRED 4.7.3R(4), a scheme case may cease to be within the subject matter of the scheme where any of ■ CONRED 4.2.7R(1), ■ CONRED 4.2.8R, ■ CONRED 4.3.8R or ■ CONRED 4.4.20R apply.

**Impact of complaints to the Financial Ombudsman Service on
scheme deadlines**

4.1.10

R

Where a *consumer* makes a *complaint* to the *Financial Ombudsman Service* following a *redress determination* by a *firm* under this chapter, the remaining time period for completing any subsequent scheme steps in, as applicable, ■ CONRED 4.2.1R, ■ CONRED 4.3.1R and ■ CONRED 4.4.1R is suspended between:

- (1) the date the letter from the *firm* communicating the *redress determination* is sent to the *consumer*; and
- (2) the date:
 - (a) the *complaint* is resolved by agreement between the *firm* and the *consumer* pursuant to ■ DISP 3.5.1R; or
 - (b) the *firm* receives notification from the *Financial Ombudsman Service* of the outcome of the *complaint* in accordance with ■ DISP 3.6.6R(5).

Summary of the scheme

4.1.11

G

■ CONRED 4 Annex 18G contains a flow diagram of the *consumer redress scheme* created by this chapter.

4.2 Consumer redress scheme: identifying scheme cases

Deadline to complete the steps in this section

- 4.2.1 **R** No more than 1 *month* after the scheme effective date, a *firm* must take the first and second steps set out in this section. The deadline for the third step is set out at ■ CONRED 4.2.8R.

First step: identify scheme cases

- 4.2.2 **R** The first step is for a *firm* to identify all scheme cases. A scheme case is a case that satisfies each of the following conditions:
- (1) a *firm* gave a *consumer* advice in relation to a BSPS pension transfer during the relevant period;
 - (2) the advice in (1) was to transfer their BSPS pension benefits;
 - (3) the suitability requirements applied to the advice in (1);
 - (4) the *consumer* subsequently transferred their BSPS pension benefits;
 - (5) the *consumer* had not, prior to the scheme effective date, accepted an offer of redress from the *firm* or other *person* in full and final settlement of all potential claims arising out of the advice in (1);
 - (6) the *consumer* had not, prior to the scheme effective date, asked the *Financial Ombudsman Service* to deal with a *complaint* against the *firm* arising out of the advice in (1);
 - (7) the advice in (1) was not reviewed in a past business review carried out by a *skilled person* where the *firm* had assessed the *firm's* advice using the FCA DBAAT and notified the *consumer* of the following:
 - (a) the outcome of that review (whether in the *firm's* view the advice met the suitability requirements); and
 - (b) that the *consumer* is entitled to complain to the *Financial Ombudsman Service* if they disagree with the *firm's* assessment;
 - (8) the law applicable to the obligations of the *firm* arising in connection with the advice in (1) is that of a *UK* territory (that is, England and Wales, Scotland or Northern Ireland) (see ■ CONRED 4.2.5R); and
 - (9) if the applicable law in (8) is that of England and Wales or Northern Ireland:

- (a) the *consumer's* BSPS *pension transfer* was on or after 24 November 2016; or
 - (b) the *consumer* did not know, and could not have reasonably been expected to know, before 24 November 2019 that they had cause for a claim; or
- (10) if the applicable law in (8) is that of Scotland:
- (a) the *consumer's* BSPS *pension transfer* was on or after 24 November 2017; or
 - (b) the *consumer* did not know, and could not have reasonably been expected to know, before 24 November 2017 that they had cause for a claim.

4.2.3 **R** The conditions in ■ CONRED 4.2.2R(6) does not apply if a *firm* is declared in *default*.

Guidance on excluded scheme cases

4.2.4 **G** ■ CONRED 4.2.2R(1) does not include a case where the *firm* advised the *client* not to transfer their BSPS pension benefits, or to remain in the BSPS, and where the *firm* or a different *firm* subsequently arranged the *pension transfer*.

Applicable law

4.2.5 **R** For the purposes of ■ CONRED 4.2.2R(8), the applicable law is:

- (1) that of the *UK* territory where, in connection with the advice:
 - (a) the *consumer* has agreed to the *firm's terms of business*; and
 - (b) these include a clause providing for the application of the law of a particular *UK* territory (that is, England and Wales, Scotland or Northern Ireland); or
- (2) (if (1) does not apply) that of the *UK* territory where the *firm* and the *consumer* both habitually reside and where the advice is given; or
- (3) (if neither (1) nor (2) apply) that of the *UK* territory in which the consumer is habitually resident, provided the conditions in ■ CONRED 4.2.6R(1) to (2) are satisfied; or
- (4) (if neither (1), (2) nor (3) apply) that of the *UK* territory in which the *firm* gave the advice.

4.2.6 **R** The conditions referred to in ■ CONRED 4.2.5R(3) are that:

- (1) in the *UK* territory in which the *consumer* has their habitual residence, either:
 - (a) the contract under which the advice was provided was preceded by a specific invitation addressed to the *consumer*, or by advertising, and the *consumer* took all the steps necessary to engage the *firm*; or

(b) the *firm* or its agent received the *consumer's* order; or

(2) the advice was provided at least in part in that *UK* territory.

Second step: send letters to consumers

4.2.7

R

The second step is for a *firm*:

(1) in relation to cases which do not meet any one of the conditions in ■ CONRED 4.2.2R(1) to (10) (subject to ■ CONRED 4.2.3R) (non-scheme cases), to send to the *consumer* a *redress determination* in the form set out in ■ CONRED 4 Annex 1R;

(2) in relation to all scheme cases, to send to the *consumer* a letter in the form set out in ■ CONRED 4 Annex 2R.

Third step: acknowledge opt-outs

4.2.8

R

Where a *consumer* has responded to a letter sent by a *firm* in accordance with ■ CONRED 4.2.7R(2) stating that they do not wish to have their case considered under this *consumer redress scheme*, the *firm* must, within 5 *business days* of receiving the response, send the *consumer* a *redress determination* in the form set out in ■ CONRED 4 Annex 3R.

4.2.9

R

The effect of a *consumer* stating that they do not wish to have their case considered under this scheme and opting out of it is that the scheme case no longer falls within the subject matter of the *consumer redress scheme* created by this chapter.

4.2.10

G

After any opt-out, a *firm* should handle any *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*.

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 BPS 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 BSPS 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 BSPS 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

R

- (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 BPS 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 BPS 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 BPS 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 BPS 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

R

- (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*.

4.4 Consumer redress scheme: calculating and paying redress

Deadlines to complete the steps in this section

4.4.1

R

- (1) A *firm* must make a *redress determination* pursuant to ■ CONRED 4.4.2R or ■ CONRED 4.4.20R where it has determined that the advice provided to the *consumer* did not comply with the suitability requirements and has answered 'yes' to the causation question. Subject to (2), the *firm* must:
 - (a) not take the first step of calculating and sending the *redress determination* pursuant to ■ CONRED 4.4.2R until after 1 April 2023; and
 - (b) make such *redress determination* no later than 10 months from the scheme effective date.
- (2) The deadline to make the *redress determination* referred to in (1)(b) is extended to 12 months from the scheme effective date where a *consumer* has:
 - (a) requested that the *firm* calculate the redress sum that would be payable by full or partial augmentation; or
 - (b) claimed for an amount described at ■ CONRED 4.3.14R(1)(b)(iii)(C).

First step: calculate redress and send redress determination

4.4.2

R

The first step is for a *firm* to calculate the amount of redress owed to a *consumer*:

- (1) in accordance with the relevant *rules* and *guidance* set out in ■ DISP App 4 and ■ DISP App 4 Annex 1, as modified by ■ CONRED 4;
- (2) by completing the BPS calculator in accordance with the instructions set out in ■ CONRED 4 Annex 21R;
- (3) where requested by a *consumer*, by calculating the redress sum that would be payable by full or partial augmentation outside of the BPS calculator in accordance with (1);

and send the *consumer* a *redress determination* in the form of the letter set out in ■ CONRED 4 Annex 13R.

4.4.3

R

A *firm* must comply with ■ DISP App 4 when carrying out the redress calculation, as modified by this section:

Table: application of DISP App 4 rules

DISP App 4 provisions	Application / modification
Step 1 at DISP App 4.3.3R to DISP App 4.3.14G	Does not apply. A <i>firm</i> must instead follow the steps to obtain information in CONRED 4.
Step 2 at DISP App 4.3.15R to DISP App 4.3.18G	Apply with the following modification: any reference to <i>defined benefit occupational pension scheme</i> is to be replaced with a reference to the appropriate comparator scheme identified in CONRED 4 Annex 21R 13.21R to CONRED 4 Annex 21R 13.26R.
Step 3 at DISP App 4.3.19R to DISP App 4.3.26R.	Applies in full. A <i>firm</i> must use the BSPS calculator to complete Step 3.
Step 4 at DISP App 4.3.27R to DISP App 4.3.35G	Applies in part. A <i>firm</i> must use the BSPS calculator to complete DISP App 4.3.27R to 4.3.29R as described in CONRED 4 Annex 21R to determine the redress components of a cash lump sum.
Step 5 at DISP App 4.3.36R to 4.3.40G	Applies in part. A <i>firm</i> completes Step 5 by sending out the <i>redress determination</i> at CONRED 4 Annex 13R in accordance with the instructions at CONRED 4.4.5R.

4.4.4 **E** Non-compliance with any of the evidential provisions set out in the instructions for the redress calculation at ■ CONRED 4 Annex 21R may be relied upon as tending to establish contravention of ■ CONRED 4.4.2R.

4.4.5 **R** A *redress determination* in the form of the letter set out in ■ CONRED 4 Annex 13R must include the following:

- (1) a copy of a summary report from the BSPS calculator as well as an offer to provide a detailed calculation report from the BSPS calculator if requested by the *consumer*;
- (2) the information at ■ DISP App 4.3.38R to ■ DISP 4.3.39R; and
- (3) where the firm has reached an arrangement with the *consumer* as described at ■ CONRED 4.4.9R(1)(b), a comprehensive summary of the instalments agreed.

4.4.6 **R** When a *firm* communicates a redress offer to a *consumer*, it should:

- (1) take reasonable steps to communicate in a way that is fair, clear and not misleading;
- (2) take into account the information needs of the *consumer*, including their understanding of financial services; and
- (3) where possible, use plain language and avoid the use of jargon, unfamiliar or technical language.

- 4.4.7** **R** Where a *consumer* requests a copy of the detailed calculation report from the BSPS calculator, a *firm* must send a letter enclosing such report in the form of the letter set out in **■ CONRED 4 Annex 14R** within 5 *business days* of receiving such request.
- 4.4.8** **R** Where a *firm* determines that redress is payable to a *consumer* and the *firm* has not received a claim from the *consumer* within 4 weeks of a *redress determination* being sent pursuant to **■ CONRED 4.4.2R**, the *firm* must:
- within 5 *business days*, send a further letter to the *consumer* in the form set out in **■ CONRED 4 Annex 16R**; and
- if there is no response to the *redress determination* in **■ CONRED 4.4.2R** within 3 months, send a letter to the *consumer* in the form set out in **■ CONRED 4 Annex 17R** within 5 *business days* of the 3 months expiring.
- 4.4.9** **R** Unless **■ CONRED 4.4.10R** applies, a *firm* must pay the redress determined payable to a *consumer*:
- (1) either:
 - (a) within 28 *days* of receiving a claim from the *consumer* for the redress determined to be payable; or
 - (b) as agreed with the *consumer* pursuant to any arrangement providing for the payment of redress in instalments over one or more tax years pursuant to DISP App 4.4.31G(4)(c);
 - (2) in accordance with the instructions set out by the *consumer* in their response to the *redress determination* in which they make their claim;
 - (3) including an additional compensation sum which:
 - (a) is payable to provide redress for the period between the valuation date referred to in **■ CONRED 4 Annex 21 13.1R(16)** and the payment date; and
 - (b) must be calculated using the BSPS calculator in accordance with **■ DISP App 4.3.29(3)**; and
 - (4) accompanied by a confirmation in the form of the letter set out in **■ CONRED 4 Annex 15R** including, where appropriate, a comprehensive summary of any arrangement with the *consumer* as described at **■ CONRED 4.4.9R(1)(b)**.
- 4.4.10** **R** A *firm* does not need to pay redress or otherwise comply with the requirements in **■ CONRED 4.4.9R** where the *consumer* did not send a claim for it within 3 *months* of the date of the *redress determination* in **■ CONRED 4.4.2R**, unless the *firm* is required to extend the validity of the redress calculation in accordance with **■ DISP App 4.3.25R**.
- 4.4.11** **R** (1) A *firm* must complete the steps at (2) where a *consumer* makes a complaint to the *Financial Ombudsman Service* in respect of a *redress determination* made under **■ CONRED 4.4.2R** and either of the following apply:

4.4.12 **R** After the expiry of the 28-day period in ■ CONRED 4.4.9R(1)(a) or in the case of an arrangement referred to at ■ CONRED 4.4.9R(1)(b) after the expiry of the payment period for each instalment, the redress may be recovered as a debt due to the *consumer* and, in particular, may:

- (1) if a county court so orders in England and Wales, be recovered by execution issued from the county court (or otherwise) as if it were payable under an order of that court; or
- (2) be enforced in Northern Ireland as a money judgment under the Judgments Enforcement (Northern Ireland) Order 1981; or
- (3) be enforced in Scotland as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

[**Note:** This *rule* is imposed by the *FCA* using the powers granted to it under section 404A(1)(m) of the *Act* to make *rules* providing for the enforcement of any redress under a *consumer redress scheme*.]

Second step: cases of insufficient information

4.4.13 **R** The second step applies in respect of a scheme case where:

- (1) a *firm* has not received a response:
 - (a) from a *consumer* ('C') to a letter sent in accordance with ■ CONRED 4.3.14R(1)(b) within 2 weeks of the letter being sent; or
 - (b) from another *party* to a letter sent in accordance with ■ CONRED 4.3.14R(1)(c) or (d) within 2 weeks of the letter being sent; or
- (2) a *consumer* requests that the *firm* calculate the redress sum that would be payable by full or partial augmentation.

- 4.4.14** **R** To complete the second step, a *firm* must take the following actions:
- (1) Where **CONRED 4.4.13R(1)** applies within 5 *business days* of:
 - (a) the 2 weeks in **CONRED 4.4.13R(1)(a)** expiring, send a further letter in the form set out in **CONRED 4 Annex 11R** to the *consumer* and allow the *consumer* at least 2 weeks to respond; and
 - (b) the 2 weeks in **CONRED 4.4.13R(1)(b)** expiring, send a further letter to the parties in **CONRED 4.3.14R(1)(c)** requesting the applicable information and allow the parties at least 2 weeks to respond.
 - (2) Where **CONRED 4.4.13R(2)** applies, within 5 *business days* of receiving a request from a *consumer* to calculate the redress sum that would be payable by full or partial augmentation:
 - send a letter to the applicable parties in **CONRED 4.3.14R(1)(c)** requesting the information at **CONRED 4.3.14R(2)** and allow at least 2 weeks to respond; and
 - if no reply is received to the letter at (a), send a further letter to the applicable parties within 5 *business days* of the expiry of the applicable deadline at (a) with a further reminder to provide the applicable information and allow at least 2 weeks to respond.
 - (3) If a reply is received from the *consumer* or the parties specified in **CONRED 4.3.14R(1)(c)** in respect of any information request in connection with the calculation of redress but the information it contains is insufficient to calculate redress in accordance with **CONRED 4.4.2R**, the *firm* should take all reasonable steps to obtain further information from the *consumer* or, where applicable, any other parties in **CONRED 4.3.14R(1)(c)**.
- 4.4.15** **R** A *firm* which, having carried out the second step, has sufficient information to complete the redress calculation using the BSPS calculator and, where requested by the *consumer*, the redress sum that would be payable by full or partial augmentation, must then complete the first step in accordance with **CONRED 4.4.2R**.
- 4.4.16** **G** Paragraph 13.30R of **CONRED 4 Annex 21R** specifies the information required to complete the redress calculation using the BSPS calculator.
- 4.4.17** **R** Where a *consumer* has requested a *firm* calculate the redress sum that would be payable by full or partial augmentation or an amount described at **CONRED 4.3.14R(1)(b)(iii)(C)**, but the *firm* does not have sufficient information to make such calculations having taken the applicable steps at **CONRED 4.4.13R**, the *firm* must proceed to calculate only the redress calculation using the BSPS calculator in accordance with **CONRED 4.4.2R** (excluding any amount claimed as described at **CONRED 4.3.14R(1)(b)(iii)(C)**).
- 4.4.18** **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 taken all reasonable steps to obtain further information from the *consumer* and the parties specified in ■ CONRED 4.3.14R(1)(c); and
- (2) does not have sufficient information to calculate redress using the BPS calculator.

4.4.19 **R** A *firm* must not make a determination pursuant to ■ CONRED 4.4.18R only because, following a request from a *consumer*, it does not have sufficient information to calculate either or both the redress sum that would be payable by full or partial augmentation or any amount described at ■ CONRED 4.3.14R(1)(b)(iii)(C).

4.4.20 **R** A *firm* must promptly send a *consumer* a *redress determination* in the form set out in ■ CONRED 4 Annex 12R if it determines, in accordance with ■ CONRED 4.4.18R, that the scheme case no longer falls within the subject matter of the *consumer redress scheme* created by this chapter.

4.4.21 **G** Where a *firm* has sent a *consumer* a *redress determination* pursuant to ■ CONRED 4.4.20R, the *firm* should handle any subsequent *complaint* from the *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* and, where possible, calculate redress using the BPS calculator.

Obligation on firms connected with transfer advice

4.4.22 **R** A *firm* receiving a request for information pursuant to ■ CONRED 4.3.14R or ■ CONRED 4.4.14R 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

4.4.23 **R** A *firm* that has sent a reminder to an initial information request to another *firm* in accordance with ■ CONRED 4.4.14R and has not received a response to that letter within 4 weeks of it being sent, must notify the *FCA* of this failure at BPSnotifications@fca.org.uk within 5 *business days* of the 4 weeks elapsing.

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.

4.6 Supervision and delegation of scheme process by firms

- 4.6.1** **R** A *firm* must ensure that the steps required by this chapter are undertaken or supervised by:
- where **■** DISP 1.3.7R applies, the *individual* appointed by the *firm*; or
 - a *person* of appropriate seniority in all other cases
- 4.6.2** **G**
- (1) A *firm* intending to outsource any of the obligations imposed on it under this chapter should have due regard to the *rules* and *guidance* on outsourcing which are applicable to it, notably in SYSC.
 - (2) A *firm* which outsources any of the obligations imposed on it under this chapter in respect of communications with *consumers* should ensure that those communications are clear as to the identity of the *firm*.

4.7 Provisions relating to communications with consumers

- 4.7.1** **R** Whenever a *firm* is required by a provision of this chapter to send a letter in a form set out in a specified Annex in ■ CONRED 4, it must:
- (1) do so enclosing any relevant documents or pre-paid envelopes which the *firm* is instructed to enclose in the Annex with that letter;
 - (2) where the letter is a redress determination, enclose the *Financial Ombudsman Service* leaflet and bespoke referral form in respect of such determination;
 - (3) complete the letter by following the instructions in the standard form set out in the specified Annex; and
 - (4) comply with any instructions in the specified Annex to insert, delete, select or complete text.
- 4.7.2** **R** All letters to *consumers* required under this chapter must be printed on the letterhead of the *firm* and dispatched by recorded delivery mail.
- (1) Where a *firm* becomes aware that the contact details it holds for a *consumer* are out of date, it must take all reasonable steps to obtain up-to-date contact details and, where appropriate, resend any letter and repeat the steps to contact the *consumer*, required by this chapter.
 - (2) If, having complied with (1), a *firm* is unable to contact a *consumer*, it need not take any further action pursuant to this chapter in relation to that *consumer* unless (3) applies.
 - (3) If, in reliance on (2), the *firm* has ceased taking action but subsequently becomes aware of up-to-date contact details for that *consumer* within 12 months of the scheme effective date, the *firm* must, where appropriate, resend any letter and repeat the steps to contact the *consumer* required by this chapter.
 - (4) Where a *firm* is required in (1) and (3) to resend any letter and repeat the steps to contact the *consumer*, required by this chapter:
 - (a) it must do so even where it has made a *redress determination* pursuant to ■ CONRED 4.3.8R or ■ CONRED 4.4.20R; and
 - (b) such *redress determination* is void.

4.7.3

R

- (5) Where a *firm* is resending a letter and repeating steps pursuant to (3), each applicable deadline for those actions by the *firm* is extended according to the length of the delay incurred by the application of (2).

Provisions relating to communications with other firms

- (1) Where a *firm* becomes aware that the contact details it holds for a *firm* that it has tried to contact pursuant to ■ CONRED 4.3.5R, ■ CONRED 4.3.14(c)R and (d), or ■ CONRED 4.4.14R ('other *firm*') are out of date, it must take all reasonable steps to obtain up-to-date contact details and, where appropriate, resend any letter and repeat the steps to contact the other *firm* as required by this chapter.
- (2) If, having complied with (1), a *firm* is unable to contact the other *firm*, it need not take any further action pursuant to this chapter in relation to that *firm* unless (3) applies.
- (3) If, in reliance on (2), the *firm* has ceased taking action but subsequently becomes aware of up-to-date contact details for that *firm* within 12 months of the scheme effective date, the *firm* must, where appropriate, resend any letter and repeat the steps to contact the *firm* required by this chapter.
- (4) Where a *firm*:
- (a) has already made a *redress determination* pursuant to ■ CONRED 4.3.8R or ■ CONRED 4.4.20R; and
 - (b) obtains further information from the other *firm* within 12 months of the scheme effective date which means that the *firm* has sufficient information to determine, as applicable, the matters in ■ CONRED 4.3.5R(1) or to calculate redress using the BSPS calculator,
- such *redress determination* is void and the *firm* must take the remaining actions in relation to the relevant *consumer's* case as if the *redress determination* had not been made.
- (5) Where a *firm* is resending a letter and repeating steps pursuant to (1) or (3), or where (4) applies, each applicable deadline for those actions by the *firm* is extended according to the length of the delay incurred by the application of (2).

Guidance on taking reasonable steps to ascertain missing information

4.7.4

G

For the purposes of ■ CONRED 4.3.5R, ■ CONRED 4.3.10R, ■ CONRED 4.4.14R, ■ CONRED 4.4.22R, ■ CONRED 4.7.2 and ■ CONRED 4.7.3, 'reasonable steps' might include, as appropriate:

- (1) checking public sources of information, but without incurring disproportionate cost;
- (2) attempting to contact the *consumer* by telephone (at a reasonable hour when the *consumer* is likely to be available to receive the call) and by email; and

- (3) attempting to contact any other party by telephone (during business hours) and by email.

4.7.5

R

When taking reasonable steps to ascertain missing information and when they contact a *consumer* a *firm* must:

- (1) only make requests for information that are necessary for assessing compliance with the suitability requirements, the causation question or for the redress calculation using the BSPS calculator and which the *consumer* can reasonably be expected to provide;
- (2) exercise sensitivity when requesting information about a *consumer's* personal circumstances;
- (3) ensure the *consumer* understands what information they have been asked to provide and in what format;
- (4) only ask for information that is likely to be readily accessible to the *consumer* (and obtain the *consumer's* authority to approach third parties for information on their behalf);
- (5) allow the *consumer* at least 14 *days* to respond; and
- (6) make clear why the *firm* is asking for the information and the consequence if the information is not provided.

Prohibition against influencing consumers against their interests

4.7.6

R

A *firm* must not make any communication to a *consumer* which seeks to influence, for the benefit of the *firm*, the outcome of the steps taken in this chapter, either by seeking to influence the content of information provided by the *consumer* in response to the *firm's* requests made under this chapter or otherwise.

Deceased consumers

4.7.7

R

Where a *firm* is required to contact a *consumer* under a provision of these rules whom the *firm* knows to be or becomes aware is deceased, it must take all reasonable steps to instead communicate with:

- (1) a personal representative of the *consumer's* estate; or
- (2) a beneficiary or beneficiaries of their estate or pension.

4.7.8

R

The provisions of **CONRED 4.7.2R** also apply in respect of a *firm's* communications with *persons* referred to in **CONRED 4.7.7R**.

4.8 Consumer redress scheme: information requirements

Requests for information by the FCA

- 4.8.1 **R** In relation to any matter concerning or related to the *consumer redress scheme* created by this chapter, section 165 (FCA's power to require information: authorised persons etc) of the *Act* and any provision of Part XI (Information Gathering and Investigations) of the *Act* which relates to that section apply to any *firm* (or person in ■ CONRED 4) which is not an *authorised person* as if it were an *authorised person*.

Ongoing reporting requirements

- 4.8.2 **R**
- (1) By 6 weeks after the scheme effective date, a *firm* must send the *FCA* an initial 'progress report' with the most up-to-date information held by the *firm* in the information categories in ■ CONRED 4.8.3R as it stood at 1 month after the scheme effective date.
 - (2) A *firm* must submit a further progress report every 2 weeks with the most up-to date information as it stood 2 weeks prior, with the second progress report to be received by the *FCA* no later than 14 *days* after the date the initial report was provided to the *FCA* until the conditions in (3) apply.
 - (3) The conditions are:
 - (a) there are no further steps which the *firm* is or could be required to take pursuant to this chapter in respect of any scheme case; and
 - (b) the *firm* has notified the *FCA* by email to BSPSnotifications@fca.org.uk that the condition in (a) is satisfied and that it intends to stop submitting progress reports in accordance with (2).
 - (4) By 6 weeks after the scheme effective date, the *firm* must send the *FCA* a 'one-off report' with the information held by the *firm* in the information categories in ■ CONRED 4.8.4.
 - (5) The reports required by (1), (2) and (4) must:
 - (a) contain an attestation by a *senior manager* responsible for compliance oversight of the *firm* confirming that:
 - (i) the information provided in each of the reports is complete; and
 - (ii) where the information reflects a *redress determination*, that such a determination has been reached in accordance with any applicable rules; and

- (b) be submitted to the *FCA*:
 - (i) in the case of the reports at (1) and (2) using RegData; or
 - (ii) in the case of the report at (4):
 - (A) using any electronic system which has been made available by the *FCA* for the purposes of submitting the report; or
 - (B) if no such electronic system is available, by email to BSPSnotifications@fca.org.uk.
- (6) Where a *firm* agrees an arrangement with a consumer providing for the payment of redress in instalments over one or more tax years pursuant to ■ DISP App 4.3.31G(4)(c), it must within 5 *business days* of reaching such an arrangement notify the *FCA* by email to BSPSnotifications@fca.org.uk.

4.8.3

R The progress reports required by ■ CONRED 4.8.2R must contain the following information about each scheme case:

- (1) *consumer* identifier;
- (2) the date the letter at ■ CONRED 4 Annex 2R was sent;
- (3) whether the *consumer* receiving the letter in (2) has opted out of the scheme and the date a *firm* received notification from the *consumer* of their decision to opt-out;
- (4) where the *firm* has carried out the case review at ■ CONRED 4.3.2R:
 - (a) the date the case review was completed;
 - (b) a copy of the completed FCA or BPS DBAAT;
 - (c) whether the scheme case was rated suitable, unsuitable or 'non-compliant due to a material information gap(s)' or 'not-compliant-unclear' (in the case of the FCA DBAAT);
 - (d) for scheme cases rated as unsuitable, the result of the causation assessment;
- (5) in a case where a *firm* has concluded that the advice was suitable:
 - (a) the date a *firm* sent the letter at ■ CONRED 4 Annex 9R;
 - (b) the *consumer's* name, address, telephone number(s) and, where available, email address (in the BPS DBAAT or, where using an FCA DBAAT, in the Reg Data report);
 - (c) whether a *firm* is aware that the *consumer* has complained to the *Financial Ombudsman Service* about the determination communicated in (a);
 - (d) the date a *firm* became aware of any *complaint* in (c); and
 - (e) the outcome of the *complaint* (both suitability and causation as applicable) as notified to the *firm* by the *Financial Ombudsman Service* in accordance with ■ DISP 3.6.6R(5);

- (6) in a case where a *firm* has concluded that the advice was unsuitable and answered 'no' to the causation question, the date a *firm* sent the letter at ■ CONRED 4 Annex 8R;
- (7) in a case where a *firm* has concluded that the advice was unsuitable and answered 'yes' to the causation question the date a *firm* sent the letters at:
 - (a) ■ CONRED Annex 7R; and
 - (b) ■ CONRED Annex 10R;
- (8) where a *firm* has completed the redress assessment as required by ■ CONRED 4.4.2R, the following in respect of the latest offer of redress made pursuant to the *consumer redress scheme* created by this chapter;
 - the date on which the redress calculation was completed;
 - the redress amount rounded to the nearest pound sterling;
 - the date the letter at ■ CONRED 4 Annex 13R was sent to the *consumer*;
 - a copy of the redress calculation from the BSPS calculator;
 - whether the *consumer* has accepted the offer of redress in (c); and
 - the date on which any redress was paid.

4.8.4

R

The 'one-off report' required by ■ CONRED 4.8.2R must contain the following information:

- (1) the number of cases in relation to which a *firm* has sent a consumer a letter pursuant to:
 - (a) ■ CONRED 4 Annex 1R;
 - (b) ■ CONRED 4 Annex 2R; and
- (2) in respect of (1)(a), a breakdown of the reasons such cases were excluded from the scheme with reference to the relevant condition or conditions at ■ CONRED 4.2.2R.

4.8.5

G

The *consumer* identifier referred to at ■ CONRED 4.8.3R(1) should:

- be a number unique to each *consumer* which starts with a *firm's* FCA firm reference number;
- not include the *consumer's* name or other personal data; and
- be the same *consumer* identifier used on the BSPS DBAAT.

4.8.6

R

A *firm* must provide copies of the BSPS DBAAT, FCA DBAAT and the redress calculation from the BSPS calculator in the format of a data string in the applicable RegData report.

4.8.7

G If the *firm* is to send an encrypted email to the *FCA*, it should use Egress Switch encryption software.

[*Editor's note*: instructions for Egress Switch are available at <https://www.fca.org.uk/egress-switch>]

4.9 Record-keeping requirements

4.9.1

R

- (1) A *firm* must keep the following records:
 - (a) evidence of posting for each letter sent in accordance with this chapter;
 - (b) a copy of each letter sent in accordance with this chapter;
 - (c) a record of any attempts to contact the *consumer*, contact any other relevant *firm*, or obtain further information, in accordance with ■ CONRED 4.3.5R, ■ CONRED 4.3.14R(1)(c) or (d) and ■ CONRED 4.4.14R;
 - (d) a copy of the Excel Spreadsheet containing the completed BSPS DBAAT or FCA DBAAT for each scheme case;
 - (e) a record of the redress calculation performed by the BSPS calculator in Excel Spreadsheet format; and
 - (f) all information on the *consumer* file and any information received from the *consumer*.
- (2) A *firm* must keep the records required by (1) for a minimum of 5 years from the date of their creation or (for the records in (1)(f)) the date when the information was included in the *consumer* file or obtained.

Redress determination: consumers outside scope/confirming exclusion

[*Editor's note:* The letter(s) can be found at this address: [https://www.handbook.fca.org.uk/form/conred/CONRED_4 ANNEX 1_28022023.docx](https://www.handbook.fca.org.uk/form/conred/CONRED_4%20ANNEX%201_28022023.docx).]

Consumer within scope/confirming inclusion

[*Editor's note:* The letter(s) can be found at this address: https://www.handbook.fca.org.uk/form/conred/CONRED_4 ANNEX 2_28022023.docx.]

Redress determination: confirmation of consumer opt-out

[*Editor's note:* The letter(s) can be found at this address: [https://www.handbook.fca.org.uk/form/conred/CONRED_4 ANNEX 3_28022023.docx](https://www.handbook.fca.org.uk/form/conred/CONRED_4%20ANNEX%203_28022023.docx).]

Further information request (1): initial request

[*Editor's note:* The letter(s) can be found at this address: https://www.handbook.fca.org.uk/form/conred/CONRED_4 ANNEX 4_20233103.docx

Further information request (2): final reminder

[*Editor's note:* The letter(s) can be found at this address: https://www.handbook.fca.org.uk/form/conred/CONRED_4 ANNEX 5_20233103.docx

Redress determination: further information not provided

[*Editor's note:* The letter(s) can be found at this address: https://www.handbook.fca.org.uk/form/conred/CONRED_4 ANNEX 6_28022023.docx.]

Notification of finding of unsuitable advice

[*Editor's note:* The letter(s) can be found at this address: https://www.handbook.fca.org.uk/form/conred/CONRED_4_ANNEX_7_28022023.docx.]

Redress determination: unsuitable advice, no causation

[*Editor's note:* The letter(s) can be found at this address: https://www.handbook.fca.org.uk/form/conred/CONRED_4_ANNEX_8_28022023.docx.]

Redress determination: suitable advice

[*Editor's note:* The letter(s) can be found at this address: https://www.handbook.fca.org.uk/form/conred/CONRED_4_ANNEX_9_28022023.docx.]

Redress calculation, further information: initial request

[Editor's note: The letter(s) can be found at this address: https://www.handbook.fca.org.uk/form/conred/CONRED_4 ANNEX 10_28062023.docx

Redress calculation, further information request: final reminder

[Editor's note: The letter(s) can be found at this address: https://www.handbook.fca.org.uk/form/conred/CONRED_4 ANNEX 11_28062023.docx

Redress determination: Redress calculation – information not provided

[*Editor's note:* The letter(s) can be found at this address: https://www.handbook.fca.org.uk/form/conred/CONRED_4 ANNEX 12_28022023.docx.]

Redress determination: Result of redress calculation

[*Editor's note:* The letter(s) can be found at this address: https://www.handbook.fca.org.uk/form/conred/CONRED_4 ANNEX 13_20233103.docx

Request for detailed calculation report

[*Editor's note:* The letter(s) can be found at this address: https://www.handbook.fca.org.uk/form/conred/CONRED_4 ANNEX 14_20233103.docx

Payment confirmation

[*Editor's note*: The letter(s) can be found at this address: https://www.handbook.fca.org.uk/form/conred/CONRED_4 ANNEX 15_20233103.docx

Final reminder to accept offer

[Editor's note: The letter(s) can be found at this address: https://www.handbook.fca.org.uk/form/conred/CONRED_4 ANNEX 16_20233103.docx

Redress Determination: payment acceptance not provided

[*Editor's note:* The letter(s) can be found at this address: https://www.handbook.fca.org.uk/form/conred/CONRED_4 ANNEX 17_28022023.docx.]

Summary of scheme flow diagram [CONRED 4.1.11G]

Summary of scheme flow diagram

Form of Attestation for use of FCA DBAAT

I [name] of [firm] attest on [date] that:

- (1) I have read the BSPS Consumer Redress Scheme *rules* in CONRED 4 and in particular the BSPS DBAAT instructions at CONRED 4 Annex 21R;
- (2) I am approved to perform the SMF16 (Compliance oversight) *FCA controlled function* for the *firm* or [another appropriate *senior management function*] within the *firm*;
- (3) I have reviewed the completed FCA DBAAT in light of the *rules* for the BSPS DBAAT referred to in (1);
- (4) where applicable, the completed FCA DBAAT has been amended as a consequence of applying the rules referred to in (1);
- (5) where the FCA DBAAT information section rating was 'non-compliant – unclear' or 'non-compliant – proceed to suitability assessment', the *firm* has taken the steps in CONRED 4.3.5R and has assessed the case in accordance with the *rules, evidential provisions* and *guidance* in CONRED 4.3.2R to CONRED 4.3.4R, CONRED 4.4.12G and CONRED 4.3.13G (or took equivalent steps previously); and
- (6) in my view, the *firm* would have come to the same conclusion (that the advice was suitable, unsuitable or a rating of 'not-compliant – unclear' (as applicable)) if it had used the BSPS DBAAT.

Signed:

BSPS DBAAT

BSPS DBAAT

BSPS DBAAT and BSPS Redress Calculator Instructions

1	Introduction	
	Limitation on use	
1.1	G	The suitability assessment toolkit reproduced at CONRED 4 Annex 20R (referred to in these instructions as the 'BSPS DBAAT') and instructions in this Annex are to be used only for the purpose of complying with the requirements under CONRED 4 to assess <i>pension transfer</i> advice provided to BSPS members during the relevant period. They should not be used for any other purpose.
1.2	G	Unless otherwise stated, nothing in CONRED 4 affects how the FCA DBAAT operates.
	Definitions	
1.3	R	In this section we use the following definitions:
		(1) 'assessor' means the person filling in the BSPS DBAAT, either at the <i>firm</i> or on behalf of the <i>firm</i> ;
		(2) 'available evidence' means the information collected by the <i>firm</i> and held on the <i>consumer</i> file or information received from a <i>consumer</i> ;
		(3) 'BSPS' has the meaning in CONRED 4.1.1R(1);
		(4) 'BSPS2' has the meaning in CONRED 4.1.1R(2);
		(5) 'BSPS DBAAT' has the meaning in CONRED 4.1.1R(4);
		(6) 'Causation Section' is the tab on the BSPS DBAAT Excel Spreadsheet that records whether the <i>firm's</i> failure to comply with the suitability requirements is the effective cause of the <i>consumer's</i> loss;
		(7) 'comparator scheme' means, other than as provided by CONRED 4 Annex 21 13.1R(4):
		(a) (if the advice was given on or before 16 May 2017) BSPS;
		(b) (if the advice was given from 17 May 2017 to 11 October 2017) either or both of BSPS and PPF; and
		(c) (if the advice was given on or after 12 October 2017) BSPS2 and PPF;
		(8) 'FCA DBAAT' has the meaning in CONRED 4.1.1R(11);
		(9) 'information requirements' are the requirements in force during the relevant period and are:
		(a) COBS 9.2.1R(2);
		(b) COBS 9.2.2R;
		(c) COBS 9.2.3R;
		(d) COBS 9.2.6R; and
		(e) COBS 19.1.2R;
		(10) 'instructions' means this Annex;

- (11) 'Information Section' is the tab on the BSPS DBAAT Excel Spreadsheet that collects information about the *firm's* compliance with the information requirements that is relevant to the assessment of suitability;
- (12) 'material information gap' has the meaning in CONRED 4.1.1R(12);
- (13) 'NRD' is the normal retirement date in the comparator scheme;
- (14) 'pension benefits' has the meaning in CONRED 4.1.1R(13);
- (15) 'PPF' means the Pension Protection Fund;
- (16) 'relevant period' is defined at CONRED 4.1.1R(16);
- (17) 'scheme case' is defined at CONRED 4.1.1(17);
- (18) 'suitability requirements' are the requirements in force during the relevant period specified at CONRED 4 Annex 21R 7.1R and are:
 - (a) COBS 9.2.1R(1); and
 - (b) the common law duty in contract or tort to exercise reasonable skill and care in advising the *consumer* on *pension transfers*;

and that were in force during the relevant period and applicable to a scheme case;
- (19) 'Suitability Section' is the tab on the BSPS DBAAT Excel Spreadsheet that records the assessment of the *firm's* compliance with the suitability requirements;
- (20) 'transfer value' is the cash equivalent transfer value or CETV;
- (21) 'transfer value analysis' is the analysis a *firm* was required to carry out during the relevant period, in accordance with the requirements at COBS 19.1.2R; and
- (22) 'two-adviser model' has the meaning in CONRED 4.1.1R(21).

2 Using the BSPS DBAAT

- 2.1 G The BSPS DBAAT contains factors for the *firm's* assessor to take into account to determine whether there has been a failure to comply with the suitability requirements in a scheme case. The instructions are addressed to the assessor carrying out the review.
- 2.2 R The BSPS DBAAT is a Microsoft Excel workbook divided into 5 'sections', using worksheet tabs, which must be completed in full except where indicated in these instructions.
- 2.3 R Before completing the BSPS DBAAT, an assessor must familiarise themselves with the features, benefits and risks of a *pension transfer* from BSPS, including the features, benefits and risks in general of a *pension transfer* that a reasonably competent *firm* should have identified, as illustrated in CONRED 4 Annex 22G at Table 1.
- 2.4 R The assessor must answer the questions in the BSPS DBAAT and complete the assessment by reference to the available evidence, and where specified the information available to advisers during the relevant period listed in CONRED 4 Annex 22G at Tables 2 and 3.
- 2.5 R All answers should be based on information obtained up until the date the *firm* gave the advice or arranged the *pension transfer*, unless otherwise stated.
- 2.6 G When completing the BSPS DBAAT, an assessor should ensure that the information they enter, including, without limitation, all values, notes, additional comments, rationale and evidence, is sufficiently detailed for a third-party assessor to:
 - (1) gain an accurate and complete overview of the relevant evidence on the *consumer* file; and

		(2) form a view without the need to refer to the relevant evidence as to whether the <i>firm</i> has collected the necessary information to assess suitability and, where applicable, complied with the suitability requirements.
2.7	G	The BPS DBAAT uses colours to indicate whether fields have been completed. Blue indicates fields still to complete. Grey indicates fields that may not have to be completed, depending on the answer to a question.
2.8	G	The diagram at 2.9G explains the scheme steps in diagrammatic form, with reference to the relevant sections of the instructions and CONRED 4 rules.
2.9	G	The steps to complete a BPS DBAAT are set out below.

Steps to complete a BPS DBAAT

3	Use of FCA DBAAT	
3.1	G	If CONRED 4.3.2R(2) applies and the <i>firm</i> uses a non-BPS DBAAT to complete the first step under CONRED 4.3.2R, it should have regard to the differences between the BPS and non-BPS DBAAT and refer to relevant sections of the instructions to identify whether their FCA DBAAT or assessment requires amendment. The material changes include: <ul style="list-style-type: none"> (1) In the Information Section: <ul style="list-style-type: none"> (a) Information Area 4 is not present in the BPS DBAAT and the remaining Information Areas have been renumbered; (b) Information Area 7 in the BPS DBAAT on the comparator scheme (area 8 in the non-BPS DBAAT) has been significantly revised; (c) Information Area 9 in the BPS DBAAT on the transfer analysis (area 10 in non-BPS DBAT) has been significantly revised. (2) In the Suitability Section: <ul style="list-style-type: none"> (a) the addition of <i>evidential provisions</i> in respect of Examples 1 to 11; (b) new Example 11 has been inserted in the BPS DBAAT; (c) Example 11 from the non-BPS DBAAT becomes Example 12; (d) Example 12 from the non-BPS DBAAT has been removed. (3) The Suitability Investment Advice, Disclosure and Insistent Client Sections have been removed.
4	General instructions	
4.1	R	An assessor must complete a separate BPS DBAAT for each <i>consumer</i> and: <ul style="list-style-type: none"> (1) if the <i>consumer</i> has more than one period of service in the BPS, complete a separate BPS DBAAT for each period of service; (2) if the <i>consumer</i> received connected <i>advice on pension transfers</i> from a non-BPS <i>ceding arrangement</i> within 6 months of the BPS advice, have regard to how the connected advice factors into the advice to transfer the <i>consumer's</i> BPS scheme.
4.2	G	For the purpose of 4.1R, advice on a <i>pension transfer</i> from a non-BPS <i>ceding arrangement</i> is likely to be connected with advice to transfer from BPS if the advice on the other scheme is integral to the <i>consumer's</i> decision to transfer from the BPS.
4.3	R	Where the <i>consumer</i> is married or has a partner, complete the BPS DBAAT on a joint life basis unless the <i>consumer</i> has instructed the <i>firm</i> to advise on a single life basis and their spouse or partner has confirmed that they have sufficient retirement provision of their own.
4.4	R	Where it is necessary to use multiple BPS DBAATs:

- (1) use the first BSPS DBAAT for the *ceding arrangement* offering the largest transfer value;
- (2) label the completed BSPS DBAATs with the *consumer's* name and the number in sequence order that the BSPS DBAATs were completed;
- (3) re-use the relevant information from the first BSPS DBAAT in any connected BSPS DBAATs and ensure that the following sections are completed using the available evidence about the *consumer* and the *ceding arrangement* the BSPS DBAAT relates to:
 - (a) case details;
 - (b) Information Area 1 – ‘has the *firm* obtained the essential facts about the *consumer*?’;
 - (c) Information Area 7 – ‘has the *firm* obtained the necessary information about the consumer’s pension benefits?’;
 - (d) Information Area 8 – ‘has the *firm* obtained necessary information regarding the *proposed arrangement*?’; and
 - (e) Information Area 9 – ‘has the *firm* carried out the transfer analysis?’; and
- (4) clearly cross refer between the BSPS DBAATs.

5 Information Section

- 5.1 R An assessor must take these 6 actions to complete the Information Section:
- (1) Enter ‘case details’ of the file review and assessor alongside details of the *firm*, adviser and *pension transfer specialist* (as recorded on the *Financial Services Register*) and the charging basis for the advice.
 - (2) Record the relevant information from the available evidence under each of the 9 Information Areas, following the instructions under each area heading.
 - (3) For each Information Area, decide whether the *firm* has complied with the information requirements and obtained the necessary information to assess suitability and answer ‘yes’ or ‘no’ to each ‘area question’.
 - (4) Depending on the answers to questions in Information Areas 1 to 9, the BSPS DBAAT will give the *firm's* information collection 1 of 3 indicative ratings. To complete this action, refer to the instructions at [CONRED 4 Annex 21R](#) from 5.3R to 5.7R and select from the drop-down list one of the following ‘assessor’ ratings:
 - (a) ‘Compliant – Proceed to suitability assessment’ – the *firm* has complied with the information requirements and collected the necessary information to assess suitability. Proceed to the Suitability Section of the BSPS DBAAT.
 - (b) ‘Non-compliant – Material Information Gap’ – the *firm* has not complied with the information requirements and so it is not possible to assess suitability. Complete action (5) before finalising this rating.
 - (c) ‘Non-compliant - However enough information to assess suitability’ – the *firm* has not complied with the information requirements and has taken the steps at [CONRED 4.3.5R](#) but there is sufficient information to conclude that the advice was likely to be unsuitable. Proceed to the Suitability Section of the BSPS DBAAT.
 - (5) If 4(b) applies, follow the steps in [CONRED 4.3.5R](#) to obtain the missing information, then carry out actions 5.1R(2) to (4) again and finalise the assessor rating.
 - (6) Explain, with reference to the *consumer* file, the reasons for the rating and any actions taken to obtain missing information.
- 5.2 G The overall assessment part of the Information Section has 2 boxes:

		(1)	Tool rating: the BSPS DBAAT's indicative rating of whether the <i>firm</i> has obtained the 'necessary information' to make a <i>personal recommendation</i> based on the answers to Information Area questions 1 to 9 in the Information Section.
		(2)	Assessor rating: this is the assessor's own informed assessment in the round of whether the <i>firm</i> has obtained the necessary information to make a <i>personal recommendation</i> . The assessor can come to a different rating.
5.3	R		To complete the overall assessment of whether the <i>firm</i> has collected the necessary information at 5.1R(4), take the following steps. Using the available evidence and with reference to the information requirements:
		(1)	review the information recorded and the ratings in each Information Area of the BSPS DBAAT;
		(2)	answer 'yes' or 'no' depending on whether the <i>firm</i> has complied with the information requirements; and
		(3)	insert commentary on whether or not the <i>firm</i> has complied with the information requirements.
5.4	R		If the answer to all of the Information Area questions 1 to 9 is 'yes', select 'compliant – proceed to suitability section' and proceed to the Suitability Section.
5.5	R		If one or more of the answers to the Information Area questions 1 to 9 is 'no', decide, with reference to the information requirements, whether there is nonetheless sufficient information to assess the suitability of the recommendation and:
		(1)	if there is sufficient information, select 'non-compliant however enough information to assess suitability' and make a record of the reasons for the assessment in accordance with CONRED 4 Annex 21R 5.3(3)R ; or
		(2)	if there is not sufficient information, select 'Non-compliant - Material Information Gap' and take the second step at CONRED 4.3.5R to obtain the missing information then proceed to 5.1R(2).
5.6	G		There may be sufficient information to assess the suitability of the advice in circumstances where the <i>firm</i> has been unable to obtain the necessary information in one or more Information Area. For example:
		(1)	where the <i>consumer</i> was in <i>serious financial difficulty</i> and had a proven urgent need for the transferred funds and the <i>firm</i> was unable to obtain the necessary information in Information Area 1, 3, 4 or 5. The types of circumstances in which a <i>consumer</i> is likely to be able to show they are experiencing <i>serious financial difficulty</i> include where continuing to pay domestic bills and credit commitments is a heavy burden on the <i>consumer</i> and the <i>consumer</i> has missed payments for any credit commitments and/or any domestic bills in any 3 or more of the last 6 months; or
		(2)	where the <i>consumer</i> was in ill health, with death expected imminently, and wanted to transfer in order to pass the value of their pension benefits to beneficiaries and the <i>firm</i> was unable to obtain the necessary information in Information Area 3, 4, 5, or 6.
5.7	R		If, after taking the steps at CONRED 4.3.5R , and having regard to the guidance in CONRED 4.3.12G to CONRED 4.3.13G , the conclusion is that the <i>firm</i> has not obtained the necessary information and it is not possible to assess the suitability of the transfer (such that the 'assessor rating' is 'Non-compliant – Material Information Gap'), record:
		(1)	a brief summary of the missing information and its significance to the suitability assessment (for example, 'the <i>firm</i> has not recorded any <i>consumer</i> objectives and so it cannot form a view on whether the transfer meets the <i>consumer's</i> investment objectives'); and

- (2) that the *firm* has not complied with the information requirements but it is not possible to assess whether the *firm* has complied with the suitability requirements; and
- (3) where the failure relates to the transfer analysis, that the *firm* has not carried out the required transfer analysis in accordance with COBS 19.1.2R.

6 Instructions for Information Areas

6.1 G This section sets out how to assess whether the *firm* has collected the necessary information across 9 Information Areas to make a *personal recommendation*. It is also to be used to determine whether the assessor has sufficient information to assess suitability.

Information Area 1: has the firm obtained the essential facts about the consumer?

6.2 R Refer to the available evidence and take the following steps:

- (1) Select 'yes' or 'no' depending on whether the *firm* has obtained the essential facts about the *consumer*.
- (2) Enter the information about the *consumer* and (if relevant) their spouse or partner from the available evidence.
- (3) Record any information inferred from the available evidence in the comment box.

6.3 R Complete the BSPS DBAAT as follows:

- (1) Where advice is on a joint life basis, complete the essential information for the *consumer* and their partner.
- (2) If the *consumer's* tax rate is not recorded, it can be inferred from the *consumer's* salary at the date of the advice.
- (3) Record in the additional comments box whether the *consumer* intends to transfer the pension to a Qualifying Recognised Overseas Pension Scheme. Record the relevant currency and overseas tax rates.
- (4) Where health status is not recorded, absent any evidence suggesting otherwise, infer that the *consumer* is in good health.
- (5) Record details about any dependants and the *consumer's* responsibility for them.
- (6) Include details about whether the *consumer* had characteristics of vulnerability. This means someone who, due to their personal circumstances, is especially susceptible to detriment.

Information Area 2: has the firm obtained the necessary information regarding the consumer's objectives?

6.4 R Take the following steps to complete this area. Using the available evidence, identify the information recorded on the *consumer's* objectives and:

- (1) if no objectives have been recorded, answer 'no' to this question; or
- (2) if objectives are recorded, answer 'yes'; and
- (3) complete the BSPS DBAAT by recording the *consumer's* objectives, using the same wording and ranking or prioritisation as the *firm* and include any observations in the additional comments box.

6.5 G For each objective identified, the BSPS DBAAT will indicate fields where further information can be recorded, in the right-hand columns, relating to:

- (1) the amount wanted (to achieve the objective); and
- (2) the date the amount is needed.

Information Area 3: has the firm obtained the necessary information regarding the consumer's preferences regarding risk taking and their risk profile?

6.6 R Take the following steps to complete this area. Using the available evidence:

		<ol style="list-style-type: none"> (1) select 'yes' or 'no' depending on whether the <i>firm</i> has obtained the necessary information about the <i>consumer's</i> preferences regarding risk taking and their risk profile; (2) record in the boxes provided the <i>firm's</i> description of the <i>consumer's</i>: <ol style="list-style-type: none"> (a) attitude to investment risk; (b) attitude to the risks associated with a <i>pension transfer</i>, including the loss of <i>safeguarded benefits</i>; (c) capacity for loss (in general); and (d) capacity for loss of <i>safeguarded benefits</i>; (3) select 'yes' or 'no' depending on whether the <i>firm</i> used a tool for any of the above assessments. If the <i>firm</i> used a tool record the name of that tool in the 'name of tool' box; and (4) record in the 'comments' box any additional comments or observations on the <i>firm's</i> approach to obtaining this information.
6.7	G	'Capacity for loss' refers to the <i>consumer's</i> ability to absorb falls in the value of their investment. If any loss of capital would have a materially detrimental effect on their standard of living, this should be taken into account in assessing the risk that they are able to take.
6.8	G	COBS 9.2.2R(2) requires a <i>firm</i> to obtain, where relevant, information about the <i>consumer's</i> (a) preferences regarding risk taking and (b) risk profile. COBS 19.1.7G and COBS 19.1.7AG contain guidance to which a <i>firm</i> giving <i>pension transfer</i> advice should have had regard when identifying the <i>consumer's</i> risk preferences and risk profile.
6.9	G	<p>A <i>firm</i> advising a <i>consumer</i> during the relevant period should have obtained sufficient information to enable it to consider the <i>consumer's</i> attitude to the investment risks specific to a <i>pension transfer</i>, including:</p> <ol style="list-style-type: none"> (1) the rate of growth that would have to be achieved to replicate scheme benefits in the <i>proposed arrangement</i> (COBS 19.1.7G and COBS 19.1.7AG); (2) the extent to which benefits may fall short of replicating those in the <i>defined benefits pension scheme</i> or other scheme with <i>safeguarded benefits</i> (COBS 19.1.7AG(1)); (3) the uncertainty of the level of benefit that can be obtained from the purchase of a future <i>pension annuity</i> and the investment risk to which the retail <i>consumer</i> is exposed until a <i>pension annuity</i> is purchased with the proceeds of the proposed <i>personal pension scheme</i> or <i>stakeholder pension scheme</i> (COBS 19.1.7AG(2)); (4) the potential lack of availability of <i>pension annuity</i> types (for instance, <i>pension annuity</i> increases linked to different indices) to replicate the benefits being given up in the <i>defined benefits pension scheme</i> as set out in COBS 19.1.7AG(1); and (5) the risks relevant to a <i>pension transfer</i> from the BPS to a scheme with <i>flexible benefits</i> listed at CONRED 4 Annex 22G at Table 1. <p>Information Area 4: has the firm obtained the necessary information regarding the consumer's knowledge and experience?</p>
6.10	R	<p>Take the following steps to complete this area. Using the available evidence:</p> <ol style="list-style-type: none"> (1) identify the information relevant to the <i>consumer's</i> knowledge and experience of <i>defined benefits pension schemes</i> and <i>pension schemes</i> with <i>flexible benefits</i>, including: <ol style="list-style-type: none"> (a) the types of service, transaction and investments with which the <i>consumer</i> is familiar; (b) the nature, volume and frequency of the <i>consumer's</i> transactions in <i>investments</i> and the period over which they have been carried out; and

		(c)	the level of education, profession or relevant former profession of the <i>consumer</i> ;
		(2)	answer 'yes' or 'no' depending on whether the <i>firm</i> has obtained the necessary information about the <i>consumer's</i> knowledge and experience; and
		(3)	record the <i>consumer's</i> knowledge and experience relevant to <i>pension transfers</i> in the 'additional comments' box.
		Information Area 5: has the firm obtained the necessary information regarding the <i>consumer's</i> estimated expenditure?	
6.11	R	Take the following steps to complete this area. Using the available evidence:	
		(1)	identify the information relevant to the <i>consumer's</i> financial situation;
		(2)	answer 'yes' or 'no' depending on whether the <i>firm</i> has obtained the necessary information regarding the <i>consumer's</i> estimated expenditure;
		(3)	record relevant information under the headings 'current regular' and 'retirement regular', including the <i>consumer's</i> expenditure on:
		(a)	basic cost of living;
		(b)	lifestyle expenditure; and
		(c)	discretionary expenditure/savings; and
		(4)	record any additional comments about the steps the <i>firm</i> has taken to obtain this information, including any inferences made about current or retirement regular expenditure.
6.12	E	Answer 'yes' to the question at 6.11R(2) if the <i>firm</i> has taken reasonable steps to obtain the information under the headings 'current regular' and 'retirement regular expenditure' but there is information missing and:	
		(1)	the <i>consumer</i> is 5 years or less from their intended retirement age and taking account their personal circumstances, it is possible to use the current regular expenditure as a proxy for retirement regular expenditure; or
		(2)	it is possible to use the current regular expenditure, with <i>consumer-specific</i> adjustments, as a proxy for retirement regular expenditure.
6.13	G	The BPS DBAAT records the necessary information about the <i>consumer's</i> estimated expenditure throughout retirement in 3 categories:	
		(1)	Basic cost of living: this includes all non-discretionary expenditure. For example, utility bills, council tax, food and any outstanding accommodation payments (such as mortgages and rents) or care expenses if these are ongoing.
		(2)	Lifestyle expenditure: this is expenditure to support the <i>consumer's</i> lifestyle. For example, <i>consumers</i> may wish to spend money on entertainment, holidays or home help.
		(3)	Discretionary expenditure/savings: this is expenditure which is discretionary and could easily be cut back by the <i>consumer</i> at any time. It may include current savings into pensions or investments which may well cease upon retirement. This may also be labelled as 'disposable income'.
6.14	G	If the <i>firm</i> has estimated the <i>consumer's</i> expenditure in retirement, consider whether it took reasonable steps to do so. Reasonable steps might include:	
		(1)	gathering the necessary information on the <i>consumer's</i> current level of expenditure and liabilities;
		(2)	considering how the <i>consumer's</i> personal circumstances and lifestyle (for example, living arrangements, mortgage position, provision of financial support for dependents, recreational activities, and travel) are

likely to change upon retirement, and how this might affect future expenditure and liabilities;

- (3) challenging low estimates of expenditure by using comparative figures derived from (for example) the *firm's* experience with other *consumers* in similar situations, statistical averages, actuarial data and other reliable sources (though it is unlikely that the use of generic data would by itself satisfy the requirement to take reasonable steps);
- (4) where a *firm* has used a cashflow modelling tool to estimate the *consumer's* level of expenditure in retirement as part of demonstrating how reliant the *consumer* is on this income in retirement;
- (5) challenging inconsistent information, for example, where the *consumer* suggests they have a high level of available disposable income but low levels of savings, suggesting that their lifestyle expenditure may be more than they represent.

Information Area 6: has the firm obtained the necessary information regarding the consumer's financial situation?

- 6.15 R To complete this area, take the following steps. Using the available evidence:
- (1) identify the information relevant to the *consumer's* financial situation;
 - (2) answer 'yes' or 'no' depending on whether the *firm* has captured the necessary information regarding the *consumer's* financial situation; and
 - (3) record the relevant information for the *consumer* and (for joint advice) their spouse or partner under the headings:
 - (a) *consumer's* current income;
 - (b) income sources in retirement (excluding income from the comparator scheme, which is captured in Information Area 7);
 - (c) other assets (excluding the *consumer's* main residence); and
 - (d) liabilities.
- 6.16 G The *consumer's* main residence should not usually be counted as an asset which can be used as an income source in retirement. The *consumer's* main residence typically provides secure accommodation throughout retirement. Where the *firm* has a reasonable basis for treating the main residence as an asset, for example because the *consumer* has a legitimate plan to downsize and the *firm* has a contemporaneous record of these plans, include the value of the main residence in the 'other assets' box.
- 6.17 G If the *consumer* file is incomplete or it is unclear whether the *firm* has collected the necessary information on the *consumer's* financial situation, it may be possible to estimate the *consumer's* income or assets from other information on the *consumer* file. For example:
- (1) if the 'other assets' section in a fact-find is blank, and there is evidence that the *consumer's* income does not exceed or marginally exceeds their expenditure, it may be reasonable to assume that the *consumer* has no other assets;
 - (2) if the 'state pension' section of the fact-find is blank:
 - (a) where there is evidence of the *consumer's* employment history on file or length of service at the scheme employer, it may be possible to estimate entitlement to a state pension;
 - (b) where a *consumer* expects to continue in employment until retirement, it is reasonable to infer, unless there is specific information to the contrary, that the *consumer* would continue to accrue state pension entitlement throughout that period;

		(3)	if details on the 'spouse's/partner's' assets are missing, it may be possible to infer information based on the spouse's circumstances. For example:
		(a)	if the spouse or partner was employed at the time of the advice, it is likely they will have some eligibility for state pension;
		(b)	if the spouse or partner was not employed, this may indicate that they have modest assets, in the absence of evidence suggesting otherwise;
		(4)	if the <i>consumer</i> or their spouse or partner held other <i>defined benefits</i> of material value, where a benefits statement was delayed, these benefits could be reasonably estimated by contemporaneous records of their salary, length of service and publicly available scheme details;
		(5)	if there is an indication that the spouse or partner has a defined contribution pension scheme or other assets but the value is not quantified, where it has already been demonstrated that the <i>consumer</i> and spouse or partner have sufficient other guaranteed pension provision to cover their expenditure in retirement, the value of this scheme may not be necessary to assess the suitability of the recommendation to transfer.
6.18	G	(1)	If the available evidence suggests that the <i>consumer</i> has a significant amount of disposable income, but the <i>firm</i> has obtained limited or no information on them, it is more likely than not that the <i>firm</i> has not obtained the necessary information.
		(2)	If the available evidence demonstrates that the <i>consumer</i> has other assets or liabilities, but the <i>firm</i> has obtained limited or no information on them, it is likely that the <i>firm</i> has not obtained the necessary information.
6.19	G		If the <i>consumer</i> was concerned about the security of their employment with Tata Steel Ltd and the security of income over the remaining term to retirement, this should have been recorded on the <i>consumer</i> file. The <i>firm</i> should have inquired as to whether redundancy or loss of income was imminent and was likely to cause significant financial hardship.
			Information Area 7: has the firm obtained the necessary information regarding the consumer's pension benefits?
6.20	R		To complete this area, take the following steps. Using the available evidence:
		(1)	(where the <i>firm</i> has advised on multiple periods of service in the BSPS record under the heading 'number of schemes':
		(a)	the number of periods of service in the BSPS advised on;
		(b)	whether the outcome was to transfer all periods of service;
		(2)	record the relevant information for the <i>consumer's</i> BSPS membership, including:
		(a)	the statement of benefits and date obtained;
		(b)	whether the Time to Choose pack was obtained;
		(c)	what the <i>consumer's</i> Time to Choose election was (BSPS2 or PPF);
		(d)	the date of the CETV and the CETV amount;
		(e)	the dates they joined and left the BSPS (the BSPS DBAAT will then automatically calculate the length of service);
		(f)	their retirement date (NRD) in the BSPS;
		(g)	BSPS minimum retirement age;
		(h)	whether the client opted out of the scheme in advance of its closure and the date of any opt-out;

		(i) any additional comments;
	(3)	answer 'yes' or 'no' depending on whether the <i>firm</i> has captured the necessary information regarding the <i>consumer's</i> BPS membership, Time to Choose election, and benefits; and
	(4)	record any comments relevant to the <i>consumer's</i> CETV and the comparator scheme(s) in the 'additional comments' box.
		Information Area 8: has the firm obtained the necessary information regarding the proposed arrangement?
6.21	R	To complete this area, take the following steps. Using the available evidence:
	(1)	identify information about the <i>proposed arrangement</i> ;
	(2)	answer 'yes' or 'no' depending on whether the firm has captured the necessary information regarding the <i>proposed arrangement</i> ;
	(3)	if the <i>firm</i> has not identified a <i>proposed arrangement</i> , answer 'no' to this question;
	(4)	record the relevant information under the headings 'proposed arrangement'; and
	(5)	in the 'additional comments' box, record any relevant information about product and adviser costs and charges.
		Information Area 9: has the firm carried out the transfer analysis?
6.22	R	To complete this area, take the following steps. For the relevant comparator scheme(s), using the available evidence and with reference to the <i>firm's</i> transfer value analysis:
	(1)	record the <i>consumer's</i> preferred retirement age;
	(2)	record the relevant comparator schemes(s);
	(3)	record relevant information under the heading 'comparison of benefits' from the comparison carried out by the <i>firm</i> to comply with COBS 19.1.2R; and
	(4)	record relevant information under the heading 'critical yield', including:
	(a)	the critical yield on a joint and single basis to the <i>consumer's</i> NRD and preferred retirement date; and
	(b)	identify which critical yield is more relevant (joint or single) by selecting the critical yield which corresponds to the <i>consumer's</i> intentions; and
	(i)	if the evidence on file demonstrates that the <i>consumer</i> does not intend to take any <i>pension commencement lump sum</i> , record the critical yield for a full pension and make a note in the 'additional comments' box; and/or
	(ii)	if the <i>consumer</i> is single and there is nothing on file to suggest that this is likely to change, then insert the critical yield calculated on a single life basis and make a note in the 'additional comments' box; and
	(c)	record the critical yield to match the comparator scheme(s) at the <i>consumer's</i> preferred retirement date; and
	(5)	record commentary on any other comparison of benefits, for example on cashflow modelling or analysis of how long funds are likely to last in the <i>proposed arrangement</i> .
6.23	G	The BPS DBAAT records the necessary information about the <i>consumer's</i> benefits at the comparator scheme(s) and their preferred retirement date in 3 categories:

		(1)	Pension (no commutation) per annum (p.a.): the income benefits the <i>consumer</i> would receive at NRD if they were to take all their benefits as income only.
		(2)	Pension (full commutation) per annum (p.a.): the (reduced) income benefits the <i>consumer</i> would receive at NRD if they chose to maximise their <i>pension commencement lump sum</i> by commuting income benefits up to the full permitted limit.
		(3)	<i>Pension commencement lump sum</i> (PCLS): the lump sum benefits the <i>consumer</i> would receive at their NRD if they chose to maximise their PCLS by commuting income benefits up to the full permitted limit.
6.24	G		To assess whether the <i>firm</i> has carried out the transfer analysis, identify whether:
		(1)	(with reference to the assumptions in COBS 19.1.4R to COBS 19.1.4BR and taking into account the dates these rules were in force) the analysis has been undertaken on the correct assumptions, including whether, if more cautious assumptions have been used, those assumptions are reasonable; and
		(2)	the analysis is consistent with product-related documents such as the <i>key features illustration</i> .
7			Suitability requirements
7.1	R		The following requirements are specified as ‘suitability requirements’:
		(1)	COBS 9.2.1R(1), which requires a <i>firm</i> to take reasonable steps to ensure that a personal recommendation is suitable for its <i>client</i> ; and
		(2)	the common law duty in contract or tort to exercise reasonable skill and care in advising the <i>consumer</i> on <i>pension transfers</i> .
7.2	G		The contract between the <i>firm</i> and the <i>consumer</i> may have included a specific term providing that the <i>firm</i> would exercise reasonable skill and care in advising the <i>consumer</i> on investments. If it did not do so, such a duty is likely to have been implied into the contract.
7.3	G		The standard of care under the <i>FCA rules</i> and the common law is that of a reasonably competent <i>firm</i> carrying on a similar business to that of the <i>firm</i> assessed.
7.4	G		The suitability requirements arise from <i>FCA rules</i> and the common law. For the requirements specified, the standards required of the <i>firm</i> are materially similar, regardless of whether their origin is a <i>rule</i> or the common law.
7.5	G		COBS 9.2.1R(2), COBS 9.2.2R and COBS 9.2.3R indicate matters of which a <i>firm</i> must take account when assessing whether the <i>firm</i> failed to comply with the suitability requirements. In summary, these are the <i>consumer’s</i> :
		(1)	investment objectives;
		(2)	financial situation; and
		(3)	knowledge and experience in the <i>investment</i> field relevant to the specific type of designated <i>investment</i> or service.
7.6	G		The starting point for <i>pension transfer</i> advice is the <i>guidance</i> in COBS 19.1.6G that a <i>firm</i> should only consider a transfer, conversion or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the <i>client’s</i> best interests.
8			Assessing scheme cases for compliance with suitability requirements
8.1	R	(1)	The ‘Suitability Section’ in the BSPS DBAAT and associated additional provisions in these instructions contain ‘examples’ which tend to show failure to comply or compliance with the suitability requirements specified at 7.1R.
		(2)	The examples are indicators that advice may be unsuitable, and an overall view of suitability or unsuitability must be reached taking account of all of the circumstances.
8.2	R		For each scheme case, the assessor must:

- (1) fairly consider and give appropriate weight to all available evidence of the *firm's* compliance or non-compliance with applicable suitability requirements; and
- (2) decide, including with reference to the examples in the BSPS DBAAT, whether it is more likely than not that the *firm* complied or failed to comply with the suitability requirements.
- 8.3 R In considering the available evidence, the assessor must:
- (1) not assume that a *firm* complied with a suitability requirement solely on the basis that:
- (a) the *consumer* signed documentation that records their understanding or agreement to matters set out in that documentation;
- (b) the advice was given to a *consumer* who had transferred from a *defined benefit occupational pension scheme* in the past;
- (2) give more weight to evidence of the *consumer's* particular circumstances or the circumstances at the time than to general evidence of the selling practices of the *firm* or its advisers at the relevant time;
- (3) determine that an example is present on the 'balance of probabilities' when it is more likely than not to have occurred.
- 8.4 R When assessing whether a *firm* complied with the suitability requirements, the assessor must take into account the following:
- (1) the *consumer's* investment objectives, including their willingness to bear the risks associated with transfer (transfer risk);
- (2) the *consumer's* financial situation, including their ability, financially, to bear the risks associated with the recommended transfer consistent with their investment objectives;
- (3) the *consumer's* ability, in the light of the following, to understand the risks associated with a *pension transfer*:
- (a) the experience and knowledge of the *consumer* relevant to a *pension transfer*; and
- (b) any communications received from the comparator scheme(s) regarding the *pension transfer*.
- 8.5 R When assessing the reasonableness of a *firm's* conduct, the assessor must:
- (1) assess the *firm's* conduct against what was reasonable at the time when the *firm* gave the advice; and
- (2) have regard to the information available at various times, including the information listed at Table 3 of CONRED 4 Annex 22G; and
- (3) 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*.
- 8.6 G Where the advice is given using a two-adviser model and the advisers are employed by different *firms*:
- (1) identify which *firm* is responsible for the *pension transfer* advice and which *firm* is responsible for the investment advice;
- (2) take into account that it will generally be reasonable for the *firm* providing *pension transfer* advice to rely on information provided to it in writing by the *firm* providing investment advice, 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 (COBS 2.4.6R and COBS 2.4.8G).

9 Completing the Suitability Section of the BSPS DBAAT

9.1	G	The Suitability Section is used to record the assessment of whether the <i>firm</i> has complied with the suitability requirements.
9.2	R	<p>The assessor must take the following steps to complete the Suitability Section:</p> <ol style="list-style-type: none"> (1) review the available evidence and the information recorded in the Information Section of the BSPS DBAAT; (2) take the steps in Section 10 of this Annex to determine whether the available evidence shows overall that an example is present, or not; (3) indicate whether any or all of Examples (1) to (12) are present, or not, by selecting 'yes' or 'no'; (4) conclude, taking into account all of the available evidence and the presence of any examples indicating unsuitable advice, whether the <i>firm</i> complied with the suitability requirements; and (5) comment on whether or not the <i>firm</i> complied with the suitability requirements, with reference to the example or examples that support their conclusion.
9.3	G	<p>If an example is present, this will tend to indicate the <i>firm's</i> potential non-compliance 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. For example:</p> <ol style="list-style-type: none"> (1) if Example 9 is present because the transfer analysis does not support a recommendation to transfer, but the recommendation is nonetheless suitable because the <i>consumer</i> has little or no reliance on the transfer value from the comparator scheme and no requirement to replicate the amount or shape of the comparator scheme benefits; or (2) if Example 1 is present but the recommendation is nonetheless suitable because the <i>consumer</i> is in serious ill health with a shortened life expectancy and: <ol style="list-style-type: none"> (a) the <i>consumer's</i> objective is to transfer to preserve the value of their scheme benefits for beneficiaries; and (b) the beneficiaries would be financially better off if the funds were transferred to a scheme with <i>flexible benefits</i> rather than remaining in the comparator scheme(s).
9.4	G	The BSPS DBAAT rating will indicate a conclusion of 'Compliant' or 'Non-Compliant' based on the answer to the example questions in the BSPS DBAAT. The BSPS DBAAT rating is not definitive of suitability; it is an indication of the <i>firm's</i> compliance with the suitability requirements.
10		Examples that indicate unsuitable advice
10.1	G	<p>This section contains rules, evidential provisions, and guidance for determining whether the available evidence shows overall that an example is present, or not.</p> <p>Example 1: the consumer is, or will be, reliant on income from the comparator scheme</p>
10.2	R	<p>Take the following steps to determine whether this example is present:</p> <ol style="list-style-type: none"> (1) Review the available evidence in Information Areas 5, 6, 7, 8 and 9 of the Information Section. (2) Using the available evidence, identify the amount the <i>consumer</i> needs to meet anticipated expenses and personal outlays throughout retirement, taking into account: <ol style="list-style-type: none"> (a) any forecast expenditure plans that the <i>firm</i> has identified with the <i>consumer</i>; (b) any intention or preference for early retirement; (c) any existing liabilities that the <i>consumer</i> continues to pay off (for example, their mortgage) and their plans for clearing these debts;

- (d) whether the forecast expenditure appears reasonable in light of their current expenditure patterns and plans to pay off liabilities; and
 - (e) where the *firm* has not collected a forecast expenditure plan, an estimate (if possible) of the *consumer's* likely expenditure patterns based on the information on file.
- (3) Using the available evidence, identify the anticipated income from the comparator scheme at NRD or the *consumer's* preferred retirement date, whichever is earlier. Where the *consumer* wishes to retire early, assess whether the *consumer* can afford to retire early or whether this will give rise to or increase the risk of the *consumer* running out of income in retirement.
- (4) Assess how the income from the comparator scheme, including inflationary increases, contributes to the *consumer's* income needs in (2).
- (5) Assess whether the *consumer* can produce the same or similar contribution towards their planned expenditure needs throughout retirement (using a range of possible life expectancies) as identified in (2) using the available assets, including from:
- (a) contribution-based pension schemes, including the *proposed arrangement*, taking into account the impact of the following factors on the sustainability of these schemes throughout retirement:
 - (i) the frequency of withdrawals (ad hoc or regular payments);
 - (ii) the timing of withdrawals (monthly, yearly);
 - (iii) the amount of the withdrawals; and
 - (iv) investment performance;
 - (b) savings and investments;
 - (c) other *pension schemes with safeguarded benefits*;
 - (d) (if the *consumer* is eligible) state pension;
 - (e) (if the *consumer* is managing income on a joint basis) the spouse's/partner's other assets, pensions and entitlement to the state pension, and how this contributes to their total household income.
- (6) Using the assessments in 10.2R(4)-(5) decide (yes or no) whether:
- (a) the *consumer* can produce the same or similar contribution towards their income needs, as identified in 10.2R(2), from the *proposed arrangement*; and
 - (b) the *consumer* has the requisite capacity for loss, taking into account the impact of the factors considered at 10.2R(5)(a) on the sustainability of the *proposed arrangement*.
- 10.3 E (1) If the answer to 10.2R(6)(a) and (b) is 'yes', conclude that the *consumer* is not likely to be reliant on income from the comparator scheme.
- (2) If the answer to either 10.2(6)(a) or (b) is 'no', conclude that the *consumer* is likely to be reliant on income from the comparator scheme.
- (3) If the *firm* has not obtained the necessary information in all of the Information Areas 5, 6 and 7 of the Information Section and so it is not possible to carry out the steps in 10.2R(1) to (6), conclude that the *firm* has not demonstrated that it has a reasonable basis for believing that the *consumer* is able to bear the risk of the *pension transfer* to achieve their objective.

Example 2: the aim of the transfer is to pass the value of the pension to beneficiaries on the member's death, but the firm has not demonstrated that the consumer can bear the risk of the transfer that would be needed to achieve this objective

10.4	R	<p>Refer to Information Area 2 of the Information Section:</p> <ul style="list-style-type: none"> (1) if the <i>consumer</i> has a priority objective to pass the value of the pension to beneficiaries on their death, take the steps in 10.5R; or (2) if the <i>consumer</i> does not have this priority objective answer 'no' to this question and proceed to Example 3.
10.5	R	<p>Take the following steps to determine whether this example is present:</p> <ul style="list-style-type: none"> (1) Review the available evidence in Information Areas 2, 5, 6 and 7 of the Information Section. (2) Refer to Tables 1 and 2 in CONRED 4 Annex 22G and the available evidence to identify what death benefits were likely to be available for beneficiaries on the member's death: <ul style="list-style-type: none"> (a) (in all cases) in the <i>proposed arrangement</i> having regard to the way the <i>consumer</i> is likely to access their pension scheme throughout retirement; and (b) in the comparator scheme. (3) Identify whether there was an alternative way to meet the <i>consumer's</i> objective without giving up comparator scheme benefits, including: <ul style="list-style-type: none"> (a) level term assurance for the required sum; or (b) decreasing term assurance for an appropriate term; or (c) using available death in service cover. (4) Decide whether the <i>firm</i> has a reasonable basis for believing that: <ul style="list-style-type: none"> (a) the recommendation to transfer in order to pass the value of the pension to beneficiaries on the member's death meets the <i>consumer's</i> investment objectives; and (b) the <i>consumer</i> is able financially to bear any transfer-related risks consistent with their investment objectives.
10.6	E	<p>Answer 'yes' to this question when the available evidence demonstrates that:</p> <ul style="list-style-type: none"> (1) the <i>consumer</i> did not have the requisite capacity for loss because they were not able to forego comparator scheme benefits to achieve this objective; and/or (2) a lower risk suitable alternative was available to achieve this objective; and/or (3) it was likely that the <i>consumer</i> would exhaust their pension savings during their lifetime (having regard to how the <i>consumer</i> will access their pension savings and the factors listed at 10.2R(5) above) and so there will be minimal death benefits available; and/or (4) the <i>firm</i> has not obtained the necessary information in both of the Information Areas 5 and 6 of the Information Section and so it is not possible to complete the assessment in 10.4R because the <i>firm</i> has not demonstrated that it has a reasonable basis for believing that the <i>consumer</i> is able to bear the risk of the <i>pension transfer</i> to achieve this objective; and/or (5) the <i>firm</i> has not obtained the necessary information in Area 2 of the Information Section and so it is not possible to understand the <i>consumer's</i> rationale for pursuing this objective. <p>Example 3: the aim of the transfer is to access income-related benefits flexibly but the firm has not demonstrated that the consumer can bear the risk of the transfer that would be needed to achieve this objective</p>
10.7	R	<p>Refer to the available evidence in Information Area 2 of the Information Section:</p> <ul style="list-style-type: none"> (1) if the <i>consumer</i> has a priority objective to access income-related benefits flexibly or to take control of their benefits, take the steps in 10.8R; or

		(2)	if the <i>consumer</i> does not have this priority objective, answer 'no' to this question and proceed to Example 4.
10.8	R		Take the following steps to determine whether this example is present:
		(1)	Review the available evidence in Information Areas 2, 5 and 6 of the Information Section.
		(2)	Identify why the <i>consumer</i> requires flexible access to or control over their income-related benefits and how the features of the <i>proposed arrangement</i> meet their objective(s).
		(3)	Identify whether any alternatives are available to meet the <i>consumer's</i> objective.
		(4)	Decide whether the <i>firm</i> has a reasonable basis for believing that the recommendation to transfer to access income-related benefits flexibly:
		(a)	meets the <i>consumer's</i> investment objectives; and
		(b)	the <i>consumer</i> is able financially to bear any related risks consistent with their investment objectives.
10.9	E		Answer 'yes' to this question when the available evidence demonstrates that:
		(1)	the <i>consumer</i> does not have the requisite capacity for loss because they were not able to forego scheme benefits to achieve this objective; and/or
		(2)	there is an alternative way for the <i>consumer</i> to meet their objectives using other assets instead of transferring their BSPS scheme; and/or
		(3)	the <i>firm</i> has not collected the necessary information in both of the Information Areas 5 and 6 of the Information Section and so it is not possible to complete the assessment in 10.8R because the <i>firm</i> has not demonstrated that it has a reasonable basis for believing that the <i>consumer</i> is able to bear the risk of the <i>pension transfer</i> to achieve this objective; and/or
		(4)	the <i>firm</i> has not collected the necessary information in Information Area 2 of the Information Section and so it is not possible to understand the <i>consumer's</i> rationale for pursuing this objective.
10.10	G	(1)	The objective may be recorded as 'flexibility' or 'control' without further explanation. It is up to the <i>firm</i> to demonstrate what is meant by 'flexibility' or 'control' with reference to the <i>consumer's</i> circumstances and how the recommendation meets the <i>consumer's</i> objectives and is suitable for their financial situation. The following examples may demonstrate a need for flexibility:
		(a)	if the <i>consumer</i> wishes to retire early and would like to access a higher amount of income in the short term in order to bridge an income gap until other guaranteed income commences, such as state pension;
		(b)	if the <i>consumer</i> is in <i>serious financial difficulty</i> or facing financial hardship and needs to pay off or reduce debt prior to its planned redemption date, and the <i>pension commencement lump sum</i> from the comparator scheme(s) would be insufficient to meet this objective. The types of circumstances in which a <i>consumer</i> is likely to be able to show they are experiencing <i>serious financial difficulty</i> include where continuing to pay domestic bills and credit commitments is a heavy burden on the <i>consumer</i> and the <i>consumer</i> has missed payments for any credit commitments and/or any domestic bills in any 3 or more of the last 6 calendar <i>months</i> ;
		(c)	the <i>consumer</i> intends to reduce their working hours or take alternative work which may produce a lower income, prior to retiring fully, and it can be demonstrated that the transfer value is of sufficient value to support this objective

without the risk of running out of money in the *consumer's* lifetime.

- (2) A *consumer* may have a strong desire to transfer to obtain flexibility and control where they have real or perceived concerns regarding the financial viability in the scheme. The circumstances of the BSPS restructuring may have encouraged a greater than usual proportion of members to seriously consider the option of transferring out, which may in turn have led to an increased occurrence of *consumers* expressing a strong desire to transfer. However, this does not absolve the *firm* from its responsibility to only recommend a transfer if it can demonstrate that it is suitable.

Example 4: the aim of the transfer is to maximise PCLS but the firm has not demonstrated that the consumer can bear the risk of the transfer that would be needed to achieve this objective

- 10.11 R Refer to the available evidence in Information Area 2 of the Information Section:
 - (1) if the *consumer* has a priority objective(s) to maximise their *pension commencement lump sum* (PCLS), take the steps in 10.12R; or
 - (2) if the *consumer* does not have this priority objective, answer 'no' to this question and proceed to Example 5.
- 10.12 R Take the following steps to determine whether this example is present:
 - (1) Refer to the available evidence in Information Areas 2, 5 and 6 of the Information Section on the *consumer's* objectives and financial situation.
 - (2) Identify the PCLS option in the relevant comparator scheme(s).
 - (3) Identify why the *consumer* wants to access their PCLS.
 - (4) Identify whether the *consumer* needs to transfer to the *proposed arrangement* to access their PCLS or could have used:
 - (a) the PCLS from the comparator scheme; or
 - (b) other assets to create a lump sum without transferring the pension.
 - (5) Identify the impact taking their PCLS may have on the level of other benefits which the *consumer* may obtain from the comparator scheme.
- 10.13 E Answer 'yes' to this question when the available evidence demonstrates that:
 - (1) the *consumer* did not have the requisite capacity for loss because they were not able to forego scheme benefits to achieve this objective; and/or
 - (2) there was an alternative way for the *consumer* to access income-related benefits flexibly without transferring their pension benefits; and/or
 - (3) Example (1) is present and taking higher PCLS makes it likely that the *consumer* would exhaust their pension savings during their lifetime (having regard to how the *consumer* will access their pension savings and the factors listed at 10.2R(5) above); and/or
 - (4) the *firm* has not collected the necessary information in both of the Information Areas 5 and 6 of the Information Section and so it is not possible to complete the assessment in 10.11R because the *firm* has not demonstrated that it has a reasonable basis for believing that the *consumer* is able to bear the risk of the *pension transfer* to achieve their objective; and/or
 - (5) the *firm* has not obtained the necessary information in Information Area 2 of the Information Section and so it is not possible to understand the *consumer's* rationale for pursuing this objective.
- 10.14 G For the purposes of 10.12R(4)(b), the *firm* should have considered the following alternative options, where they were available:

- (1) where the lump sum need/objective relates to paying off a debt, whether they can restructure a mortgage or other debt;
- (2) making increased contributions to a workplace pension scheme to increase the PCLS;
- (3) whether using the PCLS provision in the comparator scheme(s) will meet the *consumer's* lump sum need/objective;
- (4) whether the *consumer* can meet their lump sum need/objective using other available funds in a scheme with *flexible benefits* or from other savings or investments;
- (5) taking a short-term loan.

Example 5: an aim of the transfer is to preserve or protect the value of the consumer's pension benefits but the comparator scheme(s) benefits would meet the consumer's needs

10.15 R Refer to the available evidence in Information Area 2 of the Information Section:

- (1) if the *consumer* has any objective related to preserving the value of their pension benefits or protecting their benefits from the PPF, take the steps in 10.16R; or
- (2) if the *consumer* does not have this objective, answer 'no' to this question and proceed to Example 6.

10.16 R Take the following steps to determine whether this example is present:

- (1) Refer to the available evidence in Information Areas 2, 5 and 6 of the Information Section on the *consumer's* objectives and financial situation.
- (2) Identify the relevant comparator scheme(s) benefits.
- (3) Identify whether the comparator scheme(s) benefits would have met the *consumer's* needs. To do this:
 - (a) identify the *consumer's* needs in retirement;
 - (b) refer to the available evidence and Table 2 in CONRED 4 Annex 22G to identify the pension benefits the *consumer* would be likely to receive from the comparator scheme(s), having regard to the PPF income cap as it applied prior to 19 July 2021; and
 - (c) decide whether the level of comparator scheme benefits would meet the *consumer's* needs in (a).

10.17 E (1) Answer 'yes' to this question when the available evidence demonstrates that:

- (a) the level of comparator scheme benefits meets the *consumer's* income needs; and/or
- (b) where Example 7 is present, the *consumer* wanted guaranteed income or returns and the comparator scheme met those needs; and/or
- (c) the *firm* has not collected the necessary information in both of the Information Areas 5 and 6 of the Information Section and so it is not possible to complete the assessment in 10.16R because the *firm* has not demonstrated that it had a reasonable basis for believing that the *consumer* was able to bear the risk of the *pension transfer* to achieve their objective.

- (2) Answer 'no' to this question where the level of comparator scheme benefits was not likely to meet the *consumer's* income needs in retirement.

Example 6: the consumer wants to retire early but can meet their objective(s) in the comparator scheme(s)

10.18 R Refer to the available evidence in Information Area 2 of the Information Section:

		(1)	if the <i>consumer</i> has a priority objective related to accessing benefits from their pension prior to the relevant scheme NRD (an 'early retirement objective'), take the steps in 10.19R; or
		(2)	if the <i>consumer</i> does not have this priority objective, answer 'no' to this question and proceed to Example 7.
10.19	R		Take the following steps to determine whether this example is present:
		(1)	Refer to the available evidence in Information Areas 2, 5 and 6 of the Information Section on the <i>consumer's</i> objectives and financial situation.
		(2)	Refer to the available evidence and Table 2 in CONRED 4 Annex 22G to identify what early retirement options were likely to be available and any protected retirement ages in:
		(a)	the <i>proposed arrangement</i> ; and
		(b)	the comparator scheme(s).
		(3)	Consider whether the <i>consumer</i> may have retired at a protected retirement age in the comparator scheme(s).
		(4)	If (3) was not an option, identify whether there was an alternative way to meet the <i>consumer's</i> objective without giving up the comparator scheme(s) benefits, including using:
		(a)	other pensions (defined benefit or defined contribution);
		(b)	income from part time work; and
		(c)	savings, investments or other assets.
		(5)	Decide whether the <i>firm</i> has a reasonable basis for believing that the recommendation to transfer to retire early:
		(a)	meets the <i>consumer's</i> investment objectives; and
		(b)	the <i>consumer</i> is able financially to bear any risks consistent with their investment objectives.
10.20	E		Answer 'yes' to this question when the available evidence demonstrates that:
		(1)	the <i>consumer</i> could have retired in the comparator scheme(s) at a protected retirement age; and/or
		(2)	the <i>consumer</i> did not have the requisite capacity for loss because they were not able to forego comparator scheme benefits to achieve this objective; and/or
		(3)	a lower risk suitable alternative was available to achieve this objective; and/or
		(4)	it was likely that the <i>consumer</i> would exhaust their pension savings during their lifetime (having regard to how the <i>consumer</i> will access their pension savings and the factors listed at paragraph 10.2R(5) above) and so there will be minimal death benefits available; and/or
		(5)	the <i>firm</i> has not collected the necessary information in both of the Information Areas 5 and 6 of the Information Section and so it is not possible to complete the assessment in 10.19R because the <i>firm</i> has not demonstrated that it has a reasonable basis for believing that the <i>consumer</i> is able to bear the risk of the <i>pension transfer</i> to achieve this objective; and/or
		(6)	the <i>firm</i> has not collected the necessary information in Information Area 2 of the Information Section and so it is not possible to understand the <i>consumer's</i> rationale for this objective.
			Example 7: the consumer wants or prefers guaranteed income or returns
10.21	R		Refer to the available evidence in Information Areas 2 and 3 of the Information Section:

- (1) if the *consumer* wants or indicates a preference for guaranteed income or returns, take the steps in 10.22R; and/or
- (2) if the *consumer* does not have this objective, answer 'no' to this question and proceed to Example 8.
- 10.22 R Take the following steps to determine whether this example is present:
- (1) Refer to the available evidence in Information Areas 2, 6 and 7 of the Information Section on the *consumer's* objectives and financial situation.
- (2) Identify whether the *proposed arrangement*:
- (a) guarantees the *consumer's* income or returns; or
- (b) takes into account the *consumer's* preference for a guarantee and puts in place a sustainable strategy to achieve this end.
- (3) Determine whether the recommendation to transfer met the *consumer's* preference for guaranteed income or returns.
- 10.23 E Answer 'yes' to this question when the available evidence demonstrates that:
- (1) the *consumer* wants or has indicated a preference for guaranteed income or returns throughout retirement; and
- (2) the *firm* has recommended that the *consumer* transfer into a *proposed arrangement* that does not meet these needs; or
- (3) the *firm* has not collected the necessary information in Information Area 3 of the Information Section about the *consumer's* attitude towards secure income or guarantees and so it is not possible to complete the assessment in 10.22R because the *firm* has not demonstrated that it has a reasonable basis for believing that the *consumer* has the requisite attitude to risk; or
- (4) Example 8 is present.
- Example 8: the consumer does not have the necessary attitude to risk
- 10.24 R Take the following steps to determine whether this example is present:
- (1) Refer to the available evidence in Information Areas 3 and 5 of the Information Section regarding the *consumer's* preferences regarding risk taking and risk profile and their understanding of the risk of transfer.
- (2) Compare (a) with (b):
- (a) the *consumer's* preferences regarding the risks specific to *pension transfers* in general, focusing on the *consumer's* attitude to:
- (i) *safeguarded benefits* or guarantees;
- (ii) *flexible benefits* or the ability to control how and when they withdraw money from their pension savings;
- (iii) managing their investments or paying for someone to manage their investments on their behalf; and
- (iv) the long-term sustainability of their fund;
- (b) the risks associated with a *pension transfer* that the *consumer* must have been willing to take for a recommendation to transfer to be suitable. The relevant transfer risks are:
- (i) that their investments in the *proposed arrangement* will not perform as expected, and they will have less income in retirement (investment risk);

			(ii)	that the withdrawals from the <i>proposed arrangement</i> (planned and/or ad hoc) are not sustainable and the <i>consumer</i> will run out of money in retirement (longevity risk);
			(iii)	that inflation will erode the real value of the income they are able to draw from the <i>proposed arrangement</i> (inflation risk); and
			(iv)	that the <i>consumer</i> and/or their partner may become less able to make the necessary financial decisions in relation to their income as they age (for example, due to illness or diminishing capacity).
		(3)		Decide, with reference to (2)(a), whether the <i>consumer</i> was willing to take the risks associated with a <i>pension transfer</i> in (2)(b).
10.25	E	(1)		Answer 'yes' when the available evidence demonstrates that:
			(a)	the <i>consumer</i> was not willing to take the risks in 10.24R(2)(a); and/or
			(b)	Example 7 or 10 is present; and/or
			(c)	the <i>firm</i> has not collected the necessary information in Information Area 3 or 4 of the Information Section and so it is not possible to complete the assessment in 10.24R(3) because the <i>firm</i> has not demonstrated that the recommendation meets the <i>consumer's</i> objectives.
				Example 9: the firm's transfer analysis does not support a recommendation to transfer
10.26	R			Take the following steps to determine whether this example is present:
		(1)		Refer to the available evidence in Information Areas 7, 8 and 9 of the Information Section, the transfer value analysis and the <i>suitability report</i> .
		(2)		Identify the benefits and options available in the <i>proposed arrangement</i> .
		(3)		Identify the benefits and options likely (on reasonable assumptions) to be paid in the comparator scheme(s).
		(4)		Review the <i>firm's</i> analysis of the effect of replacing the benefits in the comparator scheme with the benefits in the <i>proposed arrangement</i> , having regard to the <i>consumer's</i> circumstances, including their age, marital status and, where relevant, their objectives for taking a PCLS or early retirement.
		(5)		Compare (a) with (b):
			(a)	the rate of return required on investments in the <i>proposed arrangement</i> to match the income benefits in the comparator scheme(s) that is relevant to the <i>consumer's</i> circumstances and objectives:
			(i)	if the <i>consumer</i> is single or unmarried, use the single life critical yield;
			(ii)	if the <i>consumer</i> is taking a PCLS, use the critical yield that factors in the <i>consumer</i> taking the PCLS;
			(iii)	if the <i>consumer</i> wishes to retire early, use the critical yield at the early retirement date;
			(b)	the investment risk that the <i>consumer</i> must be willing and able to take in the <i>proposed arrangement</i> (taking into account a realistic rate of return) to match the desired income benefits in the comparator scheme(s).

- (6) Review how the *firm* says the transfer analysis supports the *firm's* recommendation to transfer.
- (7) Decide whether the *firm* has demonstrated that the transfer analysis supports the recommendation to transfer, taking into account:
- (a) the comparison undertaken at (5); and
 - (b) the analysis carried out by the *firm* and assessed at (4) and (6).
- 10.27 E (1) Answer 'yes' to this question when the available evidence demonstrates that:
- (a) the *firm* has not demonstrated that the transfer analysis supports the recommendation to transfer, for example because:
 - (i) the critical yield indicated in the transfer value analysis is likely to be unattainable, factoring in the term to retirement and the *consumer's* attitude to investment risk; or
 - (ii) the capitalised value of death benefits (where this is a priority objective) is significantly higher under the comparator scheme(s) than that available from the *proposed arrangement*; and/or
 - (b) the *consumer* would not have been able to match the rate of return to replicate the benefits being given up if they invested in line with their attitude to risk; and/or
 - (c) Example 8 is present; and/or
 - (d) Example 1 is present; and/or
 - (e) the *firm* has not collected the necessary information in Information Area 7 or 9 of the Information Section and so it is not possible to complete the assessment in 10.26 because the *firm* has not demonstrated that the recommendation meets the *consumer's* objectives.
- Example 10: the firm did not have a reasonable basis for believing that the consumer had the necessary knowledge and experience to understand the risks involved in transferring their DB scheme
- 10.28 R Take the following steps to determine whether this example is present:
- (1) Refer to the available evidence and the information recorded in Information Area 4 of the Information Section, including:
 - (a) the correspondence with the *consumer*;
 - (b) the transfer analysis; and
 - (c) the *suitability report*.
 - (2) Establish the *consumer's* level of investment experience and knowledge of *pension transfers*, pensions and investments at the time of the advice:
 - (a) in relation to *defined benefit occupational pension schemes*;
 - (b) in relation to defined contribution schemes;
 - (c) in relation to the cash equivalent transfer value offered, including any actuarial reductions;
 - (d) in relation to the separate roles of the trustee and the sponsoring employer of a scheme;
 - (e) in relation to the features, benefits and risks of the comparator scheme available to it at the time; and

- (f) generally, in relation to pensions and investments.
- (3) Identify the steps that the *firm* took to establish that the *consumer* could appreciate the nature of the risks they were taking with this transfer.
- (4) Identify the steps the *firm* took to address the *consumer's* behavioural response to their situation in a balanced and rational way, including:
 - (a) any misunderstandings the *consumer* had about the benefits available in the comparator scheme(s);
 - (b) the roles of trustee and the employer where the *consumer* was concerned about belonging to a scheme where the employer would continue to be involved;
 - (c) the level of the cash equivalent transfer value on offer, including any actuarial reductions that were being applied at the time the value was prepared;
 - (d) any concerns the *consumer* had about the financial viability of the comparator scheme(s); and
 - (e) the role of the *firm* and their professional duties when providing *pension transfer* advice.
- (5) Identify the steps that the *firm* took to ensure that the *consumer* understood the *firm's* transfer analysis and its advice.
- (6) Decide whether the *consumer* had the necessary experience and knowledge to understand the risks involved in transferring to the *proposed scheme*, taking into account, in particular:
 - (a) what the *consumer* already understood, including information such as:
 - (i) information about the *consumer's* existing investment and pensions portfolio and the nature, volume and frequency of the *consumer's* transactions in pensions and investments;
 - (ii) how long the *consumer* has been an investor;
 - (iii) the *consumer's* experience with, and knowledge of, personal, stakeholder or workplace pension schemes;
 - (iv) the *consumer's* experience of managing their pension or other investments or using a financial adviser to manage these investments;
 - (v) the *consumer's* profession (if any), including whether it is relevant to understanding defined benefit *pension transfer* advice and investment advice;
 - (vi) whether the *consumer* had characteristics of vulnerability and the impact this had on the suitability of advice;
 - (b) how the *firm* communicated the following to the *consumer*:
 - (i) the risks of transferring the *consumer's* pension and investing in a scheme with *flexible benefits*;
 - (ii) the outcomes from the transfer analysis and whether the *firm* drew the attention to the factors that did, and did not, support the *firm's* advice;

- (iii) the option to remain in BPS while it entered the PPF assessment period, and the overall safety of their pension savings during this time; and
 - (iv) the option to transfer to BPS2, including the role of the trustee and the sponsoring employer and the ability to transfer out of BPS2 at a later date;
 - (c) if the *consumer* approached the *firm* for advice before 12 October 2017 and the Time to Choose period, consider:
 - (i) whether the *firm* should have waited until more information was available about the comparator scheme(s) to provide the recommendation;
 - (ii) what information the *firm* was able to provide the *consumer* with about the options in the comparator scheme(s); and
 - (iii) the effect of any failure to obtain information about the comparator scheme(s) on the *consumer's* understanding of their options and the risk of transfer;
 - (d) what the *consumer* is likely to have understood after this information was provided, taking into account the overall impression that the *consumer* would reasonably have had of the features and risks of a transfer, particularly in the light of:
 - (i) the entirety of the *firm's* communications with the *consumer*, including communications the consumer received from the scheme trustees;
 - (ii) the extent to which the *firm's* communications were balanced and rational in their presentation of features and risks; and
 - (iii) the *consumer's* relevant experience and knowledge in (2) above.
- 10.29 E Answer 'yes' to this question where:
- (1) the *firm* did not communicate in substance the risks of transferring in a way the *consumer* would have understood; and/or
 - (2) the *firm* did not take reasonable steps to ensure that the *consumer* understood the *firm's* transfer analysis, their option to transfer to a comparator scheme, and its advice; and/or
 - (3) the *firm* did not take reasonable steps to correct any misunderstandings the *consumer* had in relation to the benefits available and/or the security of their benefits in the comparator schemes; and/or
 - (4) the *firm* has not collected the necessary information in Information Area 4 of the Information Section and so it is not possible to complete the assessment in 10.28R because the *firm* does not have a reasonable basis for believing that the *consumer* has the necessary knowledge and experience to transfer.
- Example 11: the consumer is under 50 and cannot bear the risks of transfer
- 10.30 R
- (1) Refer to the available evidence in Information Area 1 of the Information Section; and
 - (2) Identify whether the *consumer's* age at the time of the advice is 50 or under and:
 - (a) if the *consumer* is under 50, take the steps in 10.31R; or

		(b)	if the <i>consumer</i> is 50 or over, answer 'no' to this question and proceed to Example 12.
10.31	R		Take the following steps to determine whether this example is present:
		(1)	Refer to the available evidence recorded in the Information Areas 1, 2, 3, 7 and 9 of the Information Section and to the scheme benefits available in the comparator scheme(s) (see CONRED 4 Annex 22G at Table 2).
		(2)	Identify the minimum age that the <i>consumer</i> can draw benefits from the comparator scheme(s), including their option to take any protected retirement benefits.
		(3)	Identify the objective for the transfer and: <ul style="list-style-type: none"> (a) the amount needed; (b) the date the amount is needed; and (c) why the <i>consumer</i> needs to transfer their comparator scheme(s) benefits now, taking into account when the <i>consumer</i> wants to: <ul style="list-style-type: none"> (i) release capital and/or tax-free cash from their scheme; and (ii) draw an income from the scheme; (d) the alternatives available to achieve the objective, including: <ul style="list-style-type: none"> (i) the option to remain in the scheme and wait for the outcome of the PPF assessment; (ii) the option to remain in the scheme and transfer into BPS2; and (iii) use of other assets to achieve the <i>consumer's</i> objective.
		(4)	Consider the investment strategy in the <i>proposed arrangement</i> and whether the <i>consumer</i> had the requisite attitude to the risks of investment in the <i>proposed arrangement</i> , including inflation risk.
		(5)	If the <i>consumer</i> approached the <i>firm</i> for advice before 12 October 2017 and the Time to Choose period, consider: <ul style="list-style-type: none"> (a) whether the <i>firm</i> should have waited until more information was available about the comparator scheme(s) to provide the recommendation; (b) what information the <i>firm</i> was able to provide the <i>consumer</i> with about the options in the comparator scheme(s); and (c) evaluate the effect of any failure to obtain information about the comparator scheme(s) on the <i>consumer's</i> understanding of their options and the risk of transfer.
		(6)	Decide whether the <i>firm</i> had a reasonable basis for believing that the <i>consumer</i> was able financially to bear the investment risk consistent with their investment objectives and had the knowledge and experience to transfer.
10.32	E		Answer 'yes' to this question when the available evidence demonstrates that: <ul style="list-style-type: none"> (1) the <i>consumer</i> was unable financially to bear the long-term investment risks associated with an investment in the <i>proposed arrangement</i>; and/or (2) Example 10 is present and the <i>consumer</i> did not have the requisite knowledge and experience to understand their options and the risk of transfer; and/or

- (3) the *firm* should have waited for more information to become available before it advised the *consumer* ahead of the Time to Choose exercise; and/or
- (4) the *consumer's* objectives for the transfer, their intended retirement date, and investments were uncertain or not clearly defined and the *firm's* recommendation to transfer has exposed the *consumer* to financial and other risks that they did not need to take with this investment.

Example 12: the recommendation to transfer is unsuitable for the consumer's investment objectives or for their financial situation for some other reason

- 10.33 R Take the following steps:
- (1) Refer to the available evidence and the information recorded in Information Areas 2, 6 and 7 of the Information Section.
 - (2) Refer to the features and benefits of the comparator scheme(s) at CONRED 4 Annex 22G.
 - (3) Consider whether there is any reason, other than the reasons at examples 1 to 11 above, why the recommendation to transfer was unsuitable for the *consumer's* investment objectives or financial situation.

- 10.34 G This example may be present when:
- (1) the transfer would result in a tax liability that the *consumer* is unwilling or unable to pay; and/or
 - (2) the *consumer* could have taken an alternative course of action to meet their objectives (other than the specific objectives identified in the examples above) with less cost or less risk; and/or
 - (3) the *consumer* has a specific objective in mind for the transfer (other than the objectives listed in Examples 2, 3, 4, 5 and 6 above), but this objective can be met without a *pension transfer*; and/or
 - (4) the *firm* has recommended a transfer to mitigate against the risk of future redundancy, when there is no evidence on file that the *consumer* is at imminent risk of being made redundant or that redundancy was likely to cause significant financial hardship.

11 Causation Section

- 11.1 G The Causation Section is used to record the assessment of whether or not the *consumer's* loss was as a result of (or caused by) the *firm's* failure to comply with the suitability requirements.
- 11.2 G The Causation Section proceeds on an assumption that the *consumer* suffered a loss by transferring their BSPS to the *proposed arrangement*. Whether or not there was actually a loss is dealt with in the Redress Section.
- 11.3 R Complete the Causation Section where the assessor has concluded that the *firm* has failed to comply with the suitability requirements.
- 11.4 R Take the following steps to complete the Causation Section:
- (1) Review the available evidence any communications to *consumers* during the relevant period, including those listed in CONRED 4 Annex 22G at Table 3, and any other relevant information recorded in the Information Section and Suitability Section of the BSPS DBAAT.
 - (2) Determine whether the *firm's* failure to comply with the suitability requirements ('non-compliant conduct') caused the *consumer* to transfer their BSPS to the *proposed arrangement* (the 'causation question').
 - (3) Answer the causation question by selecting 'yes' or 'no'.
 - (4) Explain the conclusion on the causation question with reference to the evidence at (1).

11.5	R	To answer the causation question, decide whether it is more likely than not that the <i>firm's</i> non-compliant conduct was the effective cause of the <i>consumer's</i> decision to transfer.
11.6	G	<p>The effective cause in 11.5R above does not have to be the sole or primary cause of the <i>consumer's</i> decision. In particular:</p> <p>(1) as long as the non-compliant conduct was an effective cause of the <i>consumer's</i> decision, it is immaterial that other factors (for example, the influence of a third party such as an introducer) also influenced that decision;</p> <p>(2) the <i>firm's</i> non-compliant conduct will not have been the effective cause of the <i>consumer's</i> loss if it is more likely than not that the <i>consumer</i> would have transferred their BSPS to the <i>proposed scheme</i> in the absence of non-compliant conduct. This may occur if, for example, the <i>firm</i> gave an unsuitable recommendation to transfer but the <i>consumer</i> would still have transferred their BSPS to the <i>proposed scheme</i> even if the <i>firm</i> had complied with the suitability requirements.</p>
11.7	G	<p>For the purposes of the determination under 11.4R(2), have regard to the impact of the <i>firm's</i> non-compliant conduct on the <i>consumer's</i> decision to transfer, including:</p> <p>(1) the <i>consumer's</i> demands, needs and intentions at the time of the advice, including in relation to:</p> <ul style="list-style-type: none"> (a) the <i>consumer's</i> financial situation; (b) any potential tax or other liabilities the <i>consumer</i> has; (c) the <i>consumer's</i> objectives and future financial needs throughout retirement; (d) the <i>consumer's</i> age and expected retirement age; (e) the <i>consumer's</i> state of health; and (f) the <i>consumer's</i> timeline for making any relevant decision about their BSPS in light of the BSPS restructuring; <p>(2) the <i>consumer's</i> knowledge and experience at the relevant time, including:</p> <ul style="list-style-type: none"> (a) the <i>consumer's</i> knowledge and experience as recorded in the Information Section; (b) the extent to which the <i>consumer</i> understood the changes to the BSPS, the operation of the PPF, and other relevant matters in the BSPS restructuring following the publication of the Regulated Apportionment Agreement, or whether the <i>consumer</i> would have made a decision solely or primarily on the <i>firm's</i> recommendation; (c) the extent to which the <i>consumer</i> understood the detailed reasoning (if any) within the <i>firm's</i> advice, or would have made a decision solely or primarily based on the <i>firm's</i> recommendation overall; (d) the extent to which the <i>consumer</i> read the <i>firm's</i> written advice (or would have made a decision solely or primarily based on advice given orally); and (e) the extent to which the <i>consumer</i> considered whether to take the relevant step independently of the <i>firm's</i> advice. <p>(3) whether the <i>consumer</i> had characteristics of vulnerability as recorded in the Information Section;</p> <p>(4) the relevance of surrounding circumstances, including publicly available information at the time, such as the information listed in CONRED 4 Annex 22G at Table 3, paying due regard to the reliance the <i>consumer</i></p>

- was reasonably likely to place on the *personal recommendation* of the *firm* as compared with generic and/or publicly available information;
- (5) the significance of any particular features of the BSPS, BSPS2, the PPF and the *proposed arrangement*, as regards the *consumer's* specific demands, needs and intentions;
 - (6) whether the *consumer* sought specific information from the *firm* and to what extent that information was provided to the *consumer*. If the *consumer* has sought specific information from the *firm*, then it is more likely that the information was relatively important to the *consumer* when making a decision as to whether to take a relevant action;
 - (7) whether the *consumer* was informed about the particular risks and benefits of:
 - (a) staying in the BSPS and moving into the PPF;
 - (b) joining BSPS2; or
 - (c) transferring to the *proposed arrangement*,
 where those risks and benefits were of particular concern to the *consumer* (given their demands, needs and intentions);
 - (8) whether a failure to provide information under (7)R above may make it more likely that the non-compliant conduct caused the *consumer* to take the decision they did;
 - (9) the *consumer's* knowledge and experience at the relevant time, including:
 - (a) the *consumer's* knowledge and experience as recorded in the Information Section;
 - (b) the extent to which the *consumer* understood the changes to the BSPS, the operation of the PPF, and other relevant matters in the BSPS restructuring following the publication of the Regulated Apportionment Agreement, or whether the *consumer* would have made a decision solely or primarily on the *firm's* recommendation;
 - (c) the extent to which the *consumer* understood the detailed reasoning (if any) within the *firm's* advice, or would have made a decision solely or primarily based on the *firm's* recommendation overall;
 - (d) the extent to which the *consumer* read the *firm's* written advice (or would have made a decision solely or primarily based on advice given orally); and
 - (e) the extent to which the *consumer* considered whether to take the relevant step independently of the *firm's* advice.

12 Attestation Section

- 12.1 G This section is for the *senior manager* at the *firm* to complete in compliance with CONRED 4.3.2R(3).
- 12.2 R The attestation must be signed 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*.
- 12.3 R For the purposes of 12.2R, a notification is to be treated as signed where any of the following apply:
 - (1) it contains an image of a 'wet ink' signature applied by the appropriate *individual*;
 - (2) it contains an electronic signature applied by the appropriate *individual*; or

		(3)	it contains a typed signature applied by, or with the express consent of, the appropriate <i>individual</i> .
13			Redress Calculation BSPS calculator instructions
13.1	R		The following definitions are used in this section:
		(1)	'assumptions' are the economic, demographic and other assumptions to be used in the redress calculation set out at DISP App 4 Annex 1;
		(2)	'BSPS calculator' has the meaning in CONRED 4.1.1R(3);
		(3)	'calculation date' has the meaning in DISP App 4.1.1R(6);
		(4)	'comparator scheme' is the scheme identified at CONRED 4 Annex 21 13.21R to 13.26R;
		(5)	'DC pension arrangement' means any pension arrangement holding the value of the <i>consumer's</i> pension benefits which originated from the BSPS, including where the arrangement has been subsequently switched to a new arrangement;
		(6)	'DOL' is the date that the BSPS member left active service in the BSPS;
		(7)	'input' is information entered into the BSPS calculator;
		(8)	'output' is the report produced by the BSPS calculator setting out the redress calculation, together with a summary of the inputs and the effect of any adjustments made;
		(9)	'PPF' includes any benefits bought out by PIC. The BSPS PPF benefit structure will be automatically mapped to PIC Scheme Benefits that are expected to be secured with PIC in 2022/2023;
		(10)	'PIC' is the Pensions Insurance Corporation;
		(11)	'primary compensation sum' is the amount calculated in accordance with DISP App 4.3.19R, adjusted to take account of the <i>consumer's</i> tax position and any entitlement to means-tested state benefits;
		(12)	'quarter' is the period of three <i>months</i> commencing 1 January, 1 April, 1 July and 1 October in each year;
		(13)	'secondary compensation sum' is the amount comprising any consequential losses, including any initial <i>adviser charges</i> on the DC pension arrangement and the primary compensation sum;
		(14)	'Section' is each former <i>defined benefit occupational pension scheme</i> that was merged into the BSPS over time;
		(15)	'tranche' is an element of pension benefit which typically has a unique combination of revaluation increases before coming into payment and pension increases during payment, but may also have a unique payment starting age or payment end age; and
		(16)	'valuation date' has the meaning in DISP App 4.1.1R(25).
			Using the BSPS calculator
13.2	R		This section sets out the instructions for using the BSPS calculator. The BSPS calculator is used to calculate the redress (if any) payable to a <i>consumer</i> , their spouse or beneficiary in a scheme case where the <i>firm</i> has determined that:
		(1)	the <i>firm</i> has failed to comply with the suitability requirements; and
		(2)	the <i>firm's</i> non-compliant conduct was the effective cause of the <i>consumer's</i> BSPS pension transfer.
13.3	R	(1)	The BSPS calculator carries out Step 3 at DISP App 4.3.19R to 4.3.26R and the parts of Step 4 at DISP App 4.3.27R to 4.3.29R and DISP App 4.3.32.
		(2)	The BSPS calculator does not calculate the redress sum that would be payable by full or partial augmentation.

13.4	R	The BSPS calculator compares 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.
13.5	R	The BSPS calculator has a number of sections which must be completed in full except where indicated in these instructions.
13.6	R	All inputs into the BSPS calculator must be based on information obtained by the <i>firm</i> prior to the calculation date.
13.7	G	The BSPS calculator will only produce a redress calculation where the <i>firm</i> inputs the necessary information.
13.8	G	The diagram at CONRED 4 Annex 23G explains the steps to complete the redress calculation using the BSPS calculator in diagrammatic form, with reference to the relevant sections of the instructions, DISP App 4 and CONRED 4 rules .
Use of the BSPS calculator		
13.9	G	The BSPS calculator and instructions in this Annex are to be used for the purpose of complying with the requirements under CONRED 4 to calculate redress owed to a BSPS member as a result of a <i>firm's</i> failure to comply with the suitability requirements.
13.10	G	Nothing in the BSPS calculator affects how the FCA DBAAT or BSPS DBAAT works.
General instructions		
13.11	R	A <i>firm</i> must carry out a separate calculation on the BSPS calculator for each period of the <i>consumer's</i> service or membership of the BSPS.
13.12	R	The valuation date will be the first day of the quarter (for calculations undertaken within that quarter).
13.13	G	The redress calculation date will fall within the same <i>quarter</i> as the valuation date but does not have to be the same date as the valuation date.
13.14	R	The BSPS calculator will base calculations on the new assumptions available on the first day of each new quarter, using publicly available data from the final <i>business day</i> of the quarter immediately before.
13.15	R	<ol style="list-style-type: none"> (1) Subject to DISP App 4.3.25R, redress calculations using the BSPS calculator will remain valid for 3 <i>months</i> from the date the <i>redress determination</i> is sent to the <i>consumer</i>, irrespective of quarterly changes to the assumptions. (2) If a firm carries out a further redress calculation after expiration of the validity period in (1), that calculation must be based on the new assumptions for the quarter in which it is carried out.
Steps for redress calculation		
13.16	G	The BSPS calculator can be accessed on the <i>FCA's</i> website from April 2023.
13.17	R	<p>A <i>firm</i> must take the following steps to complete the redress calculation using the BSPS calculator:</p> <ol style="list-style-type: none"> (1) Step 1: obtain the necessary information to calculate redress, including identifying the relevant comparator scheme by following the instructions at CONRED 4 Annex 21 13.21G to 13.26R. (2) Step 2: identify when the <i>consumer</i> would have taken retirement benefits from the comparator scheme by following Step 2 of DISP App 4. (3) Step 3: carry out a redress calculation by: <ol style="list-style-type: none"> (a) inputting the necessary information into the calculator, overriding default settings where appropriate, as specified in CONRED 4 Annex 21 13.30R; and (b) running the BSPS calculator and obtaining a calculator report.

		(4)	Step 4: work out the redress offer for the <i>redress determination</i> in accordance with the requirements at DISP App 4.3.27R to 4.3.30R and CONRED 4.4.2R and CONRED 4.4.3R.
		(5)	Step 5: send the <i>redress determination</i> to the <i>consumer</i> in accordance with the requirements at CONRED 4.4.2R, CONRED 4.4.5R and CONRED 4.4.6G.
		Step 1: obtain necessary information	
13.18	G		A <i>firm</i> should follow the steps in CONRED 4.3.14R and, where applicable, at CONRED 4.4.14R to obtain the necessary information to carry out a redress calculation using the BSPS calculator.
13.19	G		The necessary information to carry out a redress calculation using the BSPS calculator is specified at CONRED 4 Annex 21 13.30R.
13.20	R		A <i>firm</i> is entitled to rely on the information provided by the <i>consumer</i> unless it is aware that the information is out of date, inaccurate or incomplete.
		Step 2: identify comparator scheme and retirement date	
13.21	R		A <i>firm</i> must identify the appropriate comparator scheme to: <ol style="list-style-type: none"> (1) complete Step 2 in DISP App 4.3.15R to 4.3.18G; and (2) use for the purpose of the redress calculation.
13.22	G		Former BSPS members who did not complete a <i>pension transfer</i> had two options during the 'Time to Choose exercise' implemented by the BSPS: <ol style="list-style-type: none"> (1) move to BSPS2; or (2) remain in the original BSPS scheme, which would move into the PPF.
13.23	G		A <i>firm</i> must determine whether the evidence on the client file demonstrates that the <i>consumer</i> would have been more likely than not to choose the BSPS2 or the PPF.
13.24	E		Where there is evidence in a <i>firm's</i> client file that a <i>consumer</i> selected either the BSPS2 or PPF during the Time to Choose exercise, a <i>firm</i> must take that choice into account in the determination required by CONRED 4 Annex 21 13.23R. The <i>firm</i> must also take account of any other evidence on the client file including where it may have displaced such choice and with reference to the evidential provision at CONRED 4 Annex 21 13.25R.
13.25	E	(1)	The following evidential provisions provide examples of circumstances which make it more likely than not that the <i>consumer</i> would have chosen the BSPS2 over the PPF: <ol style="list-style-type: none"> (a) the <i>consumer</i> was under 50 at the time of the advice; (b) the <i>consumer</i> could not accept a reduction in the starting pension entitlement at retirement; or (c) the <i>consumer</i> wanted to retain the option to transfer benefits in the future.
		(2)	The following evidential provisions provide examples of circumstances which make it more likely than not that the <i>consumer</i> would have chosen the PPF over BSPS2: <ol style="list-style-type: none"> (a) the <i>consumer</i> needed to take the highest <i>pension commencement lump sum</i> available at their retirement date; and (b) the <i>consumer</i> had a considered plan for taking retirement benefits early which would have met their income needs in retirement when taking into account the PPF reduction in starting pension entitlement at retirement.
13.26	R		Where the <i>firm</i> is unable to determine which scheme a <i>consumer</i> would have been more likely than not to choose during the Time to Choose exercise, it must calculate the amount of redress using the BSPS2 as the comparator scheme.

		Retirement date
13.27	R	A <i>firm</i> must determine the <i>consumer's</i> retirement date using the <i>rules and guidance</i> at DISP App 4.3.15R to 4.3.18G, with the following modification: any reference to the <i>defined benefit occupational scheme</i> is to be replaced with a reference to the comparator scheme identified in accordance with CONRED 4 Annex 21 13.21R to 13.26R.
		Step 3: carry out redress calculation
13.28	R	The third step is for the <i>firm</i> to carry out the redress calculation using the BSPS calculator. The BSPS calculator will calculate whether 'X' is greater than 'Y' on the valuation date, using the formula at DISP App 4.4.2R, where: <ol style="list-style-type: none"> (1) 'X' is the estimated value of the benefits in the <i>defined benefit occupational pension scheme</i>; and (2) 'Y' is the value of the benefits from the <i>consumer's</i> DC pension arrangement.
13.29	R	Where 'X' is greater than 'Y', the <i>consumer</i> has suffered a loss and the amount calculated is the primary compensation sum to be used at Step 4.
13.30	R	A <i>firm</i> must input the following information into the BSPS calculator to carry out the redress calculation: <ol style="list-style-type: none"> (1) Information relevant to the <i>consumer's</i> personal and financial situation including, where relevant, and overriding the default setting where different: <ol style="list-style-type: none"> (a) date of birth; (b) marital status; (c) spouse/civil partner's date of birth; (d) the appropriate comparator scheme identified in accordance with CONRED 4 Annex 21 13.21R to 13.26R; (e) the <i>consumer's</i> presumed date of retirement from the appropriate comparator scheme, identified in accordance with CONRED 4.4.3R and Step 2 of DISP App 4.3.15R to 4.3.18G; (f) whether the <i>consumer</i> is alive or deceased on or before the calculation date (default is that the <i>consumer</i> is still alive). If the <i>consumer</i> is deceased, the <i>consumer's</i> date of death. (2) Where the comparator scheme is the BSPS (PPF) data relating to the <i>consumer's</i> former benefit entitlement in the BSPS, including: <ol style="list-style-type: none"> (a) the relevant Section (the BSPS calculator will provide a list of options); (b) the DOL; (c) annual BSPS pension at DOL split by tranche, as applicable to each section. The tranches expected will be pre-populated based on the Section selected. All tranches will be optional; however, there must be one or more non-zero amounts (the BSPS calculator will provide a list of tranches by Section); (d) the value at DOL of the automatic lump sum entitlement due at retirement split by tranche, as applicable to each Section; (e) confirmation of any lower unreduced retirement age that applies to any tranches due to any enhanced early retirement provision (optional - default is Section's retirement age will apply); (f) the value at DOL of any other associated benefits, for example for a bridging pension; and

- (g) details of any adjustment applicable to the transfer as part of a pension sharing order entered into (optional - default is no adjustment).
- (3) Where the comparator scheme is the BSPS2, data relating to the *consumer's* former benefit entitlement in the BSPS, including:
 - (a) Section (the BSPS calculator will provide a list of Sections);
 - (b) the DOL;
 - (c) annual BSPS2 pension at DOL split by tranche, as applicable to each Section. The tranches expected will be pre-populated based on the Section selected. All tranches will be optional; however, there must be one or more non-zero amounts (the BSPS calculator will provide a list of tranches by Section);
 - (d) the value at DOL of the automatic lump sum entitlement due at retirement split by tranche, as applicable to each Section;
 - (e) confirmation of any lower unreduced retirement age that applies to any tranches due to any enhanced early retirement provision (optional - default is the BSPS2's retirement age will apply);
 - (f) the value at date of leaving of any other associated benefits, for example for a bridging pension; and
 - (g) details of any adjustment applicable to the transfer as part of a pension sharing order entered into (optional - default is no adjustments apply).
- (4) Data relating to the DC pension arrangement, including:
 - (a) date of transfer out of the BSPS;
 - (b) value of each investment fund attributable to the original transfer value at the valuation date;
 - (c) valuation date for each investment fund;
 - (d) product and adviser-related percentage charges, including annual management charges;
 - (e) non percentage charges in addition to the charges at (4)(d) (option - default is nil); and
 - (f) whether the *consumer* requires initial advice in future, and whether an initial *adviser charge* needs to be applied.
- (5) Where the *consumer* has already commenced taking their pension benefits:
 - (a) the amount of any *pension commencement lump sum* taken and dates of payment;
 - (b) the amount of any funds accessed flexibly and dates of payments; and
 - (c) the date of any annuity purchased and for that annuity:
 - (i) its amount;
 - (ii) increases (fixed, *RPI* linked, *CPI* linked, applicable cap, applicable floor);
 - (iii) spouse/civil partner's pension – proportion on death;
 - (iv) the guarantee period from the commencement date (enter in years);
 - (v) payment in arrears or advance and the payment frequency; and

		(vi) annuity commencement date.
	(6)	An amount for any consequential losses claimed by a <i>consumer</i> pursuant to CONRED 4.3.14R(1)(b)(iii)(C) which the <i>firm</i> accepts are properly payable.
	(7)	The amount at 13.34R(1) and (2) combined and adjusted to take account of the <i>consumer's</i> tax position calculated in accordance with DISP App 4.3.31G.
	(8)	The amount at 13.34R(3) adjusted to take account of the <i>consumer's</i> tax position calculated in accordance with DISP App 4.3.31G.
	Use of assumptions from DISP App 4	
13.31	G	The BSPS calculator uses the assumptions in DISP App 4 Annex 1 for the purpose of calculating redress. These assumptions may include (depending on the type of case and the information entered in the calculator):
	(1)	pre-retirement discount rate, adjusted for the default product charges and default ongoing <i>adviser</i> charges (see DISP App 4 Annex 1 8.1G and 9.1G);
	(2)	post-retirement discount rate, adjusted for a <i>pension commencement lump sum</i> , if relevant (see DISP App 4 Annex 1 7G);
	(3)	RPI inflation (see DISP App 4 Annex 4 3.1G);
	(4)	CPI inflation (see DISP App 4 Annex 4 4.1G);
	(5)	Earnings inflation (see DISP App 4 Annex 4 5.1G);
	(6)	pension increases in payment, with reference to the relevant inflation index, caps and floors (see DISP App 4 Annex 1 6.1G);
	(7)	default product charge % (see DISP App 4 Annex 1 9.1G);
	(8)	default <i>adviser charge</i> % (see DISP App 4 Annex 1 9.1G);
	(9)	Bank of England Base Rate;
	(10)	mortality for <i>consumer</i> and spouse / dependant (see DISP App 4 Annex 1 10.1G);
	(11)	spouse / dependant age difference (if the spouse / dependant date of birth is not available) (see DISP App 4 Annex 1 10.2G); and
	(12)	proportion married / having a dependant at retirement age (if status unknown) (see DISP App 4 Annex 1 10.3G).
13.32	G	These assumptions will be derived in line with DISP App 4 Annex 1 and will be updated on a quarterly basis. All the assumptions needed will be automatically calculated based on the information inputted and the market conditions at the valuation date.
13.33	G	The BSPS calculator will be temporarily unavailable at quarter ends for a short period while updates for latest assumptions are made.
	Step 4: work out redress offer for redress determination	
13.34	R	The BSPS calculator will produce the following outputs:
	(1)	a primary compensation sum, calculated in accordance with DISP App 4.3.19R and 4.3.20R;
	(2)	a secondary compensation sum comprising any consequential losses, including any:
	(a)	initial <i>adviser</i> charges on the DC pension arrangement and the primary compensation sum at (1) in accordance with DISP App 4.3.32G, calculated using the formula at DISP App 4.4.19R;
	(b)	amount as described at 13.30R(6);

(3) an additional compensation sum to compensate the *consumer* for the lapse of time between the valuation date and the payment date, calculated in accordance with the formula at DISP App 4 Annex 1 14.1G to 14.3G; and

(4) the total of the amounts in 13.30R(7) and (8).

Step 5: redress determination

13.35 R The amount at 13.34R(4) is the redress payable to a *consumer* in the form of a cash lump sum for the purpose of CONRED 4.4.2R.

BSPS DBAAT Annex

- 1 Features, benefits and risks of a pension transfer**
- 1.1 The definitions in CONRED 4 and CONRED 4 Annex 21 1.3R apply to this Annex.
- 1.2 Table 1 illustrates in general the relative features and benefits of a *defined benefit occupational pension scheme* ('DB scheme') and a *non-DB pension scheme* ('DC scheme').
- 1.3 Table 1 should be read alongside the *consumer's* BSPS Scheme Rules and Handbook to determine how the BSPS benefits below apply to the *consumer* at the point the *firm* advised the *consumer*. Where there were special benefits in the BSPS that may be relevant to the *firm's* advice and disclosure of risks and benefits of transfer in general these are mentioned in 'notes' in Table 1.

Table 1:

	DB Scheme	DC Scheme
Benefits available	<p>Defined by scheme rules.</p> <p>Pay a regular income based on the <i>consumer's</i> salary and length of the <i>consumer's</i> membership in the pension scheme.</p>	<p>Benefits depend on <i>consumer</i> contributions. The <i>consumer</i> builds up a pension 'pot' over time.</p> <p>Benefits available include taking withdrawals directly from the pot either via <i>uncrystallised funds pension lump sums</i> (UFPLS) or flexi-access draw-down (FAD) or using part/all of the pot to purchase an annuity to secure a guaranteed income for life.</p>
When can benefits be taken?	<p>Scheme benefits are intended to be taken at the scheme Normal Retirement Date (NRD), defined in the scheme rules (e.g. at age 65).</p> <p>Most schemes permit benefits to be drawn earlier than NRD (but only once the <i>consumer</i> reaches the scheme's minimum pension age), though with an actuarial reduction typically applied for every year they are taken before NRD.</p> <p>Note – <i>Consumers</i> that joined the BSPS before 6 April 2006 had a protected minimum pension age of 50. This benefit was lost on transfer to a DC pension (unless it was done as part of a block/buddy transfer) but may have been retained in BSPS2 and the PPF.</p>	<p>Benefits can be withdrawn from the pension at any point once the <i>consumer</i> meets their normal minimum retirement age.</p>
Is a <i>pension commencement lump sum</i> (PCLS) available?	<p>A PCLS is available and is typically achieved by 'commuting' pension benefits for lump sum benefits using a commutation factor outlined in the scheme</p>	<p>25% of the pension 'pot' is available to be withdrawn as a PCLS.</p>

Table 1:

Are benefits protected against inflation?	<p>rules. This typically leads to a lower PCLS available than from a DC scheme.</p> <p>The pension benefits under a DB scheme typically have a level of inflation protection (the income will increase every year) both in deferment (before the <i>consumer</i> accesses the pension) and in payment.</p>	<p>There is no explicit inflation protection for benefits invested in a DC scheme. DC pension pots may be invested in the markets to generate a return to offset inflation.</p>
What flexibility is available within the scheme?	<p>The level of inflation protection depends on the type of benefits accrued (for example, Guaranteed Minimum Pension ('GMP'), excess over GMP) and when they were accrued. It is also impacted by certain minimums set out in legislation. The scheme rules detail the level of indexation and escalation that is applied.</p> <p>DB schemes typically have flexibility around when benefits are taken from the pension, subject to confirmation in the scheme rules on early retirement and the factors that are used.</p> <p>All benefits are usually taken simultaneously – for example, PCLS and income benefits are usually taken in their entirety at the same time.</p>	<p>Where a <i>consumer</i> uses their pot to purchase an annuity, they can purchase levels of inflation protection, though this comes at the cost of reducing the initial income payment to the client.</p> <p>DC schemes allow for flexibility as to when and how benefits are taken. Further, not all benefits have to be taken at the same time. For example, partial or full PCLS can be taken without starting to withdraw income benefits.</p>
Benefits available on death of consumer	<p>A DB scheme will usually include a spouse's pension, which will continue to pay a proportion of the <i>consumer's</i> income after their death. There may also be pensions for dependent family <i>consumers</i>. Some schemes may make minor lump sum payments depending on when the <i>consumer</i> dies (e.g. if it was not long after they elected to take benefits).</p>	<p>Whatever is left in the pension pot at the <i>consumer's</i> death is an asset which is available to be inherited by a nominated individual. Annuities may also have other benefits (e.g. a spouse's pension) built in at the time of purchase which will continue paying an income to a spouse, though typically at a reduced rate.</p>
1.4	<p>The key risks associated with a transfer from a DB scheme to a DC scheme include:</p> <ol style="list-style-type: none"> (1) the loss of <i>safeguarded benefits</i>, in the form of a guaranteed lifetime income from the DB scheme for the <i>consumer</i> and their eligible dependants (usually spouses and dependent children); (2) the loss of the inflationary protection that is provided by the DB scheme associated with the pension (both in deferment and in payment); (3) the transfer of investment risk from the DB scheme (and sponsoring employee) to the <i>consumer</i>. Poor investment returns will directly impact on the value of the <i>consumer's</i> benefits in a DC scheme. In a DB scheme, investment returns impact on the scheme's funding position and the sponsoring employer must make good any shortfall; (4) the transfer of longevity risk, which is the risk of running out of money in retirement and having to rely on the state pension. This is a key risk for <i>consumers</i> that choose to withdraw money from their pension via UFPLS or FAD. It is not a risk that is present in a DB scheme; (5) the transfer of responsibility for decisions about scheme assets. A <i>consumer</i> must keep their DC scheme assets under review, particularly where benefits are withdrawn via either UFPLS or FAD. In these situations, the <i>consumer</i> will need to continue monitoring their pension and potentially 	

making complex and important investment and withdrawal decisions for the remainder of their lives. Where professional support is needed to help with the monitoring and these decisions, this will come at a cost that will reduce the available benefits within the pension.

2 Comparison of benefits provided by BSPS2 and the Pension Protection Fund (PPF)

- 2.1 Table 2 compares the benefits available from the proposed BSPS2 with the benefits available from the PPF for deferred (rather than retired) *consumers* who were eligible for a *pension transfer*. This information would have become available when Time to Choose packs were sent out between 9 and 11 October 2017 at the beginning of the Time to Choose period.
- 2.2 The BSPS first entered the PPF assessment period on 29 March 2018. During the assessment period, the PPF considers whether the assets of the scheme can be used to secure benefits for the *consumer* in excess of those provided by the PPF. If they cannot, the scheme is transferred to the PPF. During the assessment period, *consumers* who retire receive benefits at PPF levels.

Table 2:

	Benefits and features of BSPS2	Benefits and features of the PPF	Comparison of BSPS2 to PPF
'Starting' income benefits by comparison to Old BSPS scheme – Consumers aged 65 or over at date of PPF assessment	No reduction	No reduction	Both options are the same.
'Starting' income benefits by comparison to Old BSPS scheme – Consumers below age 65 at date of PPF assessment	No reduction	All income benefits reduced by 10% AND subject to the benefit cap (see 3.1(3)): •April 2016 to April 2017 – £37,420.42 at age 65 •April 2017 to April 2018 – £38,505.61 at age 65	BSPS2 provides unreduced income benefits for all scheme <i>consumers</i> .
Revaluation of benefits in deferment (pre-retirement) Source: Time to Choose Information Pack (for BSPS2)	Benefits accrued: •Before 5 April 2006 – CPI with no cap •5 April 2006 to 5 April 2009 – CPI capped at 4% a year •5 April 2009 to 5 April 2012 – CPI capped at 4% a year •5 April 2012 to 5 April 2016 – CPI capped at 3% a year •From 5 April 2016 – CPI capped at 2.5% a year	Benefits accrued: •Before 5 April 2006 – CPI capped at 5% a year •5 April 2006 to 5 April 2009 – CPI capped at 5% a year •5 April 2009 to 5 April 2012 – CPI capped at 2.5% a year •5 April 2012 to 5 April 2016 – CPI capped at 2.5% a year •From 5 April 2016 – CPI capped at 2.5% a year	BSPS2 generally provides more favourable revaluation in deferment, except for: •benefits between 5 April 2006 and 5 April 2009 where PPF revaluation is better •benefits from 5 April 2016 which are revalued at the same rate
Indexation of benefits	•GMP benefits be-	•GMP benefits be-	BSPS2 generally pro-

Table 2:

in payment (post-retirement)	<p>tween 5 April 1978 and 5 April 1988 – No increases</p> <ul style="list-style-type: none"> •GMP benefits between 5 April 1988 and 5 April 1997 – CPI capped at 3% a year •Excess over GMP pre-5 April 1997 – No increases •Pension benefits between 5 April 1997 and 5 April 2005 – CPI capped at 5% a year •Pension benefits from 5 April 2005 – CPI capped at 2.5% a year 	<p>tween 5 April 1978 and 5 April 1988 – No increases</p> <ul style="list-style-type: none"> •GMP benefits between 5 April 1988 and 5 April 1997 – No increases •Excess over GMP pre-5 April 1997 – No increases •Pension benefits between 5 April 1997 and 5 April 2005 – CPI capped at 2.5% a year •Pension benefits from 5 April 2005 – CPI capped at 2.5% a year 	<p>vides more favourable indexation in retirement except for:</p> <ul style="list-style-type: none"> •GMP benefits between 5 April 1978 and 5 April 1988 where neither provide indexation; •excess over GMP pre-5 April 1997 where neither provide indexation; and •pension benefits from 5 April 2005 where indexation is at the same rate.
Spouse and dependents benefits	<ul style="list-style-type: none"> •Continued income benefits valued at 50% of the <i>consumer's</i> pension, calculated with reference to the <i>consumer's</i> pension before any is commuted for a PCLS. •In Time to Choose packs (issued between 9 and 11 October 2017), there was uncertainty over whether same sex spouses or civil partners would be eligible to pension payments relating to benefits accrued before 1997. •The scheme pays out a lump sum if the <i>consumer</i> dies less than 5 years after taking their pension. This equals the total amount of remaining pension they would have received in those 5 years. This is in addition to the spouse's pension. •Children's allowance paid for 'qualifying dependent children'. 	<ul style="list-style-type: none"> •Continued income benefits valued at 50% of the <i>consumer's</i> pension, calculated with reference to the <i>consumer's</i> pension after any is commuted for a PCLS. •PPF treats same sex spouses and civil partners in the same way as an opposite sex spouse – they are eligible for a spouse pension relating to all benefits accrued, regardless of when they were accrued. •No lump sum death benefits are paid from the PPF. •Dependent's pension available for qualifying children either under 18 or over 18 but under 23 in 'qualifying education' or with a 'qualifying disability'. 50% of <i>consumers</i> compensation if there is one child, or 100% split equally if there are 2 or more children. 	<p>Death benefits under BSPS2 are generally more beneficial due to higher reference point for calculating spouses' pension plus the presence of a lump sum payment if death occurs in the first 5 years.</p> <p>However, there are question marks over eligibility for payments to same sex spouses and civil partners under BSPS2. These question marks do not apply to the PPF, which treats same and opposite sex spouses/civil partners the same.</p>
Pension commencement lump sum (PCLS)	<p>PCLS is available from BSPS2 by commuting income.</p> <p>The commutation factors range from £12.60 to £23 of lump sum for</p>	<p>PCLS is available from the PPF by commuting income.</p> <p>The commutation factors range from £20.22 to £43.57 of lump sum</p>	<p>The PPF provides more favourable PCLS commutation factors in all instances.</p> <p>Where a <i>consumer</i> wishes to take the max-</p>

Table 2:

	<p>every £1 of income, depending on the age at which the <i>consumer</i> retires and when the <i>consumer</i> built up benefits in the old scheme.</p> <p>Where a significant proportion of the <i>consumer's</i> rights are in the form of GMP benefits, this may inhibit the amount of pension they are able to commute for a PCLS in BSPS2.</p>	<p>for every £1 of income, depending on the age at which the <i>consumer</i> retires and when the <i>consumer</i> built up benefits in the old scheme.</p>	<p>imum PCLS, the PPF will typically provide both a larger PCLS and a larger starting income (even after accounting for the 10% reduction in the PPF) than BSPS2.</p>
Early retirement	<p>Early retirement is available from BSPS2.</p> <p>The early retirement factor ranges from 0.73 to 0.97, depending on the age at which the <i>consumer</i> retires and when the <i>consumer</i> built up benefits in the old scheme.</p> <p>Where a significant proportion of the <i>consumer's</i> rights are in the form of GMP benefits, this may reduce the level of income they can withdraw if they seek early retirement.</p>	<p>Early retirement is available for the PPF.</p> <p>The early retirement factor ranges for 0.819 to 0.978, depending on the age at which the <i>consumer</i> retires.</p>	<p>The PPF provides more favourable early retirement factors than BSPS2 in all circumstances, regardless of the <i>consumer's</i> age and when they accrued benefits.</p> <p>However, the PPF reduces starting income by 10% (BSPS2 does not). After this reduction is applied, BSPS2 typically provides a higher starting income.</p>
Potential for future transfer requests	<p>BSPS2 allowed <i>consumers</i> the option to transfer out at any time up to a year from the <i>consumer's</i> NRD.</p>	<p>Once a scheme enters the PPF assessment period, <i>consumers</i> are no longer permitted to transfer out of the scheme.</p>	<p>BSPS2 provided <i>consumers</i> with more flexibility of options, in regard to the ability to transfer out at a future date, than the PPF.</p>

3 Information available to advisers during the relevant period

3.1 The following information was available to advisers about the PPF benefits:

- (1) Once a scheme enters the PPF assessment period, the benefits that will be available to *consumers* of the BSPS who have not yet commenced drawing a pension are calculated by reference to provisions governing the PPF and will not be the same as the pension that would have been available in the BSPS.
- (2) The PPF treatment of *consumer* benefits throughout the relevant period was published or available:
 - (a) on the PPF website (<https://www.ppf.co.uk/>);
 - (b) directly from the PPF;
 - (c) through continuing professional development, including in the study material for the qualifications required to be a *pension transfer specialist*.

(3) In July 2021, the Court of Appeal ruled that the PPF compensation cap was unlawful on the grounds of age discrimination. The PPF confirmed that the compensation cap would no longer apply and it would be removed from affected PPF pensioners. Whilst this is the case now, advisers at the time would not have been aware of this change, so it would have been reasonable to assume that the cap would still apply to those *consumers* with benefits above the cap. More information is found at <https://www.ppf.co.uk/trustees-advisers/valuation-guidance/compensation-cap-factors>.

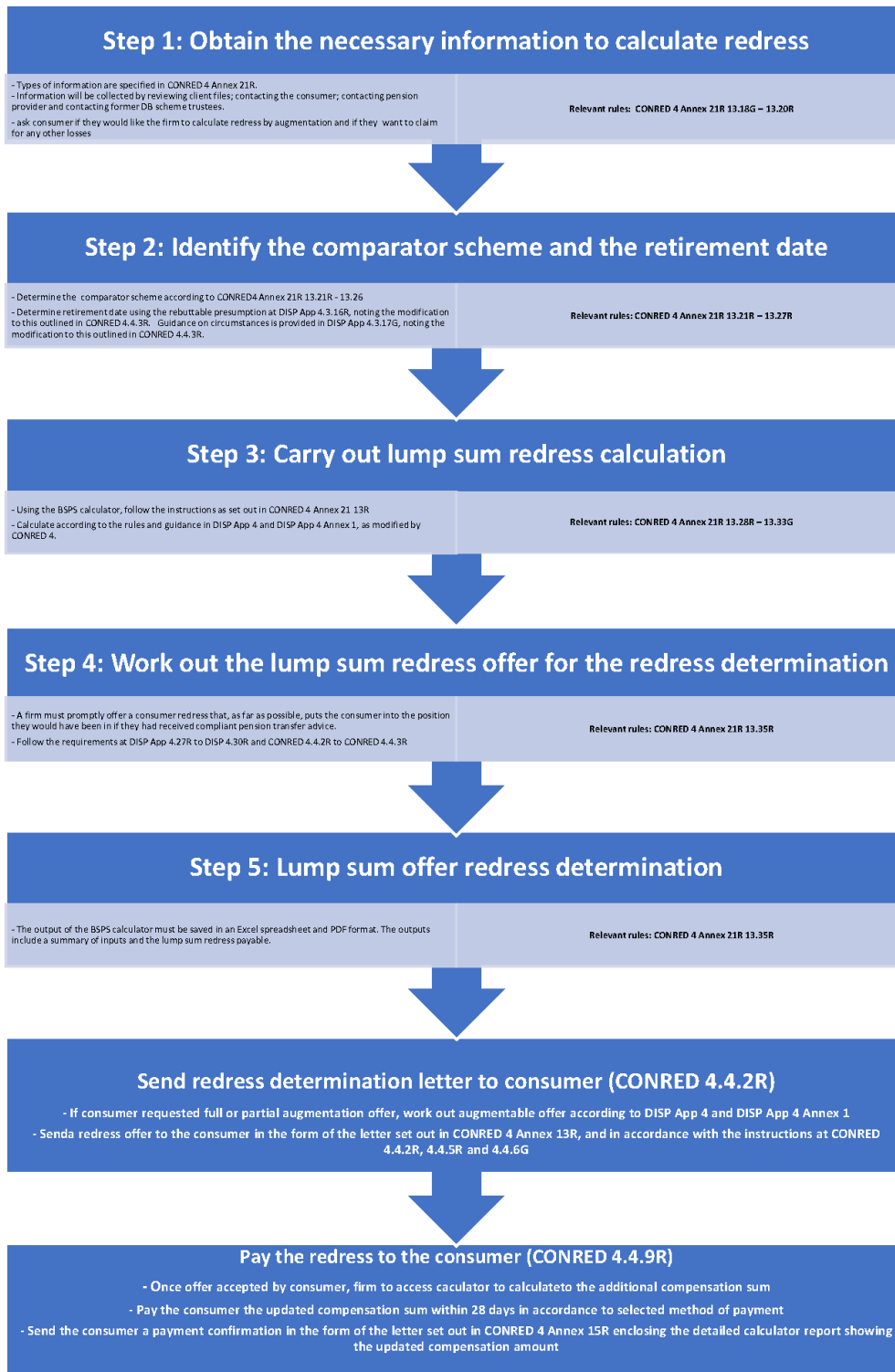
3.2 The information in Table 3 was available to advisers about BSPS2 benefits during the relevant period.

Table 3:

Date	Information
30 March 2016	Tata Steel Ltd announcement examining options for restructuring business and calling into question the future of BSPS.
26 May 2016	DWP launch consultation on BSPS outlining 4 options for the future of BSPS.
26 May 2016	Letter to consumers from BSPS Trustee (Allan Johnston) outlining Government consultation on potential changes to BSPS.
16 June 2016	BSPS Trustees response to the DWP consultation.
12 August 2016	Trustee update to consumers.
7 December 2016	Tata Steel UK announcement on proposal to close BSPS to future accrual.
7 December 2016	Trustee update to consumers following Tata Steel UK Ltd's announcement on proposal to close BSPS to future accrual.
12 January 2017	Trustee statement on potential future of the scheme.
27 January 2017	Trustee letter to consumers providing an update on developments.
31 March 2017	The old BSPS scheme closed to accrual and all active <i>consumers</i> became deferred.
1 April 2017	Trustee amendment to how the CETV was calculated resulting in most <i>consumers</i> seeing an increase in their CETV after 1 April 2017 compared to before.
16 May 2017	PPF and TPR announcements on key commercial terms for an RAA being agreed in principle.
11 August 2017	TPR announcement on initial approval of RAA for BSPS.
25 August 2017	Trustee announcement to <i>consumers</i> on CETV change.
11 September 2017	Trustee announcement on RAA.
9-11 October 2017	Time to Choose packs sent out to <i>consumers</i> (received by <i>consumers</i> between 9 and 11 October 2017) which detailed personalised benefits for <i>consumers</i> under BSPS2.
29 November 2017	The deadline for <i>consumers</i> to make a decision under Time to Choose was extended from 11 December to 22 December 2017.
16 February 2018	The trustees stated deadline for receiving transfer applications.
29 March 2018	The old BSPS scheme entered the PPF assessment period and was closed to transfer.

BSPS Calculator steps in diagrammatic form

This Annex belongs to ■ CONRED 4 Annex 21 13.8G The diagram illustrates the steps to take to calculate redress and to complete a *redress determination* using the BSPS calculator.



Appendix 1

Key definitions

1.1 Key definitions

[**Note:** the following definitions relevant to ■ CONRED 1 and ■ 2 are extracted from the *Glossary*.]

<i>CF Arch cru payment scheme</i>	the requirements included in the <i>permissions</i> of Capita Financial Managers Limited, BNY Mellon Trust & Depository (UK) Limited and HSBC Bank plc at their request under what was then (but is no longer) section 44 of the <i>Act</i> on 31 August 2011.
<i>consumer</i>	<ul style="list-style-type: none"> (a) where the <i>personal recommendation</i> was made on or before 31 October 2007, a <i>private customer</i> for the purposes of COB 2 and COB 5, as defined by the version of the <i>Handbook</i> then in force; or (b) where the <i>personal recommendation</i> was made on or after 1 November 2007, a <i>retail client</i> in accordance with COBS 3.4.1 R.
<i>firm</i>	<ul style="list-style-type: none"> (a) an <i>authorised person</i>; or (b) a <i>person</i> who was an <i>authorised person</i> when the relevant activity took place but has since ceased to be one.
<i>personal recommendation</i>	<p>a recommendation which is <i>advice on investments</i> and:</p> <ul style="list-style-type: none"> (a) where given on or before 31 October 2007, was given to a specific <i>person</i>; or (b) where given on or after 1 November 2007, was presented as suitable for the <i>person</i> to whom the recommendation was made, or was based on a consideration of the circumstances of that <i>person</i>, other than a recommendation issued exclusively through distribution channels or to the public.

Consumer Redress Schemes sourcebook

Schedule 1 Record keeping requirements

Sch 1.1 G

- | | |
|---|---|
| 1 | The aim of the <i>guidance</i> in the following table is to give the reader a quick overall view of the relevant record-keeping requirements. |
| 2 | It is not a complete statement of those requirements and should not be relied on as if it were. |

Sch 1.2 G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
CONRED 2.10.1R(1)(a)	Arch cru consumer redress scheme	Certificate of posting for each letter sent	When letter sent	Five years
CONRED 2.10.1R(1)(b)	Arch cru consumer redress scheme	Copy of each letter sent	When letter sent	Five years
CONRED 2.10.1R(1)(c)	Arch cru consumer redress scheme	Record of attempts to contact consumer or obtain further information	When attempts made	Five years
CONRED 2.10.1R(1)(d)	Arch cru consumer redress scheme	Completed template for each opted-in scheme case	When template completed	Five years
CONRED 2.10.1R(1)(e)	Arch cru consumer redress scheme	All information on the consumer file and information received from the consumer	When located on consumer file or obtained	Five years

Sch 1.3 G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
CONRED 4.9.1R(1)(a)	BSPS consumer redress scheme	Evidence of posting for each letter sent	When letter sent	5 years
CONRED 4.9.1R(1)(b)	BSPS consumer redress scheme	Copy of each letter sent	When letter sent	5 years

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
CONRED 4.9.1R(1)(c)	BSPS consumer redress scheme	Record of attempts to contact <i>consumer</i> , any other relevant <i>firm</i> or obtain further information	When attempts made	5 years
CONRED 4.9.1R(1)(d)	BSPS consumer redress scheme	A copy of the Excel spreadsheet containing a completed BSPS DBAAT or FCA DBAAT for each scheme case	When BSPS DBAAT completed	5 years
CONRED 4.9.1R(1)(e)	BSPS consumer redress scheme	A record of the redress calculation performed by the BSPS calculator in Excel Spreadsheet format	When the redress calculation carried out	5 years
CONRED 4.9.1R(1)(f)	BSPS consumer redress scheme	Information on the <i>consumer</i> file and information received from the <i>consumer</i>	When located on <i>consumer</i> file or obtained	5 years

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Schedule 2 Notification requirements

Sch 2.1 G

Handbook reference	Matters to be notified	Contents of notification	Trigger event	Time allowed
CONRED 2.4.9R	Information on the total number of scheme cases; opted-in scheme cases, and investments in Arch cru funds	<p>(1) total number of scheme cases;</p> <p>(2) The number of such investments resulting from the <i>regulated activities</i> for a <i>customer</i> in CONRED 2.1.3R; and the number of such investments falling outside the scheme with an explanation of the reason why, in each case;</p> <p>(3) the total number of opted-in scheme cases.</p>	None: notification required in all cases	Until 29 July 2013
CONRED 2.9.2R	Information on the number of opted-in scheme cases; completed and incomplete templates and the results of such; the total number of redress cases; the total number of <i>redress determinations</i> sent to <i>consumers</i> ; the total number of <i>con-</i>	<p>(1) the total number of opted-in scheme cases;</p> <p>(2) the total number of completed templates;</p> <p>(3) the total number of incomplete templates, with an explanation as to why the templates have not</p>	None: notification required in all cases	Until 9 December 2013

Handbook reference	Matters to be notified	Contents of notification	Trigger event	Time allowed
	<i>sumers</i> paid redress and the amount of such; and the total amount of redress unpaid to date.	<p>been completed;</p> <p>(4) the total number of redress cases;</p> <p>(5) the total number of redress determinations sent to <i>consumers</i>;</p> <p>(6) the total number of <i>consumers</i> paid redress to date;</p> <p>(7) the total amount of redress paid to date; and</p> <p>(8) the total amount of redress unpaid to date.</p>		

Sch 2.1A G

Handbook reference	Matters to be notified	Contents of notification	Time allowed
CONRED 3.2.7R(1), (1A) and (4)	Outcome of the financial resilience assessment in CONRED 3.2.2R	Outcome of the financial resilience assessment in CONRED 3.2.2R	Before the end of 27 May 2022 or 28 February 2023, and immediately if the outcome changes
CONRED 3.2.7R(7)	That N and CL, as calculated under CONRED 3.2.4AR and CONRED 3.2.6AR, are both zero	That N and CL, as calculated under CONRED 3.2.4AR and CONRED 3.2.6AR, are both zero	Promptly

Handbook reference	Matters to be notified	Contents of notification	Time allowed
CONRED 3.3.6R	Where the <i>firm</i> wishes to obtain prior express consent from the <i>FCA</i> for payment of dividends or LLP members drawings	<ul style="list-style-type: none"> (a) the value of the proposed dividend(s); (b) the date on which the <i>firm</i> intends to pay the proposed dividend(s); (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. 	In advance (express consent required)
CONRED 3.3.10R	<p>Transactions in the ordinary course of business which do not fall within CONRED 3.3.5R</p> <p>Any contract change with <i>connected persons</i> which could result in payments above the de minimis threshold</p>	<ul style="list-style-type: none"> (a) an explanation of the transaction or contract change; (b) an explanation of the quantifiable impact on the <i>firm's</i> financial resilience assessment under CONRED 3.2.2R; (c) an explanation of why the <i>firm</i> considers that the transaction or contract change occurs in the ordinary course of business and is therefore permitted; 	At least 15 <i>business days</i> in advance, unless urgent situation

Handbook reference	Matters to be notified	Contents of notification	Time allowed
		(d) 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	
		(e) in the case of a notification on an urgent basis under CONRED 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-business day notification requirement in CONRED 3.3.10R(1).	

Sch 2.2 G

Handbook reference	Matters to be notified	Contents of notification	Time allowed
CONRED 4.8.2R(1) and (2) and CONRED 4.8.3R	Information about each case the <i>firm</i> has taken scheme steps for	(1) <i>consumer</i> identifier;	By 6 weeks after the scheme effective date and then every 2 weeks
		(2) the date the letter at CONRED 4 Annex 2R was sent;	
		(3) whether the <i>consumer</i> receiving the letter in (2) has opted out of the scheme and the date a <i>firm</i> received notification from the <i>consumer</i> of their decision to opt-out;	
		(4) where the <i>firm</i> has carried out the case review at CONRED 4.3.2R:	
		(a) the date the case review was completed;	
		(b) a copy of the completed FCA or BSPS DBAAT;	
		(c) whether the scheme case was rated suitable, unsuitable or 'non-compliant due to a material information gap(s)' or 'not-compliant-unclear' (in the case of the FCA DBAAT);	
		(d) for scheme cases rated as unsuitable, the result of the causation assessment;	
	(5)	in a case where a <i>firm</i> has concluded that the advice was suitable:	

Handbook reference	Matters to be notified	Contents of notification	Time allowed
		(a) the date a <i>firm</i> sent the letter at CONRED 4 Annex 9R;	
		(b) the <i>consumer's</i> name, address, telephone number(s) and, where available, email address (in the BPS DBAAT or, where using an FCA DBAAT, in the Reg Data report);	
		(c) whether a <i>firm</i> is aware that the consumer has complained to the <i>Financial Ombudsman Service</i> about the determination communicated in (a);	
		(d) the date a <i>firm</i> became aware of any complaint in (c); and	
		(e) the outcome of the complaint (both suitability and causation as applicable) as notified to the <i>firm</i> by the <i>Financial Ombudsman Service</i> in accordance with DISP 3.6.6R(5);	
	(6)	in a case where a <i>firm</i> has concluded that the advice was unsuitable and answered 'no' to the causation question, the date a <i>firm</i> sent the letter at CONRED 4 Annex 8R;	
	(7)	in a case where a <i>firm</i> has concluded that the advice was unsuitable and answered 'yes' to the causation question the date a <i>firm</i> sent the letters at:	
		(a) CONRED 4 Annex 7R; and	
		(b) CONRED 4 Annex 10R;	
	(8)	where a <i>firm</i> has completed the redress assessment as required by CONRED 4.4.2R, the following in respect of the latest offer of redress made pursuant to the <i>consumer redress scheme</i> created by this chapter:	
		(a) the date on which the redress calculation was completed;	
		(b) the redress amount rounded to the nearest pound sterling;	

Handbook reference	Matters to be notified	Contents of notification	Time allowed
CONRED 4.8.2R(3) and CONRED 4.8.4R	Information about BSPS cases excluded from the scheme, <i>consumer</i> opt outs	(c) the date the letter at CONRED 4 Annex 13R was sent to the <i>consumer</i> ;	By 6 weeks after the scheme effective date
		(d) a copy of the redress calculation from the BSPS calculator;	
		(e) whether the <i>consumer</i> has accepted the offer of redress in (c); and	
		(f) the date on which any redress was paid.	
	(1)	the number of cases in relation to which a <i>firm</i> has sent a <i>consumer</i> a letter pursuant to:	
		(a) CONRED 4 Annex 1R;	
		(b) CONRED 4 Annex 2R; and	
	(2)	in respect of (1)(a), a breakdown of the reasons such cases were excluded from the scheme with reference to the relevant condition or conditions at CONRED 4.2.2R.	

Consumer Redress Schemes sourcebook

Schedule 3 Fees and other required payments

Sch 3

There are no provisions for fees in CONRED. As noted in CONRED 2.5.19G and CONRED 4.5.9G, a fee is payable in any case where the *FCA* exercises its powers under CONRED 2.5.12R or CONRED 4.5.1R to take steps instead of a firm, or appoint one or more competent persons to do so. This fee is as specified in the table at FEES 3.2.7 R.

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Schedule 4 Powers exercised

Sch 4.1 G
[deleted]

Sch 4.2 G
[deleted]

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Schedule 5 Rights of action for damages

Sch 5.1 G

The table below sets out the *rules* in CONRED contravention of which by an *authorised person* may be actionable under section 138D of the Act (Actions for damages) by a *person* who suffers loss as a result of the contravention.

Sch 5.2 G

If a "Yes" appears in the column headed "For private person?", the rule may be actionable by a *private person* under section 138D (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256)). A "Yes" in the column headed "Removed" indicates that the FCA has removed the right of action under section 138D(3) of the Act. If so, a reference to the *rule* in which it is removed is also given.

Sch 5.3 G

The column headed "For other person?" indicates whether the *rule* may be actionable by a *person* other than a *private person* (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of *person* by whom the *rule* may be actionable is given.

Sch 5.4 G

Rule	Right of action under section 138D		
	For private person?	Removed?	For other person?
All <i>rules</i> in CONRED with the status letter 'E'	No	No	No
All other <i>rules</i> in CONRED	Yes	No	No

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Schedule 6 Rules that can be waived

Sch 6.1 G

As a result of section 138A of the *Act* the *FCA* has power to waive its *rules*.

