

## Chapter 3

# British Steel Pension Scheme Financial Resilience Requirements

## 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**

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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.

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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

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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.

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- (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.

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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.

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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

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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](mailto:BSPSredress@fca.org.uk); and

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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*.