Response to FCA consultation paper CP22/15

Calculating redress for non-compliant pension transfer advice

Context and Executive Summary

OAC plc is an actuarial consultancy. Our redress solutions team are specialists in determining compensation following unsuitable advice relating to pensions and have extensive experience in calculating redress following unsuitable advice to transfer. We pride ourselves on the quality of our work and on our attention to the specific details of each case, and we keep up to date with developments in redress and wider pensions to ensure that our calculations are in line with industry best practice.

In the main we welcome the proposals set out in the consultation document. In particular, we believe that providing more comprehensive guidance will ensure better consistency between outcomes. We believe that it will be possible to make the changes to assumptions proposed relatively easily although we estimate that implementing and testing them will take around a month and we suggest that this is built into the implementation timetable. Our main concern relates to the practical implications of the proposed mechanism for the payment of redress as discussed further below.

Question 1: Do you agree that we should consolidate the pension transfer redress methodology as a new appendix in the Dispute Resolution: Complaints sourcebook covering pension transfer redress cases within the current scope of Finalised Guidance 17/09? If not, what alternative approach would you propose?

We agree that details of the pension transfer redress methodology should be consolidated into the Handbook.

We consider that it would be helpful for the scope of the new rules and guidance to be confirmed so as to provide clarity as to what calculation types would be included in the consolidation.

We propose that as well as being applied in the calculation of redress for non- compliant transfer advice and for redress in relation to opt out of Defined Benefit (DB) schemes, the rules and guidance should also apply to the following calculation types in so far as they are relevant to the case in question:

- FSAVC DB loss (Added Years or Additional Pension).
- FSAVC Defined contribution (DC) loss (comparison of charges or loss of matching contributions)
- Other forms of pension loss, including investment loss

Specifically, in the case of FSAVC DB and DC loss, it would be helpful if the FCA could clarify whether the FSAVC model review guidance should be the starting point, with further adaption for changes in the pensions industry since the model was originally developed. An example of this would be the review of the pensions tax regime.

Question 2: Do you agree with our decision not to retain the Securities and Investments Board/Personal Investment Authority provisions specified in Table 1? If not, why do you think we should retain them?

We agree with the removal of the following Securities and Investment Board and Personal Investment Authority provisions in respect of:

- Allowance for life cover
- Allowance for Additional Voluntary Contributions paid into DB schemes
- Allowance for Protected Rights funds to be valued to reflect the way in which Protected Rights annuities must be priced.

We consider that it would be appropriate to retain provisions in relation to discretionary increases on the basis that:

- There is no requirement to offer increases in payment on pension accrued prior to April 1997
- A small number of schemes still pay discretionary benefits on a regular basis
- Given current levels of inflation and the improvement in funding levels arising from rising gilt yields, there may be a demand on schemes to provide discretionary increases

We therefore propose that redress should be required to make allowance for discretionary increases where it is appropriate to do so and that the existing methodology may be considered a suitable way of setting the future discretionary increase where the ceding scheme has a history of paying discretionary increases.

Question 3: Do you agree with our proposal that firms should continue to calculate redress as the difference between the estimated value of the benefits given up in the defined benefit scheme and the current value of the consumer's defined contributions pension and pay that redress as a lump sum? If not, what alternative approach would you propose?

We agree with the proposal that firms should continue to calculate redress as the difference between the estimated value of the benefits given up in the DB scheme and the current value of the consumer's DC pension.

Further commentary on the mechanism for redress is set out in question 45.

Question 4: Do you agree with the high-level description of the steps that we propose firms should take to calculate redress and with our proposal to no longer specify separate approaches for actual and prospective loss cases? If not, what alternative approach would you propose?

We broadly agree with the high-level description outlined. As noted in question 48 we suggest that for actual loss cases, when calculating past loss the net benefits should be valued. In addition, we propose that the accumulation of past payments should be at a rate which is net of the marginal tax rate in retirement.

Question 5: Do you agree with our proposal that all valuations of benefits must be undertaken on same date basis, referred to as the 'valuation date'

We agree with this proposal.

Question 6: Do you agree with our proposal that firms should issue calculations within three months of the valuation date? If not, what timeframe would you propose for issuing calculations to consumers and why?

We consider the proposal to issue calculations within three months of the valuation date to be reasonable as this provides time required for data gathering and review by relevant stakeholders (eg PI insurer). Please see our response to question 12 for more commentary.

Question 7: Do you agree with our proposals for actuarial oversight of redress calc? If not, what alternative approach would you propose?

We agree with this proposal given that redress calculations can be complex.

We note that placing a value on the Plan attributed to the transfer proceeds can be subjective and thus commissioning an independent actuary to carry out this attribution protects both the consumer and the advisor.

Question 8: Do you agree with the information we have proposed that firms obtain to calculate redress? If not, what alternative approach would you propose?

We broadly agree with the proposal, subject to the following observations:

- We note the data gathering stage of the redress process can take a considerable amount of time in comparison to the actual redress calculation itself. This is because it can be difficult to obtain historic details and therefore we suggest that it is made clearer that firms should seek to obtain as much of the information proposed, without it being a requirement that they obtain all of it.
- We would not normally expect children's ages to be material to a calculation unless the consumer is deceased.
- Early and late retirement factors obtained should be those effective at the assumed date of retirement.
- Early and late retirement factors and PCLS factors are only required for actual loss calculations.
- We consider that the following additional information would be required to improve either the accuracy of redress calculations or the redress process: Allowance for life cover
    - Details of all monies paid into a Plan; including timing of payments.
    - Confirmation of any DC AVCs included in the transfer.
    - Details of any means tested benefits the consumer is receiving.
- With regards the information required to assess the consumer's tax position, we note that consumers may find it difficult to provide details of their current Lifetime or Annual Allowance position.
- Similarly, it will be challenging to obtain information about a consumer's future Lifetime Allowance usage.

Question 9: Do you agree with our proposed approach to requesting information from consumers, including what should happen if consumers do not respond to reasonable requests? If not, what alternative approach would you propose?

Broadly speaking we agree: where consumers do not respond to sensible information requests we agree that it is reasonable to use assumptions based on the information that is available. We consider that these assumptions should be clearly stated in communications with the consumer.

It would be helpful if the guidance could clarify the extent to which the advising firm is required to revisit calculations if the consumer, on receipt of their offer, then provides information which was not originally submitted to the advising firm.

OAC have experienced issues with some pension providers who will not provide information to a third party, or firms that are not authorised by the FCA. In this circumstance, the consumer has to request (often complex) information on our behalf. Similarly, DB schemes can be slow to reply or refuse to provide information to a third party.

OAC consider that it would be helpful if the FCA could put in place a form of "redress firm" authorisation to ensure providers and schemes must respond to appropriate redress data requests. This would expediate the redress process and ultimately result in a cleaner process for the consumer with more consistent outcomes.

Question 10: Do you agree that compensation should include losses outside the redress calculation methodology? If not, why not?

We believe that it is appropriate to make allowance in the redress calculation for Lifetime Allowance tax charges which would not have been incurred had the unsuitable advice not been received.

Lifetime Allowance calculations are complex and require various assumptions which would not be required within the main redress calculation methodology. It would be helpful if the guidance could clarify that when assessing the impact of Lifetime Allowance charges, the actuary should use assumptions and methodology consistent with that used for the main redress calculation. It would also be helpful to have confirmation that the advising firm is not obliged to pay redress in relation to future actions taken by the consumer which would increase their projected Lifetime Allowance charges.

We note that allowing for other losses has the potential to become far reaching, and indeed it would invite discussion of whether gains should also be allowed for (for example, if the PCLS from the transfer proceeds has been accessed early and used to pay off a debt). We consider that there is significant scope for inconsistency in calculations depending on the information which is provided to the advising firm by the consumer.

As such, we would suggest that losses and gains other than those directly related to pensions income are not included apart from in exceptional circumstances.

Question 11: Do you agree with our proposed approach to keeping the methodology under review? If not, do you have any other suggestions for how we could ensure the methodology and individual assumptions remain appropriate?

We agree with this proposal.

Question 12: Do you agree with our proposal that firms should update the economic assumptions they use for redress calculations no less frequently that the last working day of each month? If not, what frequency and timeframes would you propose for updating the economic assumptions and why?

Whilst we understand and agree with the objective of this proposal, we are concerned about whether the use of monthly assumptions will achieve the desired outcome, namely reducing the impact for consumers of changes in market conditions. In practice, when consumers compare their redress offers to those of other individuals, they will not have regard to the specific month in which it was prepared. Furthermore, if an individual's offer expires, the new approach would not significantly reduce the period between the original calculation date and the updated calculation date. The consumer will therefore continue to see an impact on their offer arising as a result of changes in market conditions.

The inconsistency between having a three-month period to issue calculations and the use of monthly assumptions may give rise to actual or perceived selection (cherry picking) of calculation date by advisors. As noted in our response to Question 6, we are of the view that, for practical purposes, the three-month period for issue is reasonable.

Monthly assumption updates would also increase work for actuarial firms, with time required to maintain tools and peer review such updates. This will take up time allocated to carry out calculations within the month. The increase in work by the actuarial firms will eventually result in additional costs being passed back to advisor firms.

Finally, in our experience it can take longer than one month from the date of valuation to obtain the data necessary to carry out the redress calculation.

In particular, obtaining DC plan valuations as at 1st of the month can take some time. Usually this will take a minimum of around one week but can take considerably longer depending on the third party and number of plans involved. This may result in cases being in continuous state of requesting a new update to values as each calendar month passes. For past business review exercises, it can prove difficult for advising firms to obtain fund value information for several consumers at once, sometimes from separate sources. Therefore, delivery of fund values often takes longer than one week in these cases.

For these reasons we consider that moving to monthly assumptions will introduce challenges for actuarial firms in managing workflow and could result in disputes with consumers over the valuation date. Therefore, we propose that the existing approach updating of economic assumptions every three months, with the requirement to issue calculations during the relevant quarter, is retained.

Question 13: Do you agree with our proposal to retain the 'UK instantaneous implied inflation forward curve (gilts)' for delivering retail price index inflation and our proposed changes to improve consistency of redress calculations? If not, what alternative approach would you propose?

The methodology for assumption setting needs to be robust in a range of market conditions.

In the current high inflation environment the use of the 3 year inflation spot rate to set pre retirement RPI where the term to retirement is shorter than three years could result in redress being understated. We therefore believe that it is appropriate to consider shorter term forecasts for inflation which can be applied for consumers with a term to retirement less than three years. We would therefore suggest that the FCA consider what sources of information might be available to derive a suitable inflation assumption for terms of 1-2 years (eg information released by the Bank of England as part of the Monetary Policy Committee meetings).

Question 14: Do you agree with our proposed approach to setting an inflation risk premium? If not, what alternative approach would you propose?

We agree with this proposal.

Question 15: Do you agree with our proposal to introduce a formula-based approach to calculating the future differential between the retail price index and the consumer price index? If not, which alternative approach would you use?

We agree with this proposal.

Question 16: Do you agree with our proposal to introduce an earnings inflation assumption? If so, do you agree it should be set at +1.0% above the consumer price index? If not, what alternative approach would you propose?

We agree with this proposed assumption in the context of setting the assumption for future s148 increases.

However we consider that determining a suitable earnings assumption for a given consumer – as is required for opt out, or FSAVC Added Years calculations – is challenging and that consideration should be given to the circumstances of the particular consumer.

For example, salary growth could be highly dependent on the industry in which a consumer works and on their particular employer. This is exacerbated by the current high inflation environment.

The salary increase can be highly material in redress calculations so using an inappropriate assumption could lead to over or under compensation.

As such our preference would be:

- For s148, increases to be set in line with CPI plus 1% pa
- For this to also be the default assumption for consumer specific earnings growth
- For actuaries to be permitted to deviate from the default assumption for consumer specific earnings growth if this is appropriate, with suitable disclosure and explanation of the alternative used such as the level of past real salary growth and the salary growth assumption used by the employer for financial reporting

Question 17: Do you agree with our proposed approach to pre-retirement pension increases? If not, what alternative approach would you propose?

We agree with this proposal.

Question 18: Do you agree with our approach to pensions increases in payment, including the use of the Black-Scholes model? If not, what alternative approach would you propose?

We agree with this proposal.

Question 19: Do you agree that we should continue to retain the existing pre-retirement discount rate assumption consistent with a 50% return on equity? If not, what alternative approach would you propose?

We agree with this proposal.

Question 20: Do you agree with the proposed formula for calculating the pre-retirement discount rate? If not, what alternative approach would you propose?

We agree with this proposal.

Question 21: Do you agree with the proposed changes to the dividend yield, GDP growth and inflation elements used in the pre-retirement discount rate formula? If not, what alternative approach would you propose?

We agree with this proposal.

Question 22: Do you agree with our proposal not to make an allowance for lifestyling with in the pre-retirement discount rate? If not, how do you think we should allow for lifestyling?

We agree with this proposal.

Question 23: Do you agree with our assessment that we do not need to specify an alternative pre-retirement discount rate for use where the consumer's investments are unlikely to achieve the proposed rate? If not, what alternative approach would you propose?

We agree with this proposal and concur with the comments in paragraph 4.52.

We believe that allowing for flexibility in the pre-retirement discount rate has the potential to cause confusion and debate and could ultimately result in inconsistency between calculations.

As such, we propose it would be most effective to mandate the investment return assumption and not provide any scope for alternative assumptions.

If there were to be an alternative pre-retirement discount, we consider that it would be vital for more guidance to be provided on when it would be appropriate to apply such a rate, and also when it would not be appropriate.

Question 24: Do you agree with our proposal to continue calculating the post-retirement discount rate by using the Bank of England gilt curve to derive gilt yields at the consumer's retirement date? If not, what alternative approach would you propose?

We agree with this proposal.

Question 25: Do you agree with our proposal to apply a 0.6% deduction to the post-retirement discount rate to allow for the margins built into annuity pricing? If not, what alternative approach would you propose?

We agree with this proposal.

Question 26: Do you agree that where a consumer has already retired, the consumer's term to retirement for annuitisation purposes will be zero and the post-retirement discount rate will be based only on the consumer's discounted mean term at the valuation date? If not, what alternative approach would you propose?

We agree with this proposal.

Question 27: Do you agree with our approach for allowing for the pension commencement lump sum? If not, what alternative approach would you propose?

We agree that it is reasonable to assume that consumers would have drawn their maximum cash from the DB scheme had they not transferred out.

For FSAVC Added Years actual loss cases we propose that the allowance made for cash commutation of the Added Years benefit should mirror the consumer's actual behaviour with their scheme pension.

We would suggest that the guidance make it clear that the use of the default cash commutation factor should be seen as a last resort – an effort should be made to obtain the actual cash commutation factor and any information about known commutation factors in the scheme should be reflected in setting the assumed cash commutation factor for the calculation.

We also note that the proposed default cash commutation factor of 20 is based on historical analysis. The cash commutation factor used in the redress calculation should reflect the terms that would have been available at the assumed retirement date. Whilst a factor of 20 may be appropriate for certain windows of retirement date, it might not be appropriate for all periods – for example factors applicable prior to scheme specific funding (where IR max factors often applied), or in the recent past (where higher PCLS factors are prevalent). We consider that consideration should be given to default factors which vary depending on the assumed retirement date.

Question 28: Do you agree with our proposal to update the post retirement mortality basis with the PxA16 mortality tables? If you, what alternative basis would you suggest?

We agree with this proposal. We assume that consideration will be given to future amendments to the base mortality assumption when new mortality tables are published.

Question 29: Do you agree with our proposal that firms should allow for pre-retirement mortality? If not, what alternative approach would you suggest?

We agree with this proposal.

Question 30: Do you agree that we should move from a simple assumption based on a constant probability of a consumer being married or in a civil partnership to a probability table based on term to retirement and current marital or civil partnership status? If not, what alternative approach would you propose?

We agree with the approach underlying this proposal and the table of factors proposed.

We suggest that if actual marital status is unknown, the assumption should be that the consumer is married / in a civil partnership. This is because in our experience many schemes will pay benefits to a financial dependent in lieu of a spouse. In practice, we would expect marital status (and spouse's date of birth) to be easily available so we would not envisage this assumption being applied often.

We further note that paragraph 5.11 reads:

"Where the firm has determined that the consumer would, at or before the valuation date, likely have retired in their DB scheme, the firm should use the actual marital or civil partnership status at the valuation date"

However, this does not tie in with FG17/9 which requires firms to consider the marital status at date of crystallisation, namely at retirement. Our preference would be to use the actual marital status at date of valuation as suggested in 5.11 of the consultation. It would be helpful if the further clarification could be provided on this point.

Question 31: Do you agree that the approach to the spouse's age difference assumption remains appropriate? If not, what alternative approach would you propose?

We agree that the spouse's age difference assumption remains appropriate.

Question 32: Do you agree with our proposal to introduce a 'rebuttable presumption' to ensure that the firms make appropriate assumptions about when the consumer would have retired in their defined benefit scheme? If not, what alternative approach would you propose?

We agree with this proposal.

We note that this provision will introduce subjectivity into the calculation, but we consider that it is appropriate in order to ensure fair compensation.

Question 33: Do you agree with our proposal to allow for a reasonable level of product charges of 0.75% and ongoing adviser charges of 0.5%? If not, what alternative approach would you propose?

We agree with the proposal for an allowance of reasonable level of charges.

It would be helpful if the FCA could clarify their view that redress could allow for higher charges than the reasonable level if the advising firm wishes to make such allowance (increasing redress for the consumer). This is because there may be firms who wish to retain the appointment for ongoing advice and do not wish the consumer to be penalised if they do not switch to a lower charging advisor.

Question 34: Do you agree that redress should allow for initial advice charges when consumers are not currently in an advice arrangement or where their ongoing advice charges are above the reasonable level? If not, what alternative approach would you propose?

We agree with this proposal.

Question 35: Do you agree with the proposed initial advice charge of 2.4% if a consumer needs to find a new adviser, with a minimum charge of £1,000 and maximum charge of £3,000? If not, what alternative approach would you propose?

We agree with the proposal of upper and lower limits to charges, however we are not well placed to comment on the level of these limits.

Question 36: Do you agree with the default early and late retirement factors we have proposed? If not, what alternative approach would you propose?

We agree with the proposal of specifying default early and late retirement factors although we consider that advising firms (and their actuaries) should be required to take best endeavours to obtain the actual factors that would have applied for the consumer.

As noted in question 27, we consider that consideration should be given to default factors which vary depending on the assumed retirement date to reflect that factors will have varied over time.

Question 37: Do you agree with our approach to cash enhancement payments? If not, what alternative approach would you propose?

We agree with this proposal.

Question 38: Do you agree with our approach to valuing illiquid assets? If not, please suggest an alternative approach and the rationale for your suggestion. Are there any other circumstances when it is difficult to obtain defined contribution fund values?

We agree with this proposal.

Question 39: Do you agree with our approach to valuing liquid assets where an up-to-date defined contribution fund value is not available? If not, please suggest an alternative approach and the rationale for your suggestion. Are there any other circumstances when it is difficult to get DC valuations?

We agree with this proposal. However, there is scope for the calculation to become complicated if the monies are invested in a range of different funds. We consider it would be reasonable to adjust fund values over short periods (say up to 6 months) in line with a general index such as the FTSE Private Investors Total Return Index.

We further note that permitting index adjustment for short periods could mitigate issues where pension providers are not able to issue a fund value within the timeframes needed to complete the calculation in a given month as flagged in question 12.

Question 40: Do you agree with our clarification that State Earnings Related Pension Scheme adjustment to the redress calculation is no longer needed for transfers occurring after 6 April 2016. If not, why not?

We agree that State Earnings Related Pension Scheme adjustments are not required in the redress calculation for transfers occurring after 6 April 2016.

Question 41: Do you agree that we should not propose a specific approach to Guaranteed Minimum Pension (GMP) equalisation? If not, how do you think GMP equalisation should be taken into account when undertaking redress calculations? Please consider materiality and consistency across the industry.

We agree that the FCA should not propose a specific approach to GMP equalisation.

Although we would expect that the impact of GMP equalisation should be immaterial in most cases, there will be a small number of transfer out cases, and more opt out calculations, where the circumstances of the consumer mean that the impact of GMP equalisation could be material.

It is difficult to provide a comprehensive list of factors that would trigger a material impact and we therefore suggest that expert advice is taken by advising firms in this regard.

Question 42: Do you agree that past payments should be increased from date of payment to the valuation date in line with Bank of England Base Rate over the period? If not, what alternative approach would you propose?

We agree with this proposal.

Question 43: Do you agree with our proposal that where a DB scheme has entered the Pension Protection Fund (PPF), redress should be calculated on the basis of the PPF benefits unless the firm knows that the scheme is shortly going to be secured outside of the PPF, resulting in members receiving higher benefits? If not, what alternative approach would you propose?

We agree with this proposal.

We note that it can be difficult to be certain of the benefits that will be secured outside of the PPF until the process is complete and even then the scheme Trustee may be reluctant to provide details, particularly prior to making an announcement to remaining members.

Question 44: Do you agree with our proposals to adopt the FTSE UK Private Growth Total Return Index for returns post 1 January 2005? If not, please could you indicate what alternative benchmark index should be used.

We agree with this proposal.

Question 45: Do you agree that firms should pay as much of the redress as possible directly into the consumer's defined contribution pension by augmentation? Do you also agree that payment should only be by cash lump sum where augmentation is likely to mean consumers incur a tax charge or where the consumer specifically requests that redress is provided in this way? If not, how do you think redress should be provided to consumers and why?

We believe that, as a point of principle, redress payments should be used to provide retirement income. We note that consumers who have received unsuitable financial advice could reasonably be considered vulnerable and that they may be wary of further engagement with financial advisors. As such, we believe that the FCA should take all steps possible to ensure that redress payments are used appropriately.

We therefore understand the principles behind the approach suggested but we have concerns about the practical implications of the requirement to pay as much as possible into a DC scheme:

- Obtaining information about a consumer's annual allowance is challenging, particularly if redress is being paid part way through a tax year and they are still contributing to a pension scheme – an unexpected payrise later in the year could cause problems for example, as would any accrual in a DB arrangement.

- The advising firm would need sufficient expertise to establish what level of contribution to a DC arrangement would be possible within a consumer's Annual Allowance, or would need to obtain support for this calculation from an expert. In our view there would be significant scope for Annual Allowance charges to be incurred and there could then be challenges over the extent to which the liability for any such charges rested with the consumer or the advising firm.

- Using all of an individual's available Annual Allowance may limit their ability to make pension contributions in future years. This would mean that the consumer could suffer a loss as a result of the redress payment.

- Establishing whether an individual is likely to be affected by the Lifetime Allowance at some future date is also challenging, especially given high inflation and uncertainty over future increases in the Lifetime Allowance. In practice this would require detailed projections of pensions and various subjective assumptions about possible consumer behaviour. We consider that there is therefore a risk that the consumer could ultimately suffer a loss as a result of the redress payment.

- For individuals who are above the minimum retirement age, even if redress is paid into a pension pot, the consumer is able to access the funds (with at least 25% being able to be taken tax free). This would limit the protection offered by paying redress into a pension arrangement.

- We are aware that consumers typically prefer cash compensation and we believe that, in practice, the proposals as they stand are likely to result in redress being settled as cash payments because of the risks to the advisor of imposing redress by means of a contribution to a DC pension (as outlined above).
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- We note that even when funds are invested in a DC pension, there is no certainty that they will be appropriately invested. We consider that there is a possibility that consumers will turn to high risk asset classes to generate higher returns, and we also see many consumers who are holding their funds in assets which are very low risk (for example, holding monies in cash within their SIPP).

One possible way to avoid some of the issues outlined above is to reach agreement with HMRC that pension redress payments should not be subject to Annual Allowance tax charges. This would be intuitive as redress payments do not relate to a single year's pension accrual. Another option would be to mandate that where redress is over a given cap (say £40,000) it should be settled as cash without further investigation.

However, we do not consider that either of these options is optimal in terms of putting the consumer in the closest position possible to that which they would have been in had they not transferred out.

Where individuals have reached their Normal Retirement Age in the occupational scheme we consider that it would be reasonable for redress to be implemented by means of a purchased life annuity (subject to a minimum redress payment). This annuity would not seek to directly replicate the benefits that would have been available in the occupational scheme, rather redress would be calculated as outlined in the proposals, and the resulting redress payment would be used to purchase a whole of life annuity (the form of which, increases and spouse's benefits etc, could be agreed by the consumer).

We consider a preferable mechanism for the payment of redress for individuals who have not yet reached their Normal Retirement Age in the occupational scheme could be developed and offered to consumers. This product – the "Redress Compensation Protection Trust" would:

- Be run in a similar way to a DB Master Trust, so as to benefit from low charges (noting the proposal that aggregate charges of 1.25% pa would be incorporated into the redress calculation).
- Facilitate a suitable, medium risk investment strategy consistent with the investment return assumptions underlying the redress calculation.
- Provide support for consumers as they start to decumulate benefits – possibly even mandating the purchase of an annuity at retirement age.

Consumers could also be invited to transfer their existing personal pension into the Redress Compensation Protection Trust if they have concerns about how best to manage their finances.

Question 46: Do you agree with the factors that are likely to be relevant in judging whether augmentation would result in a consumer exceeding their annual or lifetime allowance? If not, which factors do you think are likely to be relevant?

We agree that these factors are relevant but we consider that it may be difficult to obtain reliable information.

See comments on question 45.

Question 47: Do you agree with our proposal on how firms should allow for tax and means-tested state benefit entitlements on lump sum augmentation of redress payments? If not, what alternative approach would you propose?

We agree with this proposal.

Question 48: Do you agree with our proposal on how firms should allow for tax and means-tested state benefit entitlements on cash lump sum redress payments? If not, what alternative approach would you propose?

With regard tax adjustments, we note that:

- Where the Lifetime Allowance is likely to be exceeded consideration should be given as to whether the impact of the Lifetime Allowance should be reflected in the tax adjustment..

- In our experience the tax rate used (eg nil, basic or higher rate) for the adjustment can be subjective and this may cause delays in the acceptance of offers. This scenario most commonly arises where consumers are accessing the benefits from their personal pension via flexible drawdown in such a way as to minimise their income tax (eg keeping their income below the personal allowance). Where a consumer is accessing funds in this way, they will benefit from tax advantages which are not reflected in the redress calculation. This will result in the consumer being over compensated when net benefits are considered. Applying a lower tax adjustment further compounds the issue.

- We therefore consider that it would be helpful if the guidance could clarify that the tax adjustment to be applied should reflect the position that the consumer would be in were an annuity (mirroring the scheme benefits) to be purchased with the proceeds of the transfer and the redress payment. This would be consistent with the way in which redress is calculated.

- For actual loss cases, our normal practice is to value past benefits net of actual tax incurred and to value future benefits gross of tax, with a tax adjustment applied only to the future loss (eg a 20% reduction applied to the gross future loss for a basic rate tax payer). This approach enables us to reflect the tax advantages to the consumer of being able to access a higher tax free PCLS from the DC arrangement. We would therefore propose that this approach is reflected in the methodology for actual loss cases.

With regards adjustments for means tested benefits, we note that:

- Valuing lost means tested benefits is complex and thus we agree that it would be preferable to avoid them being forfeited.

- In some instances the consumer would not have been entitled to means tested benefits were they to have remained in the occupational scheme, as a result of the higher income and PCLS that would have been provided by the scheme. We consider that it is not appropriate for the consumer to be compensated for the loss of any such means tested benefits.

- In practice, individuals who are in receipt of means tested benefits may have limited Annual Allowance such that paying redress via plan top up may not be practical.

- The Redress Compensation Protection Trust, as suggested in question 45, would be structured so as to avoid any adverse impact on means tested benefits.

Question 49: Do you agree with our proposal that calculations should be valid for three months from date of issue to the consumer? If not, what alternative timeframe would you propose?

We agree that giving consumers three months to decide whether to accept an offer is reasonable.

We note that 7.32 of the consultation refers to a minimum 3-month period from the offer issue date – this suggests that advising firms may have the option to guarantee the offer for a period beyond three months and it would be helpful if the FCA could provide further clarification on this point.

Question 50: Do you agree that redress payments should be increased between the valuation date and the payment date using, as appropriate, the pre-retirement or post-retirement discount to compensate consumers for foregone investment returns? If not, what alternative approach would you propose?

We agree with this proposal although it might be helpful to confirm what interest rate should be adopted if the consumer reaches retirement age between the valuation date and the payment date.

Question 51: Do you agree with the proposed content of the calculation explanation? If not, what information do you think consumers should be given to help them understand their calculation?

In the main we agree with the proposed content. However, we note that redress calculations are typically prepared for the advising firm and as such the consumer is not able to place legal reliance on them. Whilst we support the premise that calculations should be explained clearly, we are concerned that it will not always be realistic to expect consumers to be able to take a view on the reasonableness of a redress offer. As such, we consider that it remains appropriate for consumers to take their own advice before accepting a redress offer.

Furthermore, we consider that it would be preferable for the intended scope of the requirement for firms to provide details on the impact of assumed retirement date on the redress to be set out more clearly. Within the draft Handbook text of App 4.3.34, para 1(c)(ii)(B), the requirement notes that the percentage reduction applied for early retirement should be included. We consider that any extension of the requirement beyond providing the early retirement factor could prove problematic. This is because:

In order to determine the full impact on redress, the actuary would need to run two calculations and this would incur extra cost.

We believe that providing this level of detail will lead to dispute between advising firms and consumers (and their representatives) resulting in a failure to settle complaints.

In this context, we consider that it would be preferable that where the advising firm proposes to make allowance for retirement at a date other than "Normal Retirement", and where there is subjectivity in the assumption (for example where there has not been annuitisation of the personal pension), the assumed retirement age is agreed with the consumer prior to commencing calculations. The choice of retirement age would then form part of the instruction of how the redress calculations are completed, rather than being an actuarial assumption. This approach would enable the advising firm to submit the evidence for their proposed retirement age at an early stage in the process so that an objective judgement of the retirement age can be made.

Question 52: Do you agree with the proposed wording for the warning when consumers receive redress as a cash lump sum? If not, what wording do you suggest would be more impactful for consumers?

We agree that the proposed wording is reasonable.

Question 53: Do you agree that consumers should be encouraged to read their explanations carefully and that firms should be required to and set out clearly the process the consumer should follow if they have any questions, wish to challenge any of the information used in the calculation, or make a complaint?

We agree that the proposed wording is reasonable.

Question 54: Do you agree that, subject to the differences set out in Chapter 8, the same redress calculation methodology should be used for British Steel cases as all other cases? If not, what alternative approach would you propose?

We agree that the same calculation methodology should be used for British Steel cases as all other cases; a different approach is not justified.

Question 55: Do you agree with our proposal to follow our general approach on the method of payment of redress for BSPS consumers? If not, what alternative approach would you propose?

We consider that it is important to recognise the likely level of financial literacy (and thus vulnerability) which applies to BSPS consumers. In this context we consider that the comments made in question 45 regarding the protection of customers are particularly relevant.

Given that the consumer redress scheme will operate under bespoke legislation, we would ask that the FCA considers whether it could be structured in such a way that the recoup of funds held in personal pensions into the suggested Redress Compensation Protection Trust could be mandated.

Furthermore, we consider that for BSPS consumers, incorporating annuity purchase into the redress process may be feasible given that the number of consumers entitled to redress would enable a bulk purchase annuity arrangement to be effected.

Question 56: Do you agree that where the Pension Protection Fund is used as the comparator scheme, consumers should be redressed based on the upcoming Pension Insurance Corporation benefits when available? If not, what alternative approach would you propose?

We agree with this approach to the extent that these benefits are known.

It would be helpful if clarification could be provided about what advising firms should do about cases that are due to be settled before details of the Pension Insurance Corporation benefits have been released. For example, we are aware that FOS decisions for cases of this nature have required calculations to be revisited once the Pension Insurance Corporation benefits are known.

We further note that enhancement of BSPS scheme benefits at the point of buy out is also possible given the current funding level of the scheme. It would be helpful to understand whether any allowance for such enhancement of benefits is to be incorporated into the loss assessment where BSPS2 is considered the appropriate comparator scheme.

Question 57: Do you agree that where consumers made an active selection of either the new British Steel Pension Scheme (BSPS2) or the Pension Protection Fund at the time of the transfer, the redress calculation should be based on the benefits of the selected scheme? If not, what alternative approach would you propose?

OAC are not well placed to comment on this.

Question 58: Do you agree that where there is no evidence of consumers making an active selection of either the new British Steel Pension Scheme (BSPS2) or the Pension Protection Fund at the time of the transfer, firms should calculate what the redress would be for both and pay the higher amount to the consumer? If not, what alternative approach would you propose?

OAC are not well placed to comment on this.

Question 59: Do you agree that where consumers have not made an active selection, firms should consider information from the time of the transfer advice to see if there is any evidence that demonstrates the consumer would have been more likely than not to have chosen one of the two schemes? If so, what evidence do you consider could help firms demonstrate this?

OAC are not well placed to comment on this.

Question 60: Do you agree that if the firm cannot demonstrate with evidence which scheme the consumer would have chosen, that calculation should be based on the scheme that provides the higher redress to the consumer?

OAC are not well placed to comment on this.

Question 61: Do you agree that where further information is needed for a redress calculation, firms should obtain the consumer's consent to request this from a third party?

We would expect scheme information, including early and late retirement factors, relating to BSPS to be gathered centrally and built into the calculator. Otherwise, our stance on this approach would be as outlined in our response to question 9.

Question 62: Do you agree that the calculation methodology for British Steel cases should use the same assumption as the general approach? If not, what alternative approach would you propose?

We agree that the same methodology should be used.

Question 63: Do you agree with the proposed redress calculation methodology for British Steel redress scheme? If not, what alternative approach would you propose?

We agree that the same methodology should be used.

Question 64: Do you agree with our proposals for adjusting the redress payment to take account if the consumer's tax position and accumulated interest between the valuation date and payment date? If not, what alternative approach would you propose?

We have no additional comments to this proposal to the commentary we have provided under the general proposals as set out above.

Question 65: Do you agree with our proposals for issuing redress determinations to consumers? If not, what alternative approach would you propose?

We agree with the proposal.

We note that for calculations relating to transfer from the BSPS the benefit structure of the scheme should be incorporated into the calculator and this will reduce the amount of information required from consumers.

Question 66: Do you agree with our proposals for paying redress to consumers? If not, what alternative approach would you propose?

We agree that payment of redress within 28 days acceptance is reasonable on the basis that sufficient information is available to validate payment and payee details.

Question 67: Do you have any other comments on the stages of the process that firms must follow to calculate redress under the proposed British Steel redress scheme?

We have no further comments.

Question 68: Do you agree that the calculator should significantly reduce or eliminate the need for actuarial input? If not, why not?

We generally agree with this proposal but we do not believe that the need for actuarial input can be eliminated entirely.

For example, attribution of total DC plan value to transfer proceeds, Lifetime Allowance considerations, and tax adjustments are all areas we believe would require actuarial judgement.

Question 69: Do you agree that the use of the calculator should be limited to firms, the Financial Services Compensation Scheme and the Financial Ombudsman?

We agree that consumers should not have direct access to the calculator. However, we believe that it would be appropriate for third party firms who are undertaking calculations on behalf of advising firms to have access to the calculator. This is so that such firms can support clients on more complex cases as required.

Question 70: Do you agree that the use if the calculator should be mandatory? If not, why not?

We agree with this in principle on the basis that testing of the calculator is sufficiently robust. If issues within the calculator are identified at any stage, there would need to be solutions available quickly with appropriate support in place.

Question 71: Is your firm interested in taking part in testing the redress calculator for the proposed British Steel redress scheme?

No

Question 72: Do you have any other proposals on how to make redress calculations for the proposed British Steel redress scheme more consistent?

No

Question 73: Do you have any other comments on the development of the calculator.

No

Question 74: Do you agree with our estimates of the costs and benefits of our proposals?

We note that the FCA estimates that between 250 and 300 consumers could have redress calculated under the methodology each month and would note that the number of cases could be higher if allowance is made for non DB transfer calculations (FSAVC Added Years in particular).

As noted above, we disagree that the cost arising from monthly updates to assumptions is worthwhile, given that there may still be a considerable delay in the payment of redress after the valuation date. The repeated requests for information, as well as the impact on capacity for completion of calculations may prove to be significant.

We agree that the implementation is likely to cause a short-term delay in settlement of claims, whilst changes to redress models are implemented. Firms will need sufficient time (at least a month) to implement and test the changes once the final policy statement is published and so the FCA's requirements for implementation of the changes, as well as guidance on how firms should approach redress during any implementation period, needs to factor this in.

For more information

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