



# CP22/15: Calculating Redress for Non-compliant Pension Transfer Advice

<https://www.fca.org.uk/publications/consultation-papers/cp22-15-calculating-redress-non-compliant-pension-transfer-advice>

## Response by the Transparency Task Force

26th September 2022

### **About the Transparency Task Force**

The Transparency Task Force is a Certified Social Enterprise, meaning that we exist to make an impact, not profit.

The mission of the Transparency Task Force is to promote ongoing reform of the financial sector, so that it serves society better. Our vision is to build a large, influential and highly respected international institution that helps to ensure consumers are treated fairly by the financial sector. The primary beneficiaries of our work will be consumers; but the sector itself will also benefit through improved market conduct and increased trust in the services it provides.

Our objective is to carry out a broad range of activities that help to drive positive, progressive and purposeful finance reform, such as:

- Building a collaborative, campaigning community; the larger it is the more influence it can have in driving the change that is needed

- Raising awareness of issues; so that society better understands the problems that exist in the financial sector and how they can be dealt with
- Engaging with people who can make change happen; because through such dialogue we can influence thinking, policy making and market conduct

Our response to you has been produced by a highly collaborative group of TTF volunteers, our “Response Squad,” working together to build consensus, whilst always remaining true to our “North Star” question: “What is best for the consumer?” For further information about the Transparency Task Force see: <http://www.transparencytaskforce.org>

This response is all non-confidential. Please note that all comments in this response are part of the response, and should be considered.

## Comments outside the scope of the specific questions asked

We wish to make some comments that do not fall into the scope of the specific questions asked, but believe them to be important hence their inclusion here:

We propose that an additional consultation paper should be issued entitled:

***“How did the FCA allow so many regulated companies to provide non-compliant pension advice when compliance is the foundation for regulation?”***

The FCA advises that the FSCS will calculate actual losses but can only compensate up to a maximum of £85k, regardless of the shortfall.

On 10 June 2021 the FT Adviser’s journalist Amy Austin wrote an article entitled, British Steel IFA told to pay out after giving unsuitable advice <https://www.ftadviser.com/pensions/2021/06/10/british-steel-ifa-told-to-pay-out-after-giving-unsuitable-advice/> The FOS concluded that advice firm Argent Wealth gave unsuitable advice as it was unlikely that the benefits available from the British Steel Pension Scheme (BSPS), or the Pension Protection Fund, could be outmatched by going ahead with a transfer.

Ombudsman Philip Miller ordered the firm to put the client as closely as possible into the position he would be in had it not been for the unsuitable advice, up to a maximum of £160,000. An insolvency practitioner was appointed to liquidate the company on 7 July 2021. It is highly unlikely that this compensation was paid given the time between when the decision was made, 15 June 2021, was only three weeks before the commencement of liquidation.

The upholding of complaints by FOS against multiple regulated companies involving British Steel Pension Scheme members, and others not from that scheme, sent dozens of companies into liquidation, or have simply been self-dissolved, leaving thousands of victims without pensions, for what the FCA calls “non-compliant pension advice”. And it is surely inevitable that many more regulated companies and clients will face the same fate?

We believe it is because the Treasury and those they appointed to regulate financial services actually protect regulated entities who, as fiduciaries, act dishonestly and collude to provide non-compliant advice to clients to invest and lose their pensions in illiquid high-risk, offshore schemes and unauthorised investments.

Please see a recent article in the financial press:

<https://www.ftadviser.com/pensions/2022/09/05/rowanmoor-racked-up-214-fos-claims-after-embark-deal/>

You may ask, “How can that be?”

A simplistic answer is that none of the agencies set up by the Treasury to regulate, mediate and compensate, rarely act against companies and in particular, individuals who perpetrate such actions. It is a glaring anomaly that no individuals working in financial services are personally regulated and therefore liable. Because only the companies they work for are regulated. This means that only regulated companies are held to account. Individuals can be restricted or banned from working in financial services but does that punishment equate to the life-changing damage they cause? We think not.

Company directors of regulated firms either get their professional indemnity insurers to pay compensation, pay from company funds, or become insolvent and liquidate. Whilst the company is regulated, action is not taken against persons working for regulated companies. Once in liquidation those protections no longer apply.

Insolvency practitioners for these companies tend to take no action against the directors because they believe that should be the responsibility of the FCA. However, once in liquidation, directors can be held personally liable for mistreating clients and failing as fiduciaries and in their duties of care as fiduciaries; see *Burns v Keith Burns and Others* where an IFA provided non-compliant advice for a client to transfer his pension into an illiquid, non-compliant investment that failed, in which the judge summed up with the following comments (taken from <https://www.bailii.org/ew/cases/EWHC/Ch/>):

*In my judgment that is sufficient in law to render the Part 24 Defendants liable to the Claimant for dishonest assistance. The dishonesty consists of exposing the Claimant to a type of risk that was not contemplated by the terms of the brochure promoting the investment. It is in my view no defence for the Part 24 Defendants to rely on their subjective belief that they were acting honestly nor is it a defence to say that others known to them invested their own money in the same way and lost it. This was not a risk the Part 24 Defendants were entitled to take with the Claimant's pension monies. No ordinary decent person would have transferred the Claimant's pension monies to CLLL in the way the Part 24 Defendants did. They knew that the money was unsecured. They knew it was intended to be used by a developer for property development. They knew on their own evidence that final security would only be provided on completion of the development and that any interim protection offered was in the form of a charge over the developer's family home not a property forming part of an existing property investment portfolio.*

The paragraph before the one above is also telling -

The Part 24 Defendants judged objectively ought to have known that the use they say Capitis Fora LLP made of the Claimant's pension monies was improper in the sense of being outside the form of investment contemplated by the brochure. In *Royal Brunei Airlines v Tan* [\[1995\] 2 AC 378](#) at 390A-B, Lord Nicholls said:-

"This type of case is to be sharply distinguished from the case where a trustee, with or without the benefit of advice, is aware that a particular investment or application of trust property is outside his powers but nevertheless he decides to proceed in the belief or hope that this will be beneficial to the beneficiaries, or at least, not prejudicial to them. He takes a risk that a clearly unauthorised transaction will not cause loss. A risk of that nature is for the account of those who take it. If the risk materialises and causes loss, those who knowingly took the risk will be accountable accordingly. This is the type of risk being addressed by Peter Gibson J. in the Baden case, when he accepted that fraud includes 'taking a risk to the prejudice of another's rights, which risk is known to be one which there is no right to take'."

Police forces appear to have a memorandum of understanding to treat pension investment misappropriation as a civil matter. Bodies such as the Serious Fraud Office and the City of London Police focus on major financial crimes, which don't include lying to clients to persuade them to lose their pensions in offshore investments.

In a recent report published on Companies House by the liquidator of the regulated firm Argent Wealth Ltd, Richard P Rendle wrote that "*The FSCS has lodged an interim claim in the liquidation in the sum of £881,025 in respect of 4 claims out of 21 by the FSCS. The Liquidator has not*

*adjudicated on these claims because he has not been provided with the necessary evidence to support the claim submitted by the FSCS. The Liquidator has taken legal advice on the matter which agrees with the assessment of the situation. The FSCS has been made aware of this but has still yet to provide any supporting information in respect of its claim. Accordingly, the Liquidator does not intend to review the claim from the FSCS until the FSCS can submit its final claim in order to preserve costs in the liquidation.”*

If four complaints upheld by FSCS amounted to £881,025 and the maximum compensation of £85k totals £340k, each person affected would see an average shortfall of £135,256. A consultation paper about how to calculate redress is a moot point for those victims who received non-complaint advice to risk and lose their pensions.

Who is going to compensate those British Steel Pension Scheme members?

## Response to Questions

Q1: 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 17/9? If not, what alternative approach would you propose?

Agreed, as long as assumptions are updated frequently (monthly much better than quarterly) as market conditions are volatile.

Q2: 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?

Agreed.

Q3: 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 contribution pension and pay that redress as a lump sum? If not, what alternative approach would you propose?

Agreed. It would be great if defined benefit schemes took the transfer back and reinstated benefits but we are not aware of any that will do this. There needs to be consideration of issues of where the cash sum is paid if redress is large and paying into pension policies causes issues with the LifeTime Allowance as this would then need to compensate for the impact of the tax consequences.

Furthermore, we believe there should be some consideration as to the level of annuity those returned benefits could purchase now versus known benefits available from the DB scheme.

Q4: 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?

The approach should be fine but redress should be split between past losses which are actual losses and future losses - death cases in particular can generate significant past losses.

Q5: Do you agree with our proposal that all valuations of benefits must be undertaken on a same date basis, referred to as the 'valuation date'?

Agreed.

Q6: 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?

Agreed.

Q7: Do you agree with our proposals for actuarial oversight of redress calculations? If not, what alternative approach would you propose?

Agreed.

Q8: Do you agree with the information we have proposed that firms obtain to calculate redress? If not, what alternative approach would you propose? 86 CP22/15 Annex 1 Financial Conduct Authority Calculating redress for non-compliant pension transfer advice

Agreed, but note that many schemes do not hold spouse/partner date of birth.

Q9: 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 agreed, but it should be made clear to consumers the time they have to respond, and they should receive a reminder/chaser and it should be made clear that in the absence of providing information the case will proceed based on assumptions derived from general information.

Q10: Do you agree that compensation should include losses outside the redress calculation methodology? If not, why not?

Agreed.

Q11: 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?

Agreed, but the methodology should not need frequent review as long as the assumptions are updated regularly. The event triggers look reasonable.

Q12: Do you agree with our proposal that firms should update the economic assumptions they use for redress calculations no less frequently than the last working day of each month? If not, what frequency and timeframes would you propose for updating the economic assumptions and why?

Agreed - modern technology makes updating easier and volatile markets make it essential that assumptions are updated regularly.

Q13: Do you agree with our proposal to retain the 'UK instantaneous implied inflation forward curve (gilts)' for deriving retail price index inflation and our proposed changes to improve consistency of redress calculations? If not, which alternative approach would you propose?

Agreed.

Q14: Do you agree with our proposed approach to setting an inflation risk premium? If not, what alternative approach would you propose?

Agreed.

Q15: 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 propose?

Agreed.

Q16: 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?

Agreed and agree +1% is reasonable.

However, there should also be capacity for claimants that remain with their employer but had their pensions transferred, to be able to build in a likely career path/promotion in position held until retirement, rather than just their earnings and position when the transfer occurred.

Q17: Do you agree with our proposed approach to pre-retirement pension increases? If not, what alternative approach would you propose?

Agreed.

Q18: Do you agree with our approach to pension increases in payment, including the use of the Black-Scholes model? If not, what alternative approach would you propose?

Agreed.

Q19: 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?

Agreed.

Q20: Do you agree with the proposed formula for calculating the pre-retirement discount rate? If not, what alternative approach would you propose?

Agreed.



Q21: 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?

Agreed.

Q22: Do you agree with our proposal not to make an allowance for lifestyling within the pre-retirement discount rate? If not, how do you think we should allow for lifestyling?

Although few buy annuities, most investors do look to take risk out of investment portfolios as they approach and go into retirement. Therefore, an allowance should be made for lifestyling and discount rates should be reduced to reflect this. There should be an adjustment to the discount rate over the 10 years to retirement age using a time weighted approach, so larger reduction for those already close to retirement age down to no reduction if say 10 years or more away from retirement. This should be relatively simple to calculate and programmed into redress software.

Q23: 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?

In some cases it is not only the transfer advice that is an issue but also the investment in inappropriate investments which are often illiquid and of little or nil value. In these cases use of standard assumptions would not be appropriate and firms calculating redress must take into account the need to treat consumers fairly and adjust rate to allow for each particular situation.

Q24: 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?

Agreed.

Q25: 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?

Agreed.

Q26: 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?

Agreed.

Q27: Do you agree with our approach for allowing for the pension commencement lump sum? If not, what alternative approach would you propose?

Agreed.

Q28: Do you agree with our proposal to update the post retirement mortality basis with the PxA16 mortality tables? If not, what alternative basis would you suggest?

Agreed.

Q29: Do you agree with our proposal that firms should allow for pre-retirement mortality? If not, what alternative approach would you suggest? 88 CP22/15 Annex 1 Financial Conduct Authority Calculating redress for non-compliant pension transfer advice

Agreed.

Q30: Do you agree that we should move from a single 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?

Agreed.

Q31: Do you agree that the approach to the spouse's age difference assumption remains appropriate? If not, what alternative approach would you propose?

Q32: Do you agree with our proposal to introduce a 'rebuttable presumption' to ensure that firms make appropriate assumptions about when the consumer would have retired in their defined benefit scheme? If not, what alternative approach would you propose?

Agreed.

Q33: 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?

Agreed.

Q34: 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?

Agreed.

Q35: 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?

Agreed.

Q36: Do you agree with the default early and late retirement factors we have proposed? If not, what alternative approach would you propose?

Agreed.

Q37: Do you agree with our approach to cash enhancement payments? If not, what alternative approach would you propose?

Agreed.

Q38: 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?

Agreed.

Q39: 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?

Agreed.

Q40: Do you agree with our clarification that a 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?

Agreed.

Q41: 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.

For most, the impact of GMP equalisation will be immaterial in the overall redress calculation - therefore we agree that no specific approach needs to be proposed.

Q42: 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?

Agreed, and we would suggest the bank base rate is reasonable for this. With technology today it is not so hard to keep the various indices up to date in the calculator which should help significantly. At least in the short term, most consumers would place funds in some form of saving account so granting interest at bank base rate is in the consumer's favour and the best proxy.

However, we wish to stress that such adjustment calculations should all be based on one benchmark - this paper variously applies the CPI, gilts yields, and Base Rate, thereby increasing the complexity of the proposal unnecessarily.

Q43: 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?

Agreed.

Q44: 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.

Agreed.

Q45: 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 agree that redress should be paid into pension arrangement if possible - bearing in mind the need to ensure the arrangement doesn't create Lifetime Allowance issues and consequential tax charges.

Q46: 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? 90 CP22/15 Annex 1 Financial Conduct Authority Calculating redress for non-compliant pension transfer advice

We agree that the stated factors are the main factors.

Q47: 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?

Agreed.

Q48: 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?

Agreed.

Q49: 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?

Agreed.

Q50: 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 rate to compensate consumers for foregone investment returns? If not, what alternative approach would you propose?

Agreed.

Q51: 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? The calculation report should show a summary of each element of the calculation showing clearly how the end result has been determined. We suggest that a generalised simplified note should be prepared to explain the methodology of the calculation which can then be issued with each case.

Q52: 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?

Agreed, but there is a clear need to include additional comments regarding the tax treatment and the potential need to explain the position to HMRC.

Q53: 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?

Agreed. A standard note should be included with each case which clearly states how to raise a query or make a complaint, with relevant contact details.

Q54: 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?

Agreed.

Q55: 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? 91  
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Agreed.

Q56: 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?

Agreed.

Q57: 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?

Agreed.

Q58: 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?

Agreed.

Q59: 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?

We believe that in such circumstances, the approach should be to calculate the redress on both schemes and offer the consumer the one which gives the higher redress in all cases.

Q60: Do you agree that if the firm cannot demonstrate with evidence which scheme the consumer would have chosen, the calculation should be based on the scheme that provides the higher redress to the consumer?

Agreed.

Q61: 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?

Agreed.

Q62: Do you agree that the calculation methodology for British Steel cases should use the same assumptions as the general approach? If not, what alternative approach would you propose?

Agreed.

Q63: Do you agree with the proposed redress calculation methodology for the British Steel redress scheme? If not, what alternative approach would you propose?

Agreed.

Q64: Do you agree with our proposals for adjusting the redress payment to take account of the consumer's tax position and accumulated interest between the valuation date and payment date? If not, what alternative approach would you propose? 92 CP22/15 Annex 1 Financial Conduct Authority Calculating redress for non-compliant pension transfer advice

Agreed.

Q65: Do you agree with our proposals for issuing redress determinations to consumers? If not, what alternative approach would you propose?

Agreed.

Q66: Do you agree with our proposals for paying redress to consumers? If not, what alternative approach would you propose?

Agreed.

Q67: 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?



No other comments.

Q68: Do you agree that the calculator should significantly reduce or eliminate the need for actuarial input? If not, why not?

No - there should be actuarial input on the design and testing of the calculator and actuarial review of a sample of cases to ensure that results are sensible and to act as a check.

Q69: 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 the calculator should not be issued to consumers. It should be available to third party consultants so that firms can outsource this work should they prefer to do so.

Q70: Do you agree that the use of the calculator should be mandatory? If not, why not?

We agree that the use of the calculator should be mandatory - this will help ensure consistency across firms.

Q71: Is your firm interested in taking part in testing the redress calculator for the proposed British Steel redress scheme?

Q72: Do you have any other proposals on how to make redress calculations for the proposed British Steel redress scheme more consistent?

No other comments.

Q73: Do you have any other comments on the development of the calculator?

The development should have actuarial input and actuarial sign off. Some test cases should be developed to ensure all is working correctly.

Q74: Do you agree with our estimates of the costs and benefits of our proposals?

End.