BRITISH STEEL PENSION SCHEME: FSCS COMPENSATION

Thank you for your letter of 19 November about FSCS’ approach to compensating members of the British Steel Pension Scheme mis-advised by Active Wealth.

I thought it would be helpful to you, in addressing to your questions, to let you have sight of a note we have prepared about these matters in response to concerns raised by members of the British Steel Pension Scheme and their representatives. This is attached.

Turning then to your specific questions, you will see that we have so far decided 14 claims and paid compensation of just over £285 000. Of these 14 claims, 4 resulted in no compensation payment because we determined that the claimant had suffered no loss. 8 claimants received compensation ranging between £4 300 and £50 000. £50 000 is the maximum compensation we can award under current rules. 3 claimants had losses in excess of this amount and so suffered uncompensated losses. Total losses amount to just over £504 000.

There are currently a further 49 claims in the pipeline.

I hope the attached note explains the methodology for quantifying compensation. Although our assumption is that members of the British Steel Pension Scheme should have generally have been advised to transfer into BSPS2, we use the PPF as a comparator for our calculation where that would have been more appropriate in the specific circumstances of a claimant. The methodology for arriving at a calculation of the benefits foregone – whether in the BSPS2 or PPF – is prescribed by the Financial Conduct Authority.

We compare the value of the benefits available under BSPS2 or PPF with the transfer value of the claimant’s current pension fund. This transfer value takes account of any exit fee payable. As you will see from the note, we are reviewing whether any claimants suffered detriment because we used an out-of-date transfer value in quantifying compensation. We shall make up the difference if this turns out to be the case.
Finally, you asked about the provision made in the methodology for fees. As you state, we apply FCA guidance in deducting from the re-retirement discount rate a maximum of 0.75% for continuing charges. I understand we have seen instances of charges in excess of this.

FSCS is also conscious that members of the British Steel Pension Scheme mis-advised by Active Wealth will almost certainly want to seek independent financial advice about the future investment of their retirement savings. We are, therefore, considering including in our compensation provision for a one-off payment for certain advice.

I hope this letter and accompanying note adequately addresses your questions, but we should be happy to provide more information or to meet if you would find that helpful.

Mark Neale
Chief Executive
1 Summary of FSCS's approach

Background to claims against Active Wealth (UK) Limited (the "Firm")

1.1 In late 2017, members of the original British Steel Pension Scheme ("BSPS") were presented with the options of:

a) transferring into the new British Steel pension scheme ("BSPS2");

b) remaining in the existing scheme, BSPS and so ending up in the Pension Protection Fund ("PPF"); or

c) transferring out of the scheme altogether.

1.2 Various members were advised by the Firm to transfer out of BSPS and into private pension arrangements, including into self-invested pension plans ("SIPPs"). In the cases reviewed by FSCS to date, the Firm's advice was unsuitable because the benefits that would have been carried forward into BSPS2 were not matched by the private pension which it recommended. Therefore, FSCS is upholding these compensation claims on the basis that the Firm's advice was negligent; it should have advised the customer to transfer into BSPS2, rather than into a SIPP or other private pension.

Compensation calculation

1.3 The starting point for FSCS's calculation of the compensation payable in relation to a pension transfer claim against the Firm is a comparison between:

a) the notional value of the benefits that would have been available to the customer if they had transferred into BSPS2 or PPF; and

b) the current transfer value of the customer's new pension.

1.4 The Treasury Select Committee indicated, in a paper published in February 2018, that the vast majority of members would have been better off in BSPS2 than the PPF. For calculations completed to date FSCS has used BSPS2 for its comparison calculation. In circumstances where the customer may have been better off in the PPF, FSCS would use this comparator.

1.5 FSCS's calculates compensation in accordance with the detailed Finalised Guidance published by the FCA in October 2017, which sets out how firms should calculate redress for unsuitable defined benefit pension transfers (FG17/9). The FCA's methodology is complex and uses a number of financial
assumptions prepared by PwC. It applies to live firms as well as FSCS and is not limited to British Steel; the same approach is used by FSCS for all defined benefit pension transfer claims made after August 2016¹.

1.6 Overall, FSCS expects to pay a substantial amount of compensation to customers in relation to pension transfer claims against the Firm. However, BSPS members and their representatives have raised concerns about a number of aspects of FSCS’ approach. Set out below is a summary of those aspects of the calculation which customers, or customer representatives, have questioned, together with a statement of FSCS’ current view.

Claims paid to date

1.7 FSCS has to date completed assessments for 14 claims against Active Wealth from members of the British Steel Pension Fund with total compensation paid so far of just over £285,000. Of these 14 claims, 4 resulted in no compensation payment because we determined that the claimant had suffered no loss. 8 claimants received compensation ranging between £4,300 and £50,000. There are currently in the pipeline a further 49 claims from British Steel Pension Fund members against Active Wealth.

1.8 For these claims FSCS can pay compensation of up to a maximum of £50,000 per customer. 3 claimants had losses in excess of this amount and so suffered uncompensated losses. Total losses amount to just over £504,000.

2 Key elements of the calculation

BSPS2

2.1 As set out above, FSCS uses for the purposes of its compensation calculation the notional value of the customer’s pension, had the customer transferred into BSPS2, or in certain circumstances the PPF.

2.2 As set out above FSCS uses the PPF as a comparator in those cases where the customer’s circumstances mean that a comparison with the PPF would have been a more appropriate.

2.3 FSCS has also been asked whether it is able to calculate compensation on the basis of what the customer’s pension benefits would have been, if they had stayed in BSPS (and not transferred into the PPF). BSPS was under-funded and subsequently entered the PPF. Had BSPS members not received transfer advice, they would have ended up in either BSPS2 or the PPF. Because the Firm could not have advised the customer to remain in BSPS, as the scheme had ceased to exist, FSCS cannot complete calculations based on the BSPS

¹ The FCA has indicated that its updated methodology should apply to all claims made after that date.
benefit structure. This is a consequence of the arrangements that were agreed with Tata Steel UK to close down this pension scheme.

Transfer values

2.4 From April 2017 onwards, British Steel increased pension transfer values with the result that the amount paid out of the original scheme into the customer's new pension was substantially larger after April 2017 than it would previously have been. This has an impact on the comparison element of FSCS’s compensation calculation, as outlined above. How significant this is for a particular customer depends on a number of factors, including the customer's age. These transfer values may have resulted in some confusion on the part of customers.

2.5 We do not believe that this has a bearing on FSCS’ approach; we are bound to base our calculations on the actual transfer values paid.

Discount rate

2.6 A pre-retirement discount rate is applied by FSCS as part of its calculation. The pre-retirement discount rate is used to discount the value of the defined benefit pension scheme benefits at retirement, back to the quantification date. It is the rate at which the investments in the customer's personal pension are expected to grow between the quantification date and the retirement date. As might be expected, determination of the discount rate is complex.

2.7 The pre-retirement discount rate applied by FSCS is set by the FCA in its Finalised Guidance and applies to all defined benefit pension transfer claims, not only to British Steel. However, the discount rate can have a substantial impact on the overall compensation figure and, as a result, FSCS has been asked whether or not it is willing to disregard the FCA's discount rate in favour of a rate more advantageous to customers. FSCS has explained that it is not able to set aside FCA's rate, which, as set out above, was set following industry consultation and detailed actuarial work by PwC.

2.8 The discount rate is set by FCA following public consultation and based on actuarial analysis from PwC. FSCS cannot depart from this without good reason.

Methodology for calculating loss

2.9 FCA announced that they would be consulting on a new approach to the calculation methodology for unsuitable defined benefit pension transfers in August 2016.
2.10 Between August 2016 and publication of the finalised guidance in October 2017, FSCS continued to pay claims for compensation, in relation to other defined benefit pension transfer claims, under the old approach. Compensation payments were made to customers on an interim basis and claims recalculated following publication of the finalised FCA guidance.

2.11 The vast majority of these customers were found to have been eligible for significant additional compensation, or were found to have suffered a greater pre-abatement loss, suggesting that the FCA's new methodology has not disadvantaged customers.

Pension charges

2.12 As set out in the FCA's Finalised Guidance, FSCS deducts from the pre-retirement discount rate a maximum of up to 0.75% per year for personal pension charges. In addition, regular adviser charges can be deducted separately. FSCS also takes into account for the purposes of its calculation the exit fees paid by customers in relation to their new pensions (this is particularly relevant where the customer transferred into a SIPP).

2.13 However, FSCS is not currently paying compensation in relation to fees which may be incurred by the customer in obtaining separate advice from an independent financial adviser on what the customer should now do with their pension arrangements. FSCS is also not paying compensation for any legal fees incurred in making a claim for compensation to FSCS. This falls outside the scope of FSCS's compensation. Our claims' policy provides that professional fees, for example legal fees incurred in making a claim for compensation to FSCS, are too remote from the liability of the relevant firm and are not eligible for compensation as a result.

2.14 FSCS does not believe that it would be right to compensate for the legal and other costs involved in bringing claims to FSCS. Our service is free and we are always ready to offer support to customers with prospectively eligible claims. FSCS is, however, prepared to consider offering compensation at a capped level for one-off advice on the re-investment of BSPS members' retirement savings and associated FSCS compensation.

Scheme valuation

2.15 As set out above, FSCS uses for the purposes of its compensation calculation the value of the customer's current pension, which FSCS obtains from the pension provider. In some of the cases FSCS has reviewed to date, the figure for the value of the customer's current pension was provided during the summer, following which the stock market has fallen. As a result, some
customer's current pensions are worth less now than when FSCS carried out its calculation. FSCS has received requests that it recalculate those customers' compensation to take into account the stock market fall.

2.16 FSCS is willing to consider re-running the quantification calculations made to date where the pension transfer valuation used to quantify compensation significantly pre-dated the calculation itself. We have only recently firmed up our compensation approach and started making decisions, so it would be unfair to those claimants who brought their claims promptly and whose valuations are therefore no longer current. We should make clear, however, that we shall not re-run the calculations again in the future.

3 Summary

3.1 FSCS is sympathetic to customers who were members of BSPS and, in some cases, has paid maximum compensation of £50,000 to those customers. However, there are some individuals to whom a smaller amount of compensation is payable. FSCS will continue to engage in discussions with customers and customer representatives regarding its approach to ensure that fair compensation is paid, while still complying with the rules to which FSCS is subject. We should encourage members of the BSPS or their representatives to engage with us direct if they have concerns about how we have approached their claim so we can ensure our approach is appropriate and fair in their circumstances.