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Rt Hon Frank Field MP
Work and Pensions Select Committee
House of Commons
London
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21 December 2017

Dear Mr Field

Re: Defined benefit pension transfer advice

Thank you for your letter of 15 December, which follows my letter to you of 13 December and my oral evidence of the same day. Your letter asks a number of questions regarding the British Steel Pension Scheme (BSPS) and our wider work on defined benefit pension transfers. I will respond to each question in turn.

1. ***Can you please confirm that (a) the 47% suitability was the basis of your statement on Channel 4 News and that (b) the FCA regards this figure as indicative of the national picture?***

During my interview with Channel 4 News on 13 December, I mentioned that our wider work on defined benefit transfers showed less than 50% of advice to transfer was suitable. These comments were made in relation to the initial results of our wider work which we published in October, a point which was not made clear following the editing of the interview for the segment.

The basis of this statement was the 47% suitability that we identified from a review of a sample of 88 client files from 13 firms. The findings from this review, which we published in October, was enough to give us cause for concern and resulted in four firms choosing to stop advising on pension transfers following conversations with us. I referenced this in my previous letter to you of 13 December.

The findings from this sample are not indicative of the national picture. However, our subsequent analysis shows the root cause of many of the issues we have already uncovered are the result of poor business models. In particular, we found that some firms had 'industrialised' their defined benefit transfer business so that they were no longer focused on their clients' individual circumstances and needs.

We are continuing this work and have recently asked 45 additional firms that we know are active in defined benefit transfers for information. Further to this, in 2018 we will be collecting data from all firms who hold the pension transfer permission with the intention of assessing practices across the entire market to build a national picture. We will of course keep the Committee updated as and when we have more to report on this work.

2. ***Has the FCA considered the possibility of suspending all defined benefit transfer advice while reparative action is taken? Have you discussed such action with the Government?***

Under the Pension Schemes Act 1993 members of a defined benefit scheme have a legal right to transfer out of that scheme if they wish. The subsequent Pension Schemes Act 2015 provides that scheme members are legally required to take advice before a transfer can take place. Introducing a blanket ban across the sector could potentially infringe these legal rights. Any changes to legislation are a matter for Parliament.

More generally, and putting aside the legal points I have already mentioned for a moment, if the FCA was to introduce a blanket ban on any of the sectors it regulates this would have to be as a result of considerable evidence of consumer harm and would carry with it the high probability of legal challenge. On defined benefit transfers it is important to note that there are many transfers each year that are suitable based on the individual circumstances and needs of the consumer. Therefore introducing a blanket ban or suspension would impact those cases where a transfer is warranted and in the interest of the consumer.

For these reasons we do not believe a blanket ban or suspension is warranted, nor have we proposed this as a suggestion to the Government.

3. ***Are you confident that your qualification threshold for being authorised to provide defined benefit transfer advice is adequate? Is it time to start from scratch?***

In terms of firms wishing to become authorised by the FCA to carry out the regulated activity of advising on the conversion or transfer of pension benefits, as in any sector, applicants need to meet our Threshold Conditions, one of which is suitability. We have recently published our Approach to Authorisations which explains how we use our authorisations process as a tool to prevent harm from occurring; this is available on our website: www.fca.org.uk/publications/corporate-documents/our-approach-authorisation.

In terms of individuals wishing to act as pension transfer specialists, our rules require that firms ensure that such individuals have appropriate qualifications and are competent as we set out in our Training and Competence Sourcebook (TC). TC can be found on our website: www.handbook.fca.org.uk/handbook/TC.

The rules and guidance contained in TC apply on a continuing basis and include assessing and maintaining competence, supervision and record keeping. More information is available on our website: www.fca.org.uk/firms/training-competence.

In brief, there is a robust process in place that involves passing a number of exams on a range of topics relevant to pensions and other related areas (such as the rules applicable to them from the regulator of defined benefit pensions, The Pensions Regulator (TPR)). The FCA sets the standards for these exams, which are then provided by external exam bodies under the supervision of exam and qualification regulators.

As such, there are already extensive requirements and so we do not think it is time to start from scratch. We do, however, constantly keep our rules and requirements under review and adapt them if we think it is required – including the qualifications we mandate from certain professions.

In June 2017 we consulted (CP17/16) on new rules on advising on defined benefit pension transfers and asked a discussion question on the qualification requirements for pension transfer specialists to inform our policy thinking. We are currently considering the responses, as well as taking account of the findings from the work I have already mentioned, before consulting on any proposed changes in the New Year. A copy of the full consultation paper can be found on our website: www.fca.org.uk/publication/consultation/cp17-16.pdf.

4. ***Many people take advice on defined benefit transfers having been referred by an 'introducer'. Do introducers play a valid role in the process or are they wholly parasitical?***

The law does not currently prohibit firms acting as introducers provided they do not stray into providing services for which they would require FCA authorisation, as with any non-regulated firm. Within the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

(RAO) there is a specific exemption for introducers (Article 33). The main condition is the introducer must introduce the consumer to an FCA authorised firm that will provide them with independent financial advice. If the firm does not comply with that exemption they will be in breach of the law and will be carrying out unauthorised business.

The FCA rigourously enforces our perimeter and has a dedicated team to do so. We have a range of powers to take action in these situations including civil court remedies to stop a firm carrying out its activities, freezing assets, insolvency proceedings and, in the most serious cases, criminal prosecution. To be absolutely clear, we regard any unauthorised business in relation to pension transfer activity as exceptionally serious and a high priority.

As you would expect, I will not be able to offer a comment on whether introducers are 'wholly parasitical'; however, we have previously published two alerts that highlight some of our concerns over the inappropriate influence some introducers may have over authorised firms. These alerts remind authorised firms of our expectations and points to be aware of. Again, our recent meetings in South Wales and Doncaster (and other activities) have reiterated these messages.

One final point I will make regarding introducers is that the FCA does not set its own remit, this is set by Parliament. As such, any changes to our remit would be a matter for Parliament.

5. ***Will you commit to making improvements to the FCA Register, making it clearer when a company is suspended from certain activity?***

This is a point that was raised during the evidence session on 13 December and I said at the time we would take this away. We agree with the Committee that this is an important issue and the feedback that was given during evidence is something we need to carefully consider. We are currently reviewing the Register including looking at some short term changes which would make it easier to use. We will update the Committee on this work when we are in a position to do so.

In the meantime, and in the context of those BSPS members who are looking for regulated advisers, I would recommend contacting The Pensions Advisory Service (TPAS) using the dedicated BSPS helpline – 020 7932 9522. TPAS will be able to guide BSPS members to useful tools that will help them find an adviser.

6. ***Given the evident consumer protection benefits, and that it would act as a deterrent to self-interested unacceptable advice, why do you not publicise suspensions from your Register?***

The FCA can, and has, publicised suspensions from our Register and we will continue to do so where it is appropriate based on a consideration of each individual circumstance.

Turning specifically to voluntary requirements (VREQs), as you have said in your subsequent question, these are a fast-acting measure that can stop harm (or possible harm) quickly and effectively. VREQs have the same effect as if the FCA imposed the measure on a firm (called an Own Initiative Requirement or OIREQ) but it takes less time as an OIREQ has behind it a legal process consisting of checks and balances to safeguard against the possibility of the FCA ever potentially abusing its powers. It is important to note that there are some who take the view that VREQs offer fast results but at the expense of due process. This is something we do not agree with as the option of an OIREQ is always open to us where required and is an option we do use.

The nature of VREQs are such that firms voluntarily offer to take certain action. In the context of the BSPS, this has been to restrict their permission to provide pension transfer advice. The offering of a VREQ from a firm usually follows conversations with the FCA's supervision teams.

We do not always publicise VREQs for a number of reasons, and one important factor is that publicising them runs the risk firms stop offering VREQs as they believe it will act as a public censure. This could limit the use of what is a very effective tool that is quick to implement and can stop harm, or possible harm.

7. ***You currently rely on voluntary suspensions for fast action. Would legislative change to enable you to suspend firms pending further investigation better enable you to carry out your regulatory functions?***

The FCA has the power to suspend firms' permissions under section 55L of the Financial Services and Markets Act 2000. This power allows us to impose requirements on a firm and to vary, or suspend, its permissions in prescribed circumstances such as to advance one or more of the FCA's operational objectives.

In order to assess whether there are grounds to suspend a firm's activities, we need to make enquiries and gather the relevant facts in order to understand the situation more and the potential harm they may be causing. To suspend a firm from trading without any initial investigation of the facts would be contrary to due process and public law. It could also have considerable consequences for small businesses that may later be found to have been doing nothing wrong.

Where we propose to take action following the initial assessment and information gathering, the firm will first have the option to offer a VREQ. As I have already mentioned, this can achieve a good outcome more quickly that better serves our operational objectives. If, however, a firm resists this approach then we can, and will, exercise our more formal powers where appropriate.

Our intervention powers may be used in conjunction with other work by the FCA with the firm to rectify any concerns we may have. Our Enforcement Guide is available on our website and sets out more detail about our powers and how we use them: www.fca.org.uk/publication/corporate/enforcement-information-guide.pdf.

8. ***What guidance and reassurance will you be providing to such members, including how they will be compensated if they have been badly advised?***

During the meeting in Port Talbot last week we, along with TPR and TPAS, spoke with BSPS members and explained that if they are concerned about the suitability of the advice they received they should complain. In the first instance this would be to the firm that provided the advice, and should they remain dissatisfied with the response they can refer this to the Financial Ombudsman Service.

In relation to the fees charged for advice or otherwise, if a consumer believes the fee charged was in some way inappropriate or not clearly explained at the outset then they should set this out in their complaint. As for complaints about the suitability of advice, the firm is obliged to consider this carefully and offer redress where appropriate. Again, consumers can refer their complaint to the Financial Ombudsman Service if they remain dissatisfied following the firm's response. More information on the Financial Ombudsman Service is available on its website: www.financial-ombudsman.org.uk.

If any of the firms concerned are unable to meet their liabilities, including to pay redress, then consumers may be eligible to receive compensation from the Financial Services Compensation Scheme. More information on the FSCS is available on its website: www.fscs.org.uk.

We have also published on our website information for BSPS members. This is currently available on our homepage. In addition TPR, TPAS and the FCA are sending a joint letter out to around 11,000 BSPS members who have asked for a transfer value quote – including those

that have submitted a request to transfer out, but where the trustee has not yet completed the transfer. As TPR are the regulator for the scheme and the administrators, they are printing and distributing the letter as they are the only body with access to the contact information for the BSPS members.

9. Have you considered providing to the pension scheme trustees, on a confidential basis, the names of firms under investigation so that they can be removed from any list given to members seeking advice?

Sharing information with the BSPS trustees would be considered in the same way as information shared publicly; we do not have a specific disclosure gateway to them. In order to protect the outcome of any investigation that may be ongoing we do not usually make public information which says whether we are, or are not, investigating a firm or individual. If this information were in the public domain there is an inherent risk it could jeapordise our action – for example, a firm or individual could destroy information pertinent to our investigation.

The FCA has been sharing confidential information with TPR as we have a disclosure gateway to aid this process. However, this would not ordinarily include information about ongoing investigations as although a firm may be under investigation that is not to say we have reached a conclusion on whether it has acted against our rules. On that basis, providing its name to TPR so that it can be excluded from any lists provided to BSPS members could unfairly impact the firm's business.

As mentioned previously, where we have taken action against a firm in relation to BSPS we have provided TPR with the names of the firms and will continue to do so.

10. Can you confirm your experiences in Port Talbot will inform your decision of whether to relax your proposed certification regime?

The Senior Managers & Certification Regime (SM&CR) was originally introduced for deposit takers in March 2016. This followed a number of recommendations from the Parliamentary Commission for Banking Standards aimed at improving professional standards, accountability and culture within the UK banking industry. In 2016, as part of the Bank of England and Financial Services Act, Parliament gave the FCA a duty to extend SM&CR to the majority of the other firms the FCA regulates. This includes insurers, asset managers, consumer credit firms and investment advisers.

During summer 2017 we published a consultation setting out how, in line with this legislation, we intend to extend the SM&CR. As part of this, we proposed that any individual undertaking a Certification Function, including customer-facing investment advisers, would need to be certified as fit-and-proper by their firm at least annually. We also proposed that these individuals would not appear on our Financial Services Register reflecting that firms, not the FCA, would be responsible for certifying these individuals as fit-and-proper to undertake their role.

We received substantial feedback to our suggestion that certified individuals should not appear on our Register. A number of these respondents expressed concern that this proposal could inhibit consumers ability to identify an adviser and ensure they are appropriately qualified. We are currently reviewing all feedback to this consultation, including the input received around the Register. We have listened to these concerns and are considering this feedback, as well as the experiences in Port Talbot, as we work toward determining the right approach to extending the SM&CR.

In closing, I want to thank you again for your letter. I hope the Committee finds my answers useful to its work. In particular my reply shows the crossover to areas within the remit of other organisations, specifically TPR. As per my previous letter, any further questions on those areas that fall within the TPR's remit may be better addressed to TPR.

Yours sincerely

Megan Butler

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