HOUSE OF COMMONS

Public Accounts Committee

Oral evidence: British Steel Pension Scheme, HC 1216

Wednesday 27 April 2022

Ordered by the House of Commons to be published on 27 April 2022.

Watch the meeting

Members present: Sir Geoffrey Clifton-Brown (Chair); Peter Grant; Kate Green; Sarah Olney; and Nick Smith.

Gareth Davies, Comptroller and Auditor General, and Marius Gallaher, Alternate Treasury Officer of Accounts, HM Treasury, were in attendance.

Questions 1 to 111

Witnesses

I: Tim Fassam, Director of Government Relations & Policy, PIMFA; Philippa Hann, Managing Director Financial Litigation, Clarke Willmott; and Rich Caddy, former member of BSPS Pension Scheme

II: Nikhil Rathi, Chief Executive, Financial Conduct Authority; Sheldon Mills, Executive Director of Consumers and Competition, Financial Conduct Authority; Nausicaa Delfas: Interim Chief Executive and Chief Ombudsman, Financial Ombudsman Service; and Caroline Rainbird, Chief Executive, Financial Services Compensation Scheme.

Report by the Comptroller and Auditor General

Investigation into the British Steel Pension Scheme (HC 1145)

Examination of witnesses

Witnesses: Rich Caddy, Tim Fassam, and Philippa Hann.

Chair: I extend to everyone a very warm welcome to the Public Accounts Committee on Wednesday 27 April. We will be looking at the British Steel pension scheme scandal—a bit of alliteration there. The pension scheme was set up to support steelworkers but, when the sponsoring employer hit financial difficulties, the scheme was restructured and many members decided to transfer out after receiving advice that this was, at the time, in their best interest. However, that was not always the right advice and a number of members have lost out financially.

Today we will be asking our witnesses what went wrong and what can be done to make sure members of similar schemes do not lose out in future. We have two panels in this session. On the first panel we will hear from financial advice associations, law firms and a former member of the pension scheme who is talking to us remotely. After that, we will take evidence from the national financial watchdogs.

We now come to our first panel. Before I introduce them, I offer a warm welcome to our PAC friends from the Maldives who are with us today, following our visit to their country last November.

I warmly welcome the first panel and thank them for spending time with us. We have, on my right, Tim Fassam, the director of Government relations and policy at the Personal Investment Management and Financial Advice Association. On my left we have Philippa Hann, the managing director of financial litigation at Clarke Willmott. Finally, we have Richard Caddy, a former member of the British Steel pension scheme. I gather, Richard, that you have given huge service representing your fellow pensioners on the scheme up and down the country, so thank you. I am sure all that work is voluntary and unpaid, so a big thank you to you on their behalf.

Q1 **Nick Smith:** I thank the NAO for this shocking Report. It is great to see the NAO supporting MPs to do our job.

In autumn 2017, I first heard the concerns of hundreds of pensioners in Ebbw Vale in my constituency. Soon after, the first case came in of a pension shark's bad behaviour, so I knew trouble was brewing. My constituent told me how his £0.5 million pension pot, after 40 years' service, had been put into risky offshore investments with high management fees, against his wishes.

After discovering the swindle that Christmas, my constituent and his wife broke down in tears. They thought this pension mis-selling had spoiled the rest of their lives. He wants their financial adviser—the parasite—put behind bars, and they want to know why the system let them down, so I thank the panel for coming here this afternoon.

I ask all the members of the panel: from each of your perspectives, what went wrong with the British Steel pension scheme?

Philippa Hann: I have spoken about this a number of times to a number of people, and I have previously said it was a perfect storm, but I remind myself that this is not the first pension transfer scandal. We had the pension transfer review back in the late 1990s so, although a particular set of circumstances led to this, it should not have been a surprise to everybody.

Effectively, we had 44,000 financially unsophisticated people who were frightened about the future of their pensions. They were forced into a position of having to make a decision without sufficient information and in an environment of fear. They had to make that decision within a very short period of time—their time-to-choose period was from September to

December 2017—and they were required to get advice from a very small number of financial advisers who had permission to provide that advice.

The steelworkers were often from areas of the country that are not particularly rich, and there were financial advisers in those areas who did not necessarily have clients of significant worth. This was an opportunity that a number of financial advisers could not resist, and they stepped into that space and saw an opportunity to make a lot of money.

At that time, contingent charging was allowed and it was an easy way to persuade steelworkers who did not understand what they were giving up—who did not understand the difference between having a lump sum today and a lifetime of income going forward. They were earning perhaps £35,000 a year, so the prospect of having £400,000 felt like winning the lottery, when in fact they would have to have perhaps double-digit returns from their pension to receive the same amount of benefit had they transferred out.

You had a scenario where people who were financially unsophisticated—I do not mean that as any criticism, as I think most of the population of the UK is probably financially unsophisticated, particularly when it comes to pensions—and very afraid of what was going to happen. In that position, it was very easy to manipulate and take advantage of them, and that is what a number of financial advisers did.

Tim Fassam: I just want to clarify that PIMFA is the trade association for the financial advice industry, but the majority of advisers who advised on British Steel were not PIMFA members, so my comments are representing the wider financial adviser community.

Our members are absolutely clear that far too many members of the British Steel pension scheme were let down by their financial adviser. There was a legal requirement for them to take advice before transferring out of a DB scheme. That was designed to protect them, and that protection was not successful in many cases, and these members should have swift resolution and compensation.

A number were targeted by deliberate fraudsters whose sole aim was to profit from the members' vulnerability, and we are very clear that investment and pension fraud are a scourge on our industry. We work closely with the regulator and the Treasury to prevent it, including recently working with them on the financial promotions regime and the Online Safety Bill, but there is much more to do.

Other members clearly received advice that was of insufficient quality. They did not have the information they needed to make what is an incredibly complex decision at the best of times. It was made far harder by the specifics of the British Steel case, and our members are clear that these British Steel pension scheme members deserved better.

While we are very clear that the advisers responsible must take ownership of the advice that they gave, the problem was made worse by unclear and seemingly contradictory priorities and regulation from the Treasury, the FCA and the Pensions Regulator. As an example, the FCA clarified its regulatory expectations on defined-benefit transfers in 2020 and 2021, well after this period and the introduction of pension freedoms. Given how difficult this is for advisers to navigate, I can only sympathise with an ordinary member.

The Treasury had introduced and promoted pension freedoms and the belief that individuals knew best what to do with their own money, and that inadvertently liberalised defined-benefit transfers to enable those savers to benefit from that flexibility, albeit with the advice requirement over £30,000. The FCA appears to not believe that accessing this flexibility is a sufficient reason to transfer. It has made clear that it prioritises guaranteed income, and it highlights a DB scheme being the only pension or transferring specifically to access flexibility as signs of unsuitable advice, yet those standards do not apply to defined contribution pensions.

When pushed, it appears that the primary concern is that defined-benefit transfer values often represent a poor deal for the member, leading to an impression in the industry that the FCA believes that transfers should be recommended only if a member is very wealthy or has reduced life expectancy. It is slightly concerning to see that the FCA appears to believe that a transfer value that is overseen by another Government regulator, the Pensions Regulator, represents a major risk to consumers. That is highlighted by the difference in transfer values in the equivalent annuity rate, and the regulation that governs transfer values is minimal. It is mainly guidance, and it has no requirement—

Chair: Can I ask you to keep the answer relatively short? We have a lot of stuff to get through.

Tim Fassam: Apologies. The transfer value regulations do not include any requirement to assess whether it is a good deal for the individual member, creating a situation where advisers are largely expected to charge members and talk them out of a decision that they want to make, with a disagreement between the FCA and the Treasury on the philosophical aims, and a regulated transfer value that they believe is poor value.

Q2 **Chair:** A very helpful introduction, thank you. Rich Caddy, would you like to give us your view on Mr Smith's question?

Rich Caddy: Good afternoon, everybody. Basically, for us it was just like a train crash waiting to happen, with too many people all at the same time in fear of what was going on. Basically, they were going to see advisers and being spun a load of lies in many cases, from reports I have seen. They were taking those back to the workplace, and they were going around like Chinese whispers.

The key points were: you can transfer your pension and you can retire early without the penalties that the scheme used to impose, and you can pass on the fund inheritance to your family without being taxed on it. They were basically spun a load of lies that spread like wildfire throughout the works. It all looked extremely attractive, considering what was going on with the scheme at the time and what was going on with Tata just wanting to offload the scheme. It turned into a really big car crash for everybody.

Q3 **Chair:** Ms Hann, can you clarify something you said about the charging regime and whether it may have skewed financial advisers' advice? Could you explain what it was and whether the regulator has banned that charging regime quickly enough?

Philippa Hann: Yes, absolutely. My firm acts for over 1,000 steelworkers who were transferred out of British Steel against about 123 defendants. In each case, the financial adviser, when advising on the merits or not of transferring out of the British Steel scheme, did so on what is called a contingent basis.

In those circumstances, the adviser would be paid only if they advised the client to transfer and the client did indeed transfer. The effect of that was that the steelworker did not have to find the money from their own pockets initially; it would come out of their transfer value, so they would never have to pay that from their current account or savings, for example.
So it felt like an easy way—

Q4 **Chair:** That has now been changed, hasn't it? ***Philippa Hann:*** That has now been changed, yes.

Q5 **Chair:** The financial advisers now get paid whether they advise somebody to transfer out or not, but did the regulator change it quick enough?

Philippa Hann: To be fair to the FCA, they did change it fairly swiftly, so I do not have any criticisms in relation to that action.

Q6 **Nick Smith:** Mr Caddy, were members of the scheme aware of the risks of transferring out of their defined-benefit scheme?

Rich Caddy: No. I would say that most members viewed there being more of a risk from remaining in the scheme. Obviously, there was uncertainty around the scheme itself—we were unsure if BSPS 2 was going ahead—and most members had been told that if they went into the PPF, they would see a 10% reduction and no longer be able to retire until they were 65. That is

quite hard for a steelworker to take when they have worked 12-hour shifts for many years and looked to early retirement.

Basically, it was all crazy and too much for us to take. They were not aware of the risks of running out of money. I have given an example in my written submission of one member who was told that his pot was so big, he would never run out of money by taking £24,000 a year, but, only a year later, he was told that he needed to drop that by 30% or risk running out of money within the next 10 years. That is what we are facing at the moment, and still not many members are aware of the current situation.

Q7 **Nick Smith:** What impact has all this had on the members of the British Steel pension scheme that you are familiar with?

Rich Caddy: Sleepless nights and not being sure which way to go. I would say that a high percentage are still quite blind to the risk going forward—they are not going to see it for a few years. That is one of my biggest fears. Luckily, we have seen that the FCA have proposed relaxing the rules on the amount of time that you have to raise a complaint—that has been quite a big one for us—but a lot of people are heading for a lot of issues. We are not seeing it at the moment—we have had a good run in the markets—but it is waiting to happen.

Q8 **Nick Smith:** Ms Hann, what impact has this issue had?

Philippa Hann: The impact has been absolutely huge. I have spoken to all of my clients, and I have had grown men cry because of the fear that their retirement will not be what they dreamt it would be. As was mentioned earlier, many of these people will come from areas of the country where there is quite significant social deprivation, and where we are creating an environment where those grandparents cannot take their grandchildren out for dinner or to buy ice creams; there is knock-on effect rippling across that community, and not only for the steelworkers.

Some of my steelworkers are suffering from mental health difficulties. This has a huge impact on their lives, on their ability to retire, on their ability to assist their children, and on their ability to sleep at night and to make decisions going forward. These are people who are having to engage with professionals who they should not have to engage with, because they should have remained in a gold-plated pension. These are people who are having to check what is happening with the markets regularly and losing sleep over it, and who are frightened to spend money because they have only a certain amount left to them. I cannot overemphasise to you what a huge impact this has on the people affected by this.

Q9 **Nick Smith:** Mr Fassam, you have given us some reasons already, but why was there such a high rate of unsuitable advice?

Tim Fassam: I think there are a range of answers to that. A portion of the advice that was given was exploitative and was aimed at profiting from people's vulnerability, as we said. It was very unclear at the time what the regulatory expectations on financial advisers were in that scenario. These individuals had been put in an impossible position that they really should

never have been put in, and advisers were trying to provide advice on an incredibly complex set of issues. That said, the vast majority of members should have expected better from the advice they got, given how important it was for the rest of their lives and the decisions that were made. But providing high-quality advice was incredibly challenging because of the lack of clarity over what the desired outcome from this policy was.

Q10 **Nick Smith:** So why have so many firms left the DB market since?

Tim Fassam: I think there are two reasons. First, the FCA changed its regulatory assumption that advisers would be neutral to a position whereby they should assume that it was not in a member's interest to transfer out. This did not particularly change the advice that was given, because they are still operating under the same advice permissions, but it highlights, particularly with the changes that Philippa set out for contingent charging, that they would predominantly be charging customers to talk them out of doing something that, on the face of it, they wanted to do. That was quite an unattractive thing to offer.

Secondly, it is very difficult to get professional indemnity insurance to cover you for defined-benefit transfer advice. In my experience—I worked in the insurance industry before the industry I am in now—insurers are generally happy to cover a high risk; they just charge a high price for it. They do not like covering an unpriceable risk that they feel is unpredictable and potentially irrational, and they do not believe that they can accurately predict the regulatory approach to DB transfers, so a scenario in which they are likely to upset the client by charging them for not doing what they want to do—plus being uninsured—makes this a very challenging area to offer services in. In time, that may mean that people wanting a DB transfer are more vulnerable, because the fraudsters are the ones who are left operating in this market.

Q11 **Nick Smith:** To pursue that line a bit further, only one firm has been fined so far and there have been no convictions. Do you think the bad actors in your industry have got away with it?

Tim Fassam: I think further action is needed on a whole host of issues around bad actors within our sector. It is something that we have been very clear about with the regulator, and we are actively working with them to manage that poor behaviour and the fraud that occurs in our industry's name.

Q12 **Nick Smith:** Ms Hann, what do you think about the speed of the FCA's response when these problems first occurred?

Philippa Hann: Unfortunately, I think it was woeful—I really do. I know the FCA came down to Port Talbot. They did not head north, where the transfers had been happening since at least 2016. There was a "Dear CEO" letter sent out and, as I understand it, some presentations were given. But looking back, it feels like there was simply a tick-box exercise, whereby there was a failure to really understand what was going on and to monitor what was

happening. Simply to send a letter, tick that box, give a presentation and allow things to continue was an abject failure of the FCA, in my opinion.

I will give you an example. In one of the firms that gave up voluntarily their DB transfer permissions—there were a number of those where the FCA came down to south Wales—that appears to have been it, in terms of the FCA's involvement with that particular firm. But I have a number of clients who were originally advised by that firm, and the FCA was well aware that they were being given bad advice to transfer out of this DB scheme. Once they had given up their DB transfer permissions, no further action was taken. That firm simply sent those clients on to another rogue firm that continued to transfer those clients out in any event.

So nothing was done to actually protect the people who had received the bad advice. In fact, they ended up in a worse position, because they were charged twice what they were previously going to pay. That fee was shared with the original adviser, and the clients ended up in a position where they were transferred back and the original adviser took the benefit.

I should add to my previous answer on the fees that were paid on the transfer. The second element is that when a client transfers out, the financial adviser will charge that client an ongoing fee for the rest of the client's life. It may be 0.5%, 1% or more. In doing nothing, the FCA failed to protect those clients. In relation to each of those advisers where they voluntarily gave up their DB transfer permission as a result of the FCA's action, nothing was done to preserve their PI insurance. At that time, those financial advice firms were covered for the advice that they were giving in relation to these DB transfers.

Let us not forget that the capacity for damage when somebody is transferring out of a DB scheme is huge. It is catastrophic for the person who is being transferred out. This is not advice to invest in a slightly different risk profile of investment. These are catastrophic losses that people are suffering. This was a very, very serious matter that came to the FCA's attention in no small way, and they failed to take further steps at that time, as soon as the insurance year ended, for those financial firms that had professional indemnity advice that would cover them for the advice they gave. The insurer—I have no doubt—was counting down the moments until midnight, when they could exclude liability for any advice relating to this advice.

To explain further, most PI insurance policies are based on a claims-made basis. It is the insurance policy in the year in which the claim is made that responds to that claim. As soon as that insurance year is over, if the insurer at that point removes cover for that particular type of advice, there is no insurance cover in place. That is exactly what has happened in many, many of the cases we are dealing with today.

Q13 **Chair:** On the type of phoenix scheme you describe, where one person gives advice and then, in order to avoid their responsibilities, transfers it to

another firm, the regulator could at least name and sham some of these people. Do you think they should have done that at the very least?

Philippa Hann: Yes, I do. I think they could have required the adviser to write to their clients. In fact, we have seen the letters from these advisers, saying, "We are voluntarily giving up our pension transfer permission, but there is no issue with the advice." It is simply not true. Further steps ought to have been taken at that stage. It displays to me a naivety as to the steps that people will take in order to make money and to protect themselves. It seems to me that throughout this period there has been a naivety on the part of the FCA in not understanding the extent to which people will go to protect themselves. I am talking about the advice firms here.

Q14 **Chair:** I do not want to prolong this line of questioning, but it is about more than just making money, is it not? They may well have transferred them to another adviser to avoid their liabilities in having to pay compensation.

Philippa Hann: In these circumstances it was because they were engaged with the FCA, so they simply passed it on. They had given up their transfer permission so they were not able, under the regulatory structure, to give advice. There have been a number of occasions on which firms have set up financial advice arms either specifically to deal with the transfers, presumably because they knew it was risky, or to phoenix. Those are additional problems that have occurred in these circumstances.

Q15 **Nick Smith:** Despite this financial disaster zone for steelworkers, Mr Caddy, just 25% of British Steel pension scheme members have gone through the compensation process so far. Do you think the system works?

Rich Caddy: To be fair, Nick, I have tried to deal with a lot of these complaints myself. Philippa has taken on the rest at Clarke Willmott. It is difficult and I still get a lot of members coming to me on a daily basis asking, "Where do I start? How do I know whether my advice was correct?" They are extremely difficult circumstances.

Nick Smith: Thank you very much. Ms Hann, do you want to say any more about that?

Philippa Hann: Part of the problem is the huge amounts of delay. You have three issues: you have the actions of the adviser who is being complained about—we have seen plenty of behaviour that displays a distinct lack of integrity on the part of those advisers and that certainly would not fall into the category of treating customers fairly—you have the complexity of the complaint itself; and you have the delays on the part of the Financial Ombudsman Service.

There are extraordinary delays—years'-worth of delays—in pursuing and getting justice. That is devastating for the steelworkers involved. I have to say, all credit to the FSCS, which has taken the baton, engaged with us and with the steelworker community in an extraordinary way, and worked very hard to ensure that the process is very straightforward. But I am afraid the delays on the part of the Financial Ombudsman Service are significant.

Q16 **Nick Smith:** Mr Fassam, recently, as the topic of redress has been in the newspapers these last few days, you have been quoted as saying that the FCA's estimates for redress are "wildly optimistic". Your assessment of the ballpark figure that is likely to be paid out in compensation is unclear to me. Who do you think should stump up: the industry or the Treasury?

Tim Fassam: We need a solution that ensures that all parties that have played a role in causing the difficulties and, as you say, a completely unacceptable situation for British Steel pensioners are contributing in a meaningful way. We have to look across the piece at where the challenges have been, including at the Pensions Regulator, DWP, the Treasury and the FCA. Where there has been egregious behaviour by a financial adviser, that advisory firm should pay the compensation. If the firm is out of business, processes are in place to deal with that, via the FSCS.

We think there certainly is a case to consider in respect of whether there should be a broader, Treasury-run compensation framework, along the lines of the one they introduced for LCF. The principle then was that there was a view that there was a regulatory failure as well as a failure of behaviour, and there were unacceptable limits on the compensation available to some of those affected, so a Government-run compensation scheme was appropriate for those individuals who did not fit neatly into the existing compensation framework.

Q17 **Nick Smith:** Thank you. Ms Hann, do you have any remarks on the proposed redress scheme?

Philippa Hann: Yes. I agree that it is wildly optimistic. I think there are significant issues with the insurance position in the industry, and that certainly needs a fine-tooth comb going through it. I am concerned that most of those firms will fall insolvent and the weight of the compensation will fall on to the FSCS.

It is worth adding that there are significant differences for those who sought compensation at an early stage, who ought to be compensated in addition and should not be excluded from the redress scheme. You may or may not be aware that Mr Al Rush, who has been very forthright in pursuing compensation on behalf of the steelworkers, and I met with Mr Andrew Bailey some time ago and asked for a communication to be sent out to steelworkers. About a year or two later, the FCA sent a letter to all the steelworkers advising them that they may have been mis-sold and they ought to consider seeking redress. That was in June 2020. Those steelworkers who took steps at that time have effectively been penalised, because they will have received lower sums in compensation.

There are effectively three types of person who may have been caught up in this: those who sought compensation very early on, who were subject to a £50,000 cap from the FSCS and who have suffered the worst consequences; the second cohort of steelworkers who sought redress through the FSCS, because frankly none of these advisers have insurance, and benefited from an £85,000 cap from the FSCS, which changed for firms

that went into default from 1 April 2019; and a third cohort of steelworkers who have already sought redress, where the changes to the CPI measure were brought in from 1 January 2020.

To illustrate the difference, the figures for those who are receiving compensation from the FSCS now, compared with the people in that first cohort of steelworkers who received compensation, have more or less doubled. Imagine that you are a steelworker who has been through this issue. You receive a letter from the regulator saying that you should take action, you respond to that and you take action, and you have effectively been penalised. You are working shoulder to shoulder with another steelworker who took steps, simply through a twist of fate, at a slightly different time, and they have received double the compensation that you have received. It simply is not just and it is not fair, and it needs to be dealt with.

Q18 **Nick Smith:** Thank you, Ms Hann. Special mention must be made of Al Rush, who has been a fantastic campaigner on this over these recent years—thumbs up, Al, if you are watching. Rich Caddy, you should have the final word on this first session. How do you think the redress scheme will work for your comrade steelworkers?

Rich Caddy: It is time consuming again. We are already five years in and maybe it will be another two years before claims start getting paid out. Some people might never see that. I think we need swifter action on this now. It needs pushing along faster. We need more resource at the FOS to get things settled there. Where I see issues, I am still encouraging members to raise complaints now rather than waiting. Yes, things need to happen faster, Nick. We have waited long enough for this. Something needs doing now.

Q19 **Chair:** Can I come back to you, Ms Hann? The differences in the amounts that you were talking about is largely dealt with in paragraph 3.17 on page 41 of the report, but I am not clear on two things. Can the people who had lower compensation amounts earlier on the scheme—say the £50,000—go back to the ombudsman or, as a result of the compensation, is their case closed? That is my first point; you are nodding, so the answer to that is obviously no, they can't go back. Given that very low numbers—only 25%—of people sought advice and there are an awful lot of people out there who never sought advice, could somebody who is worried about this apply now or is there a time limit by which they must have applied?

Philippa Hann: Thank you for that question. Although the limitation of six years would not ordinarily apply under the proposed terms redress scheme, there will be those who fall outside of that redress scheme, or their six-year period will expire before the redress scheme comes into play. That is the six-year period from, effectively, the date that they transferred and must take steps.

Q20 **Chair:** Is that reasonable or do you think it should be extended?

Philippa Hann: Absolutely, in those circumstances, it ought to be extended but, to be fair to the FCA, they are suggesting that within their redress scheme.

Q21 **Chair:** And they are consulting on that at the moment?

Philippa Hann: Yes.

Q22 **Chair:** To go back to some of your earlier remarks, to come up with a redress scheme, the FCA has to take evidence widely to be able to do that—it is part of the remit. I am surprised to hear you say that they visited only south Wales and never visited any of the presumably large numbers of pension scheme pensioners from plants up in the north. It seems to me that they have not done their job very thoroughly in gathering evidence.

Philippa Hann: When I mentioned that, I was talking about during the time-to-choose period in 2017. To my knowledge, the FCA visited only south Wales and did not visit the north, where there are a significant number of steelworkers who were also wrongly transferred out from the British Steel pension scheme.

Q23 **Peter Grant:** Ms Hann, I had a look at the *Hansard* record of when the pension scheme was going through Parliament in 2014-15. There are loads of mentions by Ministers and others of the Bill giving a guaranteed right to independent financial guidance for anybody who intended to transfer out of a defined-benefit scheme. Is it independent advice if the person giving the advice has a vested interest in giving one type of advice? Is that the independent advice that people were guaranteed?

Philippa Hann: I always believe you are entitled to go to a professional, and that professional ought to give you impartial advice. The regulator's rules, even at the time, were very clear about treating customers fairly and looking at conflicts of interest. But you are absolutely right that in these circumstances, 369 advice firms tucked into this opportunity to make a significant amount of money, not only from the cost of the advice to transfer, but from the ongoing advice for the rest of the steelworker's life.

I would add that, as the NAO Report set outs, the FCA looked in 2016 at the quality of advice in relation to pension transfers and identified that, even at that point, there was a significantly higher proportion of bad advice in relation to pension transfers even prior to the BSPS scandal than there was in relation to other types of advice. That ought to have set off red flags within the regulator itself, which ought to have led to a much closer monitoring of those circumstances.

Q24 **Peter Grant:** Am I right in thinking that a solicitor would be professionally required to declare a conflict of interest and decline to give

advice if they knew that their advice would have a significant financial impact on them?

Philippa Hann: Financial advisers are required to declare conflicts of interest in the same way that any fiduciary would be. I suppose the difference between solicitors and financial advisers is that when solicitors are acting for clients on a contingent basis, the goal is ordinarily a common one, to the benefit of both parties.

Q25 **Peter Grant:** In one of your answers to Nick Smith, you described a situation in which an adviser decides to pull out of the market but hands all their customers over to somebody else who can continue to fleece them—for want of a better word.

Another thing I have seen in other investment mis-selling practices is that if somebody comes under investigation by the Financial Conduct Authority, they surrender their authorisation to carry out that regulated activity, but they then take up—or already have taken up—registration for a different regulated activity. In those circumstances, does the question mark over their conduct follow them into the new regulated activity, or are they able to start with a clean page, a clean record, every time they switch to a different part of the regulation?

Philippa Hann: That is perhaps a question for Mr Rathi, but one would expect that to be the case. The issue here, it seems to me, is that they either, in these particularly roguish firms, had what I would describe as a lifeboat firm where they would buy in a firm and put all their business through that firm that was already regulated, or they would seek to phoenix.

We have seen phoenixing, although I know the FCA is taking steps in relation to phoenixing. The examples that we have seen where firms have sought to get around the regulatory oversight are quite incredible, which is why I say that there was a certain naivety around accepting simply what the adviser was telling the FCA, "We have got a new compliance consultant; it's all fine; can we have our permissions back, please? We are paying commissions to third parties", and then using those commissions as part of their Gabriel reports to suggest that they have sufficient capital adequacy when they had lost their insurance position.

Q26 **Peter Grant:** There are often questions—I will probably ask questions of the FCA later—about when they publish details of firms that have come under investigation and when they don't. Clearly, it is in the consumer's interest, if somebody's conduct is dubious, to be told that. It may not be in the interest of the providers generally if it creates instability. Do you think the Financial Conduct Authority has got the balance right in warning unsophisticated, innocent members of the public that somebody might not be trustworthy, or are they too keen to protect the market, possibly leaving customers at risk?

Philippa Hann: I do not believe that they have the balance correct. We have seen from the Report that there have been fines totalling £1.3 million, but, as I understand it, that is one fine against one individual, and another 30 companies are under investigation five years later. The problem is that that gives a veneer of respectability to advisers that none of us would want

advising us, or advising anybody. In circumstances where the FCA is not moving swiftly enough, one of the issues around only 25% of steelworkers making complaints is because they believe that if there was something wrong with the advice that they received, the FCA would have taken their adviser out of the market.

Q27 **Peter Grant:** Thank you. Finally, I have a question for both of you. You may want to write with a more detailed answer, because the answers might be quite long just now. We have been told there is likely to be an economic crime Bill, possibly in this year's Queen's Speech.

We were also told that BEIS, the Business Department, are looking to significantly change the regulation of Companies House and the regulations under which all limited companies have to operate. If you were given a chance to put one or two changes into the legislation that would prevent a scandal like this from happening again, what would you ask to be added to the Queen's Speech?

Philippa Hann: In today's fast-moving world, being able to access information a year or 18 months after the event is nonsense, isn't it? Realtime information around what is happening within firms that we have seen time and again—

Q28 **Peter Grant:** So you are talking about publication of annual accounts and that kind of thing.

Philippa Hann: Yes, much swifter and much more up-to-date information. This is part of the problem. If there had been greater and better engagement and monitoring of what was actually happening, this would have been caught a lot earlier. That would be better than the announcement earlier this week that freezing assets five years after the event might do something to retain some of the compensation for people, which is woefully late.

Chair: Have you finished, Mr Grant?

Q29 **Peter Grant:** I wanted to give Mr Fassam and Mr Caddy the chance to answer.

Tim Fassam: One thing we would like to see is an improved distinction between poor or substandard behaviour from a mainstream financial services firm and fraudulent behaviour. At the moment, they are both seen as effectively breaches of regulation, and that fraudulent behaviour is then not covered by the police in some circumstances and in other ways where individuals could get protection and compensation. In the US, much of this would have been covered by the definition of wire fraud, and there would be an ability to have a criminal sanction on someone who is committing out-and-out fraud. Our members get very frustrated that that criminal activity often falls on the Financial Services Compensation Scheme. They fund that, and our industry is tarred with the brush of that effectively criminal activity because it has the veneer of regulated activity and a failure of regulation.

Q30 **Peter Grant:** Finally, Mr Caddy, I want to honour Mr Smith's promise to give you the last word, which I think is only appropriate. Is there anything you have seen in your experience of dealing with this affair that you were surprised to discover was legal and you think should be made illegal?

Rich Caddy: Yes. None of the onus for any of this has fallen on to an individual. You commented that there were no black marks against individuals. Many of the individuals who caused a lot of this upset are just working under new firms now, and the issues fall on the firm. I can go on the FCA register now and look up an individual. It shows that he used to be linked to a firm—he might have been the adviser providing all the unsuitable advice—but the responsibility falls back on the firm.

To add to that, you mentioned firms that give up their voluntary permissions. There were about 13, and they were named at the time in the press. The FCA came back with these firms' names. What I am seeing a lot of currently is that these firms are writing to individual complainants and not upholding the complaints on the basis that they were investigated by the FCA at the time, and the FCA found nothing wrong with the advice that the firm provided. Basically, they are not upholding the complaints on that basis.

Peter Grant: Thank you.

Q31 **Chair:** Ms Hann, may I pick up one or two points with you? First, these pensioners basically have two routes by which they can get their financial adviser to pay compensation. One is through the FCA, and one is through the financial ombudsman. You are shaking your head. Do you want to correct me?

Philippa Hann: They would not be able to obtain compensation through the FCA.

Q32 **Chair:** No, but the FCA can order the financial adviser to pay compensation.

Philippa Hann: Through the redress scheme, yes.

Q33 **Chair:** So the final responsibility for actually paying out the compensation rests with the Financial Services Compensation Scheme, which is funded by a levy on financial advisers. The question is: is the amount of money that the FSCS is able to pay out adequate, in your view? Could it potentially be funded by an increased levy, and what effect would that have on the rest of the financial advice industry?

Philippa Hann: The first comment I would make is slightly left field, about the environment that has been created by the regulator. In other industries, it is not possible not to be insured for past business. As a solicitor, I cannot not be insured for past business, because my regulator would not allow me to practise. It is really important to say here and now that the minimum terms of professional indemnity insurance for the financial advice community are inadequate. Had there been proper insurance in place that did not allow there to be exclusions that could be put in at will during each

insurance year, we would not be in this position because there would be insurance. The fact that most of the weight of the compensation figure will fall on to the shoulders of the FSCS is a direct result of the minimum terms of insurance being inadequate in the financial services industry. I would like to make that very clear.

Q34 **Chair:** Very interesting. Then, on my broader point about the levy and the adequacy of the money, it is able to pay out?

Philippa Hann: We have seen from the NAO Report that some of the losses suffered by the clients are up to almost half a million pounds. That is not unusual. So in an enormous number of cases, the £85,000, if that is indeed what the client has been able to recover from the FSCS, will be inadequate. In many cases, it is adequate, but in a lot of cases, it is entirely inadequate. Some of these steelworkers ought to have been receiving £25,000 or £30,000 a year in retirement and their losses are hundreds of thousands of pounds, so there is a huge inadequacy of compensation.

There is also an issue in and around the calculation of that compensation and the addition of adviser charges within that calculation. At the moment, the FSCS's view is that unless you have a financial adviser at the time the calculation is taking place, you are not entitled to recover the cost of a financial adviser.

If you happen to have a financial adviser at the time the calculation is made, the cost of that financial adviser until you hit 65 will be included in your calculation; this is in many cases tens of thousands of pounds. And when we are talking about an average transfer value of £370,000 for somebody—or for anybody, actually, within the UK—they will need some financial advice at some point, so I would like to make the point that I think that needs to change and there should be some allowance for financial advice for those people who have transferred out. They should not be penalised simply because they—it's quite difficult to find a financial adviser, actually, when you have transferred out of the British Steel pension, because you are considered to be quite toxic.

You also have been through this situation where you have been mis-sold to by somebody. Why would you seek financial advice from somebody? How do you trust somebody when that has happened to you? So that seems very, very unfair to me. There is a whole cohort of steelworkers who either do not know that they need to have a financial adviser as at the time they go to the FSCS or simply cannot find one that they trust. And yet again they are in a situation where they are getting less back than they really ought to, so I think there is a huge piece there.

The final point of your question—

Q35 **Chair:** The real thrust of my question is whether this system of charging a levy on the financial advice industry to fund all the compensation actually works. You have pointed to the fact that there are these limitations on the amount that it can pay out. It could pay out more, presumably, if it

was allowed to and if it could raise the levy, but would that destabilise the financial advice industry? What I am really saying to you is this: does the system work? Can it be made to work?

Philippa Hann: For the steelworkers? I think it is incredibly unfair to visit the sins of a few on the rest of the industry, so no, I don't think it does work. I think the total bill will probably be somewhere in the region of a third to half a billion pounds, and to visit that on—let's be absolutely clear: there are some excellent financial advisers out there who make a real difference to people's lives, and we should not be penalising them for the failures of the FCA, the failures of TPR and the failures of those people who were involved in the decision making around the BSPS.

Q36 **Chair:** Just to be clear, to add to your answer, the paragraph that I quoted before, 3.17 on page 41 of the Report, says: "The FSCS has estimated that the total loss for its upheld BSPS claims is £55.3 million, and the total compensation awarded by the FSCS is £37.3 million." So there is quite a gap, isn't there?

Philippa Hann: Yes. You have almost 8,000 people who were transferred out. If we look at the profile of the people who were transferred out, my opinion is that most of them should not have been advised to transfer out. I think it's a shocking statistic that 79% of those people were transferred out.

These are a cohort of people who have had one job, mostly, for the entirety of their professional career. They will be earning around £30,000 to £35,000. They don't have significant other assets. This is not a profile of the type of person who ought to be transferred out of their final salary scheme. If you take—say 90% of those people were badly advised to transfer out—as an average about £70,000 or £85,000, it gets you to somewhere between a third and half a billion pounds.

Q37 **Chair:** Interesting. You raised one other very important point: who knew what at what time. The data of the people you have just referred to— those transferring out of the scheme—was owned by the Pensions Regulator, which did not even collect it in real time. It took the trustees of the pension scheme to tell the FCA what was going on. For some, it was years later before they even realised the scale of the problem. Should the whole issue of who owns the data be revisited so that at least the financial regulator has real-time information?

Philippa Hann: I think that it is imperative that the financial regulator has real-time information. That said, they were in south Wales at the time and they knew that there were at least nine firms giving bad advice, so I do not think that it is an excuse to say, "We didn't know what was going on." Very clearly, all the circumstances were available.

Q38 **Chair:** Yes, but there is all the difference in the world between people transferring out and people being given bad advice. The first thing would be to know that they were transferring out and what was causing that,

because they were being given bad advice. It just seems that they were not able to get the data quickly enough.

Philippa Hann: It would certainly have given the FCA a greater chance of understanding the scale of the problem.

Chair: May I thank all three of you very much indeed? You have set us up beautifully to ask the regulator pertinent questions. We are very grateful to the three of you for spending time with us today. You are welcome to stay if you like.

Examination of witnesses

Witnesses: Nikhil Rathi, Sheldon Mills, Nausicaa Delfas and Caroline Rainbird.

Chair: We now come to our main session. Good afternoon, everybody. I should say straightaway that I am not Meg Hillier, the Chair of the PAC; unfortunately, she has covid, so as her deputy I will be chairing the session. I have already said a warm welcome to our audience, but for the panel's information, we have members of the Maldivian PAC with us in the audience today to see how we do our PAC sessions.

I am really pleased to welcome our panel this afternoon: Nikhil Rathi, chief executive of the Financial Conduct Authority; Sheldon Mills, executive director for consumers and competition at the Financial Conduct Authority; Nausicaa Delfas, interim chief executive and chief ombudsman of the Financial Ombudsman Service; and finally, but by no means least, Caroline Rainbird, chief executive of the Financial Services Compensation Scheme. A very warm welcome to you all.

We will now go into our questions session. I reiterate that the pension scheme was set up to support steelworkers but, when the sponsoring employer hit financial difficulties, the scheme was restructured and many members decided to transfer out after receiving advice that that was in their best interest. However, that was not always the right advice and, as we heard from the previous panel, a number of members lost out financially.

Today we will be asking our witnesses what went wrong and what can be done to make sure members of similar schemes do not lose out in future. We have a high-powered panel of regulators, and I have to tell them that we have been well set up with pertinent questions. To start that process, I call Nick Smith.

Q39 **Nick Smith:** I welcome the panel. Thank you for coming today.

I think we should look, if we can, at the regulators' oversight of the pensions market in the round. The steelworkers I know have incurred serious financial losses—£82,000 on average. There is supposed to be a regulated advice market to stand up for consumers, but I think it let them down.

My first question is to all the regulators before us. What does this case show about how effective you are as regulators at protecting consumers? Ms Rainbird?

Caroline Rainbird: I am actually not a regulator. I am from the Financial Services Compensation Scheme. As you know, we pay out compensation where financial firms have failed. I am happy to take questions on that, but perhaps you might want to start with Mr Rathi or Mr Mills.

Nick Smith: You've been really helpful, thank you. Mr Rathi.

Nikhil Rathi: Thank you for your question, Mr Smith. From all the engagement with the FCA over the years on the British Steel pension scheme, it is clearly a very distressing situation that, as we heard from Mr Caddy in the previous session, has impacted on the lives of many thousands of British Steel pensioners. We are grateful to the NAO for the very thorough and succinct Report, and we welcome the PAC's scrutiny this afternoon.

You outlined the passage of events earlier. I will start with the introduction of the Pension Schemes Act in June 2014, which introduced pension freedoms. It was introduced at some speed, and it came into effect in April 2015 at the closure of the Session of Parliament before the election in May 2015. Subsequently, there was distress in the owner and sponsor of this pension scheme, Tata Steel, and there was a lot of uncertainty about the future of the company. Caroline Rookes did a review, commissioned by the Pensions Regulator, in 2019, which articulated how the confusion around the future solvency of the employer created a lot of misinformation and speculation when pensioners were having to think about the future of their pension.

On top of that, decisions were taken, including by the DWP, not to disapply section 67 of the Pension Schemes Act, which would have automatically transferred British Steel pensioners into the successor British Steel defined-benefit pension scheme, because the prevailing philosophy of the Pension Schemes Act and the pensions policy at that time was one of consent and choice. There wasn't a desire to move away from that principle of consent, which was the genesis of the "time to choose" exercise that was done over a constrained period from the end of 2017 to the beginning of 2018.

There are many lessons for us to learn operationally, and we have heard some of the feedback. We will, of course, talk about the redress scheme, but one strategic overarching lesson for us in the regulatory system—the NAO has articulated that there are about a dozen players in what is quite a complex system—is on the question of choice and consent on what is a very complex set of decisions that pension scheme members have to make and on the extent to which, when you have the restructuring of a scheme of this scale in such a concentrated period of time, it is a workable or realistic way forward.

On the FCA's regulation, I joined the FCA in October 2020, so a lot of the relevant period is prior to my time, but I have been briefed extensively on

it. There was clearly an issue around the way in which firms were supervised at that time. Post the financial crisis, the FCA focused very heavily on big firms—large firms. You can understand why, given all that happened in the banking crisis. Financial advisers—often very small financial advisers—went into flexible portfolios. You have the FCA supervising 50,000 firms and they did not have individual supervisors watching every single firm. That is not realistic when you are supervising 50,000 firms; it was more reactive and thematic. Some of the themes you heard about earlier, in respect of information sharing and speed of reaction across the different regulators, are all important things for us to learn from this experience.

Q40 **Nick Smith:** Mr Rathi, it is very helpful of you to give us the context and to talk about the complexity of it all but, to come back to my question, I know you were not there at the time—"It wasn't me"—but how effective do you think the FCA was at dealing with this issue and how it applies to consumers?

Nikhil Rathi: When I look back at the actions of the FCA, there were significant actions in 2017-18, and there were visits to the north as well, notwithstanding the evidence you heard earlier. There were letters to pensioners and co-operation with the Pensions Regulator.

There was clearly an issue with the supervision of the market, and with the supervision of the small firms—small financial advisers—and the standards that were being complied with. Part of that might have been to do with the speed with which the new regime was put in place in 2014-15: 10 months for such a wide-ranging reform of the UK pensions framework is very rapid. My predecessors put their position on that on the record at the time. Clearly, we have to get better with the supervision of smaller firms, and a major programme of work is going on at the FCA to do just that—to improve our data and technology so that we can do so.

I am encouraged that we have learned some of the lessons from this, recognising that there have been challenges that have had serious consequences—we can come to the redress scheme in a minute. You will be aware that, through co-operation with the Pensions Regulator and others, we have been very proactive and have seen risks appearing in other similar situations. We have issued warnings about Rolls-Royce and subsequent British Steel pension schemes. Recently—just in the past couple of weeks—we have issued warnings about P&O Ferries. We are getting on top of it fairly early when we see the risks crystalising.

Q41 **Nick Smith:** Thank you, Mr Rathi. Mr Mills, do you want to add to Mr Rathi's answer?

Sheldon Mills: Yes, I am happy to add to that. As Mr Rathi has explained, at time of the change to the DB pensions landscape, "time to choose" and the approach of consent and choice—

Q42 **Nick Smith:** Without repeating the context he set out, can you please talk more about the effectiveness of the organisation?

Sheldon Mills: With respect, Mr Smith, I am going to explain precisely the actions that we took during that period. I think that is at the heart of your question.

In 2015, we approached the situation from looking at DB pension advice, because we saw the prospect of people transferring and exercising that choice across a range of DB pension schemes, not just this particular situation. We were looking at that and at the potential impact.

We may come on to introducers, which have been a feature of the challenges in south Wales and in the north. In 2016 and 2017, we put out alerts in relation to introducers and some of the issues around them. We put out information to firms in relation to our expectations at the time, in the context of the "time to choose" and consent and choice environment.

We then found out information about what was going on in relation to the British Steel pension scheme and reverted resources internally to BSPS in the wider context of our DB pensions work. As Mr Rathi set out, we did extensive liaison with local communities. In 2017, we went both to south Wales—where I am from, as you know—and to the north, and we did extensive exercises there in terms of trying to understand what was going on.

In addition to that, we were trying to put through the mechanisms that we had at the time through the trustees of the pension schemes. We wrote to trustees who would have had 12,000 members within their purview to make them provide advice to their members as to the dangers, effectively, of transferring. We did quite a lot of work through that period to raise awareness of complaints procedures and of the dangers of transferring. That has built through, in a sense, in our evidence base for understanding the unsuitability—I'm sure we'll come on to this—to the redress scheme that we are consulting on at the moment.

Q43 **Nick Smith:** Ms Delfas, do you want to add anything to the evidence given? I know that you were at the FCA for at least part of this time.

Nausicaa Delfas: I am not representing the FCA today; I am representing the Financial Ombudsman Service. The Financial Ombudsman Service is there to consider and resolve disputes between the steelworkers and financial advisers when they are not able to settle them in the first place. I am happy to come back to the issues that relate to the Financial Ombudsman Service.

Q44 **Chair:** Mr Rathi, you heard the previous panel's evidence. It seems as though, at almost every stage of this saga, the FCA was behind the curve. I do not necessarily blame you for being behind the curve on getting the information on how many people were transferring out of the DB scheme because, as we have already made clear, that was owned by the trustees of the Pensions Regulator. We will come back to that in a moment.

However, even when you found out how many people were transferring out, it took you quite a long time to work out the number of financial advisers who were giving poor advice. Even when you found that out, you only recently issued an edict to those financial advisers who started to sell any of their assets to avoid their liabilities. It all seems to have been a bit behind the curve all the way along.

Nikhil Rathi: Sheldon can take you through the chronology in detail of exactly what happened when. There was action in 2017-18, particularly with respect to certain advisers who stopped offering advice when the issues arose. The question of determining whether advice is unsuitable is time consuming. I understand that the Committee has in recent days received correspondence from groups of financial advisers who are challenging every assumption we are making when we challenge the quality of their advice. Some of those are litigating us as well.

Q45 **Chair:** You would expect that, wouldn't you?

Nikhil Rathi: You would expect it, exactly, but there is therefore a process that we will need to go through, including significant independent expertise drawn from conducting past business reviews to understand the quality of the advice.

At the same time, the FCA was also monitoring the quality of advice in the broader DB pensions transfer market, beyond the British Steel pension scheme, because this was a new regime and there had been escalation in pension transfers, not just in the British Steel pension scheme. We saw the research that was published. It is referenced in the NAO Report that around 17% of advice was deemed unsuitable in the broader market. The work that was then continued specifically for the British Steel pension scheme came out at a figure of 46%. That prompted further action: letters to affected members, drawing attention to their ability to complain to the FOS or, in the case of the FSCS, taking action with respect to firms that had gone into insolvency.

The relative inertia of the affected population in raising complaints has been striking. Yes, there have been complaints, and you will hear from our colleagues at the FOS and at the FSCS about the numbers they have processed, but they are nowhere near the amount of redress that we think is payable. That is why we have proposed the scheme now.

Q46 **Chair:** I am sure we will come on to that, but the basic tenet of my question was whether the FCA had been behind the curve at every development in the whole unhappy saga.

Sheldon Mills: I will supplement Mr Rathi's answer. I think the answer is no. We took a particular supervisory approach to this, which was to go out and look for the firms that were at highest risk of either default or providing unsuitable advice and undertake a process of past business reviews. That asked those firms to undertake, sometimes with the benefit of a skilled person, so an independent third party, sometimes off their own bat, a review

and assessment of the advice that they had given. That has proved partially successful in understanding and being at the heart of some of our evidence base for entering into a consultation on the redress scheme. It has allowed us to see how much unsuitable advice there is.

Q47 **Chair:** Seven years to come up with a compensation scheme?

Sheldon Mills: It is not seven years. If you look at the chronology— Q48

Chair: 2015 to 2022 and you still haven't got a compensation scheme.

Sheldon Mills: People were transferring out and getting advice for a number of years. It is important that as markets develop, people understand and see—that is their ability to complain and why you have a statute of limitations—that what they are getting from the choice that they made or were persuaded into is less than what they might get from the version of defined-benefit scheme that they could have stayed in. In all mis-selling or redress cases we see a period of time before individuals, advisers and industry wake up to the consequences of certain decisions. That is normal.

Q49 **Chair:** That is a long answer. When do you expect to have the compensation scheme up and running so that at least people can have the certainty that there is one up and running?

Sheldon Mills: We have consulted on the redress scheme as of March. We have to consult, as Mr Rathi set out. You can hear from those on the other side on this—the financial advisers themselves, including Mr Fassam and some of his members—that they have concerns over what we are consulting on. We have to consult. That will take three months.

Q50 **Chair:** I understand all that. Just give us a date. When is it going to be up and running?

Sheldon Mills: We expect to have a final decision in the autumn, and if that is a go then we expect that early next year—January or February— there will be a redress scheme in place.

Q51 **Chair:** If we have you back here in January or February next year, you will be able to tell us all about it.

Sheldon Mills: If our board approves it, then yes.

Chair: Good.

Q52 **Nick Smith:** I remember those meetings at the FCA in 2017; my takeaway then was that the FCA was at sixes and sevens and very slow to process actions that would make a difference. Going back to 2017, just as the mis-selling was going on, in a move that appears contrary to me, the FCA consulted on removing its guidance saying that advisers should assume that in most cases a DB transfer will not be suitable. Do you think that signal to the market sent out mixed messages that supported the exploitation of steelworkers at the time?

Nikhil Rathi: Looking at this with hindsight, I cannot say that it was a helpful signal, but I would also reference the wider political context. Pensions freedoms had been implemented, the demand for defined-benefit pension transfer was far in excess of the Government's impact assessment at the point that the legislative process for those pensions freedoms began, and the underlying philosophy of overarching pensions policy— which is a parliamentary and governmental matter—was one of choice and facilitating transfers.

The question that the FCA was being asked then was whether, by having an assumption that transferring was not in someone's interest, it was doing something contradictory to what Parliament had intended in legislation. We are getting the same argument now with the steps we have taken to restrict access to defined-benefit pension transfer advice. We are making it much more restrictive; you can see from media articles that we are restricting those who quite legitimately want to transfer their definedbenefit pension out and are perfectly able to make their own decisions. They are finding it difficult to get advice; it is more expensive to get advice, and we are contradicting a freedom that was passed in legislation in 2015.

That was the balance that the FCA was weighing up in 2017. Now, we are probably shifting the philosophical approach even further by proposing a redress scheme that is an opt-out scheme rather than an opt-in scheme. We are automatically assuming that affected consumers are in there unless they choose to opt-out, which is a further shift in the journey since 2015.

Chair: Hang on, you have twice repeated that. I am old enough to remember what the pre-2015 pensions situation was like. People were locked into very poorly performing pension schemes for life. At least the Pension Schemes Act gave them the opportunity to make a choice; it is all about choice. What we are talking about this afternoon is the advice that they got to make that choice. Mr Grant.

Q53 **Peter Grant:** Good afternoon to all our witnesses. Mr Rathi, to go over a different part of the timeline, in 2014 the Government introduced the Pension Schemes Bill, which eventually became the Pension Schemes Act. At that time—in fact, before that—we knew it was only a matter of time before a major employer with a major employee pension scheme got into financial difficulties, because it happens periodically.

Putting the two together, we knew that the legislation would be changed to give employees the option of going it alone if they had to transfer out of their previous pension scheme. We knew that it was only a matter of time before that happened. Why was it only after Tata Steel got into difficulty in 2017 that the Financial Conduct Authority started to think about how it might respond to that inevitable scenario?

Nikhil Rathi: The speed with which the pensions framework was changed in 2014-15 was quite rapid, and there was a focus on getting the advice market ready. Clearly, that did not happen fast enough. The specific context

around the British Steel pension scheme is that there was a consultation, led by the DWP, about the future of that pension scheme and the options.

There were communications to all members of that pension scheme, approved by the Pensions Regulator, about the different options. There was an extensive debate around what should happen to the pension scheme, whether there should be a successor, and whether the benefits would be significantly higher than if the scheme went into the PPF—the pension protection fund.

It is worth remembering—looking at the Rookes review—that the overwhelming majority of members did transfer into the successor scheme or the PPF. What was obviously disappointing and distressing in this case was the presence of rogue advisers targeting workers who were quite distressed by the information they were receiving, or the rumours they were hearing about the creditworthiness of their employer, by using tactics such as free lunches and free gifts to try to persuade them to transfer their pension out. That was clearly unacceptable practice.

Q54 **Peter Grant:** I have no doubt we will come to some of the practices that were adopted by the financial advisers. You quoted a percentage of employees who remained in the scheme. It is all very well talking about percentages, but if a fairly small percentage of a big number of people is being damaged, that is still a lot of people. We heard evidence from one of those people earlier. Each of them suffers literally life-damaging impacts. What is your best estimate on the number of people—human beings—whose financial plans for retirement have been seriously damaged by what has happened? Are we talking about tens, thousands, or tens of thousands of people?

Sheldon Mills: We know that around 7,700 to 8,000 people elected to transfer out. We know that a certain number of them have already received compensation from the FSCS, and some have received redress from the FOS—

Q55 **Peter Grant:** Can you put a number on how many have received compensation?

Caroline Rainbird: Across ourselves and the ombudsman, we have received claims from about 25% of that population

Q56 **Peter Grant:** So maybe 1,700 have had compensation?

Sheldon Mills: Yes.

Q57 **Peter Grant:** So 5,000 people, or maybe a bit more, have still had nothing six, seven or eight years after they should have had their money.

Sheldon Mills: And then we expect that—well, there are contexts in relation to the response to your question. The age profile of some of the individuals is important: some are under the age of 50 or would have been at the time that they took those decisions; some were very close to retirement and

would have been significantly affected in the past few years; and others will be planning their retirement and thinking about this in the context of that planned retirement. It is important to consider the age profile.

We believe that we are yet to get to around 4,000 people in terms of either the redress scheme or compensation and so on. Both the consultation on the redress scheme and the complaints framework will allow us to find ways to resolve some of the concerns and fundamental challenges that they have. I recognise, Mr Grant, the personal situations of those individuals. I have been to south Wales—to Swansea—on one of our visits to meet the steelworkers, and I fully understand the impact that this is having on their lives, their mental health, and other aspects.

Nikhil Rathi: I would just add that we have tried to set out our best current estimates on page 52 of our consultation document, with the proposed impact assessment for our redress scheme. We are not assuming that everybody's advice was unsuitable, so I do not think we recognise some of the assumptions that you heard from some of the evidence given—the £300 million and those figures.

That is all to be tested during the consultation as we collect more evidence in the coming months. We do not assume that it is all unsuitable. There will be some who, for their own reasons, choose to opt out of redress. We have had members who have said to us that they are perfectly happy with the choice they have made, for whatever reasons they made a choice and have chosen to use the money in a particular way, and then we work through what we think the numbers will be. We will test those before we produce the final redress scheme.

Q58 **Peter Grant:** According to the National Audit Office Report—if I can quote a few examples—for a lot of the victims, their distress was compounded by the fact that they then engaged dodgy claims management companies, which fleeced them even further, to be quite honest. The regulation of claims management companies transferred to the Financial Conduct Authority too late to protect those British Steel pensioners. You started to monitor and become aware of the huge number of transfer requests associated with British Steel too late to protect a lot of those pensioners. You banned contingent charging too late to stop contingent charging being a factor in the financial abuse of thousands of those pensioners.

In a different example, not related directly to this, you banned the retail sale of mini-bonds too late to stop London Capital & Finance, Blackmore Bond and others stealing tens, possibly hundreds, of millions of pounds from innocent people.

The Chair was absolutely right, was he not? Time and time again, not only are you behind the curve, but you have become experts at putting a bolt on the door after the horses have gone. What is unreasonable about that statement? There are so many examples of when the Financial Conduct Authority—sometimes others—only seems to have realised the danger of what might happen after it happened, and that was too late for the victims.

Nikhil Rathi: There is a range of questions there. Let me start with the claims management companies. We have received powers relatively recently on claims management companies. It is a serious issue, and we have flagged it in our redress consultation. One of the reasons why we are going forward with this redress consultation—we are working with our partners in the Ombudsman Service and the FSCS—is that members can complain to the FOS for free. There are litigation firms—I do not know what the commercial interests are of the firm that you heard from earlier, but there are others that take up to 18% of the redress as a fee for supporting the redress complaints. We would like to tackle that as we move forward with our compensation scheme.

On this point about how quick we are to or whether we should ban activity, we have taken action on mini-bonds. There has been an independent review into that, and we have given extensive evidence to the Treasury Committee about that. This is also an area where a good dialogue with Parliament generally—this Committee, the Treasury Committee—is very important, because we are seeing, for example, other areas of exceptionally high-risk investments being exposed to mass retail.

But there needs to be a clinical choice around the extent to which the risk appetite is to allow such investments—for example, crypto-assets, which are the latest; we have been reading reports that they have been accessed by several million people in the United Kingdom—and the extent to which Parliament considers that to be something that should be a free choice for people, or to which Parliament would like there to be restrictions.

There is not a consistent view on that at the outset of these investments coming to the fore. We have seen the same with peer-to-peer lending, which was strongly encouraged, but went wrong later on. If I think about some of these areas, it would be quite hard for us—for the two that I have just talked about—to take the action to ban, because we are then treading into territory that is properly political territory.

Q59 **Chair:** I think we must keep fairly close to this Report. Thank you for warning about those others, which is useful from a general future perspective, but we want to keep closely to this Report. Why did you not take more proactive and decisive action to improve the pensions advice market after you found in 2016 that 17% of the transfer advice you reviewed was unsuitable?

Sheldon Mills: We did take action is the simple answer. We were already doing a thematic review of the DB pension advice market in 2015, looking at that—

Q60 **Chair:** What precise action did you take?

Sheldon Mills: As I explained, we started to look at the past business reviews, and so identified the high-risk firms—those at high risk of default or of providing unsuitable advice—and commenced past business reviews to understand the activity that was under way, for them to assess whether

they were undertaking advice that was suitable. That built up an evidence base—we must base all our activity and action on evidence—in order that we could further our activity. It also provided us with leads and links to enforcement cases so that we could take action against individuals and individual firms, which we still have under way.

Q61 **Chair:** On being behind the curve all the time, of course, you are legally obliged to build an evidence base before you can consult on a compensation scheme. It seems that it took you an awful long time to build the evidence base.

Sheldon Mills: The evidence base that we have supports our ability to go through with consulting on a redress scheme—

Q62 **Chair:** Of course, but that is not the question. The question is: why did it take so long?

Sheldon Mills: The purpose of that work was not to build an evidence base, but actually to seek to resolve some of these challenges through supervisory action directly with some of the highest risk firms in relation to that. I am happy to accept—I have discussed this with Mr Smith—that there are different choices that one can take as a regulator. Having got that evidence base through that work, we are moving swiftly on consulting on a redress scheme. But those are valid choices for a regulator. I was not in post at the time, but I accept and think that they were fairly balanced choices that my predecessors made at that time.

Q63 **Chair:** You don't think they took too long.

Sheldon Mills: At the end of the day, a regulator's job is not about immediately taking action today and tomorrow. We have to look at evidence, consult and work with firms and consumers to understand what the right thing to do is. Sometimes, that takes a period of time.

Q64 **Nick Smith:** I will rattle through a bunch of questions that I have saved up especially. First, if Ms Rainbird and Ms Delfas can provide some answers, to consumers there is a real alphabet soup of regulators and organisations involved in this work, as is shown at figure 3 in the Report. How much do you as regulators rely on each other to protect consumers?

Caroline Rainbird: We work very closely together as regulatory bodies, sharing information. Clearly, we have specific roles to focus on. Mine is to pay compensation to customers who have redress against financial firms that have failed.

Q65 **Nick Smith:** Did you work together closely when all this kicked off?

Caroline Rainbird: At the time, we were supporting the regulators and bodies. It is very important to understand that we come at the end of the process, when the financial services firms have gone into default. But, through that time, we can also provide information and data about specific

actions, poor actors and poor players that we can feed into the bodies and regulators—the FCA—to take action.

Q66 **Nick Smith:** Ms Delfas, was the FOS all over this as well at the time? Was it working very closely with the FCA?

Nausicaa Delfas: Yes. I joined the Financial Ombudsman Service last May, but it is clear to me, from the work that had occurred, that the ombudsman service, the FSCS and the FCA have been working together. As Caroline said, we operate at different points in the customer journey and the life cycle. The ombudsman service deals with complaints against financial services firms, where the complainant is not happy with the solution that they have had from the firm, so it is necessarily a bit later in the process. If a firm fails, we refer the matter to the FSCS, which pays out from the levy.

We have been working with the FCA and the FSCS. We have joined them on at least eight occasions, in south Wales and in Scunthorpe in the northeast, and as a result, I am pleased to say that more steelworkers came forward to complain.

For example, last autumn, our normal number of complaints was around 20 a month, but after some of those events, we got 80 complaints. We are working closely together and, this January, we reinvigorated the wider implications framework, which is a formal framework through which we can co-operate and address issues of common interest in the interests of consumers and markets.

Q67 **Nick Smith:** Thank you for that, and congratulations on working together and going out to south Wales, after much advocacy from campaigners for you to do that work. It has been brilliant, although unfortunately, it has not been enough, because only a quarter of this set of people have complained so far, and 75% still have not.

Mr Rathi, the Report say that, in 2015, the FCA was concerned about the pension freedom changes and risk of harm, particularly to DB pensioners. Did you take those concerns to the Treasury at the time, to work through the contrary position that the FCA was in then?

Nikhil Rathi: My understanding was that there was dialogue. I am not familiar with all the details of it, because I believe that the policy came at some speed and was passed in Parliament at some speed.

Q68 **Nick Smith:** Can you please go back to the files and let us know further about the dialogue and what was discussed between the FCA and the Treasury at the time?

Nikhil Rathi: I believe the Work and Pensions Committee has looked at this, so we can draw your attention to your colleagues' work on that Select Committee, where I think we gave very extensive evidence.

Q69 **Nick Smith:** I didn't ask for that. I asked whether you could please let us know what you said to the Treasury in 2015 about concerns about DB pensions.

Nikhil Rathi: We will write to the Committee on that point.

Q70 **Nick Smith:** Thanks. Mr Rathi and Mr Mills, you filed a review in 2018, and I am glad that you did some research to find out what was going on here. It showed that 47% of BSPS advice was unsuitable. For another 32%—so the total was almost 80%—it was unclear whether it was suitable or not. Was that a klaxon moment for the FCA—showing so much bad advice? Mr Mills, you talked about taking appropriate and timely actions. Did you do that then?

Sheldon Mills: I personally think we did. What we did was increase our activity in terms of seeking to reach into this issue, so several things would have occurred from that point on. One was to move towards the ban on contingent charging. Another was to redouble our efforts to reach out through communications in relation to steelworkers.

Q71 **Nick Smith:** How effective were those communications? Did they really make a difference? Did a lot of people come forward, or would you say they had a minimal impact?

Sheldon Mills: As you know, there are challenges, and there have been challenges. That is one of the reasons why we have a consultation on the knocked-out redress scheme and are encouraging individuals in those communities to come forward, and I recognise the challenges. They are the same reasons, in a different way, as to why some of those individuals were persuaded by some advisers to transfer out against their interests in many cases.

As Nausicaa was saying, we have tried to build and learn in relation to our activity in those communities, and to build up different forms of communication by working with your offices and so forth. We thank you very much for your support for our communications in those communities, but it is quite clear now—I think this is one of the reasons why we want to consult on the redress scheme on a knocked-out basis—that there are diminishing returns of that communication and campaigning activity in those communities.

Q72 **Nick Smith:** Mr Mills, a lot of the advice firms that it now seems gave a lot of bad advice were smaller companies. Do you think your arrangements for regulating these smaller financial advice firms are adequate?

Sheldon Mills: I think we have learnt lessons, as Mr Rathi was saying, in relation to all of our flexible firm portfolio and the way in which we supervise that firm portfolio. To give a tiny bit of context, we regulate and supervise nearly 60,000 firms. Evidently, we cannot do point-to-point regulation of each firm. I think Philippa's points around real-time data and information were really well put, actually. It would be helpful if we had more real-time

information about what was going on in relation to some of our portfolios, including this one.

Q73 **Chair:** Can I just stop you there? Going back to the point that I made in the pre-panel, the Pensions Regulator trustees hold the information; they do not collect it in real time. You did not know about it till they gave you the information some years later. What are you doing to tighten up on that situation?

Sheldon Mills: One of the recommendations of the Rookes review was for us to have a much more co-ordinated approach between certain regulators, and we have responded very effectively to that. There are regular data flows. We have also improved our own data collection from those firms.

We started that with ad hoc data collections, and now we have made that permanent in terms of our regular data collections. They are still not in real time, though, and as part of the transformation programme of the FCA, which Nikhil is leading, we are seeking to get better at using data. At the moment, they come in every six months and are backwards-looking, but it is a better system than what we had before. We are seeking to get more information and more data in relation to those populations.

The other thing that we can do better is to look for other forms of information and data. In this environment—with social media—you can scrape; you can hear what communities are saying to each other; and you can use MPs' offices, and so on, in order to find that information and correlate that with some of the other data collection.

Q74 **Chair:** So you heard the answer from Ms Hann. She said that it will require a change in primary legislation to ensure that you are able to get that information in real time. What representations are you making to Government to get that change?

Sheldon Mills: I am not entirely certain whether we need a primary legislation change. Maybe we can come back to you in relation to that. I think that one of the challenges, to be honest, can be the cost of real-time information coming into a regulator from firms as they do things. For smaller firms, they have to have the technological capability to—

Q75 **Chair:** What we are really talking about here is not the information from the firms, because that is secondary—what advice they give. The primary thing is that if you know that a significant number of people are opting out of a DB scheme, that should send alarm bells ringing, shouldn't it?

Sheldon Mills: Yes, so we have those data flows flowing, now, between us and trustees, TPR and other relevant regulators. If you look at the Rolls-Royce situation recently, we put out, pretty quickly, communications and guidance in relation to the provision of potential DB pension transfer advice in that situation. We have better flows and better communication processes than I think we had previously.

Nikhil Rathi: Can I just come in on this and make a couple of other points? I think it is welcome that the Government recently also empowered trustees to put a hold on transfers out, where they are concerned that the member is potentially being scammed, or they have concerns that it is not for appropriate reasons. That has only come in quite recently.

I think there is also an intersection with other pieces of legislation here. Sheldon mentioned the digitalisation of financial services, and particularly the promotions of financial products, and the Online Safety Bill, where we are really very keen to see Google, Facebook and others take real responsibility for the types of promotions they allow on their platforms, to ensure that they are not open to fraudsters in the way that has been prevalent in the last couple of years. That is coming through Parliament now, for your consideration.

Chair: Thank you for that.

Q76 **Nick Smith:** I want to return to the issue, mentioned by Mr Grant earlier, about contingent charging, and about the FCA making progress in supporting consumers. Contingent charging means firms and advisers

were getting rewarded only if they recommended that steelworkers transfer out. However, the stated policy of the FCA was that DB transfers were really in someone's best interest. In February 2018, the Work and Pensions Select Committee, looking at this issue, recommended a ban on contingent charging as they said it was, "A key driver of poor advice". Why did it take you so long—until October 2020—to ban it?

Sheldon Mills: We moved reasonably swiftly in relation to this. In July 2019 we started our consultation on measures to reduce—

Nick Smith: It took 32 months.

Sheldon Mills: Well, it is 32 months from the date of the recommendation to the final date, when the ban came into place but, as I have said, we cannot just introduce bans within the space of a couple of weeks or months. We must go through a consultation process—

Nick Smith: You say that.

Sheldon Mills: Well, I am afraid that these are—the ban on contingent charging was something that was considered very carefully, and there were arguments on both sides. We have just had a discussion, in the prepanel, around the insurance situation.

Obviously, a ban on contingent charging can have an impact on the availability of PII, and may well have done so, so we have to consider these types of measures carefully. We have done so; we have moved forward with the ban and it has become effective. However, it has had consequences for the ability of people who want to transfer out to get reasonable value fees for transferring out.

In my inbox and Mr Rathi's inbox will be letters from individuals who have sums of about £35,000, who now will face charges of £3,000, £4,000, £5,000 or sometimes more to get that advice to transfer out. We think it is the right thing to do, but all these things come with downside consequences that we have to consider.

Nikhil Rathi: Whenever we enter into bans or restrictions on pricing arrangements or fee arrangements for firms, the legal risk is elevated. There is one case right now where we have taken quite decisive action and we are subject to judicial review. The judicial threshold is one that is testing us on the quality of our evidence base and the range of considerations we have taken into account. That is the statute we must operate under, particularly when we are taking action that could put firms' business models out of business.

Q77 **Nick Smith:** Mr Mills, earlier you talked about introducers. In the shadowlands of the financial world, those introducers who make friends with potential clients—Mr Rathi talked about them sometimes offering free meals or rugby tickets—are often outside regulation. Do you think it is acceptable that 30% of the transfers in this case involve those introducers?

Sheldon Mills: As I said, we sent out alerts in 2016 and 2017 in relation to the activity of introducers, noting to financial advisers and pension transfer advisers that they should ensure that they are engaging appropriately with those introducers.

One of the challenges in this particular situation is that both points of that are sometimes corrupted, and there may well be fraudulent or other activity. We have enforcement activity, not against introducers, but against the pension transfer advisers that we authorise and regulate. We have 30 enforcement cases ongoing, and it is on the public record that one or two of them have concluded and some of those are subject to appeal. We are taking action, certainly in relation to the pension transfer advisers and their activity.

Q78 **Nick Smith:** I leave the thought with you that the introducers who work in those shadowlands are not yet a problem in this instance, but they are a problem across the sector as a whole. I think the FCA and the police need to look again at the issue and provide some light and transparency to deal with it, because it will be a thorn in all our sides across the country in the future.

I must move on, because I am a little bit afraid we will be timed out by the Elections Bill. Mr Mills, given that there has been so much mis-selling, why have you fined only one firm? I ask because you have just talked about having 30 enforcement cases ongoing. In January of last year your website said you had 30 enforcement cases ongoing. While your investigations go on and on, steelworkers think there has been no justice. Why does it take you so long to enforce your own rules?

Sheldon Mills: I will sound as if I am repeating myself, but we are continuing to progress those 30 investigations and we are moving as swiftly as possible. They are a priority for us in terms of our wide-ranging enforcement portfolio. Not all those investigations commenced at the same time: of the ones that commenced earlier, as I said, two are subject to public record and we have taken action in relation to those.

It is not necessarily just a case of finding that the advice was unsuitable; we must also find other issues relating to causation and some of the actual activities of those pension transfer advisers in the way they have carried out their business. We cannot say much more about those cases because, to go to the point about naming and shaming, we are under restrictions regarding how much we can reveal publicly while we have those persons, individuals or firms under investigation. I recognise that some of that could help in the local community, we also face legal restrictions and obligations.

Q79 **Nick Smith:** Thank you, Mr Mills. I understand the complexity, and we have talked about it a number of times. I just want you to get on with it.

Sheldon Mills: I recognise that, and I think there will be things coming through shortly.

Q80 **Nick Smith:** Chair, I remember Andrew Bailey and others saying that the FCA's and other agencies' complaints-based approach, which requires steelworkers to go back to their original financial adviser and seek compensation, was not working. That was always your opening position when I said, "There is a real problem here with getting complaints in and helping to support steelworkers."

The NAO Report has outlined several reasons: many of these consumers were vulnerable, as Philippa Hann says, and many steelworkers trusted their advisers because they were their neighbours or friends of their neighbours. I was talking to one of my constituents earlier today, and they were told that their adviser was the bees' knees. Some of them had even worked with the police, so they were seen as trusted people in their community, although that did not turn out to be the case. It is like being asked to go back to your pickpocket to get your money back; it is not like taking a faulty kettle to Argos. Mr Rathi, do you think this complaintsbased approach was the right course of action for steelworkers in this case?

Nikhil Rathi: It is the framework of the statute: if a financial services consumer has a complaint about a service received from a regulated firm, their first port of call should be to complain to the firm and see if that firm then deals with it. There is then a statutory provision to refer that complaint to the FOS if you are not satisfied with the outcome you get from your regulated financial services provider.

In a case where the FOS makes a determination, it is a binding ruling. In some cases it has passed the FSCS, where the firm has gone into insolvency. That is how we deal with financial services complaints across the board. That is how the PPI scheme worked, which paid tens of billions of pounds of compensation. It is also the quickest way to resolve complaints, because as

we are seeing, the redress scheme takes time. We are going to have to get skilled people to examine each case, and each one will be tested.

Saying that—we have seen this from the Rookes review and all the work we have done—this particular case is exceptional for many different reasons: the nature of the uncertainty around the employer, the situation in the local communities, the nature of the relationships that you have described and the prevalence of unsuitable advice. It is all those factors that have motivated us—

Q81 **Nick Smith:** We are sort of repeating ourselves. Mr Rathi, how acceptable is it for the FCA to have taken three years to even consider a redress scheme?

Nikhil Rathi: The redress scheme was, I think, considered consistently over previous years, but my predecessors felt that the complaints-led approach was the fastest way to secure redress for consumers. That is why the FCA wrote to all consumers, drawing their attention to their ability to complain. What has emerged is a relatively low level of complaints, notwithstanding, including with all your assistance, the visits to the communities and the promotion of that possibility of complaining to affected members. That is what motivated the move to using a section 404 power, which is a very wide-ranging power whose use is subject to quite strict guard rails in the legislation. As you heard, we are imposing those costs and losses most likely on firms that had nothing to do with the mis-selling. There is a very high threshold for using that power when we decide to do it.

Q82 **Nick Smith:** Mr Mills, I want to take a little look at the FCA and your consumer function, which operates with the Financial Services Consumer Panel. Three quick bullet-point questions from me. Did the panel hold you properly to account about handling BSPS? Do you think it represents ordinary people up and down the country and is not too focused on the square mile, which is one of my concerns? Do you think it is fit for purpose—does your consumer arm work for the FCA?

Sheldon Mills: The consumer panel is independent, to a degree, of the FCA. I think it is a robust panel, which provides regular reports up to the board and holds the executive to account. I would have to write to you about the specific discussions with the panel in relation to BSPS.

Q83 **Nick Smith:** Big picture: the FCA's figures show, in figure 6, that 17% of the advice given across the DB market was unsuitable. That is a lot of people over that period. Between 2015 and 2021, approximately 40,000 people are likely to have been mis-sold, given the information you have kindly provided. Can you identify those people and support them?

Sheldon Mills: This is the wider DB market, as opposed to just BSPS.

Nick Smith: Yes, a lot of people.

Sheldon Mills: So, a key priority of our work is the wider DB pensions advice market. Learning from some of the lessons that we have been discussing here, we will be helping to support those individuals as well.

Q84 **Nick Smith:** You know that has been a big issue for three, four or five years now.

Sheldon Mills: We have been working in tandem with BSPS on those issues as well.

Nick Smith: No, I mean the wider DB consumer market.

Sheldon Mills: Yes, on the wider issues as well.

Q85 **Nick Smith:** There are 40,000 people who have probably been mis-sold.

Sheldon Mills: If your question relates to whether or not those people should be included in a redress scheme or have some sort of similar approach—

Q86 **Nick Smith:** I am just looking for comfort that you know it is an issue and you are going to somehow grip it, contact these people and support them as best you are able, because they are likely to need your support.

Sheldon Mills: Yes, Mr Smith. Absolutely our role is to seek to protect consumers, including those in the wider DB pensions market.

Q87 **Nick Smith:** Okay. I want to return to the point that Mr Grant was making earlier on. Mr Mills, and Mr Rathi too, in your judgment, are there further legislative changes that need to be introduced to make sure that this scandal doesn't recur in another place?

Nikhil Rathi: It is always difficult to extrapolate legislative changes from one particular exceptional situation, but the point I made earlier, which was drawn out in the Rookes review, as to whether section 67 of the Pensions Act should have been disapplied to enable members to be automatically transferred into the successor BSPS scheme, rather than directed through a "time to choose" exercise, is an important one.

Q88 **Chair:** Are you really saying you would rather have an opt-out scheme, rather than an opt-in scheme? Is that what you are driving at?

Nikhil Rathi: I am saying that the option, in this situation, for the Government to take that kind of decision, when you are talking about 130,000 people— What came out of the Rookes review was that the 130,000 people, at different stages of their lives, tried to make a decision about transferring out to a defined-contribution scheme, stick in the employer scheme or go to the PPF. That is a very complex decision to be making in three months.

Q89 **Chair:** At least an opt-out scheme would give people the option of opting out, but most would stay in.

Nikhil Rathi: Exactly. The other point I was going to mention, and I think the DWP is looking at it, is whether the £30,000 figure is at the right level, because the cost has gone up. We are getting a lot of feedback from customers with small pension pots who are feeling that it is uneconomic for them to use the pension freedoms. Because if you have £35,000 and it is

costing you £5,000 for advice, that is quite an onerous percentage of your pot.

Chair: I understand that. Mr Grant.

Q90 **Peter Grant:** Mr Rathi, if we take several of the different strands we have looked at this afternoon and put them together, first, although you argued that the circumstances here were unusual or even exceptional, I would submit that none of them was unforeseeable. In fact, most of them were very foreseeable.

At the time of Tata Steel getting into serious difficulty, the FCA and other regulators knew, or should have known, that we were heading into a position where thousands of people who had never expected to need to think about their works pension were going to have to think about it. Everybody knew, or should have known, that those are the exact circumstances that fraudsters will travel from one end of the earth to another to take advantage of—in particular, if there has been a relatively recent change to legislation.

You also knew that every single financial adviser that every single one of those British Steel workers went to had a substantial financial incentive to give them exactly the kind of advice that would damage them, rather than the advice that was in their best interests. It is no surprise that it all went wrong, is it? It was like letting the sheep loose among the wolves and wondering why they got eaten.

Chair: We need to speed up—we are going to get cut off by the bell in a minute.

Peter Grant: It is not necessarily just on the FCA. That was a catastrophic and fundamental failure of customer protection and regulation, wasn't it?

Nikhil Rathi: I think that there are clearly things here that have not gone right at all and have caused serious distress to a range of very vulnerable pension scheme members. We have covered the reasons for that.

All that I can say is that I think we are now, as a system, better prepared to respond more quickly across the 10 to 12 bodies outlined in the NAO Report—there are multiple parties here; the FCA is one part of it, but a lot of these schemes are dealt with by the Pensions Regulator and others before us—and to be able to respond more proactively. I think you are seeing the evidence of us doing that, including, as I flagged, most recently in the context of P&O.

Q91 **Peter Grant:** Thank you. In a few of your answers, you and Mr Mills have referred to restrictions on the ability of the FCA to act quickly, for example. Given that we are coming up to a Queen's Speech, what changes to legislation would allow the Financial Conduct Authority in the future to protect investors, especially small investors, better than you have been able to in the past? I am happy for you to write to the Committee if you would rather have time to think about it.

Nikhil Rathi: Whenever we take action to ban things or restrict business models, Parliament has legitimately put a rigorous set of standards for us on collecting evidence, and we are subject to judicial standards. It is always up to Parliament to shift that balance and make it easier for us to take emergency action.

In those circumstances, we will be affecting the interests of firms or others whose businesses or profit lines may be impacted by that. On Monday, for example, we did take emergency action in relation to asset restrictions, and in covid we took emergency action. You may wish to think about whether that flexibility should be provided more broadly, but that carries with it wider impacts.

Q92 **Chair:** Thank you. We may well be cut off by the bell, so there are one or two questions I would like to quickly put to you. Ms Delfas, on pensions service ombudsmen, if you look at figure 13 on page 35, there are still 481 claims to be processed. That is a large number, isn't it? What can you do to speed up that backlog?

Nausicaa Delfas: We have taken a great many strides to reduce our overall backlog at the Financial Ombudsman Service. You will probably be aware that over the course of last year, the ombudsman service received far more complaints than had been expected. At the beginning of the year, we had a backlog of 90,000 unallocated cases. I am pleased to say that that is now down to 34,000 cases.

In terms of the pensions cases, for British Steel we have received 960 complaints. We have resolved 480 now—but since the NAO Report the numbers have changed—and 245 of those have gone to the Financial Services Compensation Scheme, because the firms failed. We are now resolving the remaining 480. Over half of those have already had initial views from the investigators or they are with an ombudsman.

We are moving swiftly through these cases, and we are committed to doing so. As others have mentioned, the cases are complex. It is very important that we get to the right answer. Very often, there are a number of parties involved. We have talked about introducers recently; there may be regulated or unregulated introducers. The job of the Financial Ombudsman Service is to get to the bottom of what happened and, if necessary, apportion liability.

The cases are not straightforward, but we have a specialist team. We have increased our resources to tackle them—we have an extra 25 specialists involved in those cases, and we are getting through them. I would like to say one thing to the people who received advice in 2016: if they are at all concerned about the advice they got, they should complain to the Financial Ombudsman Service so as not to fall victim to the six-month limitation period that we talked about earlier.

Q93 **Chair:** That is extremely helpful advice.

Nausicaa Delfas: It is really important. The other thing is that people don't have to construct a detailed complaint—they can simply give us a call. We also have a dedicated page on our website and an email address that is monitored daily. If anybody has concerns, they can just contact the Financial Ombudsman Service.

Q94 **Chair:** That was the import of my next question. Given that the access to you is relatively simple—the actual providing of information and your resolution is much more complicated—should people be so worried about making complaints to you? Such a significant number use either introducers or legal advice. Should more be thinking about making a complaint directly to you?

Nausicaa Delfas: Absolutely. As Mr Rathi mentioned earlier, there is no need to use a representative such as a CMC or a law firm. It's possible to simply contact the Financial Ombudsman Service. You don't have to have constructed a complaint—just contact us, and we will do the rest. Interestingly, in terms of the cases we have received overall, 72% were represented by CMCs or law firms.

However, now of the cases that we have—possibly this is as a result of all the work that Mr Smith and others have done in generating awareness—56% are represented by CMCs or law firms. But there is no need to do that because the service of the ombudsman is free for complainants to use. Just contact us and we will take it from there.

Caroline Rainbird: Chair, can I just add—

Q95 **Chair:** I was coming to you. Perhaps you would like to answer the same question. On that same table it says you have got 545 cases unresolved. What are you doing to reduce that?

Caroline Rainbird: We have completed 781 as of 1 April and upheld 708 of those, so that is a success rate of just over 90%, and nine out of 10 people who have come to us have received compensation. Others are outstanding. Those are some of our most complex cases. They take on average 112 days to resolve. Some 40% of that time relates to information we need from third parties, so some of that is not within our gift, although we look at ways in which we can work with what might be insolvency practitioners to speed up that process.

We also work extremely closely with the ombudsman service, so steelworkers should not be concerned about which organisation beginning with an F they should go to. They should come to either one of us and we will find the right place for them. I reiterate that we are free and independent, and we will progress claims. With a 90% uphold rate, nine out of 10 steelworkers have been successful in claiming compensation from us. We would encourage everybody.

Between us, we have only seen 25% of complaints, so we would really encourage people. If there is more that we can do, we do that. We have a

dedicated page on our website, too. We work with individuals such as Mr Smith and the MPs of the areas. We would really encourage them to come and talk to us.

Q96 **Chair:** You heard evidence, I think, from the pre-panel that the early claimants—the pre-April 2019 claimants—were paid out by your authority about half what they would now get. Does that concern you?

Caroline Rainbird: It is important that we transparently, openly and fairly follow the guidelines for compensation set out for us by the regulators. That is important for all our customers, as well as the industry that funds us. There were limits in place that have been increased since 2019, but it is important that we pay out compensation as set out by the guidelines consistently, transparently and fairly.

Q97 **Chair:** Your compensation payments are made from a levy on the industry.

Caroline Rainbird: That's right, yes.

Q98 **Chair:** Which has gone up quite considerably from 3% to 6%. Do you think that is enough? If it isn't and if you put it up further, would it have a destabilising effect on the financial services industry?

Caroline Rainbird: That is a very important question that we are asked on many occasions. The compensation amount is the compensation amount. The most important thing for us collectively—the industry, ourselves, and consumers and consumers' awareness—is to reduce the incidence of poor outcomes so that the compensation amount can come down.

However, to balance that, one example is that the claims that we receive go back in many cases many years. The first time that people might realise they have a valid claim—this is much wider than British Steel—the incidences are sometimes five years from when the advice was given. A lot of these claims—

Q99 **Chair:** Can I just stop you there? Ms Delfas gave very helpful advice that if they were in that pre-April 2019 group and they feel that their case has not been properly heard, they can go back to the ombudsman or even make a reference for the first time. If the ombudsman finds that that is the case, would they then come back to you and claim more compensation?

Caroline Rainbird: It depends on whether the company is in default. If the company is in default, that is where we come into play. If the company is still in existence, they would take that recommendation from the ombudsman service and go back to the live company. We have the guidelines set down and the limits on our compensation, and those dates are set down, as we have talked about.

Q100 **Chair:** That is very helpful; thank you. Mr Rathi, I have one important question for you. You heard what was said about professional indemnity insurance, or PII, in the pre-panel, and how lawyers are covered by PII not just for the year in which the claim was made, but for the duration of that

claim, whether it is after that year or not, but financial services advisers are not. Is this a change that the insurance industry ought to be considering, either legally or on a voluntary basis?

Nikhil Rathi: We are, as part of our impact assessment, looking at the PII market closely.

Q101 **Chair:** You have a consultation, haven't you? Yes, of course.

Nikhil Rathi: We are looking at it and I think this is where there is a balance to be struck. There has been a constraint and restriction in supply of PII. The number of insurers willing to offer PII insurance for definedbenefit pension transfer advice has gone down very significantly, and a

large number of them excluded historic BSPS cases. The question I would have with that proposal is if we put that obligation on, saying that you have to be covered for all historic business, would there be any suppliers in the market?

So, to your point, that could potentially affect the stability of the pension transfer advice market, which is the other element of our consultation. We are trying to weigh up the balance here between the critical importance of securing redress for these affected pensioners, but then trying to understand, as well as we can, the wider market impacts. A consequence of the PII market seizing up is that you potentially cause consumer harm on the other side. Customers who legitimately want a transfer are no longer able to do so.

Chair: Thank you. We are on the Opposition wind-ups in the Chamber, so I will allow Mr Smith to use the remaining time until the Division bell goes.

Q102 **Nick Smith:** Thank you, Chair. That is very kind. To put it on the record, I think the FSCS, of all the organisations in front of us today, has done a good job over the last few years at working with steelworkers affected by this terrible scandal. I think it is worth saying that aloud, Chair.

Coming on to the wider debate about how much all of this will cost steelworkers, Philippa Hann thought it could be somewhere between £300 million and £500 million. To help us understand that more, Mr Rathi and Mr Mills, could you please help us? One of the issues I know is that British Steel members have lost out on compensation owed to them due to financial limits imposed by the regulators. We have talked about the unfairness of that.

Mr Rathi and Mr Mills, you may have an estimate—if not, please can you provide one—about how much steelworkers would have lost out on because of these financial limits? It is a real bugbear to many families. They feel they have been cheated, particularly those people who put their complaints in at first—my constituents—when some of them realised what was going on. They think they have been ripped off. They tried to do the right thing early on, but they feel left behind. Is it possible you could come up with something along those lines?

Nikhil Rathi: Absolutely. When we publish our final response to the consultation, we can look to give you that information. I think Ms Rainbird may be able to give the information now of the claims that the FSCS has processed.

On the question of the limit, the £85,000, that was considered in 2019 and we have had a discussion paper recently looking at it. We have one of the most generous compensation schemes in the world in the United Kingdom, both in terms of the limit and the scope of coverage. The historic approach has been that the FSCS levy covers losses up to that limit.

In the case of the financial crisis, where there were uninsured deposits, because of the exceptional nature, the Exchequer covered uninsured deposits. Whenever we strike that limit, we have got to bear in mind that it is healthy firms that have done nothing wrong that are paying the compensation. That also applies to the retrospective point; it is very difficult for us to change things retrospectively, in response to the point about legislation.

Chair: We don't like retrospective legislation either.

Q103 **Nick Smith:** I accept the complexity of it all and I understand the difficulties that we have, but I am just trying to get to the bottom of this and support steelworkers who feel they have been unfairly treated, so if you could provide an estimate so we can understand the overall cost, I would be really grateful. Can I take your answer to be a yes?

Nikhil Rathi: Absolutely. It is one of the things we have done, and Ms Rainbird may be able to give you some information now.

Caroline Rainbird: I can give you some information now. The total compensation that we have paid for the claims that we have processed is £43.6 million. The total loss experienced is £64.6 million. So the total uncompensated loss, as we refer to it, subject and due to our limits, is £21 million. The percentage of claims with uncompensated losses is about 45%.

The challenge, as Mr Rathi just said—and I fully accept that there is a personal implication here for each and every person who has an uncompensated loss—is that we are funded by the industry and by those payers who are acting in the industry, and acting well and fairly. So we sit in a very challenging position. I want to make sure that that is balanced: I very much recognise the personal impact to steelworkers; but I obviously have to balance that with the reaction of an increasing levy. And we are in, as you identified, an environment where our levy has increased, and particularly in this area of more complex and more expensive failures and compensation to be paid.

I go back to the point that the best way to address this is to reduce the incidence of poor outcomes and bad outcomes. I would like to not exist. Nobody wants to be a customer of FSCS.

Q104 **Nick Smith:** Chair, I am going to bob around my notes here, but I will ask one more question if I may, which is about what I think of as a missing witness today. I am certainly concerned about what I think of as the FCA's slowness to respond at the outset of all this. The chief executive officer at the FCA at the beginning of this shambles was the present Governor of the Bank of England. Can I please ask, Chair, that our Clerks contact Mr Bailey and ask him to give his side of the story at a future meeting?

Chair: I think, Mr Smith, that they have already done that and I think there is a date pencilled in the diary.

Nick Smith: That would be fantastic.

Q105 **Peter Grant:** Very quickly, Mr Rathi, obviously we have to make sure that you have the necessary powers to do your job; we also need to make sure you have the resources. Later this year, you will become responsible for the regulation of the funeral plan industry and at the moment we have got 46,000 customers of Safe Hands who might have lost all their money. What additional resources will the FCA be receiving to allow you to take on that additional workload?

Nikhil Rathi: Whenever we have a scope change, over a number of years we will levy the costs of bringing a new sector into regulation on the firms that are subject to regulation. So, we will levy back the cost of bringing funeral plan providers into regulation.

The Safe Hands situation is obviously very distressing. Safe Hands has gone into administration. The administrator has been public in saying that so far they have not identified assets that match the liabilities. Clearly, in those circumstances, we can't allow that kind of firm to come into our regulatory perimeter and then be a burden on the FSCS in the future if it fails.

We are working as hard as we can with the industry to see if funerals can continue to be provided to the families who are affected, but I can understand the distress that your constituents must be facing.

Q106 **Peter Grant:** Thank you. There are also questions emerging about one of the two investment managers that the firm used; they have gone into liquidation and looking at their accounts it looks as if they were fined £2 million by the FCA quite recently, although I haven't been able to confirm that. When the FCA is looking at a firm such as a firm of investment managers and decides that what they are doing is not acceptable, do you routinely go back to their clients, either to find out whether the clients are complicit in the wrongdoing or possibly to find out whether the clients are at risk because of bad investment practices, for example?

Nikhil Rathi: In a situation where we have fined a firm for behaviour that may have caused detriment to clients, we would typically expect them to contact the clients involved to explain to them how they are going to make good the mistakes they have made.

Q107 **Peter Grant:** In this case, of course, the client, which was the Safe Hands company, didn't really care, because it wasn't their money that was at risk, was it? It was the money of 46,000 innocent people.

Nikhil Rathi: This is a very unfortunate situation. I think it is also one of the reasons why Parliament has decided to bring funeral plans into legislation—into regulation.

Q108 **Chair:** Maybe we can't cover this today, but maybe you could give us a note; that would be really helpful, Mr Rathi.

Nikhil Rathi: Yes, Chair.

Chair: We are still sort of on the throes of the bell, but Mr Smith has another couple of questions.

Q109 **Nick Smith:** Thank you, Chair; I've been dipping into my notes. Again, this question is to Mr Rathi and Mr Mills. Constituents who I talked to yesterday told me they thought it was unacceptable that they and their friends have not received full compensation because, they say, the firms that they have complained to initially are, in effect, marking their own homework. I just wondered what you had to say about that, because it feels wrong to me in the first instance and I am a little bit afraid that the redress scheme could have elements of that as well. So how will you ensure that there is transparency and fairness in this instance, please?

Sheldon Mills: The consultation on the redress scheme sets out the attestations that firms will need to comply with in order to explain to us that they have followed a proper process. They will be given by the senior manager of the firm, under our senior manager certification regime, which has greater enforcement powers for us vis-à-vis those individuals if they don't behave in the right way.

In addition to that, we will be consulting on the calculation of redress later in the summer, including in relation to wider DP pension transfers, as well as BSPS. We propose to think about whether we will have a BSPS redress calculator. Making that standardised and more consistent will allow for better transparency for us to assess whether or not firms have followed and appropriately applied the redress scheme.

In addition to that, customers will be able to complain to the Financial Ombudsman Service if there are issues in terms of their assessments—so if they are assessed as their advice being suitable, they can go to the FOS and complain about that. So we have put in a series of mechanisms so that we manage and mitigate the mark-your-own-homework risk.

In addition to that, we have put in place the asset restriction in the past couple of days, which is intended also to put more pressure on all of these firms as to the expectations that we have of them now. Moving forward, if our board agrees, a redress scheme comes into place.

Q110 **Nick Smith:** I have one more question on something that Philippa Hann raised earlier on. I know the FCA has identified 12 non-compliant firms who attempted to re-enter the market. I suppose the worry is that people will phoenix—find a way to get back in with their bad habits. How can you be sure that there aren't any more examples of phoenixing by bad actors who have already ripped people off and who will try and do it again?

Sheldon Mills: We have done significant work to ensure that we are managing the links between individuals, companies and so on on our register and to ensure that where we do see that information, we can take action and remove people from the register as appropriate or take action in relation to that.

We have also issued guidance in relation to phoenixing and issues around it, to try to make sure that firms are aware of all the types of activity that we see as phoenixing. We will consider and take enforcement action where we see egregious forms of phoenixing.

Q111 **Chair:** I have one question. Listening to the pre-panel and all of you, it seems to me that the whole of pensions regulation is creaking at the seams. We have Ms Delfas working very hard to keep up. We have Ms Rainbird's compensation for the FSCS organisation creaking at the seams on whether she can actually afford to pay out all the claims, and you running hard to stand still.

Are we in a situation where we are coping and improving the situation, thinking about those 40,000 people who are wanting to opt out of defined-benefit schemes, or would another major restructuring of a big pension scheme like British Steel push the situation over the edge? Where do you think we are?

Nikhil Rathi: First of all, there is one very big success of pensions policy, which is auto-enrolment, which has put UK citizens in a much stronger position than they would have been otherwise. Whenever we are asked this question, I think we should celebrate the success of the bedrock of pensions policy in the UK.

I would certainly hope that if we had another distressed employer, we would be on it collectively—across the TPR, the trustees and the Government, as were involved in this case. The industry is also heavily sensitised now. Can I guarantee that? No, but we hope that we have learned the lessons, and I hope that you are seeing, as the evidence of recent interventions, that we are being significantly more proactive and quicker when we act.

Chair: Thank you all very much for your time. I think we are probably better to finish before the bell cuts us off. It has been a really useful and interesting session today, so thank you very much indeed for your time.