FCA FINANCIAL CONDUCT AUTHORITY

12 Endeavour Square
London
E20 1JN

Tel: +44 (0)20 7066 1000
Fax: +44 (0)20 7066 1099
www.fca.org.uk

Rt Hon Mel Stride MP
Chair - Treasury Select Committee
House of Commons
London
SW1A 0AA

12 July 2021

Our Ref: C210629A

Dear Mel,

RE: British Steel pensioners: use of section 404 FSMA consumer redress powers

Thank you for your letter of 29 June, which follows my evidence to the Committee and responses to questions from Mr. Nick Smith MP on 12 May.

You ask about the FCA Board's considerations on the use of the section 404 power under the Financial Services and Markets Act 2000 (FSMA).

Before turning to the question about the section 404 power, I would like to stress that the FCA fully understands the importance of engaging with consumers for whom redress may be payable. A significant range of work is underway to do this. This includes Skilled Persons Reviews, Past Business Reviews, and a complaints-led approach. We are considering all options to improve the likelihood that consumers that have suffered losses due to poor advice are appropriately compensated.

The FCA ran six face-to-face events for former BSPS members in South Wales throughout 2019. Despite the promotion in advance, and changes to take account of the work shifts of members, only around 100 members attended. All the regulatory family attended, and the events helped consumers to understand what their advice experience should have been. The organisations were on-hand to help them raise complaints or claims – but also, from the FCA's perspective, to gather further knowledge and intelligence from the attendees. Following these sessions, we made available the video which the former members requested.

In addition, we have work underway which includes a consideration of consumer redress, including:

- a total of 36 Past Business Reviews covering an estimated 1,500 BSPS cases;
- c.30 enforcement investigations;
- alongside The Pensions Regulator and the Money and Pensions Service, contacting c.12,000 BSPS members in 2018 who had requested a transfer value;
- mailing 3,800 BSPS members in South Wales to promote our consumer events in 2019. We also promoted these through local media, social media, regulatory family websites and MPs;
- surveying 310 BSPS members that had transferred out of the scheme to understand the potential barriers to complaining. The responses will help inform our forward strategy;
- a webpage dedicated to BSPS (launched in June 2021) containing useful information and advice for members;
- issuing and supporting MPs with our 'MP's Toolkit'. This includes a package of materials for MPs to use to promote our resources and encourage affected members to complain. Community Union used this information in emails to c.10,000 members;
- writing to 7,700 former members to inform them that many former members had received unsuitable advice and that they should consider complaining, setting out how to do so.

We are committing further resource to a presence in steelworker communities – our 'Boots on the Ground' communications approach. We initiated this work before the pandemic, alongside the Financial Ombudsman Service, the Financial Services Compensation Scheme and the Money and Pension Service. This helped to raise awareness among former BSPS members about their right to complain, and how these organisations can help them to do this. We hope that this will continue to help steelworkers to raise complaints about the advice they have received.

Turning to the matter of use of the section 404 power, in my evidence to the Committee I noted that we had not ruled out its use, but that there were a wide range of considerations underpinning any decision to use it. Under section 404, the FCA can make rules to provide a redress scheme. We can exercise this power where *we have seen evidence of a widespread, or regular, failure by firms to comply with requirements*, which has *resulted in consumer loss* and *where it is desirable to make rules for securing redress*.

This power represents a significant intervention in a market and can have far-reaching consequences when used. As such, we must rigorously assess whether the legal test for using this power would be met in this case, including whether this approach is desirable. Based on the file reviews undertaken so far, we do not yet consider that we have sufficient evidence to determine whether the test has been met. However, we are undertaking further file reviews to gather more evidence.

The use of section 404 in the context of BSPS could have a significant impact on the market and on pension freedoms more generally. For example:

- professional indemnity insurers further restricting or significantly raising the price for their cover, increasing costs for firms; and
- firms exiting the market and thereby avoiding redress. This would have implications for the Financial Services Compensation Scheme, ultimately increasing the levy applied to the remaining firms in the advice market. The Committee has asked us a number of questions about the scale of the levy and the impact of recent increases on firms, particularly small firms, that have no responsibility for poor conduct. These are factors we must also take into account.

We are undertaking further work on the above points.

Furthermore, there are specific elements of the BSPS case and context that are relevant, in particular, the measures taken by the Government in the lead up to the 'Time to Choose' exercise in 2017. We will therefore be engaging with the Government on these issues, including understanding its position regarding any potential impact of the FCA decisions on the Government's pensions regime policy, including pension freedoms.

We hope this work will enable the FCA Board to take a decision on whether to proceed this calendar year. The Board and its relevant committees have been regularly informed about progress in the BSPS matter. Board members have engaged directly with the relevant Executive Directors and teams at the FCA, discussing the options available to provide redress to BSPS members. In the meantime, as I noted above, we are intensifying our work on the existing complaints-led approach to continue to support affected former BSPS members. We will continue to keep the Committee updated.

Yours sincerely,

Nikhil Rathi

Nikhil Rathi
Chief Executive