

## **Written evidence submitted by British Steel Adviser Group**

Dear Sir or Madam,

### **British Steel Pension Service (BSPS) Inquiry Submission by British Steel Adviser Group (BSAG)**

We are part of a membership group called BSAG, a 100 plus Independent Financial Advisers who are deeply worried about the Financial Conduct Authority's direction of travel regarding their proposed BSPS redress scheme. Our members comprise individuals, partnerships, and firms.

We are a firm of chartered financial planners based in Bridgend, South Wales. We have just over 100 BSPS pension scheme members who 5 years later are very happy with the choice that they made in 2017 to transfer into personal pension arrangements. All approached our firm for advice as to what was in their best interest and they remain happy and loyal clients of this firm.

All are in Regulated Investment portfolios which have performed very well despite the global pandemic and a threat of World War 3. Our bespoke financial modelling at the time showed that an annual investment return of 4% in a personal pension would match the benefits in drawdown from the former Scheme beyond age 125 for members of all ages.

The Scheme has a capped inflation rate increase entitlement and for all members with pre 1997 service there is a 0% inflation rate increase in retirement.

This firm has never had a non British Steel complaint and we are proud of our Governance position in having never paid any redress or claimed on our PII policy.

The history of the BSPS is convoluted. We first wish to present our members' views about the BSPS transfer out process, as little coverage of our position was covered in the press and at committee meetings.

As the NAO Committee will recall, after Tata Steel wished to discharge their BSPS liabilities to prepare for a sell off ultimately to Liberty House, BSPS members had three options:

- They could stay in the BSPS scheme, which would be transferred to a Pension Protected Fund (PPF)
- switch to New BSPS
- or members could transfer out

Our IFA members assisted with this last group.

We wish the Committee to ask the FCA 8 presently unanswered questions. They are placed in the narrative, and for convenience, are also listed here.

---

## **THE 8 QUESTIONS**

Q1 - Given the wholesale loss of trust in the BSPS, the performance of the Pensions Regulator, and the Financial Conduct Authority's neutral stance regarding transferring out request applications to fully authorised IFAs, that the BSPS scheme trustee was required to confirm, why are these same IFAs now being treated as villains?

Q2 - In determining an unexpectedly high rate of 47% unsuitable cases, are the FCA applying new rules and interpretations to what were previously considered to be suitable cases?

Q3 - If so, then how can this be fair to BSAG members?

Q4 - Was this DBAAT variant the one the FCA used to conduct a review of the 172 cases that gave rise to the 47% Unsuitable finding?

Q5 - If a random FCA staffer and random IFA were to both complete a DBAAT for a particular client with the same data, would there be differences in the two DBAAT results for that client?

Q6 - Given the Nolan Principles, and the ICO's very clear advice, on what grounds are the FCA routinely choosing to not provide the answers to our questions?

Q7 - Given that this proposed redress scheme, if it goes through, will put most BSAG members, and perhaps up to 300 IFAs out of business, how can it possibly be right that the FCA can create the rules, set unexplained criteria, use a black box prediction tool, to occasionally judge the same files differently, and apparently later tighten the rules to apparently place blame on the IFA industry, when industry experts consider many of the cases the FCA fail, were in their view perfectly reasonable?

Q8 - Has the FCA considered that with its current redress scheme direction of travel, it is heading for a similar outcome to the Post Office Horizon scandal at the speed of an express train?

---

We include references at the end of this submission, and our full set of unanswered questions to the FCA in the Appendix.

## **1. HOW THIS FCA REDRESS SCHEME WILL AFFECT US**

We have a total of 400 high net worth clients of which 100 are BS employees and pensioners. We have funds under management of circa £175m. The Firm has never had any non BS complaints and has to date not been required to pay any redress.

We are seeking a fairness in the review of the actual need for a redress scheme given that our own experience is that the alleged unsuitability rate of 47% seems extraordinarily high.

We are very concerned that a precedent could be set for CMC's to claim against all pension transfer advice because the DBAAT questions apply equally to all DB transfers. It appears that the Treasury and Government were committed to flexible retirement and in 2017 the BS members were given "Time to Choose". With hindsight, it would appear that the Members actually had no choice at all.

In our experience our BS clients are intelligent, and well informed and made their choice to transfer out from a position of understanding as to the potential outcomes based on their personal circumstances.

The current form of redress may result in compensation payments, sometimes involving the payment of tax free cash sums, potentially resulting in the Member being significantly better off in retirement than they would have been had they remained in either the PPF or transferred to BPS2. The redress at present leaves the Member to enjoy the personal pension benefits, that those making complaints state, with the benefit of hindsight, that they don't actually want, and which therefore leaves the claims system wide open to those who wish to game the redress scheme.

We are concerned that the DBAAT requires subjective judgement to reach a conclusion and hence it will not produce fair and consistent outcomes that advisers are entitled to expect.

The primary motive for transfer by our clients was to have much improved outcomes as a consequence of exercising their rights of transfer and the rights not to buy an annuity. The right to buy an annuity still exists in the personal pension arrangements and as gilt rates increase and health potentially deteriorates with age, if Members decide with hindsight that they would prefer a fixed guaranteed pension, this may be a suitable option for some with all or part of their pension capital.

In our view any redress should therefore be based on the offer of a deferred annuity or an ability to re-join BPS2 .

From our client discussions it is unlikely that the vast majority of members holding regulated investments within a personal pension arrangement would accept such redress and the inference is therefore that they must be happy with the advice that was provided in 2017.

Fairness to all parties is crucial. We have seen evidence of certain past members gaming the system and it cannot be right that a former member is placed in a better position than they otherwise would be.

If the financial redress makes a former member better off it could damage the capital resources of this firm but the precedent caused by such a redress scheme could have a wider impact on thousands of IFA's and PI Insurers with ultimately less choice provided

to the consumers and this seems to go against current Government policy of "Pension Freedom".

## **NARRATIVE**

Our first question is about the BSPS history, including BSPS and TPR communications problems, and today's FCA position.

## **2. POOR BSPS PERFORMANCE AND THE BREAKDOWN OF MEMBERS' TRUST**

British Steel members were not well served by BSPS and its supporting organisations. The House of Commons Work and Pensions Committee noted BSPS members could not get accurate information. The BSPS helplines were overloaded, option packs were incomplete, and this resulted in a wholesale loss of trust. There was such a high membership transfer out demand to reputable IFAs, many of whom are now BSAG members, they had to turn away new investment enquiries. We understand the BSPS helplines were asked to prioritise CETV enquiries for members and IFAs during this time.

The 2017 Project Excalibur process which led to the "Time to Choose" had many facets. From a BSPS perspective the FCA visited financial planning firms in November 2017 and made it clear that they took a "neutral" stance to pension scheme members transferring their pensions. The FCA had an opportunity to say "no" to financial planners but chose not to do so.

The FCA carried out a visit to our firm in November 2017 and randomly selected 15 files all of which were deemed suitable with all investments held within regulated investment portfolios so our experience is that we do not appear to have a 47% unsuitability rate.

**Q1 - Given the wholesale loss of trust in the BSPS, the performance of the Pensions Regulator, and the Financial Conduct Authority's neutral stance regarding transferring out request applications to fully authorised IFAs, that the BSPS scheme trustee was required to confirm, why are these same IFAs now being treated as villains?**

## **3. INCONSISTENT OR CHANGED DECISION STANDARDS**

BSAG want to ensure that the consultation provides a fair process for the debate on the merits or other wise of a redress scheme. One member is aware of apparent attempt to 'game' the redress system, and the BSAG Group generally are concerned that the FCA is encouraging transferred-out members to complain. The member writes:

'The current form of redress will be cash sums without any requirement to alter the replacement investment strategy, leaving wide open the scope to game the BPS2 redress scheme.'

For this cohort, complaints are of course free.

A BSAG member advises the FCA has confirmed in a recent statement (FCA Statement on British Steel Pension Scheme Redress issued on 22 December 2021) that its analysis showed that the advice provided on transfers from the Scheme was unsuitable in 47% of cases. This presumably included those well publicised cases where Scheme members were advised to invest the transfer payment received from the Scheme to non-mainstream high-risk investments. BSAG members have not recommended this to any of our clients. The approach suggests the percentage of unsuitable cases would be lower

than 47% in those cases where conventional pension arrangements were recommended. We note the FCA claim a long-term unsuitable case rate of 17%.

The FCA statement attracted considerable media coverage, with Pensions Age noting in October last year 'An FCA spokesperson commented: "We look forward to working with the NAO. We've introduced new rules to raise the standard of pension transfer advice and we're taking action, both with individual firms and across the sector, to ensure that where consumers lost out because of unsuitable advice they receive compensation.' "

BSAG members are aware of instances where files reviewed by the FCA were found to be suitable, yet the FOS has recently upheld 98% of complaints. There appears to be puzzlement within BSAG that the Financial Services Compensation Scheme are using the PPF as their redress model, and the Financial Ombudsman Service using a different method. There is puzzlement that the FOS did not use the BAAT tool in their 98% of upheld claims. There are also questions IFAs are asking about being unable to marry expected FCA redress payment cases with their overall claim of 47% unsuitable.

These questions are encapsulated in this IFA comment:

'Also, if you look at the FCAs figures they are assuming an initial population of 4,000 with an expected 1,400 redress payments. This is instead of the 7,700 total transfers out, and much lower than their 47% unsuitable claim. Either 47% of 7,700 would mean 3,619 redress payments, or 47% of 4,000 being 1,880. 1,400 of 7,700 is only 18% (ie the same as their general DB claims), or 1,400 of 400 is 35%.

If they are assuming 1,400 of the original 7,700, ie 18%, then this does not stack up. They should be investigating all DB transfers, not just BSPS. However, at 18% there is not the widespread failing that they claim.'

**Q2 – In determining an unexpectedly high rate of 47% unsuitable cases, are the FCA applying new rules and interpretations to what were previously considered to be suitable cases?**

**Q3 – If so, then how can this be fair to BSAG members?**

#### **4. DBAAT AND ENVIRONMENT**

We now want to turn to the DBAAT tool and its operating environment.

We have been advised the Excel-based DBAAT being used in March 2022 was the version created in October 2018, and authored by the FCA's Technical Specialist

[REDACTED] As currently involved with suitability of financial advice, taking an interest.

[REDACTED]

We understand that the FCA have run 172 DBAAT analyses related to the BSPS transfer out advice.

The DBAAT tool is, we argue, a basic Excel categorisation-prediction black box. Data is keyed into it, a result emerges from it, but it is impossible for anyone other than the FCA to see how it operates. It is being used as a simple Artificial Intelligence (AI) tool. But

formulae, coefficients, and parameters are hidden to users. The results it delivers depends considerably on what was keyed into it. If policy or guidelines, or group members change, the long-term results drift.

We particularly look forward to the FCA's answer to our Q2.

Next, in trying to understand how the FCA arrived at their 47% unsuitable assessment using the DBAAT, we have repeatedly asked detailed technical, method, and policy-related questions, and very little has come back.

Specifically, we cannot compare apples with apples, because we cannot get access to the FCA assumptions criteria, training materials other than the DBAAT instructions, the DBAAT formulae/scripts or the BSPS DBAAT dataset.

FOI and other requests on aspects of DBAAT and related FCA decisions are being routinely slow-walked. We simply do not know how the FCA arrived at their decisions, and they have refused to satisfactorily explain them.

We have asked independent experts to consider disputed files using the DBAAT tool, and they have told us the files seem fine. When we analyse the files ourselves with DBAAT, we get a much lower unsuitable grading compared to the FCA.

We now wish to highlight the challenge Grant Thornton, FCA appointed DBAAT experts, found when using the DBAAT. Associate Director ██████████, AFPS, who has used DBAAT extensively, stated in a tutorial video in February 2022 that DBAAT could be used as a checklist or ready reckoner. Director ██████████ stated IFAs didn't have to use the tool at all, that inferring information prior to entry was important, and the compiler has to apply experience to particular cases.

██████████ said the tool takes time to get used to, that interpreting information before submitting to DBAAT has to be done, and the reviewer decides what to enter. ██████████ stated the team has frequent case clinics and data entry dilemmas to sort out. She found DBAAT ranked Grant Thornton's first group of cases as unsuitable, and they had to do trade-off conversations, requiring data entry staff to change determinations and judgements and re-enter. A statistician would use the expression 'noisy data'.

This might suggest different cohorts of data entry staff would likely come up with very different suitable/unsuitable ratios.

Regarding FCA non-disclosure, we note the FCA is a taxpayer funded public body. As such, the Nolan Principles 1.3, 1.4, and 1.5, would seem to us to apply.

The Information Commissioner's Office advisory regarding explaining AI in practice, and the FCA DBAAT being effectively a black box, they note particularly Tasks 1 through 4 and Task 6 apply. They say the processes and presentation should consider:

- Transparency
- (be) explanation-aware
- useable and easily understandable
- (consider) how the findings are presented

We believe the FCA are not adhering to either of the Nolan Principles or the ICO guidelines.

**Q4 – Was this DBAAT variant the one the FCA used to conduct a review of the 172 cases that gave rise to the 47% Unsuitable finding?**

**Q5 – If a random FCA staffer and random IFA were to both complete a DBAAT for a particular client with the same data, would there be differences in the two DBAAT results for that client?**

**Q6 – Given the Nolan Principles, and the ICO's very clear advice, on what grounds are the FCA routinely choosing to not provide the answers to our questions?**

## **5. NOISY DATA CREATES UNRELIABLE EVIDENCE**

It is now very clear to us that the range of outcomes delivered by the DBAAT tool relies significantly on understandings, judgements, shared opinions, and inferences made prior to entering data. It also seems probable that the FCA is working to a very different set of understandings and judgements when compared to the IFA profession, and our expert witnesses.

It is also clear to our statistician, Dr Clare Walsh, (that) it seems that there may be a qualitative difference in how the two groups are defining 'unsuitable', and if this is the case, then there is no comparison of like for like here, which is problematic.

**Q7 - Given that this proposed redress scheme, if it goes through, will put most BSAG members, and perhaps up to 300 IFAs out of business, how can it possibly be right that the FCA can create the rules, set unexplained criteria, use a black box prediction tool, to occasionally judge the same files differently, and apparently later tighten the rules to apparently place blame on the IFA industry, when industry experts consider many of the cases the FCA fail, were in their view perfectly reasonable?**

We now wish to put to the FCA a close parallel to the FCA's current actions. The long-running Post Office Horizon scandal involved a not dissimilar number of sub-postmasters and mistresses to the affected IFAs. 736 were prosecuted. At the heart of that case was the refusal of the Post Office to acknowledge Horizon's problems, their use of unreliable evidence to prosecute (source: BBC), and the refusal to open up Horizon for review by independent experts. The appeal judge, Lord Justice Holroyde, said the system contained "bugs, errors and defects", and that there was a "material risk" that shortfalls in branch accounts were caused by the system. He also stated he would refer Fujitsu to the Director of Public Prosecutions for possible further action, and a parallel Public Enquiry involving the Post Office is under way.

**Q8 - Has the FCA considered that with its current redress scheme direction of travel, it is heading for a similar outcome to the Post Office Horizon scandal at the speed of an express train?**

## References:

### People

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

### Sources:

#### **House of Commons Work and Pensions Committee, British Steel Pension Scheme**

##### **Sixth Report of Session 2017–19**

<https://publications.parliament.uk/pa/cm201719/cmselect/cmworpen/828/828.pdf>

P10 Uncertainty led to a surge in transfer enquiries

P10 - Inadequate information, phonelines blocked

GOV.UK (2016). *The 7 Principles of Public Life*. [online] GOV.UK. Available at:

<https://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life--2>.

Gray, J. (2021). ***NAO to investigate FCA's handling of British Steel pension transfer scandal***. [online] Pensions Age Magazine. Available at:

<https://www.pensionsage.com/pa/NAO-to-investigate-FCA-s-handling-of-British-Steel-pension-scandal.php> [Accessed 15 Apr. 2022]. An FCA spokesperson commented: "We look forward to working with the NAO. We've introduced new rules to raise the standard of pension transfer advice and we're taking action, both with individual firms and across the sector, to ensure that where consumers lost out because of unsuitable advice they receive compensation."

ico.org.uk. (2020). ***The principles to follow***. [online] Available at:

<https://ico.org.uk/for-organisations/guide-to-data-protection/key-dp-themes/explaining->

decisions-made-with-artificial-intelligence/part-1-the-basics-of-explaining-ai/the-principles-to-follow/ [Accessed 15 Apr. 2022].

Peachey (2021). **Post Office scandal: What the Horizon saga is all about.** *BBC News*. [online] 23 Apr. Available at: <https://www.bbc.co.uk/news/business-56718036>  
The judge said the system contained 'bugs, errors and defects', and that there was a 'material risk' that shortfalls in branch accounts were caused by the system.

**Post Office used suspect evidence in prosecutions.** (2020). *BBC News*. [online] 8 Jun. Available at: <https://www.bbc.co.uk/news/uk-52905378>.

www.youtube.com. (n.d.). **FCA's Defined Benefit Advice Assessment Tool (DBAAT)**. [online] Available at: <https://www.youtube.com/watch?v=QO9tuJUP5LQ>  
[Accessed 15 Apr. 2022]. or if link unavailable:  
<https://www.dropbox.com/s/bkm724ro3shjqd8/FCA%E2%80%99s%20Defined%20Benefit%20Advice%20Assessment%20Tool%20%28DBAAT%29.mp4?dl=0>

Section noting all early DBAAT cases failed starts 35 minutes in.

## **The Unanswered Questions to the FCA**

This set of questions has been put forward to the FCA over the last 6 weeks. Very little has come back, and as can be readily seen, they are vital to BSAG Members preparing their responses.

1. Who commissioned DBAAT at the FCA ?
2. Was DBAAT built internally or was it built externally ?
3. Was there a design brief for the DBAAT system ? If so, can this be disclosed.
4. Do any of the assumptions built into the DBAAT system support the current FCA "negative" view on DB pension transfers ? eg that the starting point is that a DB transfer should not proceed, in all but very limited circumstances.
5. Are the file reviewers who use DBAAT trained on the system ?
6. If so, are there any training notes / training guides ?
7. If yes can these be disclosed ?
8. Do all the file reviewers hold qualifications which would enable them to be Pension Transfer Specialists ?
9. How are DBAAT files quality assured ?
10. Do those who undertake the quality assurance hold qualifications which would enable them to be Pension Transfer Specialists ?
11. Does the FCA have an internal policy document on the use of the DBAAT system ? If so, can this be disclosed ?
12. What is the explanation for removing the "Unclear" / "MIG" rating in the DBAAT system ?
13. Has there been an internal policy, design process which mandated the binary outcomes ?
14. If so, can you disclose the policy to us, so we can review it.
15. Please can you confirm that whether or not this is the only DBAAT guidance issued to firms. If not, please disclose any additional guidance.
16. Please disclose to us any additional internal guidance on the use of the DBAAT provided to FCA internal assessors / Quality Assurance Assessors.
17. Please confirm to us any educational requirements needed for an internal FCA member of staff (or an external subcontractor) to be deemed competent to undertake DBAAT assessments.
18. Please confirm whether any training was provided to internal FCA members of staff (or an external subcontractor) who have undertaken DBAAT assessments.
19. If yes, please disclose to us any training materials provided to staff.

**April 2022**