## FCA Consultation Paper CP23/24 – Response from First Actuarial

First Actuarial is an actuarial consultancy providing pension scheme administration, actuarial, investment and consultancy services to a wide range of clients across the UK. We have a specialist team that carry out pensions redress calculations on behalf of financial advisors, wealth managers and claims managers.

We have responded to this consultation in our capacity as actuarial advisors in the field of pensions redress and have responded only to questions that are directly relevant to our work.

**Q3: Do you agree with the scope of potential redress liabilities?**

The scope seems reasonable in theory but there is scope for firms to take different interpretations of prospective redress liabilities.

For example, the proposals could be interpreted to mean that any activity that has a higher risk of leading to claims such as advice on pensions transfers should be treated as potentially giving rise to an obligation to provide redress irrespective of whether any complaints have been received by the firm or issues have been identified through internal monitoring. It might be helpful to clarify whether this understanding is correct in order that a more consistent interpretation of the requirements is adopted across PIFs. We are also concerned about an approach whereby firms that carry out more comprehensive internal monitoring may ultimately see asset restrictions imposed whereas firms with less robust compliance processes might not identify a need to set aside capital for potential redress. Not only would this reduce the potential benefits of the proposals, but it could also serve as a deterrent to firms fully investigate whether systemic issues exist when they receive a single complaint.

**Q4: Do you agree with our proposal not to place new requirements on PIFs to proactively uncover potential redress liabilities in their past business and instead rely on existing monitoring requirements?**

Yes but as above we consider that there will be different types of monitoring processes in place and we believe that consistency between PIFs is important in order that firms with more robust monitoring requirements are not commercially disadvantaged by the proposals.

**Q5: Do you agree with our proposal for PIFs to hold capital resources until a potential redress liability has been resolved and there is no realistic prospect of it being reopened?**

In theory this seems sensible, although it is worth noting that cases referred to the Ombudsman service can take up to two years to resolve so capital would need to be held over an extended period.

It would be helpful if you could clarify the process when a firm determines that redress is not due in relation to a particular case. In particular, is the firm under any obligation to share its conclusion with the consumer in advance of the commencement of the 6 month waiting period before releasing capital. This is of interest because we are aware of cases in which:

- a firm has carried out internal file reviews of historic pensions transfer advice without notifying the consumer that such a review is taking place

- they have assessed the advice to be suitable

- the consumer has subsequently complained about the advice and the case has been referred to the Ombudsman service

- the Ombudsman has determined that the advice was unsuitable.

We understand that in this scenario the firm would hold capital whilst carrying out their internal file review, it would then be released and would only be needed again at the point a complaint was made by the consumer. This seems reasonable but again the prospect of asset retention requirements could impact on the stringency of the suitability assessment carried out internally.

**Q6: Do you agree PIFs should estimate the amount of funds they may need to provide redress and we should not mandate a single or tiered redress figure in our rules?**

For firms that have given pensions transfer advice, the potential redress associated with this activity may be relatively high compared to other potential redress liabilities. Furthermore, pensions transfer advice is identified within the consultation paper as being an activity which is more likely to lead to a redress payment. These two factors mean that if the proposals are to work effectively it will be important for firms to estimate defined benefit (DB) pension redress appropriately.

We believe that it is important that all firms (not just PIFs, and firms of all sizes) who have given advice on DB transfer take steps to understand the nature of DB transfer redress, the factors that affect it and to have some idea of their potential exposure to future redress payments. We consider that this is consistent with Consumer Duty.

However, in our view, accurately quantifying the future redress that may arise in relation to DB transfer is likely to be extremely challenging for PIFs. This is because:

- It is market related so even if a PIF commissions an accurate redress calculation, the redress that is ultimately paid on the case may not align with the output of that calculation.

- Using previous redress payments in relation to DB transfer as a guide to future DB transfer redress, even with adjustments to reflect the circumstances of the case, will not be robust. There are many factors which affect the magnitude of redress and PIFs are unlikely to be able to adjust for these appropriately. For example, redress depends heavily on the date of transfer out, the way in which the transfer proceeds were invested, the ceding scheme, the circumstances of the consumer.

We consider that if the proposals are put into effect as drafted it is highly likely that some PIFs will underestimate DB pensions transfer redress and other firms will overestimate DB pension transfer redress.

We believe that given the inherently volatile nature of DB transfer redress, it might be preferable to mandate a default approach to setting redress in relation to such advice with firms able to adopt a different approach if they are able to provide evidence that it is appropriate.

For example, it would be possible to specify that redress equal to a given percentage of transfer value effected be set aside unless the PIF has taken actuarial advice to support a different allowance. This would give smaller firms in particular, a pragmatic approach for estimating redress whilst allowing scope for lower capital to be set aside by firms who know that their book of advice is not expected to generate significant redress.

If this approach were adopted, then the percentage specified should be set with some allowance for prudence and potentially varied quarterly in line with movements in market conditions. Consideration could also be given to prescribing different percentages based on the date of transfer with higher percentages applied to transfer advice written in the 1990s and 2000s which typically have high associated redress.

Similar considerations apply to retirement income advice.

**Q7: Do you agree we should allow PIFs to reduce the redress amount per customer where PII applies and that we should not mandate a maximum PII offset in our rules?**

We believe it is reasonable to all PIFs to reduce the redress amount per customer where PII applies and that you should not mandate a maximum PII offset.

That said, we consider that it may be appropriate for PIFs to understand the potential magnitude of redress if PII were not in place in recognition that PII may be secured on a year-by-year basis such that the extent of cover could vary over time. Furthermore, this approach would ensure that PIFs are mindful of any caps on limits of indemnity.

**Q9: Do you agree we should allow PIFs to reduce their potential redress liabilities by applying a probability factor to both their unresolved and prospective redress liabilities?**

Yes.

**Q10: Do you agree we should prescribe the minimum probability factor using our data on uphold rates?**

Yes – we believe that this is pragmatic.

**Q11: Do you have any views on how we have reached the probability factor of 0.28?**

We understand that the 0.28 has been determined based on overall uphold rates over a range of different types of complaint.

Consideration could be given to:

- prescribing different factors depending upon the type of activity; or
- weighting the uphold rate in line with the associated redress in order to reflect the likely correlation between higher redress and unsuitable advice.
- making allowance for the fact that uphold rates are likely to be higher in relation to advice given some time ago due to differences in the quality of record keeping.

**Q34: Do you have any views on the cost benefit analysis, including our analysis of costs and benefits to consumers, firms and the market?**

If the proposals are implemented as drafted, we believe that many firms who have written DB transfer advice will need specialist actuarial support to help them understand their potential exposure to redress. These costs could be substantial and could be particularly prohibitive for smaller firms.

To discuss this response, please contact:

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