

British Steel Pension Scheme redress scheme consultation response

This response is submitted on behalf of the trade union Community, which is the largest and leading union across the UK steel industry. Community was closely involved in discussions and events connected with the restructuring of the British Steel Pension Scheme, and we continue to support thousands of steelworkers and ex-steelworkers across the country. The response is informed by the experiences of Community members, who were invited to contribute their concerns and priorities in advance of this submission.

1. Background and restructuring of the BSPS

- 1.1 It's impossible to overstate what the BSPS has meant to our members and their families. The BSPS has provided dignity and security in retirement for generations of steelworkers, and their dependents, the length and breadth of the UK.
- 1.2 The BSPS is something our members have always been prepared to fight for. In 2009 Tata Steel UK moved to close the scheme, and then again in 2012 and 2015, and whilst we had to accept painful changes the unions' collective strength always kept the scheme open.
- 1.3 However, when the Indian owners put Tata Steel UK up for sale in March 2016, it became apparent that with the weakened covenant, due to the precarious financial position of the company, the BSPS would go into the 2017 actuarial valuation with a £2 billion deficit. Were this to happen Tata Steel would not fund a recovery plan, the scheme would collapse into the Pension Protection Fund (PPF), and the company would enter insolvency.
- 1.4 With the stakes so high the unions took the difficult decision to engage with all stakeholders to assess the options to protect both members' pensions and jobs. On the basis of expert advice, we were convinced the scheme was too well funded to be allowed to collapse into the PPF, which would have seen members taking unnecessary cuts to benefits. Clearly there were no easy options, and the restructuring of the BSPS and its related impacts have understandably provoked many strong reactions, but as a responsible union it was our duty to secure the best outcomes for our members.
- 1.5 In May 2016, the DWP published a consultation paper outlining a range of options for the future of the BSPS. The steel trade unions (Community, Unite and GMB) submitted a joint response to that consultation arguing that, under the extraordinary circumstances, there was a case to disapply 'section 67', to allow the trustees to reduce indexation and keep the scheme out of the PPF.
- 1.6 Community lobbied hard to persuade the government to disapply section 67, which at a stroke would have put the scheme into a relatively sustainable position. It remains deeply regretful that the government chose to ignore the representations of unions, trustees, the sponsoring employer, and other stakeholders, because the challenges of 'Time to Choose', and the related pensions mis-selling scandal, could have been avoided or at least mitigated.

- 1.7 With the section 67 door closed, attention turned to existing statutory levers for restructuring the BPS, in particular the use of a 'Regulated Apportionment Arrangement' (RAA). An RAA is used to detach a financially distressed employer from their pensions obligations, which usually end up in the PPF, but with the BPS that was never going to be an acceptable outcome for the unions.
- 1.8 The creation of 'BPS 2' was far from a given; the unions and other stakeholders had to fight tooth and nail for it. It should be remembered that Tata did not want to end up where they did, as the sponsoring employer of a new multi-billion pound pension scheme.
- 1.9 It was devastating for the unions to see the BPS close after having fought for it for so long, and the RAA was nothing to celebrate for us, but all our experts confirmed that under the circumstances this represented the best outcome for scheme members. Furthermore, in connection with the BPS closure, the unions were able to secure from Tata Steel a £1 billion investment plan, an employment pact and commitment to continue running two blast furnaces at Port Talbot up to 2021, and 10% employer contributions to a new DC scheme.
- 1.10 If we had not managed to secure BPS2 then as soon as the RAA came into effect on 11 September 2017 the scheme would have entered PPF assessment, and that would have meant no BPS2 as well as no transfers out. In spite of the difficulties relating to the consultation period, we stand by our belief that creating BPS2 was the right thing to do.
- 1.11 A member consultation process for a scheme the size of the BPS was always going to be challenging. However, it could, and should, have been far more straight forward had the DWP done the sensible thing and enabled the trustees to opt members into the new scheme when it was demonstrably in their interests. Community lobbied government intensively to deliver 'deemed consent' – but to no avail.
- 1.12 Deemed consent would have meant more of the 100,000 pensioner members taking what was definitively the best option for them, and not defaulting into the PPF simply because they hadn't returned a form. Importantly, deemed consent would also have freed up extensive resources to concentrate on giving the best possible support to deferred members to help them make their more complicated choices.
- 1.13 Community's views on the issue of deemed consent were reflected in the evidence we gave to the Work and Pensions Select Committee 2017 inquiry on the BPS restructuring and features in their report. Community also gave evidence to inform Caroline Rookes' 2019 review of the communications and support that was given to BPS members.

2. Pension transfers

- 2.1 In 2016 and 2017 the uncertainty around the future of the BPS, not helped by continual media speculation, was extremely difficult for scheme members, and led to many people considering transferring their pension. In early 2017 the union became aware of suspect financial advisors touting for business in steel towns. Subsequently the steel unions wrote jointly to our respective members, advising caution when dealing with financial advisors and warning about fraudsters and potential liberation scams.

- 2.2 On the basis of legal advice, the unions also went as far as we could warning members not to rush into a decision to transfer, advising that: “whilst everyone’s circumstances are different, our pension experts tell us that scheme members’ benefits in retirement are likely to be better protected in BPS2 or the PPF, rather than through transferring out.” This was a message we repeated regularly. Of course the unions fought for decades to maintain a defined benefit pension scheme, and we believed most people would be better off staying in a defined benefit arrangement.
- 2.3 It was frustrating, but throughout the BPS restructuring we had to be very careful, and took extensive advice, because as unions we cannot stray into giving financial advice. This was also frustrating for our members, as of course they wanted more definitive guidance from their union. We were not even able to recommend the services of any particular advice firm, though again we went as far as we could highlighting the details of Community’s ‘approved’ firm of advisors.
- 2.4 There’s no doubt the regulators were far too slow to act on pensions mis-selling. The situation was completely out of hand, and Community’s central office was even approached by one advice firm offering 10% of their fees in return for introductions. When the FCA started their review of financial advice in 2017, Community shared with them details of advice firms used by our members which may present cause for concern. However the FCA’s failure to quickly identify the problems and then act decisively proved to have disastrous impacts and long-lasting consequences.
- 2.5 In late 2017 Community surveyed 500 of our members on their experiences of BPS transfer advice. The results showed the vast majority of members believed their advisor acted in their best interests (92%), and that they did not know anyone who had received bad advice. The results suggested the main reasons for people transferring was not their advisors. It was because transfer values were at a peak, because they believe they could leave something behind for loved ones, because their peers were doing it and they wanted to retire early, because the future of the BPS was unclear, and perhaps most of all because they wanted to end their relationship with Tata and take control of their money. It seemed that most members who transferred had made their decision before they saw an advisor, and in the main they had no regrets. Of course, as the scandal unfolded many members have subsequently reviewed their personal circumstances, taken guidance, and formed a very different view about the value of transferring.
- 2.6 Community welcomed the publication in March 2022 of the National Audit Office’s report on the BPS, which we gave evidence to, and which looked at the regulation of pension transfer advice and the delivery of compensation. The report rightly concluded that steelworkers have been failed by a regulated financial system that should have protected them, and we welcomed the potential of a redress scheme for BPS members. The regulators’ failure to protect BPS members from pension advice mis-selling, and the financial detriment and stress people have suffered as a result, is completely unacceptable. Lessons must be learnt to ensure this kind of situation can never happen again.

3. Redress scheme for BPS members

- 3.1 Community has worked with the FCA to promote their events in steel towns, organised to encourage BPS members that transferred out to consider making a complaint, so they might receive compensation if they received unsuitable advice. The union also circulated

communications to members who may have transferred out, inviting them to participate in a FCA survey designed to identify barriers to making a complaint, so that those barriers could be overcome or mitigated.

- 3.2 Working with the regulators Community also published on our website, and kept updated, a 'toolkit' for BSPS members that had transferred out, encouraging members to consider complaining and laying out the steps that they should take. We also stressed that members did not need to use a claims management company or solicitor to make a complaint, and if they did they would have to share their compensation with them, with some firms charging upwards of 18%.
- 3.3 However it is clear many people chose not to make any complaint, or to use a third party to make their complaint. Our members told us the process for complaining directly remained daunting and confusing. That is why we worked with the Financial Ombudsman to agree very abridged and streamlined guidance, which subsequently we circulated to our members. This abridged guidance invited members to simply email their name and phone number to the Ombudsman's dedicated email address, and one of the Ombudsman's specialist BSPS team would call them back. Thereafter the Ombudsman representative would ask for some basic details and could fill out the member's form over the phone, and also approach the member's financial adviser on their behalf. This approach negated the need for members to read any detailed guidance, with the Ombudsman's BSPS team acting as a 'one stop shop', which could walk members through the process and signpost them if necessary e.g. to the FSCS if their advice firm had gone bust. If members decided they did need further support, they were invited to contact the union.
- 3.4 When in March the FCA published the consultation document, on a redress scheme to compensate BSPS members who were given unsuitable advice to transfer their pension, Community welcome the publication and committed to making a submission. At that time, we wrote to our members inviting them to submit their thoughts and inform the union's contribution. As we said when the consultation was published, the regulators' failure to protect BSPS members from pension advice mis-selling has been a disgrace, and the consultation is an important step towards putting things right.
- 3.5 Given that the FCA's own figures suggest that 46% of transfers were unsuitable, that 94% of members who received unsuitable advice suffered losses, that the average amount lost was £60,000, that there were widespread failures across advice firms, that BSPS members were a vulnerable group, and that more than half of those who transferred would be eligible for potential redress, we consider the case for a redress scheme to be overwhelming. Furthermore, in light of the low numbers of complaints submitted to date, it is likely that, in the absence of a redress scheme, many members will become time-barred from making a complaint and securing redress.
- 3.6 Community supports the overarching principles and objectives of the proposed scheme including requiring firms who gave advice to BSPS members to transfer their benefits to assess whether the advice was suitable, and where the advice was not suitable to pay appropriate redress to put members back in the position they would have been had the advice been suitable. We also strongly support the redress scheme being opt-out rather than opt-in, to ensure it will cover more people. It is important that any scheme covers as many members that transferred out as possible, and in this regard the proposed redress scheme is the right approach from the options considered by the FCA.

- 3.7 We note that previously the FCA had indicated a redress scheme would cover transfer advice given between 1st March 2017 and 31st March 2018, but that the consultation proposes to cover members who received transfer advice over the wider period of 26th May 2016 and 29th March 2018. The extension in scope is welcome, as in 2016 there were already heightened concerns around the future of Tata Steel UK and the BSPS which were influencing people's transfer decisions.
- 3.8 Furthermore the extended timeframe covers workers who transferred from Tata Steel to British Steel, when the business was sold to Greybull Capital in June 2016, a significant number of whom had taken transfer advice prior to March 2017. This group transferred out prior to the de-risking of the BSPS, on the basis of often substantially lower transfer values, with decisions influenced by concerns about the future under Greybull, and the loss of generous early retirement terms after the sale made them deferred BSPS members. Members that transferred prior to 1st April 2017 are perhaps the most disadvantaged of all, as those that transferred after this date at least benefited from higher transfer values. In addition, there is the potential for members who received their advice in 2016 to become time-barred before the redress scheme is established.
- 3.9 We share the concerns, already flagged in the consultation document, about financial advisors 'marking their own homework' by assessing their own advice. Clearly there are potential serious conflicts of interest, with firms incentivised to assess their own advice as suitable, and a robust and consistent mechanism of oversight and review will be essential. We also strongly believe that, where financial advice firms fail to adhere to the rules of the redress scheme, the FCA should deploy the toughest possible enforcement action.
- 3.10 We would also like to stress the need for redress payments to be paid in as efficient and timely a manner as possible. Community members have reported that the existing mechanisms to pursue a complaint and seek redress, can take several months to arrive at a conclusion, meaning long periods of stress and financial uncertainty. Given the lengthy timescale for the consultation, and the fact that members may already have been out of pocket for some years, matters need to be put right at the earliest possible opportunity.
- 3.11 The proposals under consultation fail to address the pre-existing inconsistencies in the sums that steelworkers have received in redress payments to date. Whilst the consultation seeks to propose a consistent methodology for calculating redress going forward, delivering justice for all necessitates a comprehensive process to challenge past instances of perceived unfairness.
- 3.12 Finally, we'd like to reiterate our full support for a BSPS redress scheme, which we hope will serve to put matters right for thousands of steelworkers, and ex-steelworkers, who were mis-sold and let down by the regulators whose job it was to protect them.