

Regulated apportionment arrangements (RAAs) and employer insolvency

The role of The Pensions Regulator ('the regulator') includes the protection of members' benefits in work-based pension schemes and the reduction of the risk of situations arising which may lead to the Pension Protection Fund ('PPF') compensation being payable.

It is our belief that the best form of support for a pension scheme is that of an ongoing sponsoring employer. However, we recognise that in some situations this form of support may no longer be available where the sponsoring employer is at serious risk of insolvency. Where this is the case, it is important for employers, trustees and their respective advisers to engage in discussions at an early stage to explore the available options, including any which may offer an outcome other than insolvency. Engagement with the regulator should also begin at this early stage.

RAAs are only possible where a scheme is already in a PPF assessment period, or is expected to enter an assessment period. RAAs are extremely uncommon; the expectation when they were introduced into legislation was that they would be used rarely, which has proved to be the case.

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Both the regulator and the PPF have statutory functions as part of the process. An RAA must be approved by the regulator, and the PPF must confirm that they do not object to the RAA. The regulator can only approve an RAA if it believes it would be reasonable to do so. The PPF and the regulator have, therefore, always worked very closely together on any RAA application.

This statement describes the process to be followed for RAA applications. Other types of arrangements may produce a similar outcome to RAAs, with or without PPF entry, and the same principles are likely to apply in those situations.

The process

We expect RAA applications will be accompanied by clearance applications, though the regulator should have already been involved in earlier discussions around the possible options. Relevant information should be submitted to the regulator in a draft clearance application (please see our clearance guidance for further information) and draft RAA, including the level of mitigation proposed.

Any proposal should have been discussed in detail with the trustees. Trustees and their advisers should consider all relevant factors, including any possible alternatives to the RAA, and whether insolvency is inevitable. It is very important that trustees address any possible conflicts of interest or duty and seek advice where appropriate.

The regulator will need sufficient information from the applicants and trustees to allow an initial assessment. We will undertake a certain level of due diligence to decide whether an RAA may be appropriate. This due diligence may take some time to complete as the facts and the legal issues may be complex, and specialist advice is likely to be required. It should also be borne in mind that an approval notice cannot be issued until 28 days after the regulator determines to approve an arrangement.

The regulator will consider the relevant circumstances, which may include:

- whether insolvency of the employer would be otherwise inevitable or whether there could be other solutions (including funding options for the scheme) which would avoid insolvency;
- whether the scheme might receive more from an insolvency;
- whether a better outcome might otherwise be attained for the scheme by other means (including through the use of the regulator's powers where relevant);
- the position of the rest of the employer group; and
- the outcome of the proposals for other creditors.

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The advice the trustees have received from independent financial advisers will be a fundamental and integral part of what the regulator will consider. The regulator will conclude this due diligence and form an initial view about whether an RAA might be appropriate and reasonable in the circumstances. If so, then after that the regulator and the PPF will work closely together to form a common view of whether the proposed level of mitigation is appropriate.

We wish to emphasise that approval of an RAA will only be considered in circumstances where the scheme will enter a PPF assessment period in any case, irrespective of whether or not the regulator approves the arrangement. Therefore, the regulator's decision is highly unlikely to have any impact on the level of benefits that members will receive. RAAs will continue to be rare, and the regulator and the PPF will not agree to such arrangements lightly. It would not be right for levy payers to be compelled to fund the PPF if employers offload their schemes without providing appropriate value to the scheme or the PPF.

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Statement from The Pensions Regulator

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