

Regulatory intervention report

issued under s89 of the Pensions Act 2004 in relation to the DCT Civil Engineering Staff Pension Fund

October 2016

The Pensions
Regulator

Background

The DCT Civil Engineering Staff Pension Fund ('the scheme') is a defined benefit (DB) occupational pension scheme closed to future accrual. The scheme has 11 members and assets of £1.1 million.

On 18 August 2010, following a legal review of the scheme rules for legislative compliance, a draft deed ('the 2010 Deed') was put together by the trustees' legal advisers and executed by the trustees. The 2010 Deed purported to replace the scheme rules with rules that referred to benefits being calculated on a defined contribution (DC) basis. This was despite the scheme actuary informing the trustees that accrued defined benefits could not be changed from DB to DC without member consent or the relevant actuarial equivalence requirements being met. Subsequent enquiries indicated to us that it was not the trustees' intention to change the scheme rules from DB to DC, and the apparent change to the member benefits was simply a mistake. Despite the purported amendment, the scheme continued to be treated as having a DB benefit structure by all parties.

The scheme's sole sponsoring employer, DCT Civil Engineering Limited (DCT), went into administration on 6 January 2014 and was subsequently dissolved. The scheme had a deficit on the Pension Protection Fund (PPF) basis if it continued to provide DB benefits. However, due to the execution of the 2010 Deed, there was uncertainty as to whether the scheme provided DB or DC benefits. Pending resolution of that issue, DCT's administration triggered the scheme's PPF assessment period¹.

Independent Trustee Services Limited ('the trustee') was appointed by the joint administrators to act as sole trustee. The trustee submitted an application requesting that we exercise our power under section 67G of the Pensions Act 1995 ('the 1995 Act') to treat the execution of the 2010 Deed as a 'voidable modification', rendering it void and reinstating the earlier scheme rules. If successful, this would clarify that the scheme was a DB scheme and enable the PPF to take on the scheme and allow members to receive PPF compensation. If not, and the scheme was treated as a DC scheme, the trustee was of the view that the members would receive lesser benefits. The PPF also confirmed that they supported the use of our power.

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The PPF assessment period is described in section 132 of the Pensions Act 2004.

What is a voidable modification?

A voidable modification is a “regulated” modification that may be declared void by the regulator².

A voidable modification is not automatically void – the decision as to whether to declare a voidable modification void rests with the regulator’s Determination Panel (‘the DP’).

A voidable modification that is declared void reverses the effect of the relevant provision – the rule that applied before the modification was made is effectively reinstated and the amendment is ignored.

What is a regulated modification?

A regulated modification is an amendment to accrued rights to either current or future defined benefits, or both.

Illustrated summary



² Unless statutory requirements are satisfied (broadly, members consented to the modification or an actuary certified that the replacement benefits are equivalent to the member’s benefits in the transferor scheme).

Regulatory action

We issued a Warning Notice to the directly affected parties ('DAPs') outlining our recommendation to void the 2010 Deed as a regulated modification. None of the DAPs submitted any comments, so the case was referred to the DP on 14 March 2016.

The decision to issue a Warning Notice reflected our view that it was reasonable and proportionate for the DP to exercise the power because:

- ▶ the affected members' subsisting rights were adversely affected by the execution of the 2010 Deed without the requirements of the 1995 Act having been complied with
- ▶ exercising the power would put all of the members back in the position they would have been in had the 2010 Deed not adversely affected their interests and they would be eligible for DB benefits to the extent protected by the PPF compensation scheme and
- ▶ an alternative to the DP exercising the power was for the trustee to apply to the High Court for the 2010 Deed to be rectified. However, we considered that this would be disproportionate given:
 - the size of the scheme
 - it would diminish scheme assets further, effectively putting additional cost on the PPF and delaying the scheme's likely entry into the PPF (if the court agreed to rectification)
 - the further uncertainty it would create for the members and
 - the time it would take to rectify the issue by this means.

Outcome

There was no oral hearing as none of the parties requested one. The DP supported our recommendation and, as no referrals were made, the DP issued the Order declaring the 2010 Deed void on 4 May 2016.

The scheme's PPF assessment period has concluded, the PPF has taken the decision to assume the assets and liabilities of the scheme, and the trustee has been discharged from its obligations. The members will now be eligible to receive PPF compensation.

Our approach

When faced with an application to exercise our power to declare an amendment to scheme rules void, we will take into account various factors, in particular the potential impact upon member benefits.

In this case, the modification of the scheme rules had a serious impact on scheme members, reducing their accrued benefits, and so we considered it appropriate to act to protect them. This was the case even though the scheme concerned involved only a small number of members.

Members' benefits should only be reduced using one of the recognised statutory mechanisms.

For more detail, please see the DP's Determination Notice at www.tpr.gov.uk/determinations.

The regulator's consideration and approach to individual cases is informed by the specific circumstances presented by a case, not all of which are referred to or set out in this summary report.

This summary report must be read in conjunction with the relevant legislation. It does not provide a definitive interpretation of the law. The exercise of the regulator's powers in any particular case will depend upon the relevant facts and the outcome set out in this report may not be appropriate in other cases. This statement should not be read as limiting the regulator's discretion in any particular case to take such action as is appropriate. Employers and other parties should, where appropriate, seek legal advice on the facts of their particular case.

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