Regulatory intervention report

issued under section 89 of the Pensions Act 2004
in relation to Hoover Limited

June 2017

The Pensions Regulator

The Pensions Regulator (TPR) has recently approved a Regulated Apportionment Arrangement (RAA) in relation to the Hoover (1987) Pension Scheme. In our view, the RAA represents the best outcome for all parties in difficult circumstances.

Background

Hoover Limited is a household-name distributor of domestic appliances, employing over 500 people in the UK. The Hoover (1987) Pension Scheme was established in 1987 and has approximately 7500 members, with around two thirds pensioners and the remaining third deferred members. As at March 2016, the scheme had a deficit on a buy-out basis of approximately £500m and a Pension Protection Fund (PPF) deficit of approximately £300m.

The scheme trustee and employer were unable to agree their 2013 valuation by the statutory deadline of June 2014, and so payments to the scheme continued under the existing terms of the 2010 Schedule of Contributions.

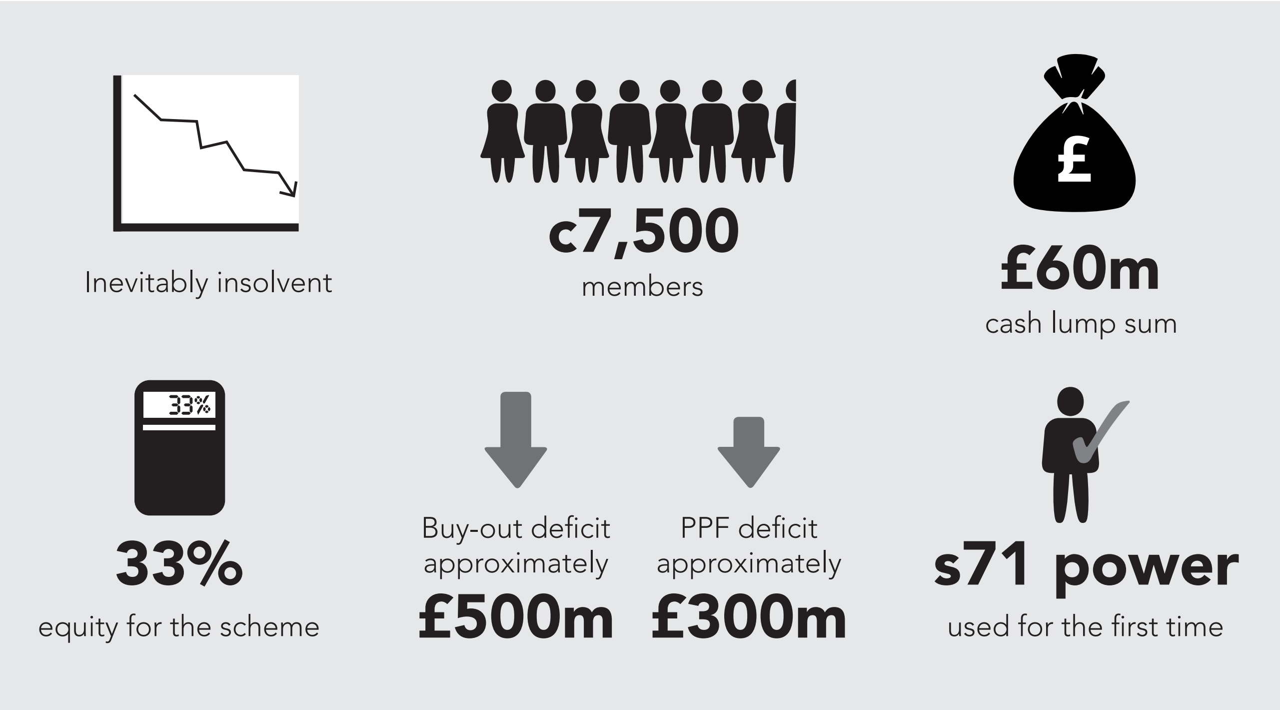
In 2015, the employer approached us with a draft application for an RAA to separate the scheme from the employer. At the time, however, they were unable to meet the criteria for us to approve it,[1] especially as we had not been provided with sufficient evidence that insolvency was otherwise inevitable. As a result, they withdrew the application.

Shortly afterwards, the employer approached the PPF about the possibility of entering into a Company Voluntary Agreement (CVA). A CVA is a process where a company can reschedule some or all of its unsecured debts to allow it to trade out its financial difficulties. In this case, the CVA was rejected by the PPF. This was because, amongst other factors, the payment amount offered was insufficient.

When such proposals are received we work closely with the PPF, which exercises the scheme's creditor rights in the CVA, to highlight any concerns. The PPF's published principles make clear that it will assess CVAs against the same principles as RAAs. Although there is a place for CVAs in certain circumstances, they should not be used to circumvent the RAA regime.

1 http://www.thepensionsregulator.gov.uk/docs/regulated-apportionment-arrangements-statement-august-2010.pdf

Illustrated summary



Regulatory action

As our criteria for approving an RAA were not met, we insisted that the parties continue to seek an appropriate funding solution for the scheme.

Despite extensive negotiations, the trustee and employer could not agree on the level of deficit repair contributions (DRCs) the employer could afford, and therefore were unable to complete the valuation and implement an appropriate recovery plan.

Skilled Person's report

We took the decision under Section 71 of the Pensions Act 2004 that a Skilled Person should be appointed to report on the level of DRCs the employer could afford to pay into the scheme, and that the cost of the report should be split equally between the employer and the scheme. This report would then allow us to determine whether a viable funding solution could be found.

This was the first time we have exercised this power, which is a regulatory function reserved to the Determinations Panel (DP). Both the employer and the trustee were supportive of our course of action, which removed the need for an oral hearing in front of the DP before a determination could be made. This saved the parties time and costs.

The findings of the Skilled Person's report highlighted that the employer's financial position had deteriorated and it could not afford to pay an appropriate level of DRCs, nor could it even afford the current inadequate level of payments. On that basis, the report concluded that the scheme could not be properly funded without support from Candy Group and its shareholders[2]. Candy Group – which had no legal obligation to provide support to the employer or the scheme – declined to provide further support.

The employer's business continued to deteriorate and markedly declined as a result of the weakening of the pound. Forecasts showed that insolvency would occur within 12 months, even without taking into account any additional payments to fund the scheme to an adequate level.

2 Candy Group acquired Hoover Limited (the employer) in 1995.

The RAA proposal

In early 2017, the employer made a further RAA proposal. We met with the employer, the trustee and the PPF to consider whether this was now an appropriate solution, and began negotiations over the next few months. RAAs are extremely uncommon and we will only approve one if we believe it to be reasonable in all circumstances. As set out in our **2010 statement**, we will consider all relevant circumstances, which in this case included:

RAA test	How it was met
Whether insolvency of the employer would be inevitable or whether other solutions would prevent this.	Expert analysis and advice was provided by the employer which confirmed that insolvency was inevitable within 12 months. The trustee supported this conclusion and we were satisfied that this test was met.
Whether the scheme might receive more from an insolvency.	The trustee sought independent financial advice on the scheme's estimated outcome on insolvency. The RAA proposal involved an upfront cash payment that exceeded the estimated insolvency outcome.
Whether a better outcome might be arrived at by other means (for example, use of our other powers).	We concluded that the RAA was the best outcome in the circumstances.
The outcome of the proposal for other creditors.	Evidence provided demonstrated that other creditors of the group were making compromises, including writing off debt.

In the specific circumstances of this case, we concluded that an RAA was an appropriate and reasonable course of action.

Outcome

The appointment of a Skilled Person served to break the deadlock between the employer and the trustee as it helped the trustee understand the decline in the business and the inability of the employer to make any meaningful contributions to the scheme. As a result of the RAA, the scheme is expected to transfer into the PPF at the end of the assessment period and will receive:

- a cash lump sum of £60m, which was materially more than the expected outcome on insolvency
- the trustee's expenses in relation to the RAA
- ordinary shares representing a 33% stake in the employer.

This deal led to a better outcome for the scheme than would otherwise have resulted from an uncontrolled insolvency and maximises the return for the PPF in very difficult circumstances. It has also enabled the employer to continue trading. As part of the deal, Candy Group also agreed to write off debt owed to it by the employer.

Our approach

The best outcome for members and the PPF is generally where the pension scheme is supported by a strong ongoing employer alongside an appropriate funding and investment strategy including, where necessary, an appropriate recovery plan. Where an agreement cannot be reached between the employer and the trustees, we will consider whether the appointment of a Skilled Person can help to achieve a viable recovery plan for the scheme. However, we recognise that in some situations, it may no longer be possible for the employer to fund the scheme. Where employers are at risk of insolvency it is important for them to explore all available options with trustees and advisers.

Where pension schemes and their sponsoring employers are in a precarious position, we work closely with them to deliver a solution that balances the interests of the members, PPF and employer.

RAAs are rare and will only be agreed to in accordance with our published guidance. RAAs result in reductions in benefits for members and a burden for PPF levy payers. We will therefore only agree to them where insolvency is otherwise inevitable and the RAA provides the best available outcome in difficult circumstances. We will rigorously scrutinise any RAA proposal and only approve it if we believe it meets our published criteria and is reasonable to do so. In this case we were satisfied that all of these were met.

Timeline of events

July 2014: Failure to agree 2013 valuation

2015: Initial RAA negotiations

2015: CVA proposal

February 2016: Warning Notice issued for Skilled Person's report

July 2016: Determination Notice for Skilled Person's report

December 2016: Skilled Person's report received

January-April 2017: RAA negotiations

April 2017: Clearance granted for RAA proposal

May 2017: RAA approval notice issued

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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The Pensions Regulator