

Report under s89 of the Pensions Act 2004

Issued by The Pensions Regulator ('the regulator') in relation to the MG Rover Group Senior Pension Scheme

Executive summary

Following a detailed investigation, the regulator commenced regulatory action in December 2012 by issuing a warning notice seeking the issue of a financial support direction (FSD) to MGR Capital Limited (Capital) in support of the MG Rover Group Senior Pension Scheme (the Scheme).

The regulator considered that Capital was the beneficiary of the loss of a profitable opportunity by the Scheme's principal employer and had benefited from the use of that employer's resources.

Parties to the regulatory action have now agreed a settlement of the proceedings which has resulted in Capital paying £8.085m to the Scheme, following which it is expected that the Scheme will be wound up outside the Pension Protection Fund (PPF), with all members receiving retirement benefits in excess of PPF levels.

Background

The MG Rover group of companies operated in the UK car manufacturing sector. The group's main operations were owned by MG Rover Group Limited (MGRG) which, together with its principal trading subsidiaries, went into administration on 8 April 2005. In March 2006, these entities entered into creditors' voluntary liquidation. MGRG was the principal employer of the Scheme, which entered a PPF assessment period following the insolvency of MGRG and the Scheme's other participating employers.

In May 2005, following the administration of MGRG and other companies in the MG Rover group, the Secretary of State for Trade and Industry appointed inspectors (the Inspectors) to undertake an investigation into the affairs of the MG Rover group. The Inspectors published their final report in 2009.

The content of this report was relevant to the regulator's investigation, in particular the Inspectors' findings concerning the acquisition of a portfolio of vehicle finance agreements with former customers of MGRG (the Loan Book).

In 2001 Capital was established specifically for the purpose of acquiring the Loan Book. It was a joint venture company established by certain private individuals, who were also connected to and involved in the business of MGRG, and a subsidiary of HBOS plc. The Loan Book was acquired in 2001 by Capital, which eventually accumulated substantial net assets as a result of the acquisition.

In 2009 Capital entered into a members' voluntary liquidation.

Regulatory action

The conclusions reached by the Inspectors regarding the circumstances in which the Loan Book was acquired were relevant to the regulator's investigation into whether it would be appropriate to seek to issue an FSD to Capital for the benefit of the Scheme. In particular, the regulator focused on the findings of the Inspectors that a company within the MGRG group of companies could have acquired the Loan Book. In addition and amongst other matters, the fact that MGRG advanced substantial collateral to facilitate the acquisition of the Loan Book was a relevant consideration in the regulator's investigation.

On 21 December 2012, the regulator issued a warning notice in respect of the potential use of the regulator's power to issue an FSD to Capital for the benefit of the Scheme. Amongst other factors, the regulator considered that it would be reasonable to seek an FSD on the basis that the acquisition of the Loan Book could have been structured in such a way as to have been acquired by and be of benefit to MGRG instead of Capital.

Following receipt of representations from Capital, settlement discussions then ensued.

Outcome

On 20 October 2014, a settlement agreement was reached between Capital and the trustee of the Scheme whereby the Scheme has received £8.085 million from Capital. In light of this agreement, the regulator is no longer seeking to issue an FSD against Capital.

With the payment of £8.085 million into the Scheme, it is expected that the Scheme will be able to wind up outside the PPF and there will therefore be no call on the PPF levy payers to fund any of the benefits of the Scheme.

General

The regulator welcomes the resolution of this case by way of settlement. The settlement amount agreed will deliver a positive outcome for Scheme members and the PPF, whilst providing certainty to Scheme members about the level of retirement benefits they will receive.

The regulator's approach to settlement in a particular case will depend on the circumstances and the regulator's assessment of how the interests of Scheme members and the PPF will best be served in line with its statutory objectives.

Settlement of this matter has avoided more protracted regulatory and legal proceedings which would have resulted in further costs being incurred by all parties.

This case also highlights that the regulator will take account of a wide ambit of circumstances when assessing whether it is reasonable to exercise its FSD power. In this case, the regulator considered the loss of a potential business opportunity by a statutory employer to the benefit of a connected or associated person was relevant to its assessment of reasonableness.

This statement 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. Trustees and other parties should where appropriate seek legal advice on the facts of their particular case.

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MG Rover Group Senior Pension Scheme

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