Report under s89 of the Pensions Act 2004

Issued by The Pensions Regulator ('the regulator') in relation to the Carrington Wire Defined Benefit Pension Scheme

Background

Carrington Wire Limited ('CWL') was a manufacturing company based in Elland in Yorkshire. It was the sole sponsoring employer in relation to the Carrington Wire Defined Benefit Pension Scheme ('the Scheme'), which had around 500 members.

In 2006, CWL was acquired by a subsidiary of PAO Severstal (formerly known as OAO Severstal), the Russian parent company of the Severstal group ('Severstal'). CWL was loss-making at the time Severstal acquired it.

As a condition of the acquisition, the seller required Severstal to provide a guarantee to the Scheme covering all payments due to the Scheme from CWL (including payments due under section 75 of the Pensions Act 1995). However, Severstal negotiated a clause in the guarantee which provided that it would fall away if Severstal ceased to be associated with CWL.

May 2015

The Pensions Regulator

Events leading to regulatory action

Beginning in 2008, Severstal explored possible routes to exit its investment in CWL. Having considered various options (including a sale of CWL), in early 2010 Severstal informed the trustees, employees and the regulator that it had decided to commence a solvent wind-down of CWL. Severstal assured the trustees that it would continue to honour the guarantee following the wind-down.

In February 2010, CWL's manufacturing facilities were closed by Severstal and CWL's plant and machinery were transported to Russia. Following this and the associated redundancies of nearly all of CWL's employees, the solvent wind-down of CWL was effectively complete. CWL was left with only one material asset (a property) and no ongoing business, but retained a substantial liability to the Scheme.

However, without informing the trustees or the regulator, Severstal entered into negotiations with Mr Richard Williams, sole director and shareholder of a shell company named Gillico Limited ('Gillico'), for the sale of CWL.

On 16 June 2010, Severstal sold the entire shareholding in CWL to Gillico for £1, with a purported working capital adjustment of £400,000, the majority of which was received by Mr Williams personally. The sale meant that the Scheme lost the benefit of the guarantee and became solely reliant on CWL, which Severstal had already wound down.

CWL entered liquidation in December 2012, and entered the Pension Protection Fund ('PPF') assessment period on the same date.

Regulatory action

Following a thorough investigation involving the review of a substantial volume of documents, the regulator issued a warning notice on 30 November 2012 seeking the imposition of contribution notices on PAO Severstal, its subsidiary OAO Severstal-Metiz (together, the 'Russian Targets') and Mr Williams.

The warning notice argued that the three targets were party to a series of acts, culminating in the sale of CWL, which was materially detrimental to the likelihood of accrued scheme benefits being received, and/or which had the main purpose of preventing the recovery of the whole or any part of a debt which was, or might become, due under section 75 of the Pensions Act 1995.

The warning notice sought contribution notices in the sum of approximately £17.7 million against the Russian Targets on a joint and several basis (being the estimated s75 deficit in the Scheme at the time of the sale of CWL, less funds which the Scheme had received shortly after that date). The regulator was of the view that it would be reasonable to seek these sums despite the fact that Severstal had provided considerable downstream support to CWL during its period of ownership.

The warning notice also sought a contribution notice against Mr Williams in the sum of approximately £380,000 (being equal to the part of the purported working capital adjustment which he personally received), on a joint and several basis with the Russian Targets.

The targets made representations in relation to the warning notice. The targets' representations included arguments that the 'main purpose' test was not met in these circumstances, because the acts had not prevented recovery from the sponsoring employer (CWL), but rather a third party under a guarantee (Severstal).

Following consideration of all the directly affected parties' representations (including those made by the Russian Targets and Mr Williams), the matter was passed to the Determinations Panel in June 2014. An oral hearing was scheduled for January 2015.

Outcome

Settlement discussions instigated by the Russian Targets took place between those parties and the regulator prior to the scheduled hearing date. The Russian Targets made a number of offers, culminating in a final offer of £8.5 million.

In considering this offer, the regulator took into account the fact that the Russian Targets had no assets in the UK and that any enforcement action would have to proceed through the Russian courts. Whilst the regulator was confident that it had a strong case, it obtained and considered specialist advice on enforcement of contribution notices in Russia.

The regulator agreed to withdraw the case from the Determinations Panel, as far as it related to the Russian Targets, following the payment of £8.5 million to the Scheme. The funds were transferred to the Scheme in January 2015.

A hearing in relation to the third target, Mr Williams, was held on 11 March 2015. Following that hearing the Determinations Panel decided that a contribution notice should be issued to Mr Williams in the sum of £382,136.

The Panel's full determination can be found at **www.tpr.gov.uk/determinations**, however the following points are of note:

- The Panel held that the 'main purpose test' in section 38(5)(a)(i) of the Pensions Act 2004 extends to acts which prevent recovery under a guarantee. This includes situations where the acts take place prior to liability under the guarantee being established.
- The 'material detriment test' in section 38A of the Act was met because of the effect of the acts on the 'scheme obligations' under the guarantee.
- When considering the reasonableness of issuing a contribution notice, the reference to a target's 'financial circumstances' under section 38(7)(f) is not limited to the target's current financial worth but also includes consideration of how the target has ended up in the financial position in which he currently finds himself. This includes taking into account the target's receipt of monies and how they have been used.
- The Panel accepted that it was correct to draw a distinction between the issuing of a contribution notice and its enforcement. Questions about the ability to recover and the costs and proportionality of so doing are far less relevant to the decision to issue a contribution notice than to decisions over whether and how it should be enforced.

The Scheme's PPF deficit* at the start of the assessment period was estimated to be around £16 million. As the regulatory action will not lead to the recovery of an amount in excess of this deficit, the Scheme will transfer to the PPF and members will receive PPF compensation rather than scheme benefits. However the regulatory action has significantly reduced the PPF's exposure in relation to this Scheme.

* The amount by which the value of the assets of the scheme was less than the cost of providing PPF compensation to the Scheme's members.

General

This case highlights some of the circumstances in which contribution notices may be pursued (and the circumstances in which the regulator considers they are likely to be issued). This includes cases where downstream support has previously been provided from a target to the sponsoring employer and cases where a potential target is located outside the UK.

The case also provides useful clarity on the interpretation of the 'main purpose test', and the circumstances in which the 'material detriment test' will be met.

Where appropriate, the regulator is willing to consider settlement proposals from targets. In assessing proposals, the regulator will consider its relevant statutory objectives, together with the litigation and enforcement risks of a particular case. Clearly, the weight attached to these risks will vary depending on the circumstances of a case.

In exercising its functions, the regulator seeks to achieve its main objectives, which include the protection of members' benefits under occupational pension schemes and the reduction of the risk of calls on the PPF. In some situations, it is not possible to satisfy both of these objectives in their entirety.

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

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