The regulation of schemes in wind-up and in a Pension Protection Fund assessment period

A statement by the Pensions Regulator,
the Pension Protection Fund, and the
Financial Assistance Scheme
(as part of the Department for Work and Pensions)

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1. Introduction

1.1 This statement by the Pensions Regulator ('the regulator'), the Pension Protection Fund (PPF) and the Financial Assistance Scheme (FAS) (as part of the Department for Work and Pensions) sets out our approach to all occupational pension schemes in wind-up – including schemes qualifying for FAS – and those entering a PPF assessment period. This tripartite approach is designed to develop synergies between each organisation and get the best from our regulatory powers. This should help ensure, wherever possible, consistency of approach between the three organisations and provide greater certainty to trustees and others about our expectations.

1.2 Please note that for the purposes of this document, 'we' and 'our' should be interpreted as referring to the three organisations.

1.3 A report issued by the DWP in November 2006 ('Speeding up winding up of occupational pension schemes') outlined its proposals on how to speed up scheme wind-up. The report made it clear that for schemes commencing wind-up, at least the key activities1 should be completed within two years. For schemes already winding up, completion should be achieved as soon as possible and certainly within two years from the publication of that report.

1.4 All three parties strongly agree with the conclusions reached and outlined in the DWP report. Our expectations are that:

- for schemes outside the PPF already winding up – at least the key activities are completed as soon as practically possible, and certainly within a two-year period from the date of publication of this statement;

- for schemes outside the PPF commencing wind-up from the publication of this statement – at least the key activities are completed within a two-year period from the date of wind-up;

- for schemes that qualify for FAS – these should be in a position to transfer all residual assets and membership data as soon as possible once legislation is in place and certainly within two years. Trustees should bear in mind, however, that there will be

[1] Serving a debt on the employer; Securing pensioner benefits; Identifying the individual remaining (non-pensioners) share of assets and obtaining terms from an insurer to secure a guaranteed pension; Conducting a final actuarial valuation; Issuing option letters to non-pensioners or details of insured benefits, as appropriate.

an ongoing requirement to provide data for members as they approach their scheme's normal retirement age;

- for schemes in a PPF assessment period – parties should put in place the necessary arrangements to ensure swift passage through assessment, as it is likely to last for a minimum of one year, and trustees are expected to have completed all tasks as soon as reasonably practicable within the following twelve months; and

- trustees of ongoing schemes should consider the steps that could be taken in advance of scheme wind-up, in order to facilitate a more expedient process in the event that their scheme were to wind up.

Note that for the purposes of this document these expectations are collectively referred to as the 'relevant timescales'.

1.5 This statement is aimed at all parties (eg trustees, administrators, insurers and professional advisers) involved in all types of occupational scheme either already in wind-up or those that commence wind-up following publication of this statement, and in schemes passing through a PPF assessment period and subsequently entering a PPF assessment period. It is, however, trustees who are ultimately responsible for schemes in wind-up or in a PPF assessment period.

2. A co-ordinated approach

2.1 All three parties consider that delays incurred in wind-ups and the PPF assessment period are not in members' interests because:

(i) members remain uncertain about the level of benefit they will receive until the key activities of winding-up are completed; and

(ii) scheme assets may be depleted by costs incurred. Not only does this have the potential to impact detrimentally on members' benefits but, in the case of a PPF assessment period, on the levy payer.

Moreover, a lengthy wind-up or PPF assessment period is not consistent with our respective objectives, which are:

For the regulator:

- to promote and improve understanding of the good administration of work-based pension schemes; and

- to protect members' benefits.

For the PPF:

- to promote increased confidence in and set reasonable expectations for members of UK defined benefit and hybrid schemes; and
- to pay the right people the right compensation at the right time.

For FAS:

- to ensure all qualifying members receive 90 per cent of their expected pension from their normal retirement;
- to protect the residual assets in qualifying schemes; and
- to ensure the effective and efficient transfer of all assets and member data to FAS.

Each organisation will provide guidance, support where relevant, and, if necessary, take enforcement action against parties which fail to secure scheme wind-up, completion of the PPF assessment period or the transfer of stewardship to FAS (ie the transfer of scheme assets and membership data) within the relevant timescales.

We recognise the importance of co-ordination between the three organisations, and are committed to aligning our approaches where appropriate. For example, we will work together in the development of guidance including the trustee toolkit and in sharing relevant information.

2.2 We also recognise the importance of working with other parties to help schemes either in wind-up or passing through a PPF assessment period to do so efficiently. For example, we are in regular liaison with government, such as DWP and National Insurance Services to Pensions Industry (NISPI).

3. Our regulatory approach

3.1 Our regulatory approach is to educate, enable and enforce.

Trustees and others need the right information to enable effective decision-making to secure a scheme wind-up or a scheme passing through a PPF assessment period. Therefore, the regulator and the PPF will produce respective good practice guidance. Guidance from the former (‘Avoiding delays in winding up pension schemes’) covers the principal causes of delay to wind-up. Guidance from the latter will be a principle-based guide to provide trustees with a structured framework in which to manage their schemes. It should enable trustees to approach the assessment process in an efficient and effective manner. Tailored e-learning modules covering the key elements of the wind-up and PPF assessment period processes are already available in the winding-up section of the trustee toolkit at www.trusteetoolkit.com.

3.2 FAS will issue regular updates and guidance to qualifying schemes to outline their expectations and major changes to the structure of FAS.

3.3 Through this statement and the provision of educational tools we expect to:

- make it clear that there will be a new approach to the regulation of scheme wind-ups and schemes in PPF assessment;

- influence a step change in behaviour, where required, so that scheme wind-ups and schemes passing through a PPF assessment period are completed within the relevant timescales;

- provide guidance to assist trustees through a scheme wind-up, a PPF assessment period or the transfer of stewardship to FAS; and

- describe when enforcement action may be taken.

We will be continuing to adopt a proactive approach to winding-up issues including visits to administrators and others.

3.4 It is critical for the effective operation of the new approach that all three parties are provided with the information required as part of the winding-up and PPF assessment period processes. Provision of information to the regulator about starting and completing wind-up is a statutory requirement under section 62 of the Pensions Act 2004.

3.5 All three parties acknowledge that there will be some very limited exceptions to the relevant timescales.

For schemes within a PPF assessment period, these will be dealt with on a case-by-case basis.

For schemes in wind-up, these exceptions are currently:

scheme-specific legal issues, which involve court actions under way;

- industry-wide legal issues, which involve court actions under way;

- when early wind-up is not in the members' best interests – for example, because of early redemption charges on a particular investment. (Please note that the scope of this exemption does not extend to delaying wind-up in the hope that long-term investment gains will arise);

- when further distributions of funds on employer insolvency are expected, although we will expect the trustees to have progressed all other aspects of the wind-up prior to the final allocation of monies to members in this circumstance; and

- when there is an outstanding member complaint with the Pensions Ombudsman in respect of a particular scheme.

These exceptions will be updated to reflect changing events.

4. Enforcement

4.1 Enforcement will be through the use of existing statutory powers. The regulator will take a proportionate approach to deciding the most appropriate action to take.

4.2 The regulator can:

- issue directions (under section 72B of the Pensions Act 1995) – for example, to tackle situations where trustees and other parties are failing to take all reasonable steps to wind up a scheme. The regulator expects this to be our principal means of enforcement against schemes which do not complete the key activities of wind-up within two years;

- remove trustees, if not fit and proper, or if necessary appoint trustees (under sections 3 and 7 respectively of the Pensions Act 1995) – for example, where they may not have the appropriate level of knowledge to enable swift management of a scheme through a PPF assessment period;

- publish information (under section 89 of the Pensions Act 2004) – for example, in respect of a decision by the Determination Panel; and

- take action for failure to provide the regulator with registrable information about starting or completing wind-up under section 62 of the Pensions Act 2004.

Examples of schemes which the regulator has encountered, and the possible enforcement action which would have been taken under the new approach, are set out in the appendix.

4.3 The above is not a complete list of the regulator's powers but instead sets out those most likely to be applied in relation to schemes winding up or schemes in a PPF assessment period. A more complete summary of the regulator's powers can be found on the regulator's website at www.thepensionsregulator.gov.uk.

4.4 The regulator may also publish information in relation to parties with large wind-up portfolios.

4.5 The regulator continues to use its trustee register to appoint trustees to schemes where the incumbent trustee is not performing its duties adequately, the existing trustees require additional support or where there is no trustee in place. The PPF and FAS are in regular contact with the regulator and provide feedback on the performance of appointed trustees.

4.6 During an assessment period the PPF can:

- issue directions under section 134 of the Pensions Act 2004 in respect of:
  - the investment of the scheme's assets
  - incurring expenditure
  - the instigation or conduct of legal proceedings, and
  - other such matters as may be prescribed (none yet prescribed);
- require relevant information to be provided under section 191 of the Pensions Act 2004.

5. The consequences of our approach

5.1 The consequences of our new approach will be as follows:

(i) There will be increased regulatory scrutiny in the event that trustees do not complete a scheme wind-up or PPF assessment period within the relevant timescales.

(ii) Trustees will need to consider how, if their scheme were to wind up, they would complete the key activities within a two-year period, and in particular, whether certain activities such as data cleansing and member tracing need to be carried out before wind-up commences rather than during wind-up. These activities are also good practice in the administration of pension schemes.

(iii) Such steps will advance the incurring of costs that would otherwise fall during the wind-up process.

(iv) This can however lead to significant cost savings compared with the work that may otherwise need to be carried out during wind-up if, for example, the employer becomes insolvent or if access to pension scheme records becomes limited.

Appendix: Examples of when the regulator may use its powers

Issuing directions

The winding-up of a scheme had begun in 1991 but had not been completed. Four members had not been traced, and their benefits had not been secured with annuities although funds were available.

The regulator became aware of the scheme's circumstances and carried out an investigation. The regulator concluded that it was in the best interest of members to use its discretion to issue a direction requiring the trustee and administrator to complete the specified steps to secure the remaining entitlements and to complete the winding-up.

Appointing trustees

(i) *Appointing an independent trustee at the request of scheme trustees*

The employer of a contracted-out money purchase scheme became insolvent and its business was closed. The two individuals acting as trustees at the time the employer ceased trading felt unable to co-ordinate the winding-up of the scheme. Members were complaining that their requests for transfer value quotations were being ignored, scheme accounts were overdue and scheme expenses were unpaid.

At the request of the trustees the regulator considered the circumstances and appointed an independent trustee on the grounds that the existing trustees lacked the necessary level of skill and knowledge to wind up the scheme and to secure the proper use of the scheme's assets.

(ii) *Appointing an independent trustee at the request of the PPF*

The PPF made a request to the regulator for the appointment of an independent trustee because the trustees were not responding to the PPF's requests.

The regulator issued a warning notice and received an objection from the trustees who wished to deal with assessment and possible winding-up themselves.

After investigating the circumstances of the scheme the regulator decided to use its discretion to appoint an independent trustee with exclusive powers.

(iii) *Appointing an independent trustee following a whistle-blowing report*

A final salary pension scheme began winding up when employment ceased owing to the insolvency of the employer. It was not eligible for entry into the PPF.

The scheme actuary reported that the one remaining trustee had transferred part of the assets to an offshore fund which the actuary considered to be inappropriate.

The trustee did not respond to our enquiries.

The regulator appointed an independent trustee with exclusive powers.