### The Pensions Regulator BHS business activity

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
<th>BHS Pension Scheme position*</th>
<th>Outcome</th>
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</thead>
<tbody>
<tr>
<td>May 2010</td>
<td>Recovery Plan case opened for 31 March 2009 valuation</td>
<td><em>Funding position</em> Assets - £279m Ongoing basis deficit - £148m Buyout deficit - £354m <em>Recovery plan</em> Deficit paid over 12 years &amp; 10 months from valuation date with DRCs increasing each year from £4.9m pa to £21.0m pa Rapid increases in DRCs up to 2012 then c10% pa increases thereafter.</td>
<td>We engaged with the trustees. Typically, discussions might involve the strength of the employer, affordability, scope for contingent support (guarantees, contingent assets, profit share arrangements etc) and the prudence of the assumptions. Eventually we closed the case.</td>
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<tr>
<td>Sept 2013</td>
<td>Recovery Plan case opened for 31 March 2012 valuation</td>
<td><em>Funding position</em> Assets - £344m Ongoing basis deficit - £211m PPF level deficit - £247m Buyout deficit - £452m <em>Recovery plan</em> Deficit paid over 23 years &amp; 1 month from valuation date with DRCs of £9.5m pa (fixed). Represented a significant reduction from previous valuation as no future increases.</td>
<td>We opened a case. Concerns over a RP of this profile might include the length of the RP and the strength of the employer. We engaged with the trustees but have not signed off or issued any comfort in respect of this valuation – our interventions have been superseded by our investigation into the sale of BHS.</td>
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<tr>
<td>March 2015</td>
<td>Sale of BHS for £1 to Retail Acquisitions</td>
<td>Assets - £435m Buyout deficit (combined with Senior Scheme) - £571m <em>Recovery plan</em> Valuation not completed so none agreed</td>
<td>TPR investigation commenced.</td>
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*This information refers only to the BHS staff pension scheme. The BHS Senior Management Pension Scheme valuations/recovery plans are not in the public domain.

**Definitions of funding measures:**

**Buyout** – the cost of securing the benefits with an external insurer (sometimes called the Section 75 debt after the relevant legal provision in the Pensions Act)

**Ongoing basis** – a prudent assumption of the cost necessary to pay benefits as they fall due, based on assumptions around investment returns and liabilities (sometimes called Technical Provisions)

**PPF level** – PPF compensation level for the scheme, i.e. 90% of benefits up to a cap of £37k pa (sometimes called the Section 179 level)

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**TPR’s Avoidance Powers**

Our avoidance powers allow TPR to take action against employers or those associated with them where we consider that there has been an attempt to avoid supporting a pension scheme, their actions have weakened the sponsor’s ability to support the scheme, or where a sponsor that is part of a corporate group is insufficiently resourced to support the scheme.

Where we believe that a company or individual has acted to try to avoid their obligations to a pension scheme or acted to weaken the position of the scheme sponsor such that members are less likely to receive their benefits in full, we can issue a **Contribution Notice**. This requires those responsible to make a payment into the scheme of an amount which could equate to the cost of securing member benefits in full with a third party insurer.

Where the scheme sponsor is under-resourced or a service company, we can issue a **Financial Support Direction** which requires ongoing financial support to be provided to the scheme from elsewhere in the corporate group. Often this is used to ensure parent companies in corporate groups support the schemes of subsidiaries that cannot provide support on their own. Financial support can be provided in a number of ways including a lump sum payment into the scheme, a parent company guarantee or other additional financial resources being made available to the scheme. Once a Financial Support Direction is issued, the person required to provide financial support must put forward proposals to TPR as to the form that financial support will take and it is for TPR to approve those or issue a Contribution Notice if it considers the support offered is inadequate.

**Exercising powers**

We will undertake a comprehensive investigation to determine whether it is appropriate and reasonable to exercise either of these powers. These investigations are complex and can involve the review of thousands of documents and other pieces of expert and witness evidence. When we are satisfied it is appropriate to use a power we will issue a Warning Notice to the proposed targets and any other directly affected parties.

The investigating team do not determine whether a power is exercised. This decision is made by our **Determinations Panel**, an independent committee which has no connection to the people undertaking the investigation. The Determinations Panel hears the case and representations from
the proposed targets, and will determine if it is reasonable to exercise the power.

We can issue a Contribution Notice in relation to acts up to 6 years prior to when we issue a Warning Notice.

We can issue a Financial Support Direction where a connection/association to the scheme sponsor has been in place within 2 years prior to TPR issuing a Warning Notice. We can consider, as part of our assessment of whether or not it is reasonable to exercise the power, any acts or events which have taken place during the proposed targets’ connection/association with the scheme sponsor, and there is no time limit on how far we can look back.

Generally speaking, the fact a company has moved into insolvency does not impact the use of our avoidance powers, and we have used our powers on a number of occasions in which the employer has become insolvent.

The Upper Tribunal has yet to rule on a decision by the Determinations Panel to issue a Financial Support Direction or Contribution Notice, though it has been asked to rule on related procedural matters connected with those decisions, such as whether or not to strike-out TPR’s case.

**Timescales**

The exact timescales will vary from case to case but the process can be complex and take a significant period of time. We give the directly affected parties an opportunity to make representations to TPR and we respond to those before any Determinations Panel hearing – due to the complexity of the issues involved this can take several months.

**Past uses of powers**

In total we have progressed 16 cases to the point of issuing a Warning Notice. Several of these cases are ongoing and several of these cases were subsequently settled before the relevant powers were exercised.

The Determinations Panel has chosen to exercise our Contribution Notice power three times and our Financial Support Direction power four times so far. Some of those cases are currently in the process of being appealed by the proposed targets and we cannot discuss these further.

In total and including settlements made before powers were formally exercised by the Determinations Panel, our anti-avoidance activity has led to over £400 million in additional and ongoing support for pension schemes.

**Clearance**

Clearance is a voluntary process whereby an employer or any other entity that is considering a transaction or action that may weaken the position of a defined benefit pension scheme can come to TPR and seek comfort that we will not seek to use our avoidance powers in relation to the activity.

In order for clearance to be granted, the applicant would need to demonstrate that steps will be undertaken to mitigate the potential detriment to the scheme – if there is no mitigation or this is not sufficient, it is unlikely we will give clearance.

Clearance is granted only in relation to the circumstances proposed – if the circumstances of the transaction change or incomplete or misleading information has been provided to us, clearance no
longer applies and we retain the ability to use our avoidance powers if necessary.

May 2016
6 May 2016

Dear Mr Mellows-Facer

Thank you for notifying us of the scope of the Work and Pensions Committee enquiry.

I first of all wanted to confirm that the Regulator is keen to assist the Committee in its enquiry.

I have attached a timeline and a summary of our moral hazard for the Committee’s assistance. I have also attached a copy of the terms of reference of our investigation, which is provided for the Committee members’ information and on the basis that this is kept confidential and not published.

As you are aware, the Regulator currently has an avoidance investigation on foot in relation to the BHS scheme. Like many of our avoidance cases, these investigations are complex and involve analysing a large amount of evidence. We are concerned that were the details of our investigation referred to in front of the Committee this would prejudice our case and potentially put at risk sums of money that would otherwise be available to support the scheme.

We understand that the BHS schemes’ 2012 valuation will be subject to the Committee’s examination. The details of this valuation are available in the public domain [https://www.bhspensions.com/wp-content/uploads/2015/09/Bhs__Actuarial-Valuation-Report-31-March-2012.pdf]. We hope to assist the Committee in relation to this issue. There are some discreet matters that followed the submission of this valuation, relating to discussions with the owners of BHS which we consider to be material to our investigation and for the above reasons, were we to discuss these, we are concerned again that this would prejudice our investigation.

If I can be of any further assistance on these matters please do not hesitate to get in touch.

Yours sincerely

Anthony Raymond
Interim Director of Legal