Introduction

The Pensions and Lifetime Savings Association is the national association with a ninety year history of helping pension professionals run better pension schemes. With the support of over 1,300 pension schemes and over 400 supporting businesses, we are the voice for pensions and lifetime savings in Westminster, Whitehall and Brussels. Our purpose is simple: to help everyone to achieve a better income in retirement. Our pension fund members own nearly £1 trillion of assets and are responsible for the pensions of 16 million people.

1. EXECUTIVE SUMMARY

1.1 The Association believes that over the last 20 years successive Government policies, reviews and legislative provisions have developed a strong regulatory framework for pensions. This framework encourages pension provision and protects member benefits and has proven to be robust even when tested by the global financial crisis. However, we recognise it is not without its imperfections and it is clear that no framework can be entirely foolproof.

1.2 The Association believes the Regulator has an important role in the pensions system and is equipped with wide-ranging powers to help support and maintain high quality pensions provision.

1.3 The Association recognises that there are tensions in some of the Regulator’s objectives, intended to mitigate moral hazard. However we believe these tensions reflect the reality that successful Defined Benefit (DB) provision is a matter of balancing a sustainable scheme and a sustainable, strong sponsor.

1.4 The Association believes it is important to recognise that these inherent tensions are managed successfully across the vast majority of UK schemes and their sponsors in a constructive manner.

1.5 The Association considers the Pension Protection Fund (PPF) to be an important part of the pensions system and believes it is in a position to be able to take responsibility for the BHS pension scheme. With regard to the PPF levy system, it is evident that protection comes at a cost. However, it is important that the levy remains proportionate and that the PPF takes a long term view about how to manage the risks it ‘insures’ from eligible DB scheme sponsors.
2. INTRODUCTION

2.1 The Pensions and Lifetime Savings Association (PLSA) welcomes the opportunity to contribute to the Committee’s examination of the strength of the regulatory framework that protects DB pension schemes.

2.2 The Association notes that the circumstances surrounding the insolvency of BHS are under active investigation by the Pensions Regulator (TPR). The BHS scheme is not a member of the Association and we are not privy to the full details of the areas under investigation, we have therefore our comments are limited to the broader operation of the regulatory system.

3. THE ADEQUACY OF DEFINED BENEFIT PENSION SCHEME REGULATION AND REGULATORY POWERS, IN GENERAL AND SPECIFICALLY IN RELATION TO THE PENSION SCHEMES OF COMPLEX AND MULTI-NATIONAL COMPANIES. THE USE OF THESE POWERS BY THE PENSIONS REGULATOR IN RECENT CASES, INCLUDING BHS.

3.1 Since the introduction of the current regulatory framework, via the Pensions Act 2004, the role and powers of TPR have been extended and changed on a number of occasions. The powers available to the Regulator today are fairly wide-ranging and can be applied to employers, trustees and public service pension schemes. They play an important regulatory role and contribute to a system which encourages high quality and sustainable schemes.

3.2 In 2008, following concerns regarding some company restructuring activities, the Regulator’s powers were specifically extended to address acts which could lead to material detriment of pension schemes by employers seeking to sever their link with their pension scheme. These powers permit TPR to take action to recover unpaid contributions from employers or issue improvement notices to individuals or companies requiring specific action to be taken within a specified time. It can also prohibit individuals from acting as trustees where it considers them not to be fit and proper, or impose fines or prosecute offences in the criminal courts.

3.3 Our understanding is that since their introduction TPR has issued several s.89 Reports regarding the use of its powers to issue Contribution Notices or Financial Support Directions, including in complex and multi-national jurisdictions, but has, to date, not fully exercised its anti-avoidance powers. At present, based on publicly available information and their limited usage, we are not aware of any specific issues with the legislative powers granted to TPR to address avoidance activity.

3.4 However, it is clear that schemes and their sponsors face a number of pressures in the current environment. Macro-economic conditions and the effect of quantitative easing, low interest rates and gilt yields have impacted scheme funding, which remains in deficit despite significant levels of employer (and employee) contributions.
3.5 As well coping with these challenges, schemes are grappling with affordability issues associated with the improvements in longevity we have seen in the last 50 years. At the same time it is evident that scheme sponsors remain vulnerable to economic shocks which can, when significant, raise questions about their ability to provide member benefits.

3.6 Although we have no evidence from this case, or others, that the regulatory system is unfit to manage these risks, we believe it is important to examine the challenges currently facing DB schemes more generally. For this reason we have established a DB Taskforce which will undertake a review of these challenges and make recommendations to Government which will (a) help ensure the sustainability of open DB schemes and (b) help closed DB schemes run off more efficiently and ultimately secure member benefits.

3.7 The Association notes that the Committee has indicated that it intends to examine the issues facing DB schemes more generally. We hope that the work of the Taskforce, which issued a Call for Evidence on the challenges facing DB schemes and their sponsors on 9 June, can help inform and support this work.

4. RESOURCING AND PRIORITISATION OF TPR SUPERVISORY WORK.

4.1 In performing its regulatory functions, TPR operates a risk-based approach and as a result will prioritise aspects of its work. The Association is not in a position to fully assess how the Regulator chooses to allocate or prioritise its resources across its range of responsibilities and the tasks associated with fulfilling its duties. These are important considerations for our members and we would encourage the Regulator to strengthen how it communicates its activities to provide greater transparency and clarity to pension schemes and their sponsors.

4.2 We note that TPR’s role and its responsibilities have been increased on several occasions in recent years, including for example providing greater oversight of public service schemes and auto-enrolment. A levy on pension schemes funds the Regulator’s activities, as well as other Government pension services such as The Pensions Advisory Service and the Pensions Ombudsman.

4.3 While the levy is set by the Secretary of State, it is an important matter for our members who would appreciate further certainty regarding how the levy is used by the Regulator. It is not always clear whether sufficient resource is being allocated to the Regulator’s frontline regulatory activity. For our members, this further clarity would help demonstrate the Regulator’s commitment to protecting the benefits of members of occupational pension schemes and provide a better understanding of how it prioritises its resources.

5. IMPLICATIONS OF THE REGULATORY APPROACH FOR COMPANY BEHAVIOUR, INCLUDING WHETHER IT MITIGATES OR INCENTIVISES MORAL HAZARD.
5.1 The Regulator has a number of objectives which are intended to mitigate the moral hazard activities that the Government recognised could occur as a result of the creation of the Pension Protection Fund.

5.2 The Association recognises that there are inherent tensions in some of those objectives, for example their requirement to prevent claims on the PPF and to consider the sustainable growth of an employer. We would note that they do however reflect the reality that successful DB provision is a matter of balancing a sustainable scheme and a sustainable, strong employer. Whilst these tensions may require careful consideration, we do not believe they are insurmountable or have proven in practice to be in direct conflict.

5.3 The Association believes it is important to recognise that these inherent tensions are managed across the vast majority of UK schemes and their sponsors in a constructive and mutually supportive manner.

5.4 Where specific issues arise, we would expect the Regulator to address any individual concerns on a case by case basis, and to utilise its powers appropriately. On the whole, since the creation of the new regulatory framework ten years ago, this approach, when applied, has been successful in supporting good quality pensions provision and addressing poor behaviour.

6. THE SUSTAINABILITY OF THE PENSION PROTECTION FUND.

6.1 The Association recognises that the PPF is now an established and important part of the UK pensions system, providing protection to over 10 million members and compensation to over 200,000 members, successfully managing over £20bn of assets. It has also in recent years, despite the challenges of a significant financial crisis, shown itself to be robust, moving from a position of deficit to become increasingly well-funded, reporting a surplus of £3.6bn in its last Annual Report.

6.2 Given its funding position, history of coping with annual claims of up to £1bn, and the long-term nature of compensation payments we expect the PPF to be in a position to take on a scheme of this size.

7. THE FAIRNESS OF THE PPF LEVY SYSTEM AND ITS IMPACT ON BUSINESSES AND SCHEME MEMBERS.

7.1 It is evident that protection comes at a cost and the levy is one of main ways, alongside investment returns and recoveries, that the PPF funds the protection it provides to pension scheme members. It is, however, important the levy remains proportionate, and
the PPF takes a long term view about how to manage the risks it ‘insures’ from eligible DB scheme sponsors.

7.2 Since its creation, the Association has engaged successfully with the PPF to help ensure the levy is transparent, fair and does not overburden schemes.

7.3 We supported the PPF’s recent review of its levy methodology, and on the whole the changes introduced to the levy calculation and the assessment of company insolvency risk was, helped by extensive and open consultation, largely well received by PLSA members in 2015/16.

7.4 We are however always mindful that the level of the levy needs to be kept under constant review and we continue to engage with the PPF regarding its broader direction and impact as well as seeking to resolve technical issues which cause concern, operational challenges or inconsistencies in outcome for our members.

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