The Committee invites written submissions addressing one or more of the following issues. My personal responses are set out below.

Defined benefit (DB) pensions regulation by the Pensions Regulator (TPR), including:

- the adequacy of regulatory powers, including anti-avoidance provisions
  - The BHS case has highlighted an inadequacy arising at the time of changes of ownership in the sponsoring employer(s). Under the Takeover Code, which was amended in May 2013, employees of both the offeror and the offeree company (applies to UK, Channel Islands and Isle of Man listed companies) and the trustees of the offeree company’s pension scheme must be informed about an offer. In addition, the offeree company’s employee representatives and pension scheme trustees have the right to have a separate opinion on the effects of the offer on employment appended to the offeree board’s circular or published on a website. (See Takeover Code rules 12.2, 20.1, 21.1, 24.2, 25.9, 26.3 and 32.6.)

- the application of those powers, including in specific cases other than BHS
  - No further comment.

- the level and prioritisation of resources
  - I am surprised the BHS scheme was not considered for TPR’s “active engagement” programme either after the August 2009 scheme closure, or the submission of a 12½-year recovery plan in June 2010 following the March 2009 valuation, or the late submission of a 23-year recovery plan in September 2013 following the March 2012 valuation.

- whether a greater emphasis on supervision and pro-active regulation would be appropriate
  - No further comment.

- whether specific additional measures for private companies or companies with complex and multi-national group structures are required
  - See Takeover Code comparison earlier above.

- the pre-clearance system, including whether it is adequate for particular transactions including the disposal of companies with DB schemes
  - Again, see Takeover Code comparison earlier above.

- powers relating to scheme recovery plans
  - 23-year recovery plans are not unique, and one of the British Airways DB schemes had a 23-year recovery plan following the scheme’s closure in 2003.

- the impact of the TPR's regulatory approach on commercial decision-making and the operation of employers
  - No further comment
The Pension Protection Fund (PPF), including:

- **the sustainability of the Pension Protection Fund**
  - The PPF seems to be in robust health based on the evidence provided to the Committee by its Chief Executive and its latest annual report for the year ended 31 March 2016.
  - The PPF should continue to emphasise that its current funding and investment strategy is contrary (even contrarian) to the approaches being used by many of the regulated DB schemes.
  - There is a concern that the annual levy being raised is excessively prudent. The levy is generally borne by the larger, better governed schemes. For example, in its most recent year ended 31 March 2016 the PPF received £558.1m of levy and £733.4m of investment income, a total of £1.2915bn, to support compensation paid during the year of only £475.9m, a cover ratio of more than 2½-to-1. And since the PPF began the year with assets of £35.6512bn, that investment income of £733.4m represents an annual yield on opening capital of only 2.057%. It should be possible for the PPF to generate somewhat higher annual investment income without taking significant risks on its capital employed.

- **the fairness of the PPF levy system and its impact on businesses and scheme members**
  - There is moral hazard in a system in which the largest, best governed schemes pay the lion’s share of the levy, while smaller schemes are not incentivised to resolve their funding shortfalls through consolidation or early buy-out. Given the ample “cover ratio” of the PPF described above, some of the annual levy could be used to fund arrangements to give consolidation or buy-out advice to small schemes.

**The role and powers of pension scheme trustees**

- There seems to be a failure on the part of many trustees to plan for the remaining life of their scheme, particularly but not exclusively schemes now closed to future accrual. In the BHS case, there is nothing in the evidence to suggest that the trustees had “a complete financial management plan” (paragraph 11 of TPR’s annual DB statement issued in April 2012), particularly following the closure of the scheme to future accrual in August 2009, but also earlier in the scheme’s development.

**Relationships between TPR, PPF, trustees and sponsoring employers**

- No further comment.
The balance between meeting pension obligations and ensuring the ongoing viability of sponsoring employers, including:

- **TPR’s objective to ”minimise any adverse impact on the sustainable growth of an employer”**
  - This is only one of TPR’s six objectives and even then it is qualified “in relation to the exercise of TPR’s functions under Part 3 of the Pensions Act 2004 only” (see below)
  - TPR’s six objectives, some of which may be difficult to reconcile, as set out in legislation are:
    - to protect the benefits of members of occupational pension schemes
    - to protect the benefits of members of personal pension schemes (where there is a direct payment arrangement)
    - to promote, and to improve understanding of, the good administration of work-based pension schemes
    - to reduce the risk of situations arising which may lead to compensation being payable from the Pension Protection Fund (PPF)
    - to maximise employer compliance with employer duties and the employment safeguards introduced by the Pensions Act 2008
    - to minimise any adverse impact on the sustainable growth of an employer (in relation to the exercise of TPR’s functions under Part 3 of the Pensions Act 2004 only).

- **whether the current framework is generating inter-generationally fair outcomes**
  - Consolidation of smaller, less well governed schemes is prevented by inflexible debt on employer regulations
  - Current members of contributory schemes bear an unfair burden of funding to secure accrued benefits of former members

- **whether the current wider environment, including very low interest rates, warrants an exceptional approach**
  - No, but there should be more instances of the flexibilities already enshrined in the Occupational Pension Schemes (Scheme Funding) Regulations 2005 being used to avoid unnecessary volatility in funding updates and cash calls on sponsoring employers and contributing members. In short, more actuaries should work with their clients and their clients’ investment managers and/or advisers to develop complete financial management plans in which the discount rates used to measure liabilities (in the absence of short-term buy-out plans) are based prudently on expected net investment returns, not rigidly pegged to falling gilt yields in periods of quantitative easing and other central bank regulatory measures.

By way of personal background, I have been a professional pension trustee for 29 years, during which time I have served on the boards of some of the largest industry-wide schemes, including the Railways Pension Scheme (which I chaired from 2007 to 2014) and the Mineworkers’ Pension Scheme.
In conclusion, the undercurrents I and both professional and lay colleagues I talk with are picking up is that there appears to be adequate regulations and protections available, so that calls for increased regulations are a distraction from (or scapegoat for), if anything, the failure of proper engagement and missing aspects of effective governance. All trustees should include among their fiduciary responsibilities the production and understanding of a trustee business plan, including scheme-specific funding and investment plans.

August 2016