Dear Mr Field,

Section 75 Employer Debt – Pensions Act 1995

I wrote to you on 6 June to highlight the concerns we had with respect to section 75 Employer Debt legislation and the unintended consequences it was having on our member firms. You responded to this letter saying that you had passed the matter to your Clerk and I am now writing to enquire whether he has had time to consider this matter.

We believe that addressing the following points will alleviate the punitive burden on those who have triggered the section 75 debt and we seek your assistance and guidance in moving towards legislative change.

- The exemption of unincorporated businesses (sole traders and partnerships) from the provisions of the legislation on the basis that a section 75 debt would not be triggered where a business ceases to have any active members in the scheme or changes its legal status.

- Removal of orphan liabilities from the debt. In 2005 when the method of calculation of the debt changed from Minimum Funding Level (MFL) to a full buy-out basis the Scheme had over 3,500 ex-participating employers and only 800 active employers. Since that time the number of active employers has reduced to around 400 employers. The impact of ‘orphan liabilities’ linked to previously participating employers is a matter of concern and needs to be addressed. It is not right that the remaining 400 employers should bear the responsibility of pension liabilities for so many employers with whom they have no connection and no control over the benefits awarded to those employees employed by their business competitors. We propose that the Pension Protection Fund should act as ‘Guarantor of Last Resort’ for the orphan liabilities in the scheme which we understand represents 60% of the
section 75 debt. We understand the Scheme is prudently funded and the risk of the PPF having to take over the Scheme is low and therefore this is unlikely to become an issue.

- We believe that the full buy-out method is inappropriate and that something akin to MFR or technical provisions would be more appropriate and reasonable. The impact of the government’s quantitative easing policy is affecting bond yields and therefore inflates the size of the scheme’s liabilities and therefore any section 75 employer debt.
- Any amendment to the current legislation covering the above needs to be retrospective to ensure that all employers who have triggered a debt under current legislation are treated on the same basis.

We would appreciate your support and guidance on how we might be successful in having the current pensions legislation on section 75 amended in the above ways and to deal with the unintended consequences on non-associated multi-employer defined benefit schemes like this one.

We participated in a conference call on 22 September 2016 with officials at the DWP and representatives from Plumbing Pensions UK Ltd when we highlighted much of the above. The Department is currently assessing last year’s call for evidence on section 75 and has yet to respond. It would appear that although the DWP is listening to these concerns the DWP remit is limited and the wider pensions and employer issues are not seen as a priority. DWP did, however, suggest there may be scope not to apply the debt when the last employee leaves which in reality simply defers the problem rather than resolve it. We also discussed the implication of such change on those retiring from unincorporated businesses. Finally we discussed changing the wording of Regulation 2(3A) which cross refers to Regulations 6ZB and 6ZC to enable this legislation to be used more widely. As it stands in its current state it is deemed too complex to apply. Richard Harrington MP has agreed to meet with us and we are just waiting to secure a date to meet.

We would be pleased to have your thoughts on any of the above.