Rt Hon Frank Field MP
House of Commons
London
SW1A 0AA

10 November 2016

Dear Mr Field,

Pension Protection Fund and Pensions Regulator Inquiry

It was a pleasure to meet you and your fellow Committee members on 19 October.

You asked me to follow up in writing on some points that I made regarding the powers of pension scheme trustees. I have focussed on the area that I expect the Committee will find most helpful - the powers that trustees have at their disposal to protect pension scheme members in the event of a corporate transaction.

The trustee powers referred to below are in addition to the powers currently available to the Pensions Regulator

Powers available to some trustees - the "balance of powers lottery"

The governing documentation of every pension scheme sets out the relationship between the powers reserved for the trustees and the employer. This is referred to by lawyers as the "balance of powers".

Before purchasing a company with a defined benefit pension scheme a potential buyer will want to understand the balance of powers for that scheme.

There are two key powers that are available to some trustees - the power to set the contribution rate and the power to wind-up the pension scheme. Both these powers are the exception rather than the rule and are rarely exercised. However, where they do exist and where trustees are concerned about a particular corporate transaction, they can be a very useful way of protecting the interests of scheme members. In some circumstances either power can give pension trustees significant leverage (and potentially a veto) over a proposed corporate transaction.

Power to set the contribution rate

Some scheme rules allow trustees to unilaterally set the contribution rate. This power must be used wisely and Trustees will always need to take into account what the company can reasonably afford. It can however give Trustees significant leverage over the employer in the context of a corporate transaction by enabling them to demand significant upfront cash payments into the pension scheme.

Power to wind-up the pension scheme

Some scheme rules give trustees the power to wind up the scheme if there is a change of ownership of the company or if the trustees are concerned about the level of funding.
If a scheme is wound up, the outstanding liabilities of the scheme immediately become statutory debts payable by the employer. The debt is calculated on buyout basis which is the most conservative funding basis and represents the cost of buying an annuity from an insurance company to cover the liabilities of the scheme.

**Powers that are available to all trustees**

The following powers are statutory powers and are available to all trustees.

*Changes to investment strategy*

Pension scheme trustees have the power to set the investment strategy, although they have a duty to consult the employer about any proposed changes. If trustees are concerned about a corporate event or the scheme is in a distressed state, they are able to tactically change the investment strategy. This can have a significant effect on the contributions due from the employer. For example, a switch from growth seeking assets to gilts will significantly increase the pension liabilities.

*Call an early valuation*

Scheme valuations are typically carried out every three years. If trustees are concerned about the impact a corporate transaction may have on the pension scheme, they can call an early valuation. I mention this power for completeness - in practice this power is not that helpful to trustees unless they also have the power to set the contribution rate.

I hope that you have found this letter informative and helpful for your enquiry. Please do let me know if you have any further questions or would like me to expand on any of the points set out above.

Yours sincerely

Andrew Bradshaw

Council Member of the Association of Professional Pension Trustees (APPT)

November 2016