

# The PPF Approach to Employer Restructuring

PROTECTING PEOPLE'S FUTURES

# 1: A message from Malcolm Weir, PPF's Head of Restructuring and Insolvency



"If an employer becomes insolvent and it has a pension scheme which we protect, we will exercise creditor rights on behalf of the scheme and seek to maximise recoveries from the employer to reduce the pension deficit.

"Occasionally an employer, with a pension scheme in deficit, faces insolvency and will propose a restructuring package to allow them to continue trading, whilst the PPF takes on the pension scheme.

"Such situations are rare and we do not agree to them lightly. We will only support such proposals if they provide a significantly better return for the pension scheme than it would receive through the normal insolvency process. These arrangements can sometimes be controversial, so we feel it is important that people have a better understanding about our approach to them."

## 2: Background

Since we opened our doors for business in 2005, we have been involved in a small number of restructuring or rescue transactions affecting employers which otherwise face certain insolvency. The negotiations that take place to agree these transactions are, by their very nature, complex and confidential because of their commercial sensitivity.

High-profile restructuring cases such as Kodak, Monarch and Halcrow have meant that our role in restructuring has received greater scrutiny and analysis, some of which has been inaccurate and occasionally even potentially misleading.

This factsheet briefly summarises why we might enter into these agreements and the principles we use to make our decisions.

## 3: Restructuring and rescues

*If our principles are met, we can take part in the restructuring or rescue of an insolvent business.*

This can mean that the employer's pension scheme will be better off than if the business had been simply left to fail. It usually involves removing the pension debt from the company, allowing it to continue to trade with a positive cash flow and potentially make a profit.

To some, this could look like we are involved in 'pensions dumping', which would be contrary to the Pensions Act 2004. This is not the case. To ensure that, we will only take part in a restructuring if our principles are met. Our principles are designed to make sure that the pension scheme is in a much better position than it would have been if we had done nothing. Most negotiations will take place alongside the Pensions Regulator, which also needs to provide clearance for the transaction before any agreement can be made.

## 4: Restructuring principles

*We judge every proposal that is put to us on the specific facts relating to the case. We apply these principles in all situations no matter what type of restructuring or rescue is involved:*

1. Insolvency **has** to be inevitable – this means that the pension scheme will be entering a PPF assessment period whatever happens.
2. The pension scheme will receive money or assets which are significantly better than it would have otherwise received through the insolvency of an employer. The proposal also needs to be considered by the PPF to be realistic compared to the pension buy-out deficit. This is the debt that would be due under section 75 of the Pensions Act 1995.
3. What is offered to the pension scheme in the restructuring is fair compared to what other creditors and shareholders will receive as part of the transaction.

### Example:

- The insolvent employer has a £100 million bank debt which will be irrecoverable on insolvency.
- Its pension scheme also has a deficit of £100 million.
- The dividend we would expect through normal insolvency is zero.
- The employer offers us £1 million to take on the pension scheme so it can continue trading.
- If we agree, the bank debt becomes fully recoverable rather than being written off through normal insolvency.
- This means we would seek a more appropriate 'price' from the bank for giving it the opportunity to get its money back over time.

4. The PPF will seek at least 10 per cent equity in the restructured company for the scheme if the future shareholders are not currently involved with the company. We will seek at least 33 per cent if the future shareholders are parties currently involved with the business.

**Note:** This is anti-embarrassment protection to make sure that where we have taken on a large pension debt, the scheme won't lose out if the restructured company goes on to become very profitable as a result of losing its pension deficit.

5. We need to make sure the pension scheme would not have been better off if the Pensions Regulator had instead issued a contribution notice or financial support direction.
6. Where the transaction involves a refinancing, the fees charged by the banks are deemed by the PPF to be reasonable.
7. The party seeking the restructuring pays the costs incurred by both the PPF and the trustees in delivering the restructuring. These will include any fees for legal and financial advice and any other costs incurred by the PPF as a result of the transaction, such as TUPE liabilities relating to the staff costs of the pension scheme.

## 5: Case study

*We assess every proposal that we receive on its unique set of facts and merits. Although every case is different, here is an example to help demonstrate how the principles are applied in practice.*

### No rescue:

Company A is hopelessly insolvent and has a large deficit in its pension scheme.

The bank will not support the company further.

This means the company cannot afford to pay out for wages or vital supplies. Insolvency is, therefore, inevitable.

If the company enters insolvency, secured creditors such as the bank would only get a small proportion of what they are owed – and unsecured creditors, including the pension scheme, would get even less.

The pension scheme would then enter the PPF assessment period. The PPF would have to take on the deficit with very low recoveries to help fund compensation to members.

### Rescue proposal:

Company A puts forward a rescue proposal which involves a management buy-out to allow the business to keep trading. It also proposes that the pension scheme enters the PPF assessment period.

We would usually only agree to this after negotiating, along the following lines, on behalf of the pension scheme:

- a substantial cash payment to the scheme which is significantly better than the “going concern” insolvency outcome for the scheme estimated by the trustees financial advisors.
- a 33 per cent equity stake in the company.
- the bank agrees to convert a substantial proportion of its debt to equity.
- the ongoing company agrees to cover any liability for staff employed to administer the pension scheme that might have fallen on the PPF as a result of the rescue.
- the ongoing company pay the costs and fees incurred by the trustees and PPF in completing the transaction.

The intended result would be that, after completing the assessment period, the cash sum and any subsequent value in the equity stake will be available to the scheme to allow trustees to seek a buy-out above the level that the PPF would have had to pay out if the scheme had entered the PPF after insolvency. If we did not agree to the transaction, the pension scheme and, ultimately, the PPF, would have received virtually nothing from the inevitable insolvency that would have followed – and our levy payers would have had to fund the deficit.

*Please note this leaflet seeks to assist stakeholders and insolvency professionals on our approach to Restructuring & Insolvency. It is an accompaniment to existing publications from the PPF and the Pensions Regulator on our respective websites, not a substitute. We encourage Insolvency Practitioners and Trustees to seek our guidance. See [www.pensionprotectionfund.org.uk](http://www.pensionprotectionfund.org.uk) and [www.thepensionsregulator.gov.uk](http://www.thepensionsregulator.gov.uk) for further information.*

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