The Pension Protection Fund – the genesis

Richard Favier offers a step-by-step guide for IPs using the PPF.

The failure of companies such as Allied Steel and Wire, which left employees with little or no future pension provision, prompted the government to act. It created the Pension Protection Fund, which opened for business on 6 April 2005 and was set up under the provisions of the Pensions Act 2004.

The Fund was established to pay compensation to members of eligible defined benefit and hybrid pension schemes where a qualifying insolvency event has occurred in relation to the employer and there are insufficient assets in the pension scheme to provide at least as good a level of benefits as would be provided by the Pension Protection Fund.

In a nutshell, the Pension Protection Fund will take over the assets in the scheme, along with its liabilities. To make up the shortfall, it uses money raised from a levy on all other pension schemes that would be eligible for Pension Protection Fund compensation, and pays compensation to the members when their pension would otherwise have come into payment. It is a statutory fund, run by the Board of the Pension Protection Fund, a body corporate.

Challenge and motivation

As Philip Cogan recently asserted in his column in the *Financial Times*: 'Life is not fair. But there can be few crueller fates than that suffered by those who spend their entire career contributing to a company pension scheme only to find their retirement plans ruined by the business's financial difficulties.'

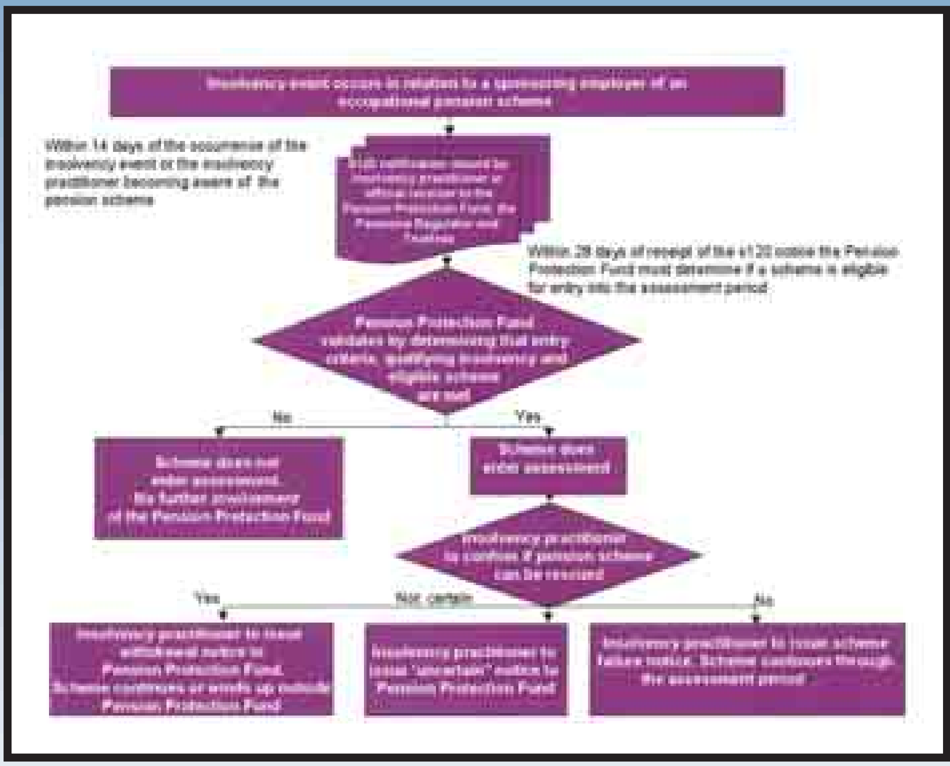
This really is a tragedy in the lives of ordinary men and women; a tragic problem that the Pension Protection Fund has been asked to solve, and one of the main factors which motivated me to join the Pension Protection Fund to head up its insolvency team. Over the past couple of years, whilst working for the Insolvency Service, it had become increasingly apparent to me that pension schemes were becoming an important factor in insolvencies and, since the Pensions Act 2004 came into force, the new Pension Protection Fund has had a very important interface with the profession.

The rescue culture and the Pension Protection Fund

When I was working (as a policy maker) on the rescue culture in the mid to late 90s there was much talk of the 'London approach' where the Bank of England invited a few banks to Threadneedle Street to 'suggest' that they might co-operate in the rescue of some big plc or other. However, as time went on, vulture funds claimed a seat at the table as did the venture capital funds, the credit insurers and one or two other groups. Since the Pensions Act 2004 the Pension Protection Fund has claimed a seat at the table too, and insolvency practitioners are becoming increasingly aware that a pre-pack or a CVA must have our prior approval where there is a big pension debt on a defined benefit scheme.

Such is the size of defined benefit pension scheme debt that the Pension Protection Fund can often outvote all of the unsecured creditors on its own. That can often be a useful (although responsible) position to be in and one an insolvency practitioner will ignore at his or her peril.

But what is the Pension Protection Fund's role at the table? That is a simple question to answer. When assuming pension scheme trustees' creditor rights under the Pensions Act 2004, our sole aim in any negotiation is to maximise the return for the pension scheme. However, before we would contemplate agreeing a transaction pre-insolvency or a pre-pack we would need to be



satisfied that the employer was heading towards an inevitable insolvency and the deal on offer is demonstrably better than the return we would otherwise have got in the insolvency.

Responsive and professional

In the first year of operation the Pension Protection Fund has had to deal with a number of high profile cases, for example MG Rover, Heath Lambert and T&N. As will be all too familiar to you, working in the insolvency arena is not a 9 till 5 occupation, and the Pension Protection Fund (working along side the Pensions Regulator) has demonstrated that it is a responsive organisation, which acts both professionally and commercially in the marketplace. So, if time is tight, you need have no concerns on that score.

What you have to do

What is required of you as an insolvency practitioner under the Pensions Act 2004 and in particular under the 'Entry Regulations' is relatively straightforward, and you do not have to become an expert in pensions legislation. The diagram above provides a useful summary setting out what actions you need to take and when.

The first thing to note is that should an insolvent employer be running an occupational pension scheme (whatever type it is), you must give notice of that fact to the Pension Protection Fund within 14 days of the insolvency or your first knowledge that the scheme exists. You are required by statute to provide specific information and if you use the form on our website you should not go wrong. That is called a section 120 notice (Pensions Act 2004). If the scheme is an eligible scheme, and has had a qualifying insolvency event, it will enter an assessment period.

Second, the Pension Protection Fund assumes the rights of the pension trustees once the scheme has entered a period of assessment (section 137 Pensions Act 2004). That means, to all intents and purposes, the Pension Protection Fund (rather than the trustees of the scheme) is the creditor during the insolvency.

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Third, as soon as is reasonably practicable, you will need to give notice (a section 122 notice) to the Pension Protection Fund if the scheme can be rescued or will fail. Again you will find a useful form on our website. Put simply, if you have laid off all the employees and are conducting a firesale liquidation you should immediately send us (probably in the same envelope as the section 120 notice) notice that financial support of the scheme will not continue – ie a scheme failure notice. If you hope to sell off the business, with the pension scheme intact, or intend to float a CVA to rescue the company (where financial support for the pension scheme will continue) you need to send us notice of that fact too – a scheme rescue notice. If you should find yourself out of office before you could properly form a view (eg because a winding up order is rescinded) you need to inform us of that fact too.

One of the key objectives of the Pension Protection Fund is to ensure that pension schemes progress through the assessment period as quickly as possible. It is therefore important that all the relevant information is submitted to the Pension Protection Fund as quickly as possible, and that the forms, which are available on our website (for download), are completed fully, accurately and promptly.

Further guidance on the role of the insolvency practitioner, in relation to the Pension Protection Fund, can be found on our website at **www.pensionprotectionfund.org.uk/insolvency_guidance.pdf** □

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