

The Pensions Regulator
Abandonment of defined benefit pension schemes: Discussion Paper
Response from Prudential plc

Introduction

Prudential plc is a leading provider of Bulk Annuity and Risk Management products for Defined Benefit schemes and a provider of Defined Benefit Schemes.

We welcome the Pension Regulator's paper and draft guidance and, subject to our comments below, believe these provide important and valuable input into this potentially complex and contentious subject.

However we are concerned by the suggestion that in considering the merits of any proposal, trustees should obtain access to documents relating to the anticipated costing, income and profits of parties to any transaction. We recognise that trustees need to be satisfied that an arrangement represents a fair deal and protects the interests of scheme members as a whole. However we do not believe that this requires or entitles trustees to access commercial data and this position should be reflected in the guidance.

Response to specific questions

- 1) Are there any other products or methods that have been introduced to manage pension risk that are not covered in this chapter?

We are not aware of any products or methods other than those listed.

- 2) What level of take-up of such products by schemes are you aware of or do you expect to see?

We are aware that there has been interest in a number of these options but we are not aware of the level of take-up.

We anticipate that increasing numbers of employers will look at methods for reducing or removing the various risks they face in respect of their pension scheme. It is therefore important that the Regulator, in addressing concerns about scheme abandonment, continues to allow other risk management methods to develop. In this respect we are reassured that this paper does not prevent the development of other risk management options.

- 3) Do you agree with the analysis and the reasons why abandonment can rarely be justified?

We agree that where employers have made a benefit promise to their employees it is usually not appropriate for the risks inherent in that promise to be passed to members and/or to the Pension Protection Fund.

As the paper recognises, there can be difficulty in establishing whether a particular transaction constitutes abandonment and/or whether that transaction is satisfactory. For example, the arrangement in respect of the Marconi scheme appears to fall within the definition of abandonment outlined in the Discussion Paper but presumably represented the most suitable option, given the particular circumstances in that case.

This indicates that each case needs to be considered on its merits and that guidance issued by the Regulator is therefore appropriate.

- 4) Do you have knowledge about types of formats of transactions involving pension schemes that may be classified as abandonment as described in the paper? If so, what forms do these take?

Although we are aware that various concepts have been discussed we do not have any details of the form these might take.

- 5) Chapter 6 sets out draft guidance to trustees to help them identify and deal with proposed transactions that could result in abandonment of pension schemes. Do you find the guidance relevant and helpful?

In the main yes, but see comments below.

- 6) Do you have any feedback on the content of the proposed guidance on abandonment?

- (i) In addition to the factors listed we believe trustees should also be reminded of the need to take into account the powers and requirements that apply under the scheme's trust deed and rules, for example, in the event of a change of principal employer or the cessation of employer contributions.

In addition, the scheme rules will determine the role and powers of various parties to the arrangement and whether rule amendments, trustee agreements etc would be required for any action to take place.

- (ii) Paragraph 41 states that trustees should obtain access to documents setting out parties' costing and expected income and profits as a result of the arrangement.

We recognise that trustees need to be satisfied that the best interests of the members as a whole are served by an arrangement and that they are getting a fair deal. However, we do not believe that this requires or entitles them to access commercial data held by parties to an arrangement.

Therefore we not believe it is appropriate for the guidance to suggest that trustees should have access to this information.

- (ii) We believe it would be useful if the following aspects were also covered by the guidance.
- The extent to which Section 67 Pensions Act 1995 needs to be considered if rule amendments are required to facilitate a scheme abandonment. For example, a rule amendment that results in a weakening of the employer covenant would or might affect any of the members' accrued rights. Could this be considered to bring Section 67 into play?
 - The extent to which the rights of members under the Contracts (Rights of Third Parties) Act 1999 need to be considered where the trustees are party to any contract on scheme abandonment. For example, the extent to which individual members might have the right to sue any of the parties associated with the transaction, or whether any provision

that expressly excludes members from any third party rights could be accepted by trustees, as it could be contrary to the members' best interests.

Prudential plc
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