Pension Protection Fund

Guidance on Contingent Assets
Part 2: Type A Contingent Assets

2024/2025

CONTENTS

1 THE GUIDANCE

1.1 Guidance Introduction

1.1.1 The Guidance in relation to Contingent Assets is comprised of four Parts. These are:

Part 1 – General Requirements;

Part 2 – Type A Contingent Assets (group company guarantees);

Part 3 – Type B Contingent Assets (charges over assets); and

Part 4 – Type C Contingent Assets (letters of credit / bank guarantees)

(the "**Contingent Asset Guidance**").

1.1.2 This Part 2 of the Contingent Asset Guidance covers specific requirements in respect of Type A Contingent Assets and should be read in conjunction with Part 1 of the Guidance in relation to Contingent Assets.

2 THE GUARANTEE

2.1 The Guaranteed Obligations and the Liability caps

2.1.1 Under the standard form guarantee, the guarantor is guaranteeing all sums due from the relevant scheme employers. See the definition of "Guaranteed Obligations" and "Companies" in the standard forms.

2.1.2 In the versions of the standard forms published on 18 January 2018 and thereafter (the "Post-2018 Standard Forms"), the liability cap is a limitation on the amount recoverable from the guarantor.

2.1.3 There are, broadly speaking, five types of cap:

(a) a fixed sum;

(b) a fluctuating cap based on the scheme's s179 funding level;

(c) a fluctuating cap based on the scheme's s75 funding level;

(d) a combination of (a) and (b) above, i.e. the lower of a fixed sum and a fluctuating cap based on the scheme's s179 funding level; and

(e) a combination of (a) and (c) above, i.e. the lower of a fixed sum and a fluctuating cap based on the scheme's s75 funding level.

2.1.4 The Post-2018 Standard Forms changed the structure of the fixed element caps, to clarify the circumstances in which payments by the guarantor under the agreement will reduce the cap. The forms introduced the concept of pre-insolvency and post-insolvency caps. All Contingent Assets that include a fixed cap must include a figure for the post-insolvency cap (which will be the relevant figure to be taken into account for levy calculation purposes). In addition, parties to an agreement with a post-insolvency

fixed cap may choose to insert a cap on their pre-insolvency liabilities, so that their agreement contains two caps.

2.1.5 To explain the pre-insolvency caps available for use in the Post-2018 Standard Forms, where the parties have chosen a fixed cap for post-insolvency demands:

(a) Option A is expressed to be "unlimited", but will comprise the legally-implied limit of the Guaranteed Obligations. What this means is that the guarantor must pay out the full amount of the Guaranteed Obligations. It is up to the guarantor to ascertain, when understanding the nature of their commitment, what Guaranteed Obligations means in the context of the scheme in question.

(b) Option B, which envisages a pre-insolvency cap of a fixed sum, provides that the pre-insolvency cap shall not be less than (but may be greater than) the post-insolvency cap, less any pre-insolvency demands. Option B is structured in this way so as to ensure that a fixed sum pre-insolvency cap is meaningful for those who wish to include it (i.e. not trivial). This fixed sum cap will be reduced over time by any pre-insolvency demands made.

(c) Option C is a fluctuating cap rather than a fixed sum, and is defined by reference to the employer's funding obligations under the scheme-specific funding provisions of the Pensions Act 2004 (e.g. schedule of contributions and recovery plans) and (if selected) any further funding obligations under the scheme rules during the Reference Year in question. This Option C refreshes every Reference Year. This is drafted with specific reference to the scheme-specific funding requirements so that the guarantor can ascertain what the limitation means in more concrete terms, and can explain this (as may be needed) within their business.

2.1.6 Parties who wish to specify a cap on the pre-insolvency liabilities therefore have the option of choosing a fixed cap at a robust level, or a fluctuating cap (refreshing each year) based on anticipated annual liabilities.

2.1.7 For post-insolvency demands in a fixed cap agreement (i.e. caps including a fixed monetary sum element), post-insolvency demand payments erode the post-insolvency cap. No pre-insolvency demand payments erode the post-insolvency fixed cap - this is because a cap that may not protect a scheme's position on insolvency would involve a fundamental reworking of our levy calculation for schemes with Contingent Assets (which may lead us to conclude that no levy recognition could be given). So, in a multi-employer scheme scenario, if a post-insolvency demand is made in respect of one employer, the amount paid by the guarantor will reduce the overall remaining cap.

2.1.8 For fluctuating caps (i.e. by reference to s75 or s179 funding levels), there is no cap to erode, so any payments made by the guarantor as a result of any demands (whether pre or post insolvency) will not affect the way that the cap continues to be calculated for any future demands.

2.1.9 For caps where there is a "lower of" formulation, the above paragraphs will apply accordingly, to the respective parts of the cap.

2.1.10 A guarantee granted to the trustees of schemes or sections where the employers are not associated by a permanent community of interest ('non-associated schemes') must

have a fixed cap (and not one of the other formulations) to ensure that the credit given for such assets in the levy calculation is fair.

2.1.11 Alternative formulations for the liability caps are not generally allowed. However, caps of the form "the higher of Cap(a) and Cap(b)", where Cap(a) is one of the five caps set out above and Cap(b) is an alternative measure, are acceptable. They will be valued by the Board as though only Cap(a) applies, and should be certified accordingly.

3 Levy recognition

3.1 Single Type A guarantee

3.1.1 The insolvency risk of the sponsoring employer(s) will be adjusted to include some credit for the insolvency risk of the guarantor.

3.1.2 In order to be taken into account in the risk-based levy calculation for a particular Levy Year, the insolvency risk of the scheme after making any substitutions of the guarantor's Levy Band (as set out in paragraph 17 of the Contingent Asset Appendix) at the start of the Levy Year must be lower than the scheme's insolvency risk without such substitutions. If the Type A guarantee initially satisfies this condition, but no longer satisfies this condition at the start of a future Levy Year, then the guarantee (if recertified) will not be taken into account in the risk-based levy calculation for that Levy Year. However, it remains of value to the trustees and will be taken into account again in any Levy Year after that if the insolvency risk of the guarantor at the start of that year is once again lower than the insolvency risk without substitution, provided that it continues to be certified.

3.1.3 As in previous Levy Years, a Type A guarantee can only result in a risk switch in the levy calculation. It cannot result in a scheme that is less than 100% funded on the s179 basis (taking into account Contingent Assets of Types B and C) paying zero risk-based levy.

3.1.4 The insolvency risk of guarantors will be assessed using average monthly scores (from D&B's PPF-specific model or credit ratings) measured on a monthly basis if available, then assigned to a Levy Band with an associated Levy Rate. If fewer than twelve months' data is available, the Board will calculate the guarantor's insolvency risk in accordance with Rule E5 of the Determination. In order to recognise the guarantee, there must be at least one monthly score available for the guarantor. In most cases this will mean that the guarantor's consolidated accounts will need to be filed (either publicly or with D&B).

3.1.5 Full details of how single Type A guarantees affect the risk-based levy calculation can be found at paragraphs 17 – 22 of the Contingent Asset Appendix.

3.2 Multiple Type A guarantees

3.2.1 Under our levy rules, where a scheme has multiple Type A guarantees, guarantors are taken into account in the scheme's levy calculation in decreasing order of strength (measured by the scheme's insolvency risk after substitution using the relevant guarantor).

3.2.2 Full details of how multiple Type A guarantees are treated for levy purposes can be found at paragraphs 17 – 22 of the Contingent Asset Appendix.

3.3 Type A guarantees in multi-employer schemes

3.3.1 In this situation the guarantor's Levy Rate will only be substituted for those employers with a higher Levy Rate. If any employers have a lower Levy Rate than the guarantor this will be carried through to the calculation of the scheme's insolvency risk.

3.3.2 When carrying out this substitution, the Levy Rate of the guarantor will be calculated without applying the Scheme Structure Factors (SSF). Full details are set out at paragraph 17 of the Contingent Asset Appendix.

3.4 Adjusting the guarantor's levy band

3.4.1 The Board will (subject to certain exceptions, detailed below) apply a formula which may result in a downgrading to a guarantor's Levy Band to take account of the amount guaranteed under the Type A guarantee(s). The extent of the adjustment will depend on the impact that providing the guarantee would have on the guarantor's level of gearing if called upon.

3.4.2 In summary, where the guarantee would generate an increase of less than 0.1 in the guarantor's gearing then no change will be made to its Levy Band. However, where the guarantee would increase the guarantor's gearing by between 0.1 and <0.5 then there will be a move of one Levy Band. An increase between 0.5 and <1 will result in a move of two Levy Bands and an increase of 1 or more will result in a move of three Levy Bands in each case (if possible).

3.4.3 The change only affects a guarantor's score as a guarantor. Where the guarantor is also a scheme employer, its score as an employer will not be altered. Also, where a guarantor is the ultimate parent of all guaranteed employers and, at the Measurement Time, its latest accounts are consolidated to include those employers' pension liabilities, then no adjustment will be made to the guarantor's score.

3.4.4 The gearing adjustment will not apply where a guarantor is classed as a Special Category Employer or where the guarantor is CRA Rated.

3.4.5 The gearing adjustment is modified in the case of guarantor-employers who receive credit in the levy calculation for their proportionate share of underfunding as an employer. In these cases, the reduction to the gearing adjustment to reflect that same proportionate share of underfunding is removed to avoid double-counting the credit.

3.5 Guarantor-employers and recognition in the levy calculation formulae

3.5.1 From the 2018/19 Levy Year the Board decided to change its levy calculation methodology where the guarantor is also a scheme employer, to allow for a full risk switch where the guarantor certifies a Realisable Recovery in respect of the other employers' liabilities (rather than having to certify for the full underfunding level, including its own liabilities, as in previous levy years). Where the Board is satisfied that the guarantor-employer can meet the Realisable Recovery and its own contributions, a full risk switch may take place.

3.5.2 To achieve this, the guarantor-employer's share of the underfunding will be calculated and applied in its capacity as an employer against the underfunding as a whole, followed by its existing component as a guarantor until the Realisable Recovery is used up. The formulae contain overrides to avoid the position where certification in respect of a guarantor-employer could produce a higher risk-based levy compared to non-certification, for example when the guarantor-employer's insolvency risk is higher than that of the scheme employers as a whole. Conversely, overrides are included to bring the contingent asset into the levy calculation where it offers a levy benefit but would not otherwise be recognised. This could occur in limited circumstances, for example, where the guarantor-employer is not the employer in the scheme with the lowest insolvency risk, and its proportionate share of the underfunding as an employer is low relative to its certified Realisable Recovery as a guarantor. Annex 1 to this Part 2 contains further details of the methodology and example calculations for schemes with guarantor-employers.

4 GUARANTOR STRENGTH CERTIFICATION

4.1 Overview

4.1.1 Rule G2.3(2) of the Determination provides that a Contingent Asset must appear to the Board to reduce the risk of compensation being payable in the event of an insolvency event occurring in respect of an employer in relation to the scheme, and that the Contingent Asset must reduce the risk of compensation being payable to an extent that is reasonably consistent with the levy reduction secured (the "**Risk Reduction Test**").

4.1.2 To support Rule G2.3(2), trustees must certify on Exchange a fixed cash sum (the "**Realisable Recovery**"[1]), whether or not the underlying Contingent Asset agreement contains a fixed sum. Requiring trustees to certify a fixed amount is intended to provide clarity as to the value that the Board will ultimately put on the Contingent Asset if recognised in the levy calculation. Trustees must also certify whether or not the underlying agreement includes a limitation by reference to a percentage of s179 liabilities, and if so, what that percentage is.

4.1.3 Broadly speaking the amount that should be certified is the lower of:

- any post-insolvency cap defined by reference to a fixed amount in the guarantee; and
- an amount no greater than that which the trustees are reasonably satisfied that the certified guarantor(s) could meet if called upon to do so. (The Realisable Recovery may be met on an aggregate basis where there is more than one guarantor.)

4.1.4 Trustees (or their authorised representatives) are required to certify (the **"Certification**") that the trustees, having made reasonable enquiry into the financial position of each Certified Guarantor, are reasonably satisfied that:

"(a) in the case of a single Certified Guarantor, as at the date of the certificate, that Guarantor could meet in full the Realisable Recovery certified, having taken account of

[1] "Realisable Recovery" is defined in paragraph 4(15) of the 2024/25 Contingent Asset Appendix.

the likely impact of the immediate insolvency of all the Employers (other than the Certified Guarantor where that Certified Guarantor is also an Employer);" or

"(b) in the case of multiple Certified Guarantors who are jointly and severally liable under the relevant Type A Contingent Asset agreement that the Certified Guarantor as at the date of the certificate, could meet in full the Realisable Recovery certified, having taken account of the likely impact of the immediate insolvency of all of the relevant Employers (other than the Certified Guarantor where that Certified Guarantor is also an Employer)."

4.1.5 As reflected in the certification at 4.1.4(b) above, where there are multiple Certified Guarantors, those guarantors are no longer required to each be able to meet the aggregate certified Realisable Recovery in full. **The Contingent Asset certificate allows for each Certified Guarantor's individual Realisable Recovery to be specified**. Provided that all the other relevant Levy Rules are met, the aggregate Realisable Recovery certified for the scheme (subject to an overall maximum of the overarching liability cap) will be taken into account for the levy, with each individual certification assessed by reference to the insolvency risk of the corresponding guarantor.

4.1.6 The levy benefit in respect of each guarantor will be based on the certified Realisable Recovery, with each individual guarantor component being applied against the scheme's underfunding in decreasing order of strength, with the extent of levy recognition remaining subject to the overall cap selected in the underlying agreement.

4.1.7 Schemes should note that this change in certification requirements does not alter the liability of guarantors under the agreements themselves, as each guarantor must remain jointly and severally liable; the change in requirements simply enables guarantors to certify in a manner that demonstrates how their liability may be met in practice.

4.2 Certification – general points

4.2.1 When assessing the guarantor's position, the Certification expressly requires the trustees to take account of the impact of the insolvency of the employer(s) on the guarantor's resources. This is intended to focus trustees' minds on the key issue of what the guarantor would be able to pay in the event that the scheme employer became insolvent.

4.2.2 The Board may apply an adjustment to the guarantor's levy band to reflect the impact of the amount that it is guaranteeing on its gearing. The focus of trustees should continue to be on the amount that they consider the guarantor can realistically afford to pay in the circumstances of employer insolvency. However, certifying the largest Realisable Recovery which they consider possible may impact on the guarantor's Levy Band.

4.2.3 A different Realisable Recovery can be certified year on year. This enables trustees to take a sensible on-going view of the guarantor's financial position and the scheme's funding position.

4.2.4 The certification is designed to allow trustees to take a rounded view of whether it is reasonable to believe the Realisable Recovery could be met by the guarantor, without

having to obtain absolute certainty as to the guarantor's ability to do so. Trustees need to be comfortable (i.e. rather than certain) that the guarantor could meet its full commitment under the guarantee if called upon to do so.

4.2.5 Trustees should take proportionate steps to assess the capability of the guarantor to meet any sum that may fall due under the guarantee. What is proportionate will depend on their individual scheme's circumstances, the size of the guarantee being given and its potential levy impact (where the levy impact is above £100,000 consideration must include a guarantor strength report), and the complexity of intra-group arrangements. Trustees should consider whether they have sufficient expertise on their board to know what information is required from the guarantor and to assess the information received. In particular, they should be able to demonstrate that they have challenged assertions made by the guarantor and, where appropriate, obtained third party professional advice to support their view. The extent to which professional advice is necessary will depend on the circumstances. If the expected levy saving exceeds £100,000 there is a requirement to have obtained a guarantor strength report at the time of certification (see section 6 below).

4.2.6 We strongly recommend that trustees keep comprehensive records and evidence of the basis for their certification so that they can provide this at a later stage if required by the Board. If the levy saving is estimated to be more than £100,000, this should include a guarantor strength report.

4.2.7 Schemes should note that for a legally segregated scheme (noting Rule A1.2(10)), the financial assessment should be done individually for each segregated section – and the guarantor strength reports should reflect this also.

5 THE BOARD'S CONSIDERATIONS

5.1 What does the Board consider is required for certification?

5.1.1 The circumstance in which the guarantee would be called on is most likely to be where the employer(s) to the scheme has suffered an insolvency event. Trustees should therefore take account of the likely impact of the insolvency of the employer whose liabilities are being guaranteed[2], assuming that were to occur in the near future.

5.1.2 Without limitation, the impact of employer insolvency could include effects such as: the diminution in value of the employer(s) shares or investments held directly or indirectly by the guarantor, the loss of inter-company debts owed by the employer(s), the impact of a cross guarantee or the loss of an important supplier (the insolvent employer) to the group.

5.1.3 At its most basic, this means that trustees must not attribute value to investments in the sponsoring employer (or businesses controlled by it) in their assessment of the guarantor unless they can be confident that this value would survive an insolvency. In

[2] Where a guarantor guarantees the liabilities of multiple employers, then the combined effect of their multiple insolvencies should be considered. Where the guarantor guarantees the liabilities of employers in more than one scheme, then the combined effect of their insolvencies should also be considered, unless it would be particularly difficult for trustees in the circumstances to obtain information about the employers in other schemes. Trustees, when considering the amount to certify as the Realisable Recovery, should also take into account the amount the guarantor is guaranteeing to other schemes.

particular the Board considers that trustees should normally assume a nil return on the value of any employer shareholding held by the guarantor, as it is unlikely that a return would be achievable in practice.

5.1.4 The Board has seen instances where trustees have certified guarantors whose principal assets were investments in the very companies being guaranteed and which were, therefore, of no value. In other cases, we have also seen substantial value attributed to intercompany loans or receivables whose value would be questionable on the employer's insolvency.

5.1.5 Where the guarantor and employer are part of a group of companies, the indirect effect of an employer's insolvency should also be considered, in particular whether the employer's insolvency could also lead to the insolvency of the guarantor. For example, where the group as a whole is reliant on an employer for a considerable part of its revenue or assets, trustees need to take this into account and think about whether the guarantor could actually meet the Realisable Recovery if that employer failed. They should think about all the circumstances in which an employer might fail, including those where other group members also fail.

5.1.6 Linked to the above, if the guarantee covers entities including a service company, then the trustees should consider the relationship between the solvency/insolvency of the guarantor and the service company (in particular whether the insolvency of one entity will necessarily trigger the insolvency of the other or not because of the dependencies between the entities) and the circumstances in which the guarantee would be likely to be called upon. The amount of the certified Realisable Recovery should take full account of these considerations. It will be for schemes and their advisors to consider what steps to take to satisfy themselves of the appropriateness of the proposed Realisable Recovery in these circumstances, and what explanation of their considerations to provide in the report.

5.1.7 Where trustees are considering a guarantor which is also an employer in a multi-employer scheme, they should consider the impact on the guarantor of the insolvencies of the other scheme employers. In particular, trustees should consider whether the guarantor would be able to meet the other employers' obligations to the scheme in addition to its own. This is particularly relevant where the guarantor's own business is dependent on the continued operation of one or more of the other employers. Trustees should therefore ensure they understand the group structure and analyse the interdependency of trading within the group.

5.1.8 If a guarantor which is also a scheme employer would be likely to cease trading as a result of paying the guaranteed amount, trustees must assess whether it could pay the guaranteed amount on its winding-up alongside other costs such as its own share of the section 75 debt to the scheme.

5.1.9 Where the guarantor is also an employer, the Board will consider whether it is likely that the guarantor could meet the liabilities of the other employers (which are assumed insolvent) whilst still continuing to trade.

5.1.10 For the avoidance of doubt, trustees are free to consider a guarantee from or in relation to an employer in a last man standing scheme. The Board will assess such guarantees in the same way as for guarantees relating to other scheme structures.

5.1.11 Trustees should consider the guarantor's position by reference to both its standalone position and (where part of a group) on a consolidated basis. Where the guarantor is part of a group, they should not rely solely on consolidated accounts to assess its position, but must also consider the guarantor's resources on an individual basis.

5.1.12 Trustees should take particular care to consider not just the guarantor's net asset value compared to the guaranteed amount, but to think carefully about the nature and location of the guarantor's assets. Where the guarantor's assets include intangible assets, such as brand value, or primarily consist of intercompany accounts and investments in employer subsidiaries, then trustees should consider whether these assets are likely to deliver any real value to the guarantor if the employer becomes insolvent, which is the time at which the guarantee will be called upon.

5.1.13 Trustees should also consider how readily the guarantor's assets could be realised in order to meet the Realisable Recovery if required to do so.

5.1.14 Trustees should be aware of the new restructuring tools – moratoriums and restructuring plans – introduced by the Corporate Insolvency and Governance Act 2020. In particular, trustees should consider the potential for certain creditors to obtain 'super-priority' if a guarantor were to suffer an insolvency event (such as a CVA, administration or liquidation) or propose a restructuring plan within 12 weeks of a moratorium in relation to the guarantor ending. The creditor claims that would gain 'super-priority' in this situation include any unsecured finance debt (intra-group or shareholder loans as well as debt owed to banks or financial institutions), which would otherwise have equal ranking with the trustees' claim under the guarantee, and as a result there may well be fewer assets available to meet the trustees' claim. Some companies are not eligible to apply for a moratorium, such as insurance companies, banks, or companies which are party to a capital markets arrangement in an amount of over £10 million (note that this is not a comprehensive list). The Board expects that if the employer's insolvency could lead to the insolvency of the guarantor, and the guarantor is a type of entity that is able to apply for a moratorium, trustees should consider whether the guarantor entering into a moratorium prior to it becoming insolvent would reduce the likely recoveries to the trustees. Trustees are referred to the flowchart at Annex 2, which is intended to assist with assessing whether they need to consider the potential impact of a moratorium shortly prior to the guarantor's insolvency.

5.1.15 Trustees should take particular care when considering resources only indirectly available to the guarantor, for example if seeking to rely on a 'cross-guarantee', since the resources may be less readily obtained (or may depend on the continuing solvency of other parties, whose risk differs from the guarantor - which could give rise to a disproportionate levy benefit).

5.1.16 The Board expects trustees to seek guarantees from companies which are independently able to meet their commitment under the guarantee. It is likely always to be inappropriate to seek to certify a guarantor whose ability to meet its full commitment under the guarantee is dependent on a cross guarantee being provided by an employer.

5.1.17 Any assessment of a guarantor is likely to involve an element of judgement, and trustees should exercise a degree of prudence in assumptions about the value in

businesses. For example, where a guarantor's value is expressed as a range, it would not be appropriate to use the higher figure. An assessment that a guarantor were valued at £50 million to £100 million would support certification at £50 million but not £80 million, since by definition the trustees could not say that they were reasonably satisfied that the guarantor could meet in full a guarantee for £80 million.

5.1.18 Subject to the guarantor strength report requirement, the Board is not prescriptive about the information trustees should consider. As a general example, trustees could consider any available information about the guarantor's financial position, including its most recent accounts. However, the key factor is whether the information enables the trustees to consider whether the guarantor is able to meet the Realisable Recovery in the context of other commitments it has. In some cases, they may wish to commission specific advice or request information from directors of the guarantor. In other cases, existing information may suffice. What is appropriate is ultimately for the trustees to decide based on the guarantor's circumstances.

5.1.19 For the avoidance of doubt, trustees cannot give the certification purely on the basis that they have attempted to obtain information about the guarantor's financial position but have been unsuccessful in doing so. The certification is to be given on the basis of information obtained, not on the basis of attempts to obtain this information. Trustees need to have adequate financial information in order to make a meaningful assessment of the guarantor's position. They should not accept the withholding of guarantor accounts, for example on the grounds of confidentiality, where those accounts are required in order for the trustees to make a meaningful assessment of the guarantor's financial position.

5.1.20 Intentionally or recklessly certifying falsely may be a criminal offence under section 195 of the Pensions Act 2004. If trustees innocently provide the certification incorrectly, the Contingent Asset may be rejected by the Board and therefore not recognised in the levy calculation. If information comes to light after a Contingent Asset has been accepted and used in a scheme's risk-based levy which subsequently shows that the trustees were incorrect to provide the Realisable Recovery certification as at the date of certification, the Board may review the levy calculation and disregard the Contingent Asset.

5.1.21 Schemes do not need to provide copies of their evidence with their Contingent Asset submissions unless they are providing a guarantor strength report for the purposes of the Risk Reduction Test. When the estimated levy saving is less than £100,000 and the scheme is not required to but has nevertheless chosen to provide the Board with a guarantor strength report, the requirements for a guarantor strength report set out in this Guidance will equally apply to guarantor strength reports submitted as a matter of choice. The Board may, though, ask for trustees' evidence later if the Contingent Asset is selected for detailed review, so trustees and their advisers should retain the information relied on.

5.2 Refresher review

5.2.1 Where trustees have previously carried out a review of the guarantor that is consistent with the Contingent Asset Guidance it will generally be acceptable to update that review by reference to what factors may have changed (in relation to both the guarantor and also any changes to the Guidance) rather than to undertake a wholly

fresh exercise.

5.2.2 This approach also applies in relation to Type A guarantees that are caught by the Re-execution Requirement (i.e. with fixed caps), and where the schemes are making no other changes (i.e. other than to move to the Post-2018 Standard Forms).

5.2.3 For the avoidance of doubt, schemes must still consider all the relevant factors (even if just to confirm no change).

5.3 The Board's assessment of the strength of guarantors

5.3.1 The Board's assessment of whether to recognise a Contingent Asset will, in accordance with Rule G2.3(2), involve comparing the guarantor's resources (in the event of the failure of the employer) with the deemed value of a contingent asset for levy purposes.

5.3.2 Since the introduction of a trustee certification requirement for the 2012/13 Levy Year, we have seen a relatively high failure rate amongst Type A Contingent Asset submissions often on the basis that insufficient evidence to demonstrate the guarantor could meet the Realisable Recovery has been provided. In particular, we have seen evidence that the guarantor's position is sometimes only seriously considered by trustees post-certification after the Contingent Asset was selected for assessment.

5.3.3 From the 2018/19 Levy Year we therefore strengthened our requirements by introducing new rules in respect of the Risk Reduction Test and guarantor strength. These new rules apply again this Levy Year, and provide that:

(a) Where a guarantor strength report that is, in the Board's opinion, consistent with the Contingent Asset Guidance is obtained by the trustees before the Measurement Time, the Risk Reduction Test will be deemed to be met unless specified exclusions apply. Those exclusions are: where the Board has concluded that the calculation in paragraph 21A(c) of the Contingent Asset Appendix applies, or where the guarantor is a service company.

(b) Where no such guarantor strength report is obtained, and the levy reduction that would otherwise result from the recognition of the contingent asset (assuming all other requirements are met) would be £100,000 or more, the Board has a discretion to permit the trustees to provide further information but is under no obligation to do so. When considering this discretion, one factor the Board will have regard to is the failure of the trustees to obtain a guarantor strength report prior to the Measurement Time.

5.3.4 The new rules outlined above amount, in effect, to a requirement for schemes over the £100,000 threshold to have obtained a guarantor strength report; the Board's discretion to accept further information from a scheme over the £100,000 threshold will take into account the trustees' failure to obtain such a report. Schemes below the threshold may also obtain a report voluntarily, so the new rules give schemes, regardless of the possible levy reduction, the opportunity to obtain certainty as to the acceptance of their Type A Contingent Asset by obtaining a guarantor strength report. Schemes should note that the same requirements in relation to the content and substance of the guarantor strength report apply whether the levy saving is above or below £100,000. For example, the duty of care is still needed where the levy saving is

expected to be under £100,000.

5.3.5 We believe that these new requirements will help ensure our Type A Contingent Asset regime is more risk reflective, but they reflect the assessment process that we consider schemes should already be carrying out in practice.

5.3.6 We also require the professional adviser preparing the guarantor strength report to include a duty of care to the Board, enabling the Board to rely on the contents of the report for the purposes of charging a levy. See paragraph 6.3 below.

5.3.7 The report should be prepared by an independent covenant adviser or other appropriate professional (with relevant insolvency experience), with input from other advisers (for example the trustees' legal advisers) as the covenant adviser considers appropriate. The purpose of the guarantor strength report is to ensure a separate process of review and consideration of the situation and interdependencies on insolvency for schemes (as the underlying information will not be subject to our further checks and information gathering on the financials if the report is accepted, because the guarantor strength reports are on a pass or fail basis). The independence of the adviser and separation from the trustees and employers is therefore an important and integral requirement so that the Board can place satisfactory reliance on the report. The report must not be provided in-house or by an entity that is owned (either directly or indirectly) by the trustees or the employers (or under their influence); it should be external.

5.4 Partial recognition of Type A Contingent Asset

5.4.1 Type A guarantees with guarantors assessed as unable to meet the Realisable Recovery (or where a satisfactory guarantor strength report has not been completed) will, in general, be wholly rejected even where the Contingent Asset may be considered to have some value. If the Board were to partially recognise a Contingent Asset for less than the value (or not all the guarantors) that had been certified, this could encourage the use of under-resourced guarantors (e.g. listing a series of guarantors of varying substance and levy rate) on the assumption that the scheme would get at least partial credit.

5.4.2 The Board may partially recognise a recertified or new Contingent Asset if all the circumstances justify it and if there has clearly been no intention to seek to gain an unfair levy advantage. However, schemes should not assume that the Board will exercise its discretion to partially recognise a Contingent Asset simply because the Contingent Asset is unchanged from the previous Levy Year.

5.4.3 The Board will only partially recognise a Contingent Asset in exceptional circumstances. It is not a mechanism to enable schemes which have certified at an unrealistic level to have a second opportunity to secure recognition in circumstances where they could reasonably have been expected to have certified a lower Realisable Recovery at the outset.

5.5 Changes to guarantor strength

5.5.1 Rule G3.1 of the Determination provides that no Contingent Assets will be recognised unless the previous levy year's Contingent Asset is in place unweakened, and Rule G3.4 provides that where Contingent Asset cover is removed/reduced, the scheme should

not receive any recognition for Contingent Assets until the scheme's position is no worse than it was prior to all the Contingent Assets being recognised.

5.5.2 Where a scheme has put in place a Type A guarantee in all good faith but subsequently the guarantor's position changes, the Board appreciates that the scheme should not automatically suffer if they change their guarantors to keep in line with our requirements. While the Board's general position is that weakening Contingent Asset cover is an unacceptable change, it would take into account all the circumstances when exercising its discretion to accept or reject the Contingent Asset, including the fact that the reduced cover is a good-faith attempt to keep within the rules about guarantor strength.

5.5.3 Details of how the Board might exercise its discretions can be found in Part 1 of the Contingent Asset Guidance.

5.6 Changes of guarantor

5.6.1 Schemes and their advisers must decide how legally to effect a change of guarantor in a deed. The Board cannot advise schemes on how to manage their legal obligations. The Board can confirm, however, that an existing certified Contingent Asset can be recertified rather than a new Contingent Asset certificate being required, if the parties have effected the change of guarantor via a legally effective method that has not required a new Contingent Asset agreement to be entered into. Trustees should also bear in mind that they will need to undertake an assessment of the new guarantor's financial position before they can give the required certification in respect of the new guarantor.

5.7 Requirements as to the guarantor as Employer's Associate

5.7.1 The guarantor must be an Employer's Associate (defined in paragraph 4(7) of the Contingent Asset Appendix) of at least one (but not necessarily all) of the scheme employers.

5.7.2 To fall within the wider definition of Employer's Associate in paragraph 4(7)(b), the Board must be satisfied that:

(a) the Contingent Asset was given or paid for because of such an existing relationship between the person and the employer(s); and

(b) the person giving or paying for the Contingent Asset had a genuine and substantial reason for doing so regardless of any payment or other consideration received by it as a result of doing so.

5.7.3 The Board must be satisfied that a sufficiently strong relationship exists between the employer and the guarantor. This could be evidenced, for example, via long-term contracts between the parties that recognise a sharing of the pension scheme liabilities, but will ultimately depend on the individual case.

5.7.4 Similarly, whether or not there is a genuine and substantive reason for giving the Contingent Asset will depend on the individual case. If, for example, the guarantor will ultimately (through the particular relationship) bear the cost of higher levies if no

Contingent Asset were in place, that guarantor would appear to have a genuine reason for giving the Contingent Asset.

5.7.5 The Board does not expect to receive evidence but if provided, for example, via a letter to the Board, the writer of the letter should base their view on having seen the requisite documentation. It is acceptable to include a statement as to associateship in the legal opinion, on the basis that the legal adviser has had sight of the relevant documentation or confirmations from the relevant parties and can therefore provide the confirmation as a matter of fact.

6 GUARANTOR STRENGTH REPORTING REQUIREMENT

6.1 Reporting threshold and timeframe for submitting report

6.1.1 Where recognition of a Type A Contingent Asset would result in a levy benefit of £100,000 or more, the trustees must have certified that they have obtained a guarantor strength report, prepared by an independent professional adviser (see paragraph 5.3.7 above for more detail), prior to the Measurement Time. Where no report is received by the stated deadline our standard approach will be to reject the scheme's Contingent Asset.

6.1.2 In cases where such a reduction may apply, we would expect a scheme's professional advisers to have produced an estimate of the levy benefit to be gained from submitting the Contingent Asset in advance of certification. However, we also recognise that there may exceptionally be cases where an estimate may not ultimately be accurate, for example where there is a late change in a scheme's insolvency risk score meaning that the levy benefit of the Contingent Asset unexpectedly exceeds the threshold.

6.1.3 In the above circumstances, we may choose to exercise our discretion to accept a late guarantor strength report, where a scheme provides evidence to demonstrate (a) that it had obtained an estimate of the levy benefit in advance which showed that the reporting threshold would not be met, (b) that the estimate was based on reasonable assumptions, and (c) that the scheme trustees therefore had reasonable grounds for assuming that it would not be necessary to obtain a guarantor strength report. We expect that cases falling into this category will however be exceptional. For example, where we consider that the estimate was unrealistic and that it should have been clear the reporting threshold would be exceeded, we may decide not to recognise the scheme's Contingent Asset in the levy calculation. We would also suggest that if the scheme identifies that it is close to the threshold it would be sensible to obtain a report.

6.2 Content to include in report

6.2.1 The objective of the report is to demonstrate how, in the event of the employer's insolvency, the guarantor could meet its certified Realisable Recovery in full. It is not our intention to prescribe a set of factors which should be included in the report as the factors to take into account will depend on the individual circumstances of the guarantor and the scheme. However, a list of the (non-exhaustive) issues we would expect to see covered in the report are set out below. What will be relevant in the particular circumstances of each case will require an exercise of judgment by the relevant adviser.

6.2.2 Assumptions and propositions in the report

(a) The starting point for determining Realisable Recovery is that the valuer should consider whether it is reasonable to conclude that it could be met by each Certified Guarantor, as at the date of the certificate, having taken account of the likely impact of the immediate insolvency of the Employers (other than the Certified Guarantor where the Certified Guarantor is also an Employer), unless the trustees' view is that the insolvency of the Certified Guarantor would be more likely than not to result from the insolvency of the Employers during the Levy Year in question.

(b) The report should consider whether the guarantor will continue trading or not. If the guarantor is expected to continue trading, the report must include a clear explanation as to why, along with supporting financial analysis. If the guarantor is not expected to continue trading, an estimated outcomes statement must be provided and the potential for certain creditors to obtain 'super priority' if the guarantor is a type of entity that is eligible to apply for a moratorium should also be considered.

(c) For a multi-employer guarantee where all of the employers are cross-guaranteeing each other, the report should consider whether it is appropriate to assume that all of the employers will be insolvent. If not, the analysis should demonstrate that it is reasonable to assume that the guarantor-employers could reasonably be expected to meet the s75 debt of the other employers and continue to trade, even after taking into account any adverse operational and financial impact following the insolvency of the other employers. This requirement to demonstrate the guarantor's ability to meet the s75 debt(s) of the other employer(s) applies to all scheme structures (not just last man standing structures).

(d) Any assumptions must be on a basis that is appropriate in the context of an insolvency scenario.

6.2.3 Nature of the analysis, and evidencing considerations:

(a) The assessment requires the professional adviser to exercise judgment**.**

(b) The report should reflect that all relevant factors have been considered and the conclusions on how the Realisable Recovery will be met are clear to a reader not familiar with the entities in question

(c) If there are any caveats or cross-references to other advice (e.g. legal, separate property valuations, for example) a brief summary of the conclusions of the other advice should be included.

6.2.4 Substantive financial analysis that should be covered:

(a) When considering any source of funds that is to be used for the purposes of the guarantor meeting the Realisable Recovery, the report must consider:

(i) Whether the guarantor has direct legal access to those funds and confirmations as to the guarantor's expected approach, and (if not) how it is clear that the funds will be readily available (including an explanation of why there are no barriers to accessing the funds);

(ii) An assessment of the liquidity of the funds and how quickly they can be realised (for example nature, location, and available market);

(iii) Any competing claims on those funds;

(iv) Any reduction in the availability of those funds as a result of insolvencies in the group; and

(v) Confirmation that the source of any funds being used to provide or substantially provide the money to satisfy the guarantee must be sourced from an OECD country. This includes the original source of the funds, noting that they may be transmitted via an intermediary entity in an OECD jurisdiction.

(b) Some of this analysis may require legal advice. If it does, the advice must be referenced. If the guarantee or group structure is complex we expect the legal advice to be appended to the report.

(c) The business interdependencies within the group must be set out. The impact (direct and indirect) of the employer insolvencies must be set out in the report, including, for example, supply or debt arrangements. Diagrammatic explanations of group structures are helpful.

(d) Other material obligations of the guarantor must be analysed and summarised. For example, other guarantees provided (including to pension schemes), other creditors, any direct obligations arising under defined benefit pension schemes (which must be assessed on a s75 basis if the guarantor is expected to cease trading as a result of the insolvencies).

(e) The report must also confirm whether or not there are any planned activities in the coming year that would have an impact on the opinions and conclusions in the report.

6.2.5 While we expect professional advisers to have regard to the range of considerations highlighted in the table below when producing their report, what will be relevant in particular circumstances of each case will require an exercise of judgment by the relevant adviser. Advisers may include, exclude, or add to the considerations mentioned below and elsewhere in this Guidance in support of conclusions reached. Advisers should not assume that covering the matters mentioned in the table below will automatically lead to a conclusion that the guarantor strength report is acceptable.

Issue	Points to consider
Can the guarantor still trade after the disposal of assets required to meet the guarantee?	Asset disposals may impact both the guarantor's and the wider group's ongoing businesses.

Issue	Points to consider
	Where the sale of core business assets would mean the guarantor ceases trading, trustees should consider whether other creditors would exist and whether other creditors' claims would have higher priority than the trustees' claim (including the potential for certain creditors to have super priority if the guarantor were to apply for a moratorium (if it is eligible to do so) and then go insolvent within 12 weeks of the moratorium ending).
Are there restrictions on the use of undrawn finance facilities and cash balances post-employer insolvency?	An understanding of group cash pooling arrangements, and capacity to draw on unused facilities on employer insolvency, may be needed. For example, a positive cash balance in the guarantor's accounts may not be accessible on employer insolvency where the funder could set off the guarantor's cash on the employer's insolvency. An extreme case we reviewed involved the employers already having negative cash balances at the outset while solvent which would eliminate the guarantor's cash even before insolvency takes place.
What is the impact of inter-company balances?	Trustees should appreciate the often complex interaction between group companies and how funds flow around the group. They should consider obtaining an inter-company balance matrix to assess whether intercompany debts held by the guarantor would in fact be collectable once insolvencies occur within the group.
Where EBITDA multiples or similar measures are used in company valuations, how was the multiple chosen and is it reasonable?	This may involve considering the effect of employer insolvency, the level of debt in the company being assessed, the level of market activity and comparable deals. We have challenged multiples for subsidiaries "that could be disposed of to meet the claim" which gave little reflection of any change in the

Issue	Points to consider
	market's perception of a group on employer insolvency, the speed with which a business may need to be sold or which otherwise appeared unreasonable.
What are the guarantor's funding and borrowing sources, treasury arrangements if used, security structure, cross-guarantee obligations and funding defaults?	Trustees should consider whether the employer's insolvency would cause any cross default across the group and the impact of this on the ability to move cash around to satisfy the guarantee claim. Such a default could also impact whether undrawn facilities remain in place as mentioned above.
Are asset valuations appraised on a basis appropriate for the circumstances to support the amount attributed to specific assets?	Are there any restrictions on value to be taken account of, such as stock retention of title? We have seen valuations that assume that highly specialised assets could be sold without assessing whether a market would exist or what impact the circumstances of the sale would have on price.
Where the guarantor cannot trade without the employer, is an estimated outcome statement (EOS) needed?	An EOS would consider realisable asset values on insolvency to assess the value the guarantee claim will receive. Sensible assumptions should be made about the asset realisation process including time scales and likely achievable price, together with the level of applicable costs. The EOS should be produced on the assumption that a moratorium in relation to the guarantor ended within 12 weeks of the guarantor's insolvency if the guarantor is a type of entity that is eligible to apply for a moratorium. Although it is rare to conclude a guarantee would be met in full where the guarantor ceases trading, we have seen cases where this conclusion is justified.
What value of investments in group subsidiaries and other group assets can be relied on?	Due diligence will include a full breakdown and stress testing of the asset on the sale basis required to discharge the guarantee. We have seen examples of assessments simply based on carrying

Issue	Points to consider
	value in accounts or taking little account of the need to sell in a restricted timescale.
Can the guarantor control the income stream of connected parties required to meet the Realisable Recovery?	Trustees may need to assess the ability to obtain value where this flows from other group companies to the guarantor. We have seen situations where trustees appear to have relied on consolidated accounts without considering where value actually lies in the group, or on broad assumptions that other group companies will deliver value if required. Trustees should consider whether group companies have the legal ability, or cash liquidity, to make payments back to the guarantor. We have also seen value attributed to group companies which are subsidiaries of employers assumed to be insolvent – and who if they remained trading might be used for the benefit of the employer's creditors.
Is the view that the guarantor could meet the guarantee dependent on an assumption about a recovery from the insolvent employer?	The Board recognises guarantees whose existence reduces risk. A recovery from the employer which would be available in any event to the pension scheme does not provide additional value.
What would happen to the value of assets held within the group in a group-wide insolvency scenario?	Trustees should think carefully about how such a scenario would be viewed by the market. In particular, they should consider the impact on the realisable value of the guarantor or wider group's assets in a 'fire sale' scenario.
What is the scheme structure? For example, is it sectionalised?	Trustees should consider whether the scheme structure would impact on the guarantor's ability to meet its obligations under the agreement.
Is the guarantor reliant, wholly or partially, on group cash pooling arrangements?	Trustees should think carefully about the extent to which the guarantor may be competing with other entities for a share of these funds on employer insolvency and the amount it could

Issue	Points to consider
	realistically expect to obtain in practice.
Are there any planned group activities in the coming levy year, for example a restructuring?	While the trustees may consider the guarantor's position to be currently robust, they should consider the impact of any planned corporate transactions or restructurings, in particular whether this would affect the flow of funds around the group or result in the guarantor taking on liabilities from elsewhere, or whether a financially strong entity is being sold out of the group which may remove access to a key resource from the guarantor.

6.2.2 More generally, advisers should make sure there is clarity over the basis of assumptions used in creation of the reports.

6.3 Professional advisers' duty of care

6.3.1 The Board needs to be able to place reliance on the guarantor strength report produced for levy purposes. The Board's intention in seeking a duty of care is not to seek to create an absolute liability in the event of the failure of a guarantor to meet its obligations, but rather to protect the Board against the risk of the report being negligently produced. The Board's concern, in respect of the possible loss, is the levy reduction that would be inappropriately granted for the year to which the report pertains if a report was not produced to proper standards.

6.3.2 With this is mind, this Guidance specifies the following as required statements for advisers to include in their report:

"This Guarantor Strength Report is for the purposes of the consideration by [name of trustees] of the financial strength of [name of guarantor/s] in respect of a Type A Contingent Asset to be certified by [name of trustees], and is to be provided to the Board of the PPF.

We accept a duty of care to the PPF in relation to the Guarantor Strength Report and acknowledge that the Guarantor Strength Report may be relied upon by the PPF for the purpose of calculating the PPF levy for [name of scheme]. We are providing this Guarantor Strength Report on the basis that it will not be relied on by the Board of the PPF for any other purpose, acknowledging that nothing in this report purports to exclude liability to the Board of the PPF in the event of the Board of the PPF undertaking any actions or proceedings pursuant to Schedule 6 of the Pensions Act 2004.

We confirm that we have taken into account the Board's published Guidance in relation to Contingent Assets when preparing this Guarantor Strength Report.

We confirm that we are a professional adviser, independent of the guarantor, the trustees

and the employer, and we meet the requirements in paragraph 5.3.7 of the Type A Contingent Asset Guidance."

6.3.3 This Guidance Note also requires that advisers confirm that they have appropriate professional indemnity cover in place. This cover should be commensurate with other comparable advisers in the market in which the adviser operates. The following wording is suggested (which may need to be modified for individual circumstances):

"We confirm that [name of adviser] has insurance cover of £[ ] in place in respect of the advice given in this Guarantor Strength Report, and that it is our understanding that this cover is appropriate in respect of the production of a Guarantor Strength Report. We confirm that the level of £[ ] is at or above any specified minimum required as a matter of professional conduct in respect of the production of a Guarantor Strength report." If the guarantor strength report seeks to place a financial limit on liability to the Board, any limit should be set at or above the level of levy reduction that would apply if the Contingent Asset were accepted. The following form of words should be used:

"The duty of care accepted at paragraph [x] above is subject to a limit of liability of [£], which is at or above the level of levy reduction that would apply if the contingent asset were accepted. For the avoidance of doubt, nothing in this Letter is intended to exclude or restrict any liability that cannot be excluded or restricted by law or regulations. ."

If the guarantor strength report seeks to place a temporal limit on liability to the Board, a limit is permissible in line with the common six-year limit on liabilities. The following form of words should be used:

"*The duty of care at paragraph [x] above is accepted on the basis that no action or proceedings shall be commenced by the Board of the PPF in connection with any levy reduction granted as a result of this Guarantor Strength Report beyond the expiry of six years from the date of this Guarantor Strength Report*."

6.3.4 Where an adviser relies upon a report from a third party adviser, it should either accept a duty of care in relation to that third party report or indicate that that report contains a similar clause.

6.3.5 The duty of care requirements cannot be caveated as subject to any separate terms between the adviser and the trustee.

6.4 Timeframe for submitting guarantor strength reports

6.4.1 For the 2024/25 Levy Year, the Contingent Asset Appendix specifies that the guarantor strength report must be provided to the Board before the Measurement Time (which is 5:00pm on 2 April 2024). Where no report is received from a scheme over the reporting threshold, our standard approach will be to reject the scheme's contingent asset. In practice, trustees are likely to require the report at an earlier date than this, prior to certification, as they must have certified on the basis of the report.

6.5 The Board's assessment of guarantor strength reports

6.5.1 Submitted reports will be assessed on a pass/fail basis by the Board, to confirm whether they had been obtained by the certification deadline, contain the required duty of care and otherwise satisfactorily address the guarantor's financial strength in

all the circumstances.

6.5.2 For schemes that do not provide a guarantor strength report meeting the requirements, the Board expects to:

(a) Select Contingent Assets for detailed review.

(b) Where the Board requires further information, it will ask trustees to justify in detail that the guarantor would genuinely be able to pay a sum up to the level of the Realisable Recovery certified, assuming the employer is insolvent.

(c) Evaluate that detailed information with input from an external financial adviser experienced in insolvency and pensions, together with other information available to it, to determine whether the Contingent Asset's recognition in the levy would be reasonably consistent with the risk reduction offered.

6.5.3 A key issue that the Board will consider is whether meeting the Realisable Recovery would be likely to trigger the insolvency of the guarantor, because this would reduce the likelihood that the guarantee could be satisfied. For example, where the sale of the guarantor's assets to meet the Realisable Recovery would mean that the guarantor was unable to continue its business, in reality the guarantor's resources may be used to meet its own liabilities. In this situation, the likelihood of the scheme receiving payment in full under the guarantee would be reduced, and consequently there would be no real reduction in risk to the Board.

6.5.4 The Board therefore expressly considers, where a guarantor is also an employer, whether it could meet its certified obligations in respect of the other guaranteed employers while continuing to trade or, in the event it ceased trading, whether it could meet both its own s75 debt and the Realisable Recovery. If the guarantor is a guarantor-employer and would not be expected to meet the guarantee and its own s75 debt in full if the guarantee is triggered, the report should highlight the extent of the reduction in recovery of the guarantor-employer’s own s75 debt as a consequence of its obligations under the guarantee being a competing claim in its insolvency. The definition of Realisable Recovery requires that it should take into account any expected reduction in the scheme’s recovery from the guarantor under s75.

6.5.5 The Board does not generally provide further details about how it will select cases for further investigation of guarantor strength (which may include an element of random testing). However for 2024/25 we expect to place particular focus on any schemes that do not certify as having obtained a guarantor strength report but are close to the threshold. That said, the focus of trustees and advisers should be on whether the guarantor is good for the Realisable Recovery, not whether it is good enough to escape detailed scrutiny.

6.5.6 In carrying out its detailed assessment, the Board may:

(a) Use financial data regarding the guarantor.

(b) Assess the guarantor by reference to its accounts on both a standalone and a consolidated basis.

(c) Consider which assets of the guarantor are intangible or illiquid assets, and

whether they can be realised for value.

6.5.7 This is not an exhaustive list and we may consider other appropriate information in making our assessment. Where a guarantor strength report has not been obtained, the Board expects to use the analysis that the trustees have done as the basis for assessing the guarantors, provided that this provides sufficient evidence as to the value of the guarantor. In particular, trustees should be aware that the higher the Realisable Recovery certified, the higher the threshold for providing satisfactory evidence will be to demonstrate that, in the circumstances, the guarantor could meet that sum.

Annex 1 – Levy Calculation where the Guarantor is a Scheme Employer

Where one or more guarantors are also scheme employers, the calculation of the Realisable Recovery amount will need to take account of any reduction in s75 recovery that may occur as a result of the guarantee being in place. It should reflect the net benefit of the arrangement, not simply the expected proceeds from the guarantee. The remainder of this Annex considers the operation of the levy calculation based upon the certified Realisable Recovery.

Prior to levy year 2018/19 the formulae made no distinction between guarantor-employers and other guarantors. The underfunding (U) was apportioned between the amounts certified in relation to each guarantor and any remaining amount, as set out below:

$$RBL = (\Sigma_1^{\ t}(H^n \times IR_g^{\ n}) + (U - \Sigma_1^{\ t}H^n) \times IR) \times LSF$$

where:

- IR represents the weighted average insolvency risk for the scheme without any guarantor substitution;
- $IR_g^{\ n}$ represents the weighted average insolvency risk for the scheme, substituting the nth guarantor for each employer which is weaker than that guarantor; and
- H^n is the guaranteed amount corresponding to the nth guarantor.

This approach continues to apply where none of the guarantors are scheme employers. However, if a scheme has one or more guarantor-employers, each guarantor-employer's share of the underfunding as an employer is calculated and may be used as a new component in the calculation. A guarantor-employer would therefore have two associated insolvency risks – one as an employer and one as a guarantor. We then:

(1) order all the guarantors in decreasing order of strength by $IR_g^{\ n}$ (as in the previous formulae);

(2) for each guarantor-employer, if the new component relating to its share of the underfunding as an employer is accepted, apply this component first, followed by the guaranteed amount which it is certifying; and

(3) apply each guarantor in turn until either the underfunding is used up or all guarantors have been considered.

This is reflected in the formulae in the Contingent Asset Appendix as follows:

Where a part of U remains uncovered after considering all guarantors:

$$RBL = \Sigma_1^{\ t}[(U \times (GAMn/M) \times IR_g^{\ nE}) + (H^n \times IR_g^{\ n})] \times LSF$$

$$+ \{U - \Sigma_1^{\ t}[U \times (GAMn/M) + H^n]\} \times IR \times LSF$$

The new component, [U x (GAMn/M)] represents the nth guarantor's share of the underfunding in its capacity as an employer (and will be zero if the nth guarantor is not an employer). This is calculated on a pro-rata approach using membership numbers, i.e.:

- GAMn represents the number of members allocated to the nth guarantor in its

capacity as an employer; and

- M is the total number of scheme members.

This component is assessed using IR_g^{nE} which represents the nth guarantor's insolvency risk in its capacity as an employer, if applicable. In particular:

- no adjustment for guarantor gearing would be applied;
- the Scheme Structure Factor (SSF) would be applied in the case of Last Man Standing and Centralised schemes;
- the new component [U x (GAMn/M)] would only be recognised once for each guarantor-employer, regardless of the number of individual guarantees provided; and
- where the certified Realisable Recovery for any guarantor employer is zero, the guarantor employer component shall also be taken to be zero.

If IRg^{nE} exceeds IR, the contingent asset will not generally be taken into account in the levy calculation. This is to avoid anomalous outcomes whereby schemes could be charged a higher levy than if they had not certified the contingent asset. However, if IRg^n is lower than IR for any such case then it is possible that the application of the contingent asset could produce a levy reduction, depending on the relative values of IRg^n compared to IRg^{nE} and H^n compared to U x (GAMn/M). The formulae contain an override to ensure that the contingent asset is brought into the levy calculation where it does indeed offer a levy benefit. In practice, we will achieve this by identifying any cases satisfying the condition $IRg^n < IR < IRg^{nE}$, assessing the situation, and ensuring that the contingent asset is recognised in the calculation where it would reduce the levy.

Where U is used up before all the guarantors have been considered:

In the formulae below the rth guarantor is the first guarantor that is not needed in its entirety to cover U, i.e. it is the first guarantor in the sequence for which:

Σ_1^r [U x (GAMn/M) + H^n] exceeds U.

$$RBL = \{\Sigma_1^{(r-1)} [(U \times (GAMn/M) \times IR_g^{nE}) + (H^n \times IR_g^n)]\} \times LSF$$

$$+ U \times (GAMr/M) \times IR_g^{rE} \times LSF$$

$$+ \{U - \Sigma_1^{r-1} [U \times (GAMn/M) + H^n] - U \times (GAMr/M)\} \times IR_g^r \times LSF$$

U x (GAMr/M) would be applied before considering H^r, so it is possible that only a part of the second component in the above formula would need to be brought into the calculation, with the third component not required.

To illustrate how the proposed approach above would work in practice, we have included the following two example scenarios. The examples use the levy parameters for 2024/25 and assume, for simplicity, that there are no guarantor gearing adjustments, the scheme is not LMS or

Centralised, the RBL cap does not bite and the SSA does not apply. The figures are for illustrative purposes only and should not be taken to imply either acceptance of a Type A contingent asset for levy purposes or recognition of the component representing the guarantor-employer's proportionate share of the underfunding, in similar actual circumstances.

Example scenario 1 – single guarantor

A scheme with £100 million of underfunding has three employers, X, Y and Z. Employers X and Y each have 10 per cent of the scheme's membership and Z has the remaining 80 per cent.

X is in levy band 1, Y is in levy band 3 and Z is in levy band 5.

X provides a Type A contingent asset with a certified Realisable Recovery of £40 million.

I IR = (0.1*0.002800 + 0.1*0.003500 + 0.8*0.005300) = 0.004870

IR_g^X = (0.1*0.002800 + 0.1*0.002800 +0.8*0.002800) = 0.002800

IR_g^{XE} = 0.002800

H^X = £40 million

(GAM_X/M) = 0.1

RBL = (£10m*0.002800 + £40m*0.002800 + £50m*0.004870) * 0.48

= £184,080

Example scenario 2 – multiple guarantors

Y in example scenario 1 provides a Type A contingent asset with a certified Realisable Recovery of £30 million. IR, IR_g^X, H^X and (GAM_X/M) are unchanged.

IR_g^Y = (0.1*0.002800 + 0.1*0.003500 +0.8*0.003500) = 0.003430

IR_g^{YE} = 0.003500

H^Y = £30 million

(GAM_Y/M) = 0.1

RBL = (£10m*0.002800 + £40m*0.002800 + £10m*0.003500
+ £30m*0.003430 + £10m*0.004870) * 0.48
= £156,768

Annex 2 – Should the impact of a potential super-priority debt arising on insolvency following a Moratorium be considered in the Realisable Recovery ("RR") analysis?