



The PPF's
legal standing
and approach to
the governance
of insolvency
proceedings

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1. Background



1.1

The interaction between the pension scheme, its trustees, the Pension Protection Fund (PPF) and the Insolvency Practitioner (IP) is important to understand. Decisions and resolutions may need to be made quickly to preserve value, so it is important that there is engagement with the correct parties.

1.2

IPs should make sure they are fully aware of the interaction between insolvency law and pension law.

1.3

The PPF acquires the scheme creditor in insolvency situations and the approach we adopt to decision procedures.

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This guidance sets out the focus of the PPF in insolvency situations and the approach we adopt to decision procedures.

2. PPF standing as a creditor



2.1

If the employer of an eligible Defined Benefit pension scheme undergoes

a qualifying insolvency event¹, a PPF assessment period² will start to determine whether we should adopt responsibility for the scheme.

2.2

During the assessment period, the creditor rights in relation to any debt owed to the scheme trustees by the employer are exercised by the PPF (s137 Pensions Act 2004).

2.3

The PPF exercises these rights to the statutory exclusion of the trustees. Any resolution that an office holder obtains from the pension scheme trustees after the assessment period has started is therefore invalid.

2.4

IPs are reminded that all correspondence relating to the insolvency proceedings should be addressed to the PPF's Restructuring & Insolvency (R&I) Team (see the contact list at the end of this guidance) from the date of their appointment, or initial creditor notification, if earlier.

¹ Section 121(3) Pensions Act 2004 and Regulation 5 Pension Protection Fund (Entry Rules) Regulations 2005. See appendix 1, PPF guidance for Insolvency Practitioners <https://www.ppf.co.uk/further-guidance-and-support>

² <https://www.ppf.co.uk/your-role-assessment-process>

³ s120 Pensions Act 2004 and <https://www.ppf.co.uk/restructuring-and-insolvency>

2.5

In most situations, there is enough time available to agree strategy and matters such as fee proposals, and to provide a valid proxy vote regardless of the decision making process. IPs should however be aware of the potentially shorter timescales applying to Creditor Voluntary Liquidations (CVL) (see also 4 below).

2.6

We expect prospective office holders to identify any Defined Benefit pension scheme that may exist – and therefore the likely PPF interest – during their preparation for an insolvency, and to contact us before the s120 notice³ submission. Despite the fact that the legal effect of s137 will not apply until the insolvency event (such as the winding up resolution being approved by shareholders). Doing so should help the IP to obtain valid resolution approval at the appropriate juncture.

2.7

We expect IPs to understand and recognise that the PPF will usually have an economic interest in their fees and will become part of the approving body imminently by operation of law.

2.8

We regard any prior agreement between the office holder and the scheme trustees as invalid and may not ratify it subsequently.

3. Creditor and liquidation committees

3.1 Creditors sometimes want to form a creditors' or liquidation committee. While a committee can perform a useful purpose in some circumstances, the PPF considers that they should only be convened where it is clear that they can add significant value to the insolvency process and assist the IP in maximising realisations.

3.2 In the majority of cases where there is a Defined Benefit pension scheme debt, it will be at such a level that most of the economic benefit from the insolvency will flow to the scheme or the PPF. In these circumstances, the specialist PPF R&I Team will closely monitor and, where appropriate, challenge the IP on his actions and costs.

3.3 The PPF can best influence the conduct of the insolvency through direct contact with the IP. This facilitates more effective control, as more confidential information can be shared than might be the case with a committee and the PPF can usually bring a greater level of scrutiny.

3.4 It also mitigates some of the costs of a formal committee.



3.5

These measures have the objective of maximising the potential return to the scheme and, as result, to creditors as a whole. The value of this approach for creditors has been demonstrated by cases such as BHS.

3.6

Accordingly, where the PPF has a majority unsecured interest, it will not usually propose or support a resolution to form a committee.

3.7

If the office holder considers that a committee will be beneficial, supporting information demonstrating the need should be provided to the PPF in advance of the meeting.

3.8

In circumstances where the PPF agrees with the office holder that a committee is necessary or beneficial, it will normally want to be represented. Office holders should contact the PPF's R&I team for details of the appropriate representative.

3.9

The PPF does not consider it appropriate to propose forming a committee for the sole purpose of approving office holders' remuneration, except in the case of Scottish insolvencies where a committee will mitigate the need (and cost) to go to court for fee approval.

4. PPF as a disenfranchised creditor



4.1

Any situation where resolutions are obtained (including approval of the basis of remuneration) or actions taken without the PPF having an opportunity to consider and vote will, where appropriate, be investigated by the R&I Team.

4.2

Particular care needs to be taken in CVL cases where passing a members' resolution will trigger the start of an assessment period and the ability to exercise the scheme trustees' creditor rights will pass to the PPF in respect of the subsequent decisions.

4.3

The PPF will exercise its statutory rights to protect its interests and those of the schemes it protects. It will submit complaints and reports to the relevant authorising bodies as deemed necessary.

4.4

Office holders should not rely on resolutions approved by the pension scheme trustees when it is apparent that the right or interest is (or will be) held or exercised by the PPF. Office holders should contact the R&I Team if they are in any doubt about the circumstances applicable to a case.

4.5

Office holders should also contact the R&I Team in the event that they identify any situation where resolutions have been obtained without the PPF's previous involvement.

4.6

In any circumstance where the scheme's eligibility for entry into the PPF is uncertain, it is in the best interests of the office holder that any resolutions are approved jointly by the PPF and scheme trustees. This ensures that the vote is valid irrespective of the scheme's eligibility.

4.7

The PPF will instigate this approach if it is required, but IPs should help by ensuring that the PPF's R&I Team is aware of the impending voting deadline as early as possible, particularly in the case of a CVL (as a s120 notice cannot be submitted ahead of the insolvency event).

5. Insolvency Practitioners' proposals and resolutions

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The PPF has a standard approach to certain proposals and to resolutions proposed in various types of insolvency situations."

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| 5.1 | The PPF has a standard approach to certain proposals and to resolutions proposed in various types of insolvency situations. |
| 5.2 | Remuneration – the approach is explained in our Guidance Note 2 – Insolvency Practitioner remuneration. |
| 5.3 | The formation of committees – see section 3 above. |
| 5.4 | Voluntary Arrangements – the approach is explained in our Guidance Note 5 – Company Voluntary Arrangements. The qualifying insolvency event relating to voluntary arrangements is the submission of the nominee's report to court. |
| 5.5 | Discharge of administrators' liability – a discharge effective at the end of the administration is often sought in administrators' proposals. The PPF's position is that it cannot conclude whether this is appropriate at such an early stage. This decision can only be made when the administrators' work has been concluded, and a resolution should be sought at that time. Accordingly, we will vote against any such resolution unless it is intended that the administration be brought to an end immediately following the approval of the proposals. |

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Please note this leaflet seeks to assist stakeholders and insolvency professionals on our approach to restructuring and insolvency cases. It is an accompaniment to existing publications from the PPF published on our website, not a substitute. We encourage restructuring & insolvency practitioners and trustees to seek appropriate, specific case guidance.

See www.ppf.co.uk for further information.

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Pension
Protection
Fund

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