

## **OVERFUNDED SCHEMES at s143 stage Applications for Reconsideration and Closed Scheme Authorisation**

### **Background**

This document is intended to provide guidance for trustees when making an application for reconsideration under section 151 and/or an application for closed scheme status under section 153 of the Pensions Act 2004 (the **Act**). It is not intended to provide an overview of every aspect of the relevant legislation. Trustees should seek advice from their own legal and actuarial advisers when making applications for reconsideration and/or closed scheme status. Whilst the PPF cannot give legal advice, it is willing to consider draft applications to check if they are in the correct form where such a request is made sufficiently in advance of the deadline. Trustees should liaise with their scheme delivery associate if they wish to submit their application in draft.

Where a scheme's binding section 143 (entry) valuation or funding determination shows that it was over 100% funded on a section 143 basis so that the PPF is not required to assume responsibility for the scheme, the trustees of that scheme:

- **may** apply for reconsideration (a **Reconsideration Application**); and
- **must** apply for authority to continue as a closed scheme where they are unable to obtain a full buy-out quotation (a **Closed Scheme Application**).

### **Deadline for Reconsideration and Closed Scheme Applications**

Both applications **must** be made within six months of the receipt by the trustees of:

- the binding scheme failure notice<sup>1</sup>; or
- the binding of the s143 valuation or funding determination<sup>2</sup> whichever is later date.

This is referred to as the **Authorised Period**.

For example if the trustees received the binding scheme failure notice on 22 May and received the binding section 143 valuation 1 June, the last day of the authorised period would be 30 November.

---

<sup>1</sup> This is the letter labelled as the s.125 notice

<sup>2</sup> This is an enclosure to the letter labelled as the s.145 notice or s143A(4) notice

Applications must be made within this period. **The PPF does not have the discretion to accept late applications in any circumstances.**

Reconsideration Application decisions and Closed Scheme Authorisation decisions are reviewable matters. Information about the Reviews process is available on the PPF's website together with application forms to request a review by searching under "review complaints" in the Document Library.

Any application for a review of these decisions **must be made within 28 days of the date of the decision letter.** This deadline can not be extended.

## Reconsideration Applications

Where a scheme is overfunded on a section 143 basis the trustees **may** make a **Reconsideration Application**.

The application must be made within the **Authorised Period**.

Appendix 1 contains an application form for a **Reconsideration Application**.

There are two types of Reconsideration Application; a Protected Benefits Quotation Application (**PBQ Application**) and a No Protected Benefits Quotation Application (**No PBQ Application**)

In both cases the application must be made in writing and must be accompanied by audited scheme accounts.

## Reconsideration Application Accounts

All Reconsideration Applications must be accompanied by audited scheme accounts. The reconsideration application accounts must start with the date of the last audited scheme accounts and end with any day in the 6 months preceding the date on which the **Reconsideration Application** is made. The end date of the accounts is important for defining the **Reconsideration Time**. The **Reconsideration Time** is the time immediately before the end date of the reconsideration application accounts.

Regulation 25 and the schedule to the Pension Protection Fund (Entry Rules) Regulations 2005 set out the detailed requirements for the reconsideration application accounts.

## PBQ Application

A **PBQ Application** must be accompanied by a copy of the protected benefits quotation (**PBQ**), as well as audited scheme accounts.

Broadly, a **PBQ**<sup>3</sup> is a quotation for one or more annuities at the **Reconsideration Time** which would provide, in respect of each member, PPF-level benefits or full scheme benefits (whichever can be secured by the trustees at the lower cost for that member).

---

<sup>3</sup> Defined in s.151(8) of the Act

The exact content of any insurer's offer to write business may vary as between insurer but it would be expected that the quotation is a complete proposal as to the terms and cost of the insurer providing annuities on the appropriate basis for each individual.

It must be capable of acceptance by the trustees i.e. the insurer is willing to write the business. An indicative costing for providing the benefits will not constitute a **PBQ**.

In some cases, insurance companies may offer to quote on a basis different to those described above. A quotation on a different basis or a costing on the basis of the **PBQ** requirements with an offer to write business on different terms will not constitute a **PBQ**.

Trustees of schemes with a provision in the scheme rules that allows them to pay for a quotation may do so. The offer to pay for the quotation might provide a solution to the problem of obtaining quotations that go beyond an insurance company's normal terms where the insurance company is concerned that no business will result from the quotation. However whether it is reasonable for trustees to pay an insurer to provide a quotation, if that is the only way in which a **PBQ** can be obtained, should be considered by the trustee in light of the insurer's proposed fee and the scheme's financial position. What is reasonable for a scheme where it is finely balanced as to whether the scheme can buy out PPF level of benefit in the market will not necessarily be reasonable for a scheme where it is known that by the time the section 143 valuation was approved its financial position has deteriorated so that it would be underfunded on a s143 basis. The PPF does not propose to issue detailed guidance on whether in particular situations it would or would not be reasonable to pay for a **PBQ** but it would expect that trustee to weigh up the proposed costs in light of the scheme's particular circumstances. Trustees may wish to discuss this with their scheme delivery associate.

Please note that if it is not possible to obtain a quotation based on PPF-level benefits then it is not sufficient to only obtain a quotation on a buy-out basis. The legislation defines a **PBQ** as a quotation or quotations for PPF-level benefits or full scheme benefits, whichever benefits can be secured at the lower cost in the case of each member.

Please note that the above is not intended to be an exhaustive list of points for the trustees to consider in relation to a **PBQ**. The trustees

should have recourse to their own advisers when obtaining a **PBQ** and carry out the appropriate due diligence on any quotation issued to them.

### **No PBQ Application**

Where trustees are unable to obtain a **PBQ**, they will still be able to make an **Reconsideration Application**. The requirements for the application are different and the process for dealing with the application following receipt from the trustees will be different.

Where the trustee has been unable to obtain a **PBQ** the **No PBQ Application** must include written evidence showing that the trustee have taken all reasonable steps to obtain a **PBQ** but were unable to do so, in addition to audited scheme accounts as described above. Such evidence should include details of what the trustees have done to obtain a **PBQ** such as who the trustees have contacted, when contact was made and copies of any requests for quotation or refusals to quote.

What is reasonable in the context of a particular situation must be considered objectively but there is no prescriptive test of reasonableness. The PPF does not propose to provide detailed guidance as to what reasonable steps would be as the reasonableness of any particular action is contextual. In the PPF's view it would be difficult to conclude, save for in exceptional circumstances, that trustees who have not approached any insurers have taken all reasonable steps. Whether it is a reasonable step for the scheme to pay for **PBQ** will depend on the scheme circumstances and the costs quoted, amongst other factors. The trustees must be able to explain why they consider that they have taken all reasonable steps.

Trustees may wish to seek advice from their professional advisers and to liaise with their scheme delivery associate as to what steps it would be reasonable for them to take in their particular circumstances in light of the prevailing market conditions. All schemes are different and what is reasonable for one scheme may not be reasonable for another.

Where a **No PBQ Application** is made, the PPF will direct the Trustees to obtain either a s152 valuation or a s152 funding assessment to establish whether the value of the scheme assets was less than the amount of the protected liabilities at the **Reconsideration Time**. It is anticipated that it will take the PPF longer to decide a **No PBQ**

**Application** because it will be unable to determine the outcome of the application until the funding calculations at the **Reconsideration Time** have been completed. The trustees are not required to supply any actuarial information in order for there to be an initial valid **Reconsideration Application**.

The Board's Section 152 Statement details what is required by the actuary to complete the section 152 funding calculations. The PPF will decide following receipt of the **Reconsideration Application** whether it will obtain a s152 valuation or a s152 funding assessment. Trustees should not instruct the scheme actuary to undertake any s152 calculations before the PPF has confirmed how it will assess whether the scheme was underfunded at the **Reconsideration Time**.

The completion of the **Reconsideration Application process** may take longer where a **No PBQ Application** is being made because of the time it may take to obtain the calculations. Trustees should be mindful of this and should not assume that the outcome of any **Reconsideration Application** would be known before end of the authorised period in considering whether to make a concurrent **Closed Scheme Application**.

### **What happens if my application fails?**

If a **Reconsideration Application** fails, and assuming no successful **Closed Scheme Application** has been made, then the scheme must wind up (or continue to wind up if wind-up was triggered before the assessment date).

## Closed Scheme Applications

Where the trustees are unable to obtain a full buy-out quotation for the purposes of section 153, they must, within the **Authorised Period**, apply for authorisation to continue as a closed scheme under section 153 of the Act.

The application process is similar to that in respect of reconsideration and, indeed, may be made at the same time as a **Reconsideration Application**.

An application form for authorisation to continue as a closed scheme is set out in Appendix 2.

Amongst other things, the **Closed Scheme Application** must be accompanied by evidence that the trustees were unable to obtain a full buy-out quotation. This must usually be evidenced by a refusal on the part of any insurance company approached to quote (copies of e-mails from providers stating this will suffice). With regard to obtaining a full buy-out quote, the legislation requires the trustees to take reasonable steps to obtain that quote. What is reasonable in the context of a particular situation must be considered objectively but there is no prescriptive test of reasonableness. This is something which trustees may wish to take advice on and discuss with their scheme delivery associate in the light of the particular circumstances of the scheme. The trustees must be able to explain why they consider that they have taken all reasonable steps.

Where the PPF receives a **Closed Scheme Application** that complies with all of the necessary requirements (see Appendix 2) and there is no successful **Reconsideration Application**, it **must** authorise the scheme to continue as a closed scheme.

Where the PPF authorises a scheme to continue as a closed scheme, the scheme will no longer be in an assessment period and it will be required to wind up. However, where a scheme is authorised to continue as a closed scheme it is recognised by closed scheme status that the steps that the trustees can take to wind up the scheme will be restricted.

Whilst the scheme is operating as a closed scheme, the trustees must obtain actuarial valuations of the scheme under section 156 of the Act. The first such valuation must be carried out either:

- within 3 years after the effective date of the section 143 (entry) valuation; or
- where the scheme was not authorised as a closed scheme within 3 years of the effective date of the section 143 (entry) valuation within 15 months of the **determination date**.

The **determination date** is the date immediately after the period for the review of the section 153 decision has expired or (if the decision was reviewed, reconsidered and then referred to the PPF Ombudsman) the date immediately after that review process has completed. This is also referred to as when the section 153 decision has become binding.

Subsequent section 156 valuations must be carried out within three-year intervals afterwards.

Where a scheme has been authorised as a closed scheme the trustees **must** make an application<sup>4</sup> for a further assessment period **within 6 months** of becoming aware that the value of the assets of the scheme is less than the amount of the protected liabilities. The PPF expect the trustees to monitor the scheme funding level so that an application can be made as soon as the funding level falls under 100%. The PPF has no power to extend the period for the trustees to make this application and may take appropriate action if it appears that there have been inappropriate delays in the Trustees submitting the application.

### **What happens if my application fails?**

If a **Closed Scheme Application** fails and there was no successful **Reconsideration Application** then the scheme in question must wind up (or continue to wind up if wind-up was triggered before the assessment date).

---

<sup>4</sup> Section 157 of the Act

## **Appendix One Reconsideration Application**

**Date Application submitted to PPF:**

### **Section 1 Scheme Details**

**1.1 Scheme name:**

**1.2 Pension scheme registration number:**

**1.3 Segregated part name/Section name (delete as applicable):**

**1.4 Scheme address:**

**1.5 Employer's name:**

**1.6 Employer's address:**

### **Section 2 Trustee Details**

**2.1 Name(s) and address(es) of the Trustees of the Scheme**

### **Section 3: Key Dates**

**Date binding scheme failure notice received (s125 notice):**

**Date binding valuation/funding determination notice received  
( s145 notice/s143A(4) notice)**

### **Section 4: Audited Accounts**

**I enclose a copy of the audited scheme accounts required  
under s151 Y/N**

**Accounting Period:**

### **Section 5: Obtaining a Protected Benefits Quotation**

**5.1 Please describe steps taken to obtain a protected benefits  
quotation (please complete this section in all cases)**

**I enclose copy documents to evidence what steps were taken  
to obtain a protected benefits quotation[s]  
Y/N**

**I enclose a copy of protected benefits quotation[s] which  
has/have been obtained  
Y/N**

*Please complete parts 5.2- 5.5 only if you are enclosing a protected benefits quotation*

**5.2 Date of quotation**

**5.3 Liability commencement date\***

\* this date must match the end date for the audited accounts

**5.4 Cost quoted in the protected benefits quotation**

£ \_\_\_\_\_

**5.5 Value of the assets of the scheme adjusted to take into account any outstanding liabilities of the scheme which are not covered by the protected benefits quotation which accompanies the application**

£ \_\_\_\_\_

**5.6 Estimated cost of winding the scheme up**

£ \_\_\_\_\_

**Signature**

**Name:**

**Date:**

Note: Regulation 24 of the Pension Protection Fund (Entry Rules) Regulations and section 151 of the Pensions Act 2004 prescribe the content of this application

## **Appendix 2**

### **Application for Authorisation to continue as a closed scheme**

**Date application submitted to PPF:**

#### **Section 1 Scheme Details**

**1.7 Scheme name:**

**1.8 Pension scheme registration number:**

**1.9 Segregated part name/Section name (delete as applicable):**

**1.10 Scheme address:**

**1.11 Employer's name:**

**1.12 Employer's address:**

#### **Section 2 Trustee Details**

**2.1 Name(s) and address(es) of the Trustees of the Scheme**

### Section 3: Obtaining a Full Buy-out Quotation

**3.1 Please describe steps taken to of the steps they have taken to obtain a full buy-out quotation**

**3.2 Please complete the table below with the details of any person the trustees have approached to obtain a full buy-out quotation and when the approach was made**

Name	Address	Date of approach	Tab in evidence bundle

**3.3 I have enclosed copies of the requests made by the trustees of the scheme in respect of which the application is made for a full buy-out quotation in respect of that scheme and any refusal received in response to such a request**

**Y/N**

**Signature**

**Name:**

**Date:**

Note: Regulation 2 of the Pension Protection Fund (Closed Scheme Regulations 2007 prescribes the content of this application.