Briefing

Pensions

BURGES SALMON

January 2016

Importance ★★☆☆

Final Levy Rules for 2016/17

The PPF confirms its plan to re-invoice schemes that have mistaken their structure as "last man standing" and urges trustees to do probing due diligence before submitting contingent asset guarantees.

The final levy rules for 2016/17 (published in December) are largely unchanged but there is some fine-tuning, like the rules on the exclusion of certain mortgages for insolvency scoring.

Last man standing (LMS)

The PPF will re-invoice schemes that have realised they are not LMS after all. It acknowledges this will be unwelcome but sees it as a matter of fairness to other levy payers. It accepts schemes will have reported their structure in good faith in the past.

The annual scheme return due by 31 March will ask trustees to confirm they have had legal advice that their scheme is LMS.

The PPF will begin by contacting schemes that have already acknowledged they are not LMS. After the end of March it will be in touch with those that have not confirmed receiving legal advice.

Schemes that are in PPF assessment or have become ineligible for PPF protection will not be re-invoiced.

Where the sum involved is limited, the PPF may decide not to re-invoice. These schemes will be notified.

Contingent asset guarantees

The certification requirements for intra-group contingent asset guarantees are unchanged: trustees must certify a cash sum (the "realisable recovery") that each guarantor is good for on its own. They need to do – and record – thorough due diligence before deciding a figure.

The PPF does not rule out changes to the certificate in future, however. This reflects its continuing discontent with some guarantees. Rejections in 2015/16 were down on the previous year but remain "above the levels [the PPF] would hope to see".

Since a certificate on the substance of guarantees was first required, the number accepted has fallen by a third (to about 500).

Among the headlines the PPF draws from last year are that trustees need to:

- consider in detail the knock-on effect of the employer's insolvency on the rest of the group,
- understand the impact of the employer insolvency and of the guarantor having to pay out on inter-company balances, pooled cash funds and group-wide banking arrangements,
- look behind intra-group arrangements (e.g. trade terms and the ownership/licencing of intellectual property) to understand the impact on the amount recoverable from the guarantee,
- recognise that a fire sale of companies to meet the guarantee could mean their value is well below what it might be in other circumstances.

For a fuller statement of its expectations over due diligence, the PPF commends its briefing note *"Contingent Assets: Guarantor Strength"* that it plans to re-issue in updated form soon.

Trustees also need to read the PPF's *Guidance in relation to Contingent Assets 2016/17* (part 5 in particular). This includes a longer list of frailties in the guarantees submitted last March.

Tips in the 2016/17 Levy Policy Statement include:

- the importance of trustees understanding the group structure and its implications for the value of the guarantee,
- whether a guarantor that is also a statutory employer, will be able to meet the realisable recovery under the guarantee and its s.75 employer debt if it goes insolvent,
- trustees should not acquiesce in being refused financial information they reasonably need on grounds of confidentiality.

Mortgage exclusion

The rules about the mortgages that can be disregarded for mortgage age variable are adjusted:

- existing certificates for *refinance* and *pension scheme mortgages* and for *rent deposits* will be carried forward to 2016/17 automatically,
- the evidence required to show a *refinance mortgage* was a replacement for an existing secured loan is simplified e.g. it need not appear on the face of the loan documentation,
- existing *immaterial mortgages* will need to be recertified for the new year (because they are vulnerable to changing circumstances). Charges over bank accounts are added to the list of those that can be certified as immaterial,
- where a certificate is based on an employer's *investment grade credit rating*, the PPF will check the rating still applies at the end of March 2016. Experian's PPF Portal will soon publish the information it currently holds on credit rating to indicate the potential impact on scoring. However, the onus is finally on schemes and employers to monitor credit rating and its effects.

continued

Entities that can show they are legally barred from granting security over their assets will be given a zero score for mortgage age instead of a neutral one. The PPF expects an employer in this position to contact Experian by the end of March with copies of its constitutional documents and the legislation that prevents it from granting security. Confirmation from a lawyer is also required.

Bodies that are not required to submit full accounts to Companies House may submit them voluntarily to Experian. They will need to submit accounts for the previous three years too. Having been done once, this must be continued in future.

Asset backed contributions (ABCs)

The approach to annual recertification outlined in the consultation goes ahead. This requires a valuation but it can be an update on last year's rather than a full one. It is for the valuer to decide. Reasons for choosing an update must be given. In an additional change, a valuation may be expressed as "no less than £x".

If the terms of the ABC have been changed or the trustees are aware of anything that might materially affect the basis of the original legal opinion, a new opinion must be taken.

FRS 102

The PPF continues to consider the potential impact (mainly for levy year 2017/18 onwards) of accounting standard FRS 102. Recognition of deficits in multi-employer schemes has captured attention but the PPF wants to understand other possible effects too.

Arithmetic

The arithmetical elements of the levy calculation, like the scaling factor and scheme-based multiplier are unchanged. So is the risk-based levy cap (at 0.75%). The estimated gross levy is down £20m to £615m.

KEY DATES

Item	Key dates
Experian Score Measurement Date	Last business day of each month from April 2015 to March 2016
Deadline for filing of or submission of data **to Experian** to ensure impact on Monthly Experian Scores	One calendar month before the Score Measurement Date
Submit scheme returns **on Exchange**	By midnight, 31 March 2016
Reference period over which funding is smoothed	5-year period to 31 March 2016
Submit Contingent Asset Certificates **on Exchange**, with hard copy documents as necessary **to PPF**	By midnight, 31 March 2016
Submit ABC Certificate **to PPF**	By midnight, 31 March 2016
Submit Mortgage Exclusion ('Officers') Certificates and supporting evidence **to Experian**	By midnight, 31 March 2016
Submit Deficit-Reduction Contributions Certificates **on Exchange**	By 5pm, 29 April 2016
Certify full block transfers **on Exchange** or send to PPF (in limited circumstances)	By 5pm, 30 June 2016
Invoicing starts	Autumn 2016

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