



A trust as a principal employer



Background

The scheme:

- Multi-employer defined (DB) scheme, closed to future accrual with assets of £6.7m
- Membership: 23 deferred and 34 pensioners
- Funding as at 31/5/2015: 88% funding level with a deficit £916,000 on the statutory funding objective (SFO)

The sponsors:

- Principal and participating employer: an Estate Trust (employing 35 scheme members)
- Participating employers: A Co Ltd (13 scheme members), B Co Ltd (9 members)

PS Independent Trustees (PSIT) is the sole corporate trustee.



The issue

When taking on this client, we reviewed scheme documentation and the structure of the group of participating employers. This highlighted the **identity of the statutory employers** for the purpose of Pension Protection Fund (PPF) legislation **was unclear**. Legal advice was sought on this issue and can be summarised as:

- A Co and B Co were statutory employers, along with another group business (Invest Co). Furthermore the Estate Trust trustees may also be statutory employers for this purpose.
- The fund is a multi-employer, non-segregated scheme with the requirement for partial wind-up on the withdrawal of a participating employer. This means, if a triggering event occurs in relation to an employer, the segregated part of the fund (created via the partial wind-up rule) is treated for PPF entry purposes as if it were a separate scheme.
- A PPF trigger event could not ever happen in relation to the Estate Trust. Due to its legal constitution, it isn't possible for either an insolvency event to occur or for the scheme trustees to make an application to the PPF that the Estate Trust is unlikely to continue as a going concern as it is not one of the bodies listed in the regulations.
- Consequently, if a segregated part of the fund were to be created via the partial wind-up rule in respect of the Estate Trust, it would not be eligible for PPF entry.

This meant the **scheme's principal employer would not be eligible for PPF entry** in the event of failure or insolvency of the Estate Trust (however remote that may be). This represented a **significant risk for the scheme members** employed by the Estate Trust.

The solution

We suggested putting in place a **flexible apportionment arrangement** (FAA) between the Estate Trust and Invest Co.

- This would **address the PPF liability issue** by the Estate Trust apportioning its pension liabilities to Invest Co.
- The Estate Trust would then cease to be a statutory employer under PPF regulations.
- To ensure the scheme's position was not prejudiced by the proposed solution, the Estate Trust would have to **guarantee the actual and contingent liabilities** of Invest Co in relation to the scheme, including any future s75 debt.

The Estate Trust believed a FAA was not required, as the scheme trustee would have legal recourse to the assets of any employer to cover the liabilities of any member, irrespective of which legal entity employed that member when an insolvency event occurred. Legal advice showed this argument to be flawed.

We also considered an alternative solution: restoring Invest Co as the principal employer. This would give greater certainty to the scheme trustee and was a tried and tested legal procedure.

As these discussions were taking place, the Government consulted on legislative changes that, if implemented, would give the part of the scheme attributable to Estate Trust a route into the PPF. Subsequently, the PPF entry rules were amended and the scheme trustee can now apply to the PPF in the situation where Estate Trust is unlikely to continue as a going concern.

Benefit to the client

The regulation changes negated the need to find a separate solution and ensured the **benefits of members** employed by Estate Trust **are now covered by the PPF** in the event of its insolvency. However, the work to resolve the question of the identity of the statutory employer(s) has brought other benefits:

- Clarification of who the statutory employers are and the powers they have has resulted in **greater security** for members' benefits.
- It also helped in the **covenant** review process for the 2015 actuarial valuation as the assessment of the overall strength of the employers was **'strong'**. In turn, this allowed the scheme trustee to agree less prudent assumptions with the employer.
- The outcome also provides **peace of mind** to all the employers.