

# The Pensions Regulator

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**Private & Confidential**

Carillion (DB) Pension Trustee Directors  
c/o Mr Robin Ellison  
Carillion House  
84 Salop Street  
Wolverhampton  
WV3 0SR

Our ref: C92233148

15<sup>th</sup> August 2017

Dear Trustee directors,

**Mowlem Staff Pension and Life Assurance Scheme**  
**Carillion B Pension Scheme**  
**Carillion Staff Pension Scheme**  
**Alfred McAlpine Pension Scheme**  
**Planned Maintenance Engineering Limited Staff P&AS (together 'the Schemes')**

Company proposal to suspend deficit contributions and related matters

We write with regard to the letter from Carillion plc (the 'Company') of 3 August 2017 which sets out a proposal (the 'Proposal') to suspend the deficit contributions to the Schemes for three months with the option to extend the suspension for a further three months.

We indicated to the Chair of Carillion (DB) Pension Trustee Limited (the 'Trustee'), Robin Ellison, that the Regulator wished to discuss the Proposal with the Trustee and its financial advisors before the Trustee responds to the Company; particularly in view of the potential restructuring risks that the Company may face.

Restructuring advice

We understand from our subsequent discussions with Mr Ellison that the Trustee acknowledges and agrees that it needs advice from those with direct experience in this type of situation. This scenario has to date involved the Company making a public announcement on its trading position that had a significant adverse impact on its share price, announcing a strategic review, holding a meeting of its lenders and credit providers less than two weeks after the announcement and sharing the update with the Trustee. The outcome of the strategic review is due to be received by 30 September and the potential for a restructuring of the business is readily apparent.

As previously stated, we are keen to ensure that the Trustee fully understands and satisfies itself that whoever it chooses to work with, its advisors have the requisite skills and experience, particularly in view of the uncertain financial situation and future of the Company, given the outcome of the strategic review is awaited. These types of situations will almost invariably include requests of the financial creditors, and potentially the pension schemes, therefore the hiring of advisors who have direct

experience of discussions and negotiations with the types of creditors the Company has, is of paramount importance. This will provide the Trustee with properly informed views on how other creditors are likely to react and to consider how best to protect the Schemes' position.

We understand that the Trustee is satisfied with Short Partners LLP's ('Shorts') credentials as the advisor in this regard, and agreed to instruct Shorts as the financial advisor at a meeting on 3 August (subject to finalising terms of the engagement). We understand there is a meeting in diary for tomorrow morning between Mr Ellison and Shorts to seek to finalise their engagement. However if agreement cannot be finalised and the Trustee needs to consider an alternative financial advisor, we expect the Trustee to ensure that the alternative party has the requisite skills outlined above.

It is now over a month since the Company's announcement and it is critical the Trustee engages a financial advisor with the appropriate skills as a matter of urgency. The financial creditors are far more used to considering their options and strategies in such situations, and will have been working on them since the original announcement. We also expect the Trustee to ensure the financial advisor is in place in good time in order to properly advise the Trustee regarding the options available before responding to the Proposal. We would be concerned if any delay on the Trustee's part puts the Schemes' creditor negotiation position at a disadvantage.

You will also be aware that the Regulator met with the Company's interim CEO and CFO (and others) last Wednesday. We note the CEO's sentiment that even the Company is not fully confident of its own position pending the outcome of the strategic review.

Our position regarding the Proposal

We have also seen a copy of the presentation from the Company regarding its liquidity position and access to funding, which we understand all creditors providing facilities found satisfactory. Furthermore, we understand that no such creditor has made any request to protect or improve its position. In our view the Company appeared confident about its current cash position, especially as no request was made of its credit providers.

Against this background the request that has been made of the Trustee is of concern on three fronts:

- If the liquidity position is as we understand it, there is no logic in the request to postpone contributions.
- Until the outcome of the strategic review is available, the Trustee has no visibility on the future direction of the Company, or what requests will be made on a more lasting basis to the financial and scheme creditors to provide a stable financial position for the Company to execute its strategy.
- The iniquitous nature of the request. In these types of situations if the Company needs immediate financial assistance (which has not been demonstrated or evidenced) then it needs to make requests of both financial and scheme creditors.

In response to a question we were asked at the meeting with the Company, we indicated that against the background outlined above we could not see how the Trustee could agree to the request. If the Trustee wishes, we can join the next Trustee meeting on 23 Aug to discuss our views further.

Other matters

In addition to the Schemes' future position, we would also like to review two other aspects of the Schemes as a result of our on-going engagement.

Governance

These types of situations always bring additional challenges to the Trustee in respect of conflicts and their proper management. We would take this opportunity to remind the Trustee that management of conflicts concerns more than conflicts of interest but also encompass the effective handling of any conflicts of duty. Conflicts may also arise where a trustee is in possession of information (arising from for example his role as a company director) which may be relevant to a decision being made by the trustee board; failure to disclose that information to the rest of the trustee board could be a breach of

trust. We would also remind the Trustee directors that they may be personally liable for such a breach of trust.

We are aware in this instance there are a large number of trustee directors and we query how conflicts are being managed and whether there has been any consideration to the formation of conflict-free sub-committees of directors. This has two obvious benefits, firstly it avoids those with conflicts from being involved and secondly it makes the management that much easier, helping to avoid unnecessary delays when dealing with urgent matters that arise. We are unaware whether the Trustee directors have considered this option following the announcement but we would appreciate sight of a copy of the Schemes' conflict policy and register, prior to any meeting with us.

It would be helpful if you would also provide evidence of how the policy has been implemented in practice. For example, this could be the commissioning of legal advice on the proper management, minutes or records of discussions that the Trustee may have had in relation to recusing certain directors from specific decisions, forming sub-committees with non-conflicted directors for decision-making purposes, and any conclusions and evidence of the actions taken thereafter.

#### Investment strategy

Given the Company's current situation, it has become more urgent that the Trustee takes advice on the appropriateness of de-risking its investment strategy in the short term, at least as a temporary measure, to protect the Schemes' future position. We note that this was discussed at the ALC meeting on 19 July and that the conclusion was to take no immediate action pending the ongoing review of the Schemes' investment strategy. We are not sighted on the timetable for the review and would appreciate an update.

Further, should the Trustee decide against implementing temporary de-risking at this stage, we would encourage the Trustee to put in place a contingency plan and the relevant practical arrangements so that, if the company covenant were to deteriorate further materially and quickly, appropriate de-risking could be implemented very quickly in response. By this we mean deciding in advance what changes to make in such circumstances, perhaps depending on the degree of deterioration, and arranging the necessary documentation and authorisations in advance, thus avoiding the need to draw up paperwork, locate authorised signatories, etc.

#### Nest steps

We are meeting Mr Ellison on Thursday 17 August to discuss the appointment of a financial advisor, governance of the Trustee board, the Proposal from the Company and investment strategy of the Schemes. However, if you believe a meeting with a wider group of the Trustee directors before the next Trustee meeting on 23 August would be helpful, we are happy to seek to accommodate that.

Yours faithfully



Geoff Cruickshank  
Senior Case Management Advisor  
**The Pensions Regulator**