Dear Mr Field

Johnston Press - consideration of use of anti-avoidance powers

Thank you for your letter of January 16 about Johnston Press. Addressing each of your questions in turn:

Why do you not usually publicise a decision not to use your anti-avoidance powers?

In all cases we consider publication in accordance with our published policy\(^1\) for reasons of transparency, education and guidance and deterrence. If we decide to publicise, we would normally do so once the relevant regulatory action has been completed using our publication power under Section 89 of the Pensions Act 2004.

If we were to publish a decision to use our powers at a stage before a decision had been made by our Determinations Panel, there would be a number of risks, including:

- Publication may prejudice the effectiveness of any subsequent investigation (for example following receipt of new information or evidence) by tipping off the parties being investigated.
- Publication may have adverse effects on a company’s business and/or share price.

Publishing information about the regulatory action we have taken in cases is an important lever for influencing behaviour more widely among those we regulate. We regulate around 6,000 defined benefit schemes and, generally speaking, as a risk-based regulator we would not consider it the best use of our resources to publish information on decisions not to take anti-avoidance action, which could be for a number of reasons such as a lack of evidence of avoidance activity or certain legal tests or thresholds not being met.

One specific area where we have made public our decisions not to use our anti-avoidance powers is when these form part of our agreement to a Regulatory Apportionment Arrangement (RAA). We have published information on a number of RAAs under s89 of the Pensions Act 2004 in which we have referenced that a better outcome would not be secured through other means such as the use

of our anti-avoidance powers, which is one of the criteria for agreement to an RAA. These are very specific cases in which we have used our clearance powers.

We of course appreciate that stakeholders will take an interest in certain high-profile corporate activities.

**Whether you have considered whether a different approach might be warranted in this case? If you decide not to act, whether a decision will be made public?**

With regard to Johnston Press specifically, in my letter to you of 21 December I said that we expected to decide whether to pursue the use of our anti-avoidance powers by the end of January. This is under consideration but we expect to reach a decision imminently and we will then decide whether it would be appropriate to publicise that specific decision at that point, taking into account our published policy.

**If you decide to act, whether at any stage you will be able to publish information about your actions and if so when and what?**

Where we do decide to publish information on our considerations in a case, this is normally through the publication of a ‘regulatory intervention report’ under s89 of the Pensions Act 2004 once our powers have been exercised, or once the case is resolved by other means such as reaching a settlement.

If a case is heard by the Determinations Panel this would normally also include publication of the determination notice setting out the reasons for the panel's decision.

We would expect all these considerations to apply in the Johnston Press case.

**How members of the Johnston Press Pension Plan will be kept informed of what is happening?**

The trustees of the scheme are primarily responsible for communicating with members and responding to individual queries. This remains the case while a scheme is in a PPF assessment period. We would usually let trustees know of the outcome of an investigation and we plan to do so in this case, enabling them to update members as appropriate. This would be in addition to the communications members commonly receive at different stages of the PPF assessment process. Should the scheme in due course transfer to the PPF, the PPF would then take over responsibility for communicating with members.

Yours sincerely

Lesley Titcomb
Chief Executive