Dear Mr. Field

Marathon Services (G.B.) Limited Pension and Life Assurance Scheme

Thank you for your letter of July 31, raising concerns about RockRose Energy’s recent purchase of Marathon Oil UK’s interests.

As the Committee is aware from previous correspondence, I am unable to disclose any information that is restricted under the Pensions Act 2004. Taking each of your questions in turn:

1. Is the Pensions Regulator concerned about the scheme’s trustees being constrained in securing the best outcome for their members by:

   a. The sponsor requiring the trustees to enter into a non-disclosure agreement at the outset of the transaction?

   A non-disclosure agreement (NDA) does not constrain pension trustees from getting the best outcome for members. Typically, the detail of a transaction prior to it finalising can be commercially sensitive, especially where companies are listed and any information made public could impact on the share price and/or sale price.

   In such circumstances, companies may be concerned about information being disclosed. Where there is a reluctance by sponsoring employers to share information with pension trustees, we expect the trustees and sponsoring employer to find solutions which allow trustees access to the information they need in order to assess any impact on the pension scheme. One possible way is for trustees to enter into an NDA. This approach is common, especially at the outset of a transaction, and can prove to be a productive way to facilitate information-sharing.

   In our experience, NDAs can be a constructive solution where information would otherwise not be disclosed to the trustees, leaving members’ benefits at risk. We expect trustees to seek appropriate legal advice before entering into an NDA.

   b. Restricted access to information which would allow trustees to accurately evaluate the position of the scheme?

   Pension trustees have a duty to protect members’ interests. Where a proposed corporate transaction could impact a pension scheme, we expect the trustees to be given access to the information that they need to properly assess this. Following an NDA we would expect all relevant information to be shared with trustees.
Where this does not happen, we encourage trustees to contact us. In such circumstances, we would set out our expectations to the sponsoring employer regarding information being shared with the trustees.

Scheme Administration regulations require employers to share relevant information with trustees. Where a scheme would be negatively impacted by a change of sponsor, we expect trustees to negotiate robustly on behalf of the scheme to ensure the impact is adequately mitigated, and the scheme sufficiently protected.

Where we consider information to be critical to assessing the position of the scheme, and where this information is not being voluntarily provided to either the trustee or TPR, we will consider using our formal information-gathering powers.

2. In cases such as this, where there are concerns about a pension scheme moving from a well-resourced sponsor to one that is less so:

As points a and b cover the same information, I will answer these together

   a. What actions are available to TPR and the schemes’ trustees to protect members?

   b. What action can be taken to protect the interests of pension scheme members both before and after a deal closes on a transaction?

Prior to a transaction we expect trustees to communicate clearly with members, so that they are aware of the circumstances and do not take hasty or uninformed decisions to leave the scheme. Where we believe that there is an increased risk of members transferring out of a scheme following an event or transaction, we provide trustees with a joint letter from TPR, the Financial Conduct Authority and The Pensions Advisory Service to provide to members who request a cash equivalent transfer value (CETV)

Before any transaction a sponsor can seek clearance from the Regulator. Clearance is a voluntary process. If granted, a clearance statement provides assurance to the applicants that, in the circumstances set out in the application, TPR considers that it would not be reasonable for us to engage our anti avoidance powers.

TPR’s approach to corporate transactions is to set out our expectations clearly to relevant parties and encourage them to work constructively with us in the best interests of the pension scheme. Depending upon the circumstances, we may also outline what regulatory action TPR may take post-transaction if the pension scheme is not treated appropriately.

An example of this approach was during the takeover of GKN by Melrose, in this situation prompt engagement by TPR meant that both GKN and Melrose provided details of their plans and engaged with the trustees to agree mitigation for the changes in covenant resulting from the acquisition. ¹

If at any point the trustees consider that the scheme has been, or could be, negatively impacted without sufficient mitigation being proposed or provided, then they should contact TPR. To assist with any mitigation negotiations trustees should take legal advice as to their powers under the scheme rules.

Where TPR determine that a scheme has been negatively impacted by a transaction without sufficient mitigation and our engagement has not resulted in an appropriate outcome, we can investigate whether it is appropriate to exercise our anti avoidance powers under section 38 Pensions Act 2004 (by issuing a Contribution Notice) or under section 43 Pensions Act 2004 Pensions Act (by issuing a Financial Support Direction).

Post-transaction, depending on the circumstances, we continue our engagement with any new sponsor to ensure appropriate funding/protection is in place. TPR will continue to review whether it is appropriate to exercise our powers, as described above

c. Are these actions sufficient to allow both TPR and the trustees to discharge their duties?

The Government's White Paper Protecting Defined Benefit Pension Schemes, published in March 2018, found that the vast majority of employers and trustees behave responsibly towards DB schemes. However, the White Paper acknowledged that there have been examples of sponsoring employers misusing the flexibility in the system at the expense of the pension scheme.

To this end, the Government has signalled its intention to make changes to legislation in a number of areas, including strengthening the notifiable events framework and placing a new duty on corporate planners to submit a Declaration of Intent to TPR and trustees ahead of certain events, setting out the nature of the transaction and how any risks have been mitigated. In addition, further changes are proposed to introduce new criminal and civil sanctions, and improve the effectiveness of our Contribution Notice and Financial Support Direction powers.

As previously highlighted to the committee, we support the Government's proposals and believe that, as a package, they will work well to deter inappropriate behaviour, strengthen our ability to investigate and gather information and provide an enhanced early warning system enabling TPR to intervene more quickly and effectively.

Yours sincerely

Charles Counsell
Chief Executive