Dear Mr Field,

This letter is The Pensions Regulator’s (TPR) response to the Work & Pensions Select Committee’s report into defined benefit (DB) pension schemes, published on 21 December 2016. We welcome the Committee’s report and can assure the Committee that we are reflecting on its findings and recommendations.

This letter addresses the recommendations that are specifically relevant to TPR and our functions. In the main we have not addressed those recommendations which are directed to the Government or the Pension Protection Fund. However, we are engaging closely with the Government in the development of their Green Paper on DB schemes and expect that a number of points that the Committee makes will be picked up in that paper.

For clarity, we will use the numbering system from the ‘Conclusions and Recommendations’ section of the Committee’s report (pp 50-53) to identify individual recommendations.

**Recommendation 1 – trustees’ power to demand timely information**

We are strongly in favour of trustees – and TPR – being provided with accurate and timely information, for example in respect of corporate events that have the potential to impact on the pension scheme, and we are discussing this issue with the DWP.

**Recommendation 3 – removing regulatory and other barriers to DB consolidation**

We agree with the Committee’s conclusion that the consolidation of small DB schemes could be beneficial. We continue to explore how this might be achieved and what the
role of the regulator might be in ensuring that member benefits and the PPF are protected if this happens.

**Paragraph 8 - observations on TPR’s overall approach**

We note the Committee’s observations in paragraph 8 on our powers. We wish to assure the Committee that we are making significant efforts to pursue more cases, and to use a wider range of powers where appropriate, relating to scheme funding and other matters. However, we must also caution that it will take a while for this work to come to fruition as case work involves various regulatory stages and some issues will be resolved or settled without the formal exercise of the powers.

We also note the Committee’s observations on our engagement with trustees. Getting the balance right in terms of formal and informal guidance is challenging. DB schemes range in size from very large, well-advised schemes to very small ones with little support. In our TPR Future work we will be looking at how we can segment the population of schemes and better meet the needs of schemes in each segment. We also recognise the importance of being clear about when we propose to move toward the formal use of our powers and to make this clear to the scheme in question.

**Recommendations 9 & 10 – frequency of valuations and period in which to carry out valuations**

We have discussed the issue of the frequency of valuations with Government, as this is prescribed in law and as such cannot be adjusted by TPR alone. As you are aware, we support the aim of the Committee’s associated recommendation; that schemes can and should be required to complete their valuation and submit their recovery plan quicker than the current 15-month period. A change here would also require Parliamentary approval.

**Recommendation 11 - Recovery plans**

We wish to assure the Committee that we continue to challenge excessively long recovery plans. While there are circumstances in which a plan of more than 10 years is justified, it is often not in the members’ and PPF levy-payers’ interests to allow too long a time for recovery. We also share the Committee’s concern with recovery plans where a majority of the employer contributions is weighted toward the end of the period, and we continue to challenge employers where we see such proposals.
We think it is important to note that the length of recovery plan is one of the key flexibilities built into the funding framework in law, which allows schemes, employers and TPR to balance the interests of members, employers and the PPF levy-payers.

There are circumstances where a relatively long recovery plan may be appropriate and we feel it would be step too far to rule out such plans altogether. However, we recognise that we can be clearer about the circumstances in which the use of this or other flexibilities are or are not appropriate and over the coming months we will be considering how best to do this; for example, in our next Annual Funding Statement.

Our increasing emphasis on proactive engagement in advance of the due date of a valuation means that unusual or unacceptable proposals from higher risk schemes are more likely to be challenged before agreement is reached between the sponsor and the scheme trustees. This proactive engagement is part of a wider drive to help schemes and employers understand what we expect of them early in the valuation process.

We are keen to raise awareness where we use our powers to improve outcomes for members or PPF levy-payers. In particular, we have recently publicised a £255m settlement in the Coats case, and our case in respect of the Silentnight scheme continues after successfully defending a judicial review in relation to our anti-avoidance powers. As I outlined to the Committee, we are taking steps to ensure that we pivot to enforcement quicker in cases where our powers may be appropriate, as well as shortening the time needed to make the initial evaluation about whether powers can be used at all.

**Recommendation 14 – Interval between ‘warning’ and ‘final’ RAA notice, and guidance on RAAs**

As we discussed with the Committee in November, we hold speeding up our use of powers to be a key focus for TPR. To this end we will discuss with Government whether and how periods for representations can be shortened while preserving the rights of those affected.

We continue to encourage schemes and employers to come to TPR where an agreement on ongoing funding is challenging; we will review our guidance to see if this can be made clearer and encourage even earlier approaches to us.

It may help to provide some further background the RAAs. Under pensions law, RAAs are available to schemes where trustees believe insolvency is reasonably likely within the next 12 months. We have set out the criteria we expect to be met before we will agree a proposal in our RAA guidance, and this is informed by our belief that it should
be difficult for a sponsoring employer to divorce themselves from their responsibilities to their schemes and its members. Our guidance explains that we need to be satisfied that the sponsoring employer’s insolvency is inevitable and that the RAA proposal provides a better outcome for the scheme than would have been achieved through insolvency or by the use of our anti-avoidance powers. In particular it is unacceptable for an employer to engineer financial distress to bring themselves within the scope of an RAA application or to try to unload their liabilities on to the PPF. Under circumstances like this, we may well take a view that their actions are avoidance and we can – and will – invoke our anti-avoidance powers. We are, however, aware that that some schemes are genuinely stressed and we expect the DWP’s forthcoming Green Paper to consider different options for these schemes.

In addition, the Committee’s report states that the RAA “is a means of negotiating an outcome for scheme members that is better than the PPF in instances where a sponsoring employer is in mortal danger”. As we note above, it is a condition of an RAA that the proposal must represent a better outcome for the scheme, or PPF in the shoes of the scheme, than an uncontrolled insolvency would have provided. We would therefore like to clarify that the most common outcome remains PPF entry. Of the 26 RAAs that we have granted, the pension scheme has entered the PPF in all but three.

**Recommendation 17 – broadening TPR’s wind up power**

The power to wind up schemes of course remains a last resort, whether that power sits with the trustee or TPR. We continue to explore with Government whether our winding up power can be improved to ensure that it is available for use in the full range of circumstances in which it might be required.

**Conclusion**

We also note the Committee’s observations about the need for TPR to be nimble.

Again, we can assure the Committee that this is a key focus of our ‘TPR Future’ work and its review of our regulatory approach. However, we are not waiting for the outcome of that work and have already taken a number of actions to speed up elements of our work in relation to the funding of DB schemes and the use of our powers more generally. This will remain a priority for the foreseeable future.
We thank the Committee once again for its work on this inquiry and for its final report. We would of course be happy to come back to give evidence to the Committee on this, or any other part of our regulatory remit, in due course.

Yours sincerely

Lesley Titcomb
Chief Executive