The Pensions Regulator
Making workplace pensions work

Napier House
Trafalgar Place
Brighton
BN1 4DW

0345 600 0707

www.tpr.gov.uk
www.trusteetoolkit.com

mpcorrespondence@tpr.gov.uk

Frank Field MP
Chair
Work and Pensions Committee
14 Tothill Street
London
SW1H 9NB

3 December 2018

Dear Mr Field,

Johnston Press plc (in administration)

Thank you for letter of 19 November regarding the Johnston Press Pension Plan (the scheme) and the insolvency of Johnston Press and most of its subsidiaries (the company).

1. Description of TPR's involvement to date with Johnston Press

TPR had been aware of the risk of insolvency for some time. The company was operating in a declining sector, its revenues were steadily decreasing and we were aware that it had commenced a strategic review in March 2017 to assess the financial options in relation to the £220 million bond debt due for repayment in June 2019.

We have been working with the scheme for a number of years on its funding position, due to concerns about the weakening covenant and in relation to the 2014 refinancing of the company's debt. In that period, we supported the trustees to negotiate higher deficit repair contributions, to adopt a more prudent investment strategy and to change their asset allocation to bring it more in line with that of the PPF.

Under the 2014 refinancing, the company raised £140m of new equity, along with £220m of debt. This refinanced existing debt of £329m. Raising these funds was conditional upon the trustee releasing their existing security. We worked with the trustees and considered that their decision to agree to the release of their security to facilitate the refinancing and the raising of equity was not unreasonable given the challenging circumstances faced by the company and was likely to achieve more funding for the scheme than any alternatives. The scheme's PPF deficit has reduced in the period since this refinancing.

The company's strategic review was announced when the scheme's December 2015 valuation was still under discussion between the trustees and the employers. We were concerned that pressure might be put on the trustees to agree lower contributions to the scheme to make the refinancing of the bonds more viable and our involvement intensified. We have continued to work with the trustees and employers to ensure that nothing was agreed that would worsen the scheme's funding position. From 2017 onwards we urged the group to explore all possible ways to refinance the £220 million bond to avoid insolvency and the scheme having to enter the PPF.

2. **Why it was not possible to find a solution that would have avoided the pension scheme entering the PPF?**

We are aware that the group explored with its professional advisers various refinancing options but that these initiatives were unsuccessful.

As was reported in the press earlier this year, the company also approached the trustees, TPR and PPF with a proposal for a regulated apportionment arrangement (RAA). A draft proposal was submitted but did not satisfy TPR's and PPF's principles. Whilst an RAA would have avoided the need for administration, it would still have resulted in the scheme entering the PPF.

The company then tried to find a solvent solution through a sale. A sales process under the Takeover Code started on 11 October. On 16 November the company announced that none of the purchase offers would achieve sufficient value to refinance the bond debt. We understand that the directors resolved on 16 November to enter into administration because at that stage they determined that it was clear that there was no reasonable prospect of avoiding insolvent administration or liquidation and that, in light of their fiduciary duties, there was no viable option to continue to trade solvently**.** The company filed for administration and was sold to JPIMedia through a pre-pack administration.

While TPR realises that pre-packs can be a useful tool for realising best value from business that have failed, we also recognise the risk of misuse.

In respect of the pre-pack of the group's business to JPIMedia, we recently received the administrators' statement of insolvency practice (SIP) 16 and are carefully considering it, together with responses to further information requests we have made, to determine whether further investigation of the rationale for the pre-pack may be warranted. These enquiries are ongoing. In this case, our focus is in particular on the timing of the administration and pre-pack given that a deficit repair contribution of approximately £880,000 was due to be paid to the scheme on 19 November, two days after administrators were appointed.

3. **Are adequate protections are in place to prevent schemes being dumped into the PPF?**

Depending on the circumstances of a pre-pack, there may be grounds to consider the use of our anti-avoidance powers, particularly if evidence suggests insolvency has been engineered to avoid pension scheme obligations. Using these powers requires TPR to show that the parties are 'associated or connected' with the scheme's employer (as defined in the Insolvency Act 1986). Action to issue a Contribution Notice to certain purchasers in a pre-pack situation may not be possible if they do not meet the 'associated or connected' test.

Where 'associated or connected' parties are involved, we consider that our anti-avoidance powers do provide a strong deterrent to a pre-pack engineered for the purposes of 'dumping' a pension scheme.

TPR does not have a power to stop a pre-pack taking place (as there is no requirement for either us or the PPF to pre approve it). This means that pre-packs can happen quickly, which is why our powers to investigate and act after the event are important.

Decisions regarding legislative change are made by the government. We understand that BEIS is looking at pre-packs as part of their wider look at matters of corporate governance. We stand ready to assist and expect to make a contribution to that work based on our experience of the impact of pre-pack on occupational schemes.

We will continue to work closely with the PPF and the trustees to ascertain the circumstances surrounding the sale and its implications for the scheme and its members.

I hope this information is useful to the committee.

Yours sincerely

Lesley Titcomb
Chief Executive