

The Pensions Regulator

Rt Hon Frank Field MP
Chair, Work and Pensions Committee

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12 February 2018

Dear Mr Field

Thank you for your follow up letter of 31 January regarding Carillion. We feel it is important to set out our responsibilities in respect of defined benefit (DB) pension schemes before moving on to your specific questions. We work within the regulatory framework, set by Parliament. It requires The Pensions Regulator (TPR) to balance its statutory objectives in relation to DB funding of protecting scheme members, reducing the risk of calls on the Pension Protection Fund (PPF) and minimising any adverse impact upon the sustainable growth of employers.

With the Pensions Act 2004, Parliament took the decision to move to a flexible, scheme-specific funding framework. This did not require schemes to be fully-funded but recognised the importance of sponsoring employers repairing funding deficits within a reasonable period.

The Act also provided much greater security for members through a robust PPF which provides compensation in the event that a sponsoring employer of an underfunded DB scheme becomes insolvent. Before 2005 no such safety net existed and members faced substantial losses when companies failed.

As the UK recovered from the 2008 financial crisis, the Government became concerned about the impact of DB pension liabilities upon the ability of businesses to invest and grow. The Budget 2013 announced a new statutory objective for TPR to minimise any adverse impact upon the sustainable growth of sponsoring employers in its regulation of DB funding. This was given effect by the Pensions Act 2014. The objective highlights the importance of striking the right balance between ensuring sufficient funding for a DB pension scheme and an employer's ability to survive and grow so that it can support the scheme in the future.

TPR is focused on issues that affect the pension scheme, but we do not run the scheme day to day, regulate the sponsoring business or have power over commercial decisions. It is our job to work robustly and diligently, mostly behind the scenes, supporting the trustees, who are the first line of defence, in reaching agreement on the appropriate level of funding for the scheme in the best interests of pension scheme members.

Our role is to ensure DB schemes are well-run, have credible plans to pay members' benefits over time without adversely impacting the employer's sustainable growth and, to the extent our powers allow, to step in to put things right when they go wrong. We aim to be

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proactive and prevent problems from developing and we have evolved our approach over time to become more interventionist.

We have strong anti-avoidance powers to prevent employers from avoiding their obligations and misuse of the PPF, which has enabled us to recover over £1 billion for pension schemes through both settlement and regulatory proceedings. This is in addition to our ongoing engagement with pension trustees, sponsoring employers, and the wider pensions industry which is helping to secure billions of pounds in deficit recovery contributions each year. We are also prepared to consider creative solutions in cases where employers are at imminent risk of insolvency to try to secure a better outcome for members and/or to limit calls on the PPF.

During the last ten years in respect of Carillion we have:

- robustly supported the trustees during negotiations about scheme funding;
- attended trustee meetings to discuss priorities and strategy;
- made clear to the trustees and employer that we were prepared to use our s231 powers when they were unable to reach agreement in respect of an overdue valuation;
- strongly encouraged the trustee to appoint new advisors after the profit warning; and
- driven tough negotiations with the banks during discussions about payment deferral.

In response to your specific questions:

1. *You wrote that TPR has launched an investigation to “determine if there is information that suggests that we should use our anti-avoidance powers.” **Could you clarify when exactly that investigation was launched and what the trigger for it was? Is this the first such investigation into Carillion?***

Carillion entered into compulsory liquidation on 15 January 2018 and we made the decision to open an avoidance investigation on 18 January 2018. This is the first anti-avoidance case relating to Carillion that we have opened.

The scale, timing and impact of the group’s profit warnings raise important questions. We are in contact with the FCA, FRC and Insolvency Service to determine what happened and, in relation to the pension schemes, have launched an investigation into whether there are grounds for us to use our contribution notice and/or financial support direction powers.

2. ***Could you please provide a list of any meetings TPR had with Carillion Pension Trustee Ltd (the Trustee) and/or their advisor representatives, and with Carillion and/or their advisor representatives, dating back to the 2008 scheme valuations? Could you please also provide any minutes or notes of those meetings?***

Over the seven-year period between 2010 and 2017 we attended a number of meetings with the five ‘single trustee’ schemes. All of these meetings were with the trustee or company (or both) and their advisers but we are unable to share the conclusions from those meetings unless the trustee and employer consent to disclosure.

However, we are aware that the trustee has agreed to provide the notes of meetings and copies of letters and we hope that will provide sufficient information for the joint committee. If

there are further issues that arise from those notes and letters we will answer any further specific questions if we are able to do so.

3. Any minutes or records relating to meetings held with the company, creditors and the Trustee over the proposed deferral agreement in September and October 2017

In light of the challenges faced by the pension scheme and sponsoring employer following the first profit warning in July 2017, we worked closely with the trustee, its advisers and the company. At the beginning of August, the company approached the trustees with a request for deferral of pension contributions. A subsequent request was made in the context of the group's acknowledgement that they needed to agree a further £140m of bank facilities.

TPR has no power to prevent trustees and employers from agreeing changes to their recovery plans and schedules of contributions, but we nevertheless worked with the parties between August and October and achieved several material improvements for the schemes from the original proposal. Given these improvements and in the context of the employer experiencing critical and immediate liquidity issues, we supported the trustees' decision to agree to the deferral. This is because, without it, the £140m of new money from existing lenders would not have been forthcoming and would likely have led to the group's earlier collapse, with the deferred contributions then not being paid.

At the time, the company expected that the provision of this new money would be sufficient to enable it to continue trading until the end of April, providing enough time to achieve a longer term restructuring, thereby preserving an ongoing employer to support the schemes. In the event and regrettably, the additional money which the deferral of the deficit recovery contributions facilitated was not sufficient to achieve that objective.

4. Keith Cochrane, interim chief executive of Carillion, wrote that the company was attempting to put together a restructuring plan in December 2017 that focused on restructuring the group's pension liabilities, either through a consensual deal with the trustees, the PPF and TPR or through a regulated apportionment arrangement. What discussions did TPR have with the relevant parties about these proposals and what stage did the proposals reach before the company collapsed? Did you receive any proposals?

A reference to a proposed RAA was made in the oral evidence to the joint committee by Mr Cochrane on 6 February 2018.

We expect any RAA proposal to meet both our and the PPF's published criteria. The criteria are available on both the TPR and PPF websites and are deliberately intended to set a 'high bar' to discourage spurious applications and undesirable behaviours.

We received a high-level principles-based proposal from the employer's legal advisers. It lacked important detail but we nevertheless provided constructive feedback as to how we thought such a proposal could potentially meet our (and the PPF's) criteria.

Our strong view was (and remains) that an RAA was not, of and by itself, capable of resolving the issues faced by the employer, but rather would have been one element of a wider restructuring package which would also have required support from new money lenders, existing lenders and existing shareholders. It appeared that this was a business that was running out of money and severing the employer from the pension schemes would not by itself resolve matters. In the event, no formal RAA application was received and we

understand that this was due to the absence of the necessary support from other stakeholders.

5. ***Could you please provide a list of notifiable events under s69 of the Pensions Act 2014 of which you were informed by trustees of any of Carillion's 13 UK DB schemes, since 2008?***

Clarification of what constitutes a notifiable event is available on the TPR website:

<http://www.thepensionsregulator.gov.uk/codes/code-related-notifiable-events.aspx>

Without consent from the trustees and company we are unable to supply further information of any notifiable events in this case as such information would be restricted under the Pensions Act 2004.

6. ***Your response to our previous letter failed to directly answer whether you were aware of the Pension Ombudsman ruling against Mr Green. Could you confirm whether or not you were aware of that ruling?***

We understand that the ruling you refer to took place in 1994. TPR came into being in April 2005, replacing the Occupational Pensions Regulatory Authority which itself was established in April 1997. We were not aware of the ruling against Mr Green, as the determination was not published on the Pensions Ombudsman's website and, as far as we can establish, we were not notified of the ruling by another route. Had we been aware of the ruling, we would not have been able to take any action in respect of Mr Green as our regulatory remit does not extend to the activities of sponsoring company directors.

I hope this information is helpful. Please get in touch if I can be of further assistance.

Yours sincerely



Lesley Titcomb
Chief Executive