

Rt Hon Frank Field MP
Chair of the Work and Pensions Committee
House of Commons
London
SW1A 0AA

28 November 2018

Dear Mr Field

Johnston Press

Thank you for your letter of 19 November on Johnston Press.

I would like to take this opportunity to reassure the Committee and members of the Johnston Press Pension Plan (JPPP) that JPPP members' pensions are protected by the PPF.

Following the insolvency of Johnston Press PLC and Johnston Publishing Ltd, which sponsored the JPPP, we recognise that this will be an unsettling time for scheme members. According to the latest information we have, the scheme has a significant funding shortfall – its deficit on a PPF basis is in the region of £109 million, and around £305 million on a buy-out basis (to secure full benefits with an insurer).

We trust that the significant level of compensation we provide (funded in part by other DB schemes through the PPF levy), coupled with our own robust financial position (we had a reserve of £6.7 billion and funding ratio of 122 per cent at March 2018), will provide some measure of comfort to members.

Background on 'pre-packs'

Before answering your specific questions, it might assist the Committee to provide some contextual information on pre-packaged administrations (or 'pre-packs' as they are commonly known) involving defined benefit pension schemes, and how we approach them.

Defined benefit pension schemes entering PPF assessment as a result of a pre-pack administration are relatively uncommon when compared to other forms of insolvency. From recent experience, we see only a handful of pre-pack cases a year. To put this in context, last financial year (2017/18) 47 schemes entered PPF assessment and we currently have a total of 103 schemes in assessment.

We do not fundamentally take issue with the use of pre-packs. We recognise that there may be wholly legitimate reasons for negotiating a sale of an entity's business and assets prior to an insolvency, thereby minimising the period which a potentially viable business spends in administration. This may be for good commercial reasons and be the right approach in certain circumstances.

Where we do take issue is in cases where we have grounds to believe they may be being misused. Pre-packs can be used inappropriately to "dump" the company's liabilities, including the pension scheme, through "dropping" a company into administration with a sale prearranged. This is particularly the case where the new company is controlled by or has strong links to the owners/management/investors of the old company (a "phoenix situation"), or where the previous/new owners have secured debt in the insolvent business. In these circumstances, we pay particular attention to the sale process of the business.

Accordingly we treat each case on its own merits.

As and where we have concerns over the circumstances of an individual case, we refer these to the Pensions Regulator (TPR), as we have done in this case.

Turning to your specific questions:

1. To set out in detail for the Committee the nature of these concerns;

By way of background, the pension scheme debt is due from Johnston Press PLC and Johnston Press Publishing Ltd. Previously there had been a series of employers through the group and the obligation was consolidated into the current employers through a Flexible Apportionment Arrangement in 2015. We understand that as part of this, the trustee obtained guarantees of the pension debt from the various former employer companies. As a result, the pension scheme has a guarantee claim into over 50 separate companies in the Johnston Press group.

Accordingly, as a creditor in over 50 separate group companies, the scheme must be satisfied that the best result is being achieved for each single legal entity and not be disadvantaged by a group wide approach.

As has been reported, on 4 October the trustees, TPR & PPF were approached with an RAA proposal. The proposal did not meet the PPF's published criteria,¹ which are well-known in the industry, and was rejected. In the days before the insolvency was triggered, we were presented with the same RAA offer we had previously rejected, and indicated verbally that this would most likely be unacceptable. Nonetheless we undertook to put this to our Board, and would have reiterated our rejection of the offer formally had the administration not been triggered soon after. We had been told that if there was no purchaser for the business, a pre-packaged administration could well ensue.

Although all parties were aware that the group faced a very difficult task in refinancing the £220 million bond debt that was due for repayment in June 2019, there was no indication that the business was cash-flow insolvent and unable to meet its current debts as they fell due – indeed this has subsequently been confirmed by the administrators. We had been led to believe that the group actually had more than adequate cash reserves, including enough to pay the next pension contribution amounting to c£800k due on 18 November and bond holder interest due in December.

We invited the company to provide evidence of the "burning platform" for proceeding with a swift pre-pack which was not forthcoming. Accordingly we could not, and still don't, understand why there was an apparent rush to complete the pre-pack administration.

At meetings with the company, its advisors and the then prospective administrators, we challenged if suitable marketing of all the businesses had been carried out to ensure that

¹https://www.pensionprotectionfund.org.uk/DocumentLibrary/Documents/Restructuring_and_Insolvency.pdf

the best financial result on a legal entity basis was being achieved for the creditors of each of the companies.

The response received then, and which has been reiterated since by the administrators, was that the marketing of the group *as a whole* was sufficient to ensure the best result was achieved, notwithstanding that individual titles or asset owning companies were not being offered for sale.

We have recently received the administrators' Statement of Insolvency Practice (SIP) 16 report and are considering it carefully. At the present time we remain concerned that the approach taken to the marketing may not have adequately flushed out interest in single or batches of titles that may have achieved a better result for creditors including the pension scheme.

2. Whether your concerns are unique to this deal, or whether they reflect wider concerns about the use of pre-pack administrations;

The circumstances of each case are inherently unique. It is important to stress at this stage that we are awaiting further information on the circumstances of this particular case. Until we have all the facts it may be too soon to definitively judge if there might be wider concerns for consideration.

More broadly, as stated above, we do not fundamentally take issue with pre-packs. We treat each case carefully on its own merits to ensure all guidelines relating to them have been met in spirit and not just letter. As and where needed we provide robust challenge on behalf of pension schemes.

Despite in our experience pre-packs being relatively rare compared to other forms of insolvency, we have for many years been proactively explaining how we approach them to insolvency practitioners. In July 2015 we published formal guidance which is available on our website (a copy of which is also enclosed for your reference). We will continue to engage with industry stakeholders to ensure our approach is well understood.

3. Whether, in the light of this and similar cases, you consider that adequate protections are in place to prevent schemes being dumped on the PPF, at cost to pensioners and levy-payers?

The main protection we have against potential misuse of pre-packs is provided by TPR. It has existing powers to investigate potential "dumping" cases or where there may have been misuse, and can where appropriate take action. We believe these powers remain broadly adequate but TPR themselves will be better placed than us to comment. As and where there is evidence of wrong-doing, we fully support robust action being taken, not least as you rightly say to protect our levy payers.

Additional consideration could though be given to expanding the role of the "pre-pack pool" – a body comprised of independent, experienced industry professionals able to offer impartial advice on the purchase of a business and/or its assets by connected parties to a company where a pre-packaged sale is proposed – and making referral in a wider range of situations compulsory. We were advised that a referral was not deemed appropriate in this case as the proposed purchasers were not considered to be a connected party.

I hope this information is helpful, and I am of course more than happy to assist further if you or colleagues have any further questions.

Yours sincerely,

A handwritten signature in black ink that reads "Oliver Morley". The signature is written in a cursive style with a long, sweeping tail on the letter "y".

Oliver Morley CBE
Chief Executive