

**The Actuarial Profession**  
making financial sense of the future

Actuaries and the Law Seminar  
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## Hot Topics : PPF

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### Agenda

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- Setting the scene
- Eligibility
- Tales from the trenches
- Questions

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## Setting the scene

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- Progress more refined
- Actuarial panel
- Fast-track more available post A&P pilot

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## Eligibility: statutory employer

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- Many more closed DB schemes and increased risk of a statutory employer being lost e.g. on employer group restructuring (including substitution of new principal employer) or scheme transfers
- tPR example: Employer with closed DB scheme is replaced by a new employer. The new employer doesn't employ active DB members (and never has in the past). So, unlikely to be a statutory employer
- tPR statement builds on 2008 clearance guidance or covenant monitoring guidance in 2010
- Schemes will need to confirm who their statutory employers are via Exchange on Scheme returns from November 2011

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## Eligibility : statutory employer

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- tPR expects, in any case, to be told if a scheme hasn't got or loses a statutory employer (will look at moral hazard) and to consider advice received at the time

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## What if no statutory employer?

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- Schemes without a statutory employer at worst have not only no sponsor to fund the scheme (or pay S75 debt) but also no access to the PPF
- So must be clear on who stands behind the scheme not least to ensure Trustees can assess covenant of the right employer to inform ongoing funding and investment strategies etc
- A scheme without a statutory employer can achieve like statutory funding and debt payments under the Rules if necessary but will not be a qualifying statutory employer for PPF purposes

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## **George & Harding Group Scheme**

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- Parent company of original sponsor became principal employer of the G & H pension scheme in 2002 after the scheme had closed to new members and to future accrual. The original sponsor then ceased to trade
- Parent had never employed any active or prospective members of the scheme. It paid PPF levies but was rejected as an employer by the PPF on its insolvency in 2009

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## **Consultation on further extension to FAS**

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- DWP consulting on extension of FAS to this situation but only where
- the connection between scheme and last statutory employer lost before 10 June 2011 and
- the last statutory employer had an insolvency event prior to 6 April 2005 (i.e. not eligible for PPF) and
- scheme began to wind up between 23 December 2008 and when Regulations come into force

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## What is a Statutory Employer? (1)

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- s124 Pensions Act 1995
  - “...the employer of persons in the description or category of employment to which the scheme in question relates”
- s318 Pensions Act 2004
  - “...the employer of persons in the description of employment to which the scheme in question relates”

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## What is a Statutory Employer (2)

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- Both sections of the 1995 and 2004 Acts allow regulations to extend the meaning of employer to include those who have been an employer in relation to the scheme as well as any current employer
- OPS (Scheme Funding) Regulations 2005 (Regulation 2 and Paragraph 3 of Schedule 2)
- OPS (Employer Debt) Regulations 2005 (Regulation 9)
- PPF (Entry Rules) Regulations 2005 (Regulation 1)

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## Case Study

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- Company A is principal employer and funds the scheme
- Only employer of active members was a subsidiary, Company B, which went into liquidation in 2002
- Company A does not employ active members (nor prospective ones), nor has it ever done so.
- Company A is obliged under deed of participation to pay necessary funding and amount equivalent to statutory debt but the scheme cannot access PPF unless allows one or more Company A employees to accrue benefits in the Scheme

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## Qualifying Former Employer for PPF Entry

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- Single Employer Schemes (or Section)
- “Employer” where Scheme has no active members includes person who employed persons in the description of employment to which scheme or section relates immediately before scheme or section ceased to have any active members

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## Former Employers for PPF Purposes

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- Multi-Employer Scheme (or Section) Employer includes any person who (prior to the assessment date) ceased to be the employer of persons in the description of employment to which scheme or section relates unless condition A, B, C, D or E is satisfied

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## Conditions A to E

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- A – debt due and paid before assessment date
- B – debt due, compromised and paid
- C – debt due but excluded because unlikely to be recovered without disproportionate costs or within reasonable time
- D – no debt when ceased to employ
- E – s6ZB or 6ZC restructuring

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## Case Study

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- Insolvency event last November
- PPF investigation into former employers
- One still live
- Was it possible to attach a section 75 to it? No, debt on exit only £7000 or so. Disproportionate to calculate and recover. Duly noted in minutes at the time. Condition C satisfied
- Emphasises importance of recording decisions
- Increasing recommending deeds of cessation of participation as a formal record

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## Some tales from the trenches

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- Admissible Rules
- Equalisation
- Interaction with record-keeping
- Documenting ill-health early retirements



**Any questions?**