

JACK JONES evaluates the role the HMV Pension Scheme played in the retailer's restructuring

HMV deal sounding good

Trustees of the HMV Pension Scheme believe they secured a good deal from the sponsor's restructuring, which will see HMV sell its bookshop chain subsidiary Waterstone's. But how did they do it?

Independent Trustee Services trustee director Chris Martin – who was on the trustee board – says this was down to the scheme having powerful cards to play, and playing them well.

The terms of the scheme apportionment agreement – which will allow Waterstone's to be sold free of pensions liabilities – reached between retailer and scheme were revealed last week (*PP Online*, 8 June – www.professionalphensions.com/2077385).

They include £2.5m in contributions to be paid in two slices from the proceeds of the £53m sale, and another stand-alone payment of £3m in January 2014, with annual contributions of £5m.

On top of this the sponsor will contribute 80% of any excess cash flow capped at £1m annually and the scheme has been given third ranking security on the firm's assets behind its lending banks and EMI.

"But the initial offer was based around a straightforward cash contribution schedule at a rate not as favourable as the one we ended up signing up to," says Martin.

He adds trustees were able to drive a hard bargain because they were legally required to agree to the SAA before the sale could go through, as revealed last month (*PP Online*, 20 May – www.professionalphensions.com/2072599).

PwC pensions credit advisory director Karina Brookes led the negotiations for the trustees.

She explains: "The proposal put in front of the trustees was that Waterstone's would be sold and its pensions liability would be apportioned to HMV. The trustees had to take into account the test, which was that HMV – the remaining group – would be able to support that liability."

Martin says that was "an absolute test to be met". He explains: "It wasn't that it would be nice to be satisfied – we *had* to be satisfied. Once we'd had that discussion a number of times with the other parties, there was a clear view we weren't just asking because we fancied it, we were asking because we had to."

Martin says this is the key difference between this case and recent examples – such as the Silentsnight restructuring – in which the sponsor had suffered an insolvency.

However, he adds that the options presented by HMV were limited by the scale of the problems it faced.

Brookes emphasises that the company's lenders also had a very strong hand – holding first-ranking security and being needed for ongoing financial support.

"The lenders' position at the start was probably more severe than the company's in terms of what they were expecting the pension scheme to get, although it wasn't articulated in a formal proposal," she says.

"All three of the key stakeholders – lender, company and trustee – had pretty powerful cards to play," says Martin. "I think it was a recognition that each had those positions that allowed us to get to what was hopefully a successful conclusion for all three."

ITS was brought onto the trustee board in March after a series of exchanges between the trustee chairman and the company triggered by HMV's poor Christmas trading and sliding share price.

Martin says one member-nominated trustee and one company-nominated trustee had to step back from negotiations as they held senior management positions and had identified a potential conflict of interest.

This left a trustee board of three – ITS, an independent chairman and one company employee.

PwC was engaged in early April and pitched into meetings at which HMV presented its proposals on the same day.

Brookes says the fast pace of the process was, in part, driven by the company's timetable for pushing through the Waterstone's sale.

"And the negotiations went right to the wire," says PwC pensions credit advisory partner Richard Setchim, who was also involved in the process. "They concluded about the time the discussions concluded with the purchaser in Paris."

Martin, Brookes and Setchim all agree that it was vital that the trustees were in agreement on their minimum requirements for the SAA and stuck to their line.

"When we had undertaken the analysis which indicated the minimum requirement the trustees needed to pass the funding test, it was about articulating that to the other stakeholders and holding to that during negotiations," says Brookes.

"Going into those negotiations, PwC absolutely had to know what the trustee's minimum position was and that the trustee was entirely clear and behind them, and would back them all the way in that," says Martin.

"It would have been very difficult for PwC

to have been leading those negotiations for us without that certainty."

The arrangement also required The Pensions Regulator's approval as HMV applied for clearance, and Setchim had praise for the way the watchdog acted.

"They understood the timescales we were working towards and were very cooperative in helping to meet them," he said. "We had a conference call with them together with the trustees and were able to explain things – that was key to it."

Martin agrees: "The regulator was watching with interest from the sidelines even when they didn't have anything formal to consider – so it wasn't that they were suddenly presented with a clearance application and had to make a decision.

"They were keeping up-to-speed, and the way they behaved in doing that was really useful in terms of the final outcome."

TPR has given a clearance statement for the agreement – a process that does not signal its approval, but does give assurance that it will not use its anti-avoidance powers to investigate the deal.

The regulator announced last month it would use these powers to investigate the way in which Silentsnight shed its pension liabilities, as no clearance application was received (*PP Online*, 19 May – www.professionalphensions.com/2072033).

After receiving the consent of the trustee board and TPR, the final group that must back the deal is the HMV shareholders, who will vote on the proposals next week.

The firm expects the sale to go through by the end of the month.



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Chris Martin, Independent Trustee Services

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